

Errata

December 17, 2024

A.758 (p.43) incorrectly lists the lead agency for Sands New York. The lead agency is the Nassau County Legislature

Questions and Answers have been congregated by subject area. For convenience, reference is provided to where the subject matter had been discussed in the First Round Questions and Answers. We suggest that each Applicant review all First-Round Questions and Answers as well.

Alcoholic Beverage Licensing

[See also First-Round Question & Answer 572]

Q.614. Does the Commission plan to promulgate regulations and/or issue rulings to expand the hours for service of alcohol in class III casinos? If so, do individual applicants need to request a ruling, or will the Commission issue a blanket ruling for all licenses granted?

A.614. Please see Part 5328 of the Commission's regulations, which will be universally enforced. Please also note that "class III casino" is a concept relevant to the federal Indian Gaming Regulatory Act and has no applicability to commercial casinos licensed pursuant to New York law.

Q.615. If the Commission plans to expand the hours for service of alcohol in commercial casinos, do individual applicants need to request a ruling, or will the Commission issue a blanket ruling for all licenses granted?

A.615. Please see the answer to Q.614.

Applicant Instructions

[See also First-Round Questions & Answers 1 through 6]

Q.616. The RFA includes a limitation that "Each responsive file (.pdf or .jpg) should be no greater than 5MB."

a. Does "responsive file" mean each named section (for example: EvalEconCaliber11.Brand.Layout)?

b. Does this apply to both FTP and USB supplied files?

A.616.

a. The 5 MB limit generally applies to PDFs and JPGs submitted in response to the RFA, to afford accessibility and convenience for those tasked with reviewing proposals. While the Board will not reject Applicant response components that exceed the 5MB limit, Applicants should strive to keep all responsive files within a reasonable size.

b. Yes.

Q.617. The answer to Question 2 provides that entities that intend to apply must request access, no earlier than 30 days prior to the RFA Return Date but no later than 14 days prior to the RFA Return Date, to the file transfer system through the Commission. Will applicants be able to periodically update and/or revise the RFA while accessing the Commission's file transfer system (*i.e.*, upload files over a period of time), or will they need to complete the submission in one setting?

A.617. The applicant must submit all files at once.

Q.618. May an Applicant supplement its application with updated information as it becomes known and prior to the Supplement Return Date?

A.618. An applicant must amend its application with updated information consistent with the Continuing Duty to Update Application set forth on Page 8 of the RFA.

Q.619. The Waiver, Release, Covenant Not to Sue and Indemnification Agreement ("State Waiver") is presented as a two-party agreement, to be signed by a representative of the Board.

a. If the Applicant is submitting the hard-copy of its Application in a binder or bound book, should these forms and the two-party N.Y. Racing, Pari-Mutuel Wagering and Breeding Law § 1311 Waiver forms be submitted separately as loose pages, for countersigning by the Board or will the Board e-sign the .pdf submitted with the electronic files?

b. Does the Board anticipate countersigning and returning those documents after receipt or waiting until selections?

A.619.

a. The Applicant must submit two hard copies of the State Waiver with original signatures, separate from any bound materials.

b. The Board will return one counter-signed copy upon the receipt of the Application and retain one copy for its records.

Q.620. The description of the Waiver of N.Y. Racing, Pari-Mutuel Wagering and Breeding Law § 1311 Rights (“Section 1311 Waiver”) at the bottom of page 14 of the RFA appears to be a misstatement of N.Y. Racing, Pari-Mutuel Wagering and Breeding Law § 1321-d(2)(b) in stating that that section makes it a condition for each Applicant, Operator and direct or indirect owner of either Applicant or Operator to submit that waiver. The statute reads that each “license applicant must...(b) waive all rights they or any affiliated entity possess under section thirteen hundred eleven of this article to bring an action to recover a fee.” There is no reference to Operator or other qualifiers who are not seeking a casino license, and therefore not directly paying the Application fee, but who are qualifying entities associated with the casino licensee. The actual § 1311 waiver form appears to have corrected that error by making the form specific to an Applicant, which is also signing “on behalf of Applicant’s affiliates....” Consistent with the text of the § 1311 Waiver form, should that form be submitted by the Applicant only?

A.620. The requirement of this statutory provision is no longer relevant, having been mooted by the passage of time. The date to recover passed on February 28, 2023.

Q.621. N.Y. Racing, Pari-Mutuel Wagering and Breeding Law § 1311 has been amended, most recently by the State budget legislation in New York Laws of 2022, Ch. 56, Part RR, section 5, but still includes a reference at the beginning of the second paragraph of subsection (1) to a gaming facility being “required to commence gaming operations no more than twenty-four months following license award.” The earlier response to Question 574 states that “the period subject to the recoverable license fee, as set forth in N.Y. Racing, Pari-Mutuel Wagering and Breeding Law § 1311(1), has expired.” That recoverable license fee first appears in the same paragraph after the reference to the twenty-four months opening requirement and, from the context, the twenty-four months is associated with the recoverability of earlier application fees and the earlier expansion of available licenses following the state constitutional amendment. If the period subject to the recoverable license fee in that section has expired, has the obligation to open within twenty-four months

also expired or otherwise been superseded by N.Y. Racing, Pari-Mutuel Wagering and Breeding Law Article 13, Title 2-A?

A.621. Section 1311 is in Title 2 of Article 13, which applies only to the Upstate Gaming Facilities award process.

Q.622. N.Y. Racing, Pari-Mutuel Wagering and Breeding Law § 1321-d(2)(b) speaks only to a waiver of rights to bring an action to recover a fee under N.Y. Racing, Pari-Mutuel Wagering and Breeding Law § 1311.

a. Can an Applicant assume that would mean an action to recover an application fee under N.Y. Racing, Pari-Mutuel Wagering and Breeding Law § 1311(1)?

b. N.Y. Racing, Pari-Mutuel Wagering and Breeding Law § 1311(3) states that “licensees shall be required to house upon the physical premises of the licensed gaming facility, upon request, a mobile sports wagering platform provider’s server or other equipment...” Questions 363 and 372 address only retail sports betting, not mobile servers. Must an applicant reserve space in its facility for such a request, or is this also an expired obligation?

c. Is the fee due from a mobile sports wagering platform provider an active fee available to new licensees, and is that fee excluded from the Section 1311 fee waiver referenced in N.Y. Racing, Pari-Mutuel Wagering and Breeding Law § 1321-d(2)(b), or does the N.Y. Racing, Pari-Mutuel Wagering and Breeding Law § 1311 waiver purport to waive that server-hosting fee also?

A.622.

a. No.

b. No, this provision is applicable only to licenses granted through the Upstate Gaming Facilities award process.

c. No, this provision is applicable only to licenses granted through the Upstate Gaming Facilities award process.

Q.623. Since N.Y. Racing, Pari-Mutuel Wagering and Breeding Law § 1321-d(2)(b) has made the N.Y. Racing, Pari-Mutuel Wagering and Breeding Law § 1311 waiver specific to fees, will the Board be changing the form which currently is broader than fees?

A.623. No.

Q.624. Since the State Waiver addresses the waiver, release, covenant not to sue and indemnification obligations of not just the Applicant but all of the “Proposers” referenced in the State Waiver, is there a continuing purpose for the N.Y. Racing, Pari-Mutuel Wagering and Breeding Law § 1311 waiver to address the Application fee only, to the extent not waived by the State Waiver?

A.624. No.

Q.625. RFA Page 20 provides a “consortium” in the list of those that will become an Applicant upon payment of the \$1 million Applicant fee. How would a consortium be an Applicant and sign the required waivers and application materials, through a designated entity?

A.625. The Applicant should use its best judgment to comply with this requirement.

Q.626. The responses to questions 402 and 403 refer to the “Initial License Period” as referenced in the questions, but which do not appear to be defined terms in the RFA or elsewhere. Can you confirm Initial License Period is not a new defined term?

A.626. Section 1321-a of the Racing, Pari-Mutuel Wagering and Breeding Law provides an initial license period of no less than ten years but no more than thirty years based on the proposed total investment of the applicant’s project. The length will be set by Commission rulemaking.

Q.627. The answer to Question 170 states that Casino Key Employees do not need to respond to questions that refer to “Applicant Party”, “except where such information is required on the Multi Jurisdictional Personal History Disclosure Form.” As questions in the RFA generally differ from information required on the Multi Jurisdictional Personal History Disclosure Form, specifically which questions in the RFA are Casino Key Employees required to respond to?

A.627. Key employees are required to complete the Multi Jurisdictional Personal History Disclosure Form.

Q.628. The answer to Question 381 states that “the New York Supplemental [Form] does not require references.” However, Attachment 7 to the New York Supplemental Form requests that the individual provide five (5) references. Please clarify.

A.628. Attachment 7 is part of the Gaming Facility License Application Form, not the New York Supplemental Form. It requires disclosure of Applicant Officers.

Q.629. a. For the hard-copy submission, are the materials to be submitted in hole-punched binders?

b. Is there a specific requirement for organizing the binders?

A.629.

a. Hard copy submissions may be submitted in hole-punched binders.

b. A hard-copy submission must be organized with the Executive Summary first, then documents based on the outline contained in pages 29-56 of the RFP. Additional documents not included in the outline shall follow based on the outline contained in the File Name Convention Appendix.

Q.630. For the hard-copy submission, if the materials are to be submitted in hole-punched binders, is there a specific requirement for organizing the binders?

A.630. Please see the answer to See Q.629(b).

Q.631. Can the large-format drawings be reduced to 11" x 17" format for the hard copy submission, so that these could fit within a standard 8 ½" x 11" binder?

A.631. Yes.

Q.632. How many USB flash drives are required for submitting the redacted copies?

A.632. One, but an Applicant will bear responsibility for hardware failure resulting in an inability to access data of the drive.

Q.633. RFA Page 11, in Applicant Instructions, provides that "During the application process, no Applicant, agent of the Applicant, qualifier, or other associated individual shall contact a Board, Commission or (after the return date) CAC member directly concerning the subject matter of this RFA." If the CAC appointing authority is the appointed CAC member, will the applicable Applicant or its agents be permitted to contact such appointing authority/CAC member concerning topics other than but related to the RFA, including land use,

environmental review and community benefits, to ensure that such other approvals and processes can continue to advance contemporaneously with the CAC review process?

A.633. Yes, it is understood that in the general course of conduct some interaction may be necessary to process entitlements. The intention of this prohibition is to eliminate direct advocacy or lobbying efforts to advance or limit any application.

Q.634. The RFA appears to require the submittal of one physical copy of the Application, two flash drives containing the electronic version of the Application, and the upload of the electronic version of the Application via the FTP server designated by the Commission. Further, redacted files must be submitted on a separate flash drive, with such flash drives submitted in clearly marked separate envelopes. Can an Applicant submit two sets of (two or more) flash drives, with each set containing the electronic version of the entire Application (as opposed to being required to submit two, and only two, flash drives containing the electronic version of the entire Application)? The ability to submit two sets of flash drives would address, for example, a situation where Applicant's entire Application cannot be saved on a single flash drive due to file size or other reasons.

A.634. Yes, provided that all flash drives are clearly marked and identified. In the alternative, an applicant may utilize an alternative form of a portable drive, such as a portable solid-state drive.

Q.635. The answer to Question 303 refers Applicants to the RFA submission requirements suggesting redactions are to be submitted alongside unredacted files on the USBs. The answer to Question 532 requests Applicants to submit redactions on a separate USB drive and for "such drives to be submitted in clearly marked separate envelopes." Questions on whether an Applicant is to submit hard copies of redactions are referred to in the answer to Question 303, which is the RFA submission requirements, suggesting Applicants do not need to submit hard copies of redacted materials. Could the Gaming Facility Location Board please clarify the submission of redacted materials?

A.635. An electronic version must be submitted on a separate USB drive or solid-state drive. A hard copy of the redacted application is not required.

Q.636. The RFA appears to require the submittal of one physical copy of the Application, two flash drives containing the electronic version of the Application, and the upload of the electronic version of the Application via the FTP server

designated by the Commission. Further, redacted files must be submitted on a separate flash drive, with such flash drives submitted in clearly marked separate envelopes.

As Background Investigation Forms contain sensitive and confidential personal background and financial information, can an Applicant submit its Background Investigation Forms in one or more sets separately from the remainder of its Application, provided that the separate submittals each include one physical copy of the relevant Background Investigation Form, two flash drives each of which contain an electronic version of the relevant Background Investigation Form, the upload of an electronic version of the relevant Background Investigation Form via the FTP server, and one flash drive containing a redacted version of relevant Background Investigation Form?

A.636. All individual licensing documents and background investigation forms must be submitted in a manner that clearly separates them from the remainder of the Application.

Q.637. The RFA requires an “Applicant Party” to provide responsive information to several RFA questions, including Organizational Documents, Legal, Bankruptcies, Contract Breach, Tax Delinquencies and Experience. “Applicant Party” includes, in part, persons or entities that have a direct or indirect ownership interest in the Applicant equal or greater than 5 percent.

Given the nature of the questions that an Applicant Party must respond to, and that an Applicant Party may include shareholders of a publicly traded company or other third parties, such an Applicant Party may be required to provide non-public information as part of the Application and further, the Applicant may not be privy to such non-public information and have no legal right to obtain and/or possess such non-public information.

Accordingly, can an Applicant Party submit responsive information to RFA questions (provided such information is non-public and the Applicant is not privy to such information and/or have a legal right to obtain and/or possess such information) separately from the remainder of the Application, provided that the separate submittals each include one physical copy of the relevant information, two flash drives containing an electronic version of the relevant information, the upload of an electronic version of the relevant information via the FTP server, and one flash drive containing a redacted version of relevant information?

A.637. Yes, if submitted in advance of RFA submission. If so submitted, both electronic and hardcopy must be provided. Additionally, a redacted electronic copy must be included in the filing.

Please be reminded that any RFA submission that is not complete is subject to rejection. An Applicant is responsible for ensuring all elements of its RFA submission are complete and received by the deadline.

Q.638. With respect to the answer to Question 317, could the Gaming Facility Location Board please confirm that in addition to scanned copies of “signed instruments and applications,” Applicants are to submit original signatures in their hard-copy RFA submission?

A.638. Yes, original signatures must be submitted with the hard copy.

Q.639. a. Video materials are referenced in several areas, including the answers to Questions 307, 308, 320, and 323. Could the Gaming Facility Location Board please confirm that the Applicant is to provide a video file (on the USB and through the file transfer system) within its RFA submission and the Gaming Facility Location Board will then post the video on YouTube.

b. In the answer to Question 323, Gaming Facility Location Board pointed to the revised RFA naming conventions to answer an Applicant's question on a naming convention for the YouTube video. We were unable to find the preferred naming convention. Could the Gaming Facility Location Board please clarify how the video file should be saved?

c. Is an Applicant allowed to publicly post online and/or distribute its project overview video before the Gaming Facility Location Board posts the video on the designated Gaming Facility Location Board YouTube page?

A.639.

a. Yes, the Board will post videos.

b. A file should be saved a manner that makes the file content readily apparent.

c. Yes.

Q.640. The Gaming Facility Location Board recommends Applicants strive to keep materials to 5MB. Could the Gaming Facility Location Board please confirm that such file-size guidance is 5MB of responsive content per RFA question?

A.640. See answer to Q. 616.

Q.641. Is a PDF submission of the project schedule acceptable or is a live file from scheduling software preferred?

A.641. A PDF submission is required.

Q.642. Can the site plan and master plan be the same drawing if all requested information is present on the drawing?

A.642. Yes, provided all necessary information can be clearly obtained though the single drawing.

Q.643. The RFA asks Applicants to provide the project's proposed construction timeline. However, key milestones within the RFA timeline remain undefined. Those milestones, which include but are not limited to RFA Return Date, Supplemental Return Date, CAC Vote Deadline and Zoning Submission Date, will influence the project's schedule and construction timeline.

a. In answering RFA questions on the proposed project's construction timeline, should the Applicant base its proposed construction timeline on its best assumptions of undefined milestones?

b. Given that the milestones will be defined at a future date, will Applicants be allowed to submit revised and supplemented schedules as needed?

A.643.

a. Several dates have now been established. Please refer to the updated schedule.

b. Yes, as the RFA requires.

Q.644. The answer to Question 177 indicates financial data should specify the corresponding calendar year as well as the number of years after opening. The answer to Question 246 indicates financial data should be labeled as Year 1, Year 2, etc. Can you please confirm the required labeling convention for financial data?

A.644. Year 1 shall represent Calendar Year 2026, with each successive calendar year increasing the base year by one.

Background Investigation

[See also First-Round Questions & Answers 7 through 39]

Q.645. What specific disclosures are required for banks, lenders and other qualified institutional investors that comprise a syndicate that may qualify for a waiver of licensing or qualification requirements under 9 NYCRR § 5301.4(a)(3)(i)-(iii)?

A.645. Please see the Waiver Certification Form accessible [here](#).

Q.646. The answer to Question 383 states that Information from individual applicants shall be provided “as [of] or as close to the Return date as possible.” Is it acceptable to provide individual financial information as of the end of the last quarter prior to the Return Date for this purpose?

A.646. Yes.

Q.647. Can the Background Investigation materials (including the Multi Jurisdictional Personal History Disclosure Form and New York Supplement) be included in a submission that is separate from Applicant’s other RFA materials to maintain confidentiality of individual applicants? This assumes that the Background Investigation materials will be named/labeled and submitted on the Return Date in the specific formats required.

A.647. All documents for any individual’s licensing and for background investigation must be submitted in a manner that separates them from the remainder of the Application.

Q.648. For Schedule C of the Multi Jurisdictional Personal History Disclosure Form, can the most recent quarter-end statement of investments be submitted in lieu of completing the table on Page 51?

A.648. Yes, so long as such statements continue to represent an Applicant’s financial position.

Q.649. For the Multi Jurisdictional Personal History Disclosure Form, what is meant by “dependent” children?

A.649. The customary and general use of this term applies.

Q.650. For the Multi Jurisdictional Personal History Disclosure Form, if the interest in real estate is a contingent interest, the current value of such real estate is \$0 until the contingency occurs. Is this an acceptable valuation?

A.650. Yes, so long as the interest is specified as such.

Q.651. For the Multi Jurisdictional Personal History Disclosure Form Schedule E, are life insurance policies that are in place to pay back loans made to family trusts to be listed?

A.651. No.

Q.652. For the Multi Jurisdictional Personal History Disclosure Form Schedule E, is a life insurance policy purchased for a grandchild with the parent – and not the Applicant – listed as the death beneficiary to be listed?

A.652. No.

Q.653. a. For shareholders of a holding corporation (“Holdco”) that will be the ultimate parent of the company that will own somewhere between 10-15 percent (still to be decided) of the applicant, what percentage of ownership of Holdco will require individual shareholders to submit applications?

b. Do we assume this will be a look through, *i.e.*, we should assume 15 percent ownership of the applicant then anyone owning at least 33.33 percent of Holdco would need to be licensed ($33.333 \times .15 = 5.0$)?

c. Would all officers and directors of Holdco automatically be required to submit individual applications?

A.653.

a. Five percent.

b. No.

c. Yes.

Q.654. a. For any individual(s) required to submit a Multi Jurisdictional Personal History Disclosure Form (with New York Supplement) as a shareholder (>5%) of a Holdco and whose shares are held in a trust, are 3 additional applications required (trust entity, trustee and beneficiary)?

b. If so, will it be entity applications for the trusts and individual apps for the trustees and beneficiaries? Does this answer change depending on whether the trust is revocable or irrevocable?

c. If additional applications are required (Trust entity, trustee and beneficiary), will it be entity applications for the trusts and individual apps for the trustees and beneficiaries?

d. Does this answer change depending on whether the trust is revocable or irrevocable?

e. If additional applications are required (Trust entity, trustee, and beneficiary), does this answer change depending on whether the trust is revocable or irrevocable?

A.654.

a. An application would be required for the trust entity and the trustee. When the beneficiary obtains assets from the trust entity, the beneficiary should then apply for licensure. If the beneficiary acquires the entire trust estate, a notice also should be submitted requesting the withdrawal/inactivation of the trustee license.

b. Yes, an entity application for the trust and an individual application for the trustee. When the beneficiary obtains an asset from the trust entity the beneficiary should then submit an individual application. If the beneficiary acquires the entire trust estate, a notice also should be submitted requesting the withdrawal/inactivation of the trustee license. This answer applies whether the trust is revocable or irrevocable.

c. Yes, entity application for the trust and an individual application for the trustee. When the beneficiary obtains an asset from the trust entity, the beneficiary should then submit an individual application. If the beneficiary acquires the entire trust estate, a notice also should be submitted requesting the withdrawal/inactivation of the trustee license.

d. No.

e. No.

Q.655. What is the status of the Application for Waiver Form mentioned in 9 NYCRR § 5301.4?

A.655. The Waiver Certification Form can be accessed [here](#).

Q.656. If the Applicant and the Operator are the same entity, may that entity submit one application form as Applicant and Operator?

A.656. Yes.

Q.657. Will the Commission accept copies of pages of the Multi Jurisdictional Personal History Disclosure Form submitted to other jurisdictions with information that remains unchanged, re-initialed and re-dated, in lieu of retyped original pages?

A.657. Yes.

Q.658. If a new natural person shareholder acquires a beneficial or proprietary interest of 5 percent or more in an Applicant after the Applicant has filed, how long does the new shareholder have to submit a Multi Jurisdictional Personal History Disclosure Form and New York Supplemental Form?

A.658. As soon as practicable following the identification of the new shareholder.

Q.659. If a new entity shareholder acquires a beneficial or proprietary interest of 5 percent or more in an Applicant after the Applicant has filed, how long does the new entity shareholder have to submit an Entity form?

A.659. See answer to Q. 658.

Q.660. When will details concerning the submission of fingerprint cards for Key Persons be released?

A.660. Details concerning the submission of fingerprint cards are contained in the document Commercial Fingerprint Information – RFA Applicants, which can be accessed [here](#).

Q.661. Will fingerprinting by a state, tribal, or local law enforcement agency on FBI fingerprint identification cards be accepted, as is the common practice in other jurisdictions?

A.661. Yes.

Q.662. Is National Fingerprint Inc. or any other non-government agency an approved vendor for purposes of submitting digital fingerprints to the Commission?

A.662. New York will accept digital submissions only through IdentoGo, the lone State-approved vendor.

Q.663. a. The RFA refers to “publicly held companies or corporations” and in other instances “publicly traded.” Is there a distinction or difference for licensing or waiver purposes?

b. Would an issuer of publicly held debt securities, but not equity securities, qualify?

c. Would an issuer of exempt private debt securities qualify?

d. Per the response to Question 12, should waiver request forms and supporting documentation be submitted separately for review by the Commission or as part of the Application and associated materials?

A.663.

a. No.

b. Determination would be made on a case-by-case basis dependent on individual facts and circumstances.

c. See answer to Q.663(b) above.

d. Waiver requests may be submitted independently.

Q.664. Please confirm that an Operator is not issued a separate management license by the Commission but is a qualifier that will be determined to be suitable for operating a licensed facility.

A.664. No, the Operator will be licensed independently.

Q.665. What factors will the Commission review related to requested waivers?

A.665. The nature of the transaction or entity and its relationship to the ordinary course of business of the applicant.

Q.666. a. What factors will the Commission review related to requested waivers?

b. Are limited liability companies included in the definition of “corporations” under 9 NYCRR § 5301.4(a)(2) of the regulation related to waivers?

c. With respect to banks and other licensed lending institutions, will the Commission accept credit ratings from a reputable credit rating agency, such as Moody’s or Standard & Poor’s, that meet or exceed a threshold rating of BBB-/Baa3 in place of audited financial statements and other documentation and disclosures required of Financial Sources? "

A.666.

a. See the answer to Q. 665.

b. Yes.

c. Yes.

Q.667. With respect to banks and other licensed lending institutions, will the Commission accept credit ratings from a reputable credit rating agency, such as Moody’s or Standard & Poor’s, that meet or exceed a threshold rating of BBB-/Baa3 in place of audited financial statements and other documentation and disclosures required of Financial Sources?

A.667. See answer to Q. 667(c).

Q.668. Is it preferred that the Applicant use the corresponding attachments provided in the Gaming Facility License Application Form or is the Applicant allowed to use its own spreadsheets to respond to each Item?

A.668. Applicants should use the Gaming Facility License Application Form.

Q.669. a. What constitutes a substantial change for determining whether a currently licensed Applicant must submit a new application?

b. If a currently licensed Applicant files updated financials and an affidavit confirming no other substantial change, would that be considered sufficient?

A.669.

a. All current licensed (video gaming and commercial casino) Applicants must submit a new Application. If an individual or entity associated with the Applicant holds a current video gaming license, such individual or entity must file a new Application. If the individual or entity associated with the Applicant holds a current commercial casino license, such individual or entity must update the original application to reflect any material change to the information previously provided, unless the individual or entity will now require a higher-level license, in which case a new Application is required.

b. Yes, consistent with the answer to Q.669(a).

Benefits of the Site Location

[See also First-Round Questions & Answers 40 through 55]

Q.670. If a proposed ancillary planned community development is included in a proposal, will an affordable housing component of the project be mandatory/required as part of the proposed planned community development?

A.670. An affordable housing component is not required as a condition for receiving a license. If affordable housing is required as part of the local entitlement process, or if affordable housing is offered even though not required, it would be considered as part of the economic activity and business development and/or the local impact siting evaluation.

Q.671. If a proposed ancillary planned community development is included in a proposal, will the Affordable New York Housing Program Rules and Eligibility Requirements pursuant to N.Y. Real Property Tax Law § 421-a (16) apply?

A. 671. Any current statutory or regulatory obligations or conditions of tax or other incentives applicable to the development's location, building type, or incentive programs will continue to apply to any commercial casino development.

Q.672. If proposed, will a proposed planned community development be required to accept Section 8 rental assistance?

A. 672. New York State’s Human Rights Law prohibits discrimination on the basis of lawful source of income.

Q.673. If proposed, will a proposed planned community development be required to include rent controlled or rent stabilized housing?

A.673. Any current statutory or regulatory obligations or conditions of tax or other incentives applicable to the development’s location, building type, or incentive programs will continue to apply to any commercial casino development.

Q.674. If proposed, will a proposed planned community development be required to comply with the “80/20” housing program?

A.674. Any current statutory or regulatory obligations or conditions of tax or other incentives applicable to the development’s location, building type, or incentive programs will continue to apply to any commercial casino development.

Q.675. If a planned community development is proposed, in what period of time must it be constructed to be considered ancillary and of economic benefit?

A.675. Ancillary development must be constructed in a timeframe consistent with the overall project, with this work occurring concurrent to the primary gaming facility developments or planned as following phases immediately following completion of the previously identified phase. Work must be scheduled within a reasonable period in relation to industry standards.

Q.676. Will the Gaming Facility Location Board take into consideration whether related or affiliated entities of the Applicant have failed to construct an affordable housing component of a residential development constructed previously?

A.676. All factors of an Applicant’s experience will be considered when analyzing character and capability.

Community Advisory Committees

[See also First-Round Questions & Answers 60 through 144]

Q.677. a. In regard to the CAC process, will the CACs follow an identical schedule for review of proposal(s)?

b. Will they be required to have a specific number of public hearings?

c. Assuming there is a single calendar for all CACs how long will the process take?

A.677.

a. No. Each CAC may set its own schedule so long as the deadlines imposed by the RFA are satisfied.

b. The statute obligates hearings, a plural term. Accordingly, each CAC must conduct no less than two hearings. There is no limitation on the maximum number to be conducted.

c. See answer to Q.677.a.

Q.678. a. Will the CACs be expected to evaluate proposals according to guidelines and criteria provided to them by the Commission?

b. What will be those guidelines and criteria?

c. Will the CACs be expected to score proposals and to make their scorings available to the public?

A.678.

a. No.

b. It will be up to each CAC member to individually determine if, in the member's opinion, public support has been evidenced and an application should advance for Board consideration. If a CAC votes to advance an application, such CAC is required by Racing, Pari-Mutuel Wagering and Breeding Law section 1321-d(3)(e)(x) to issue findings establishing public support.

c. No scoring of proposal is required, as a CAC is obligated only to advance or not advance an application.

Q.679. a. Will the CACs be subject to the legal requirements concerning open meetings imposed on other official decision-making entities in the State of New York?

b. Will the CACs be required to keep a written record of their deliberations and votes?

A.679.

a. Yes.

b. Yes, to the extent required by law.

Q.680. The Commission has indicated that appointed members of the CAC will be subject to the N.Y. Public Officers Law. Will members of the CAC be allowed to hold private meetings with the applicants?

A.680. No. Private meetings with CAC members are prohibited contacts pursuant to the RFA (see p. 11):

DURING THE APPLICATION PROCESS, NO APPLICANT, AGENT OF THE APPLICANT, QUALIFIER, OR OTHER ASSOCIATED INDIVIDUAL SHALL CONTACT A BOARD, COMMISSION OR (AFTER THE RETURN DATE) CAC MEMBER DIRECTLY CONCERNING THE SUBJECT MATTER OF THIS RFA.

Q.681. a. Will CACs be provided with the financial and personnel resources to hire staff for their work?

b. How will staff be chosen for the CACs?

A.681.

a. No.

b. The Commission will provide staff support and/or will secure a consultant to provide support.

Q.682. a. Will CACs be required to consider more than one project when multiple projects are submitted in areas represented by the same delegation of local elected officials?

b. How will a CAC or local elected officials decide which project is subject to its review and approval?

A.682.

a. The statute provides for specific appointing authorities for each CAC established, dependent upon project location. In the event that two projects have identical or overlapping appointing authorities, whether to make singular or multiple appointments will be at the discretion of the appointing authority.

b. A CAC of local elected officials will not need to determine which project is subject to its review and consideration. The Commission, or its representative, will identify the statutory appointing authorities for each CAC project and distribute materials to the CAC member, when appointed.

Q.683. Will there be an appeal mechanism to any decision of the CAC especially in cases where an applicant believes the basic requirements of due process have not been met?

A.683. An applicant may be able to avail itself of potential remedies afforded by the judicial system.

Q.684. a. Will members of the CACs be empowered to negotiate new or modified terms to the proposals under review?

b. Assuming the answer is in the affirmative, will the CACs be restricted to negotiate only certain aspects of the proposal under review or will all aspects of the proposal be open to change?

A.684.

a. A CAC may suggest modifications that, in their opinion, if incorporated would improve the CAC's likelihood to find a sufficient demonstration of public support. By law, for an application to advance to GFLB consideration it must receive an affirmative supermajority vote of their respective CAC. If an applicant rejects all or part of a CAC suggested modification, the applicant runs a risk of a negative CAC finding.

b. See answer to Q. 684(a).

Q.685. Will CAC guidance be issued pursuant to the State Administrative Procedure Act?

A.685. No. The CACs are not regulated parties of the Commission. Therefore, SAPA does not apply to guidance from the Commission to the CACs.

Q.686. The Board has made it clear that CAC members will not be subject to Non-Disclosure Agreements as it relates to confidential or redacted information from the Applicant. Will CAC members be provided with training on what their obligations are related to confidential information under the State Code of Ethics and the N.Y. Public Officers Law?

A.686. Each CAC member will be able to avail itself of all ethics training and education offered by the N.Y.S. Commission on Ethics and Lobbying in Government. Ethics agencies of appointing authorities will likewise be available to provide education, resources and guidance.

Q.687. What agency will be responsible for monitoring and enforcing compliance with the State Code of Ethics and the N.Y. Public Officers Law by CAC members?

A.687. The N.Y.S. Commission on Ethics and Lobbying in Government.

Q.688. What penalties will CAC members be subject to for violations of the State Code of Ethics or the N.Y. Public Officers Law in regard to the confidential information of the Applicant?

A.688. The full panoply of remedies for violations would be available to any agency having jurisdiction over a transgressor.

Q.689. If CAC members will be provided with unredacted copies of all materials, how will they be made aware of what is considered confidential information in the application materials?

A.689. Recall, the Commission will post all redacted copies of bid documents on their public website. Members of each CAC will have access to such redacted materials, which may be comparatively used to identify confidential information.

Q.690. As a follow-up to the answer to Question 74, can an Applicant make material commitments as part of the community review and/or CAC process that were not included in its initial application, recognizing that they may not ultimately be considered in the Siting Board's evaluation?

A.690. Yes, but CACs are advised to understand that any such commitments outside an application will be unenforceable by either the Commission or Board and will not be included in any part of the scoring evaluation. All applicants must promptly report commitments made to the community or a CAC to the Gaming Commission, who will post these for purposes of public transparency.

Q.691. RFA Page 63 indicates that an Application requires a two-thirds majority vote from the applicable CAC prior to the Board's evaluation of the application. Please clarify the number of votes in support of the application that are required to reach the two-thirds threshold for locations within New York City (six members on the CAC) and locations outside of New York City (five members on the CAC). For example, outside New York City, where only five members will be appointed, how many votes will be required for a two-third majority vote, 3 or 4 votes?

A.691. When a CAC is statutorily authorized to comprise six members, four votes constitute two-thirds. When a CAC is statutorily authorized to comprise five members, four votes constitute at least two-thirds. Three votes in a CAC that is statutorily authorized to comprise five members constitutes only a 60 percent vote, which is less than two-thirds.

Q.692. Per the answer to Question 99, "All materials included in the Application related to the proposed project" will be provided to the CAC, and we understand the CAC will be subject to FOIL like state agencies.

a. Does that mean the CAC is one of the "New York Agencies" referenced in the State Waiver?

b. If the Multi Jurisdictional Personal History Disclosure Form and New York Supplement materials for each Qualifier, particularly the natural person Qualifiers are highly confidential, may an Applicant designate those as "not related to the proposed project" but related to backgrounding and the licensing of Applicant and exclude them from the copy of materials provided to the CAC?

A.692.

a. Yes.

b. The question has a flawed premise. No applicant will be providing application materials directly to a CAC. Rather, pursuant to law, the provision of materials will be from the Commission or its authorized consultant. Regardless, no CAC will be provided individual applicant licensing materials.

Q.693. a. Will CAC criteria for achieving “public support” of the project and, thus, resultant approval of Applicant’s application through a majority vote be published with the CAC guidance when eventually published by the Board?

b. In the CAC process, what is the definition of “public support” and “local support” for which the CAC vote is set to take into consideration?

c. What is the definition of “local” support and “community” support in the context of the CAC vote?

d. Is there a geographical meaning to these terms?

A.693.

a. See answer to Q.678.

b. The customary and general use of “public support” applies. “Local support” is not a term in statute concerning the CAC process.

c. See answer to Q,693(b); “community support” is not a term in statute concerning the CAC process.

d. No.

Q.694. When determining local, community and public support, will the CAC place greater weighting on the host community input as opposed to nearby communities or other communities of greater distance?

A.694. See answers to Q. 678(b) and Q.693(d).

Q.695. Despite there being no objective criteria set forth in the statute for CAC evaluation as stated in the first round of questions, will CAC criteria be determined

and made available to each Applicant for achieving a favorable vote prior to the CAC process?

A.695. Neither the Commission nor Board will be setting forth CAC criteria, however a CAC might.

Q.696. If the answer to Question 695 above is in the affirmative, how will the Gaming Facility Location Board take such failure into consideration?

A.696. As the aforementioned question was answered in the negative, this question is moot.

Q.697. When will further guidance concerning the CAC process be issued?

A.697. CAC guidance was issued with the posting of these answers.

Q.698. a. To the extent that Applicants will be submitting “tax returns” pursuant to the application process (“FinancialStability” section), will the Board be providing to CACs information on how it will maintain confidentiality of the tax returns and compliance with tax secrecy laws?

b. Will the CAC be provided with unredacted tax returns and other personal financial information related to the Applicant?

A.698.

a. No.

b. Please see the answer to Q.686. To the extent that tax material will be provided, no individual returns from qualifiers will be disseminated.

Q.699. Will the RFA process continue to the CAC process if the full Board is not yet selected?

A.699. Yes. The Board is specifically authorized by statute to undertake business once a quorum of members have been seated.

Construction Schedule and Budget

[See also First-Round Questions & Answers 149 through 152]

Q.700. For the Post-License Construction section referenced on RFA page 41, if narrowly addressing the post-license period, what assumption should be made for the period from selection to formal licensing by the Commission and how will the Board differentiate projects that have many conditions precedent to construction from those with zoning or other approvals already in place and fewer conditions precedent to commencing construction?

A.700. We are uncertain what the question intended to address, but all necessary zoning or other approvals must be obtained prior to Board evaluation. Speed to market is only one of many factors of consideration.

Continuing Duty to Update Application

Q.701. With respect to the continuing duty to update the Application, should updates be provided in the form of blacklines if changes are made to narrative responses?

A.701. Yes.

Q.702. If an Applicant provides updates to its submission, do hard copies need to be provided for each update?

A.702. No, unless the update regards material that required an initial wet signature.

Q.703. a. With respect to the continuing duty to update the Application generally, is there a materiality threshold or guideline for requisite updates?

b. What specific type of information does Gaming Facility Location Board seek in terms of updates for the RFA Materials, the Gaming Facility License Application materials, the Multi Jurisdictional Personal History Disclosure Form and New York Supplement?

c. Are there specific areas of interest or focus for the requisite updates?

A.703.

a. If an Applicant desires a change to be considered it must be filed with the Board. The term materially should be considered in its common licensing usage.

b. See answer to Q.703(a).

c. See answer to Q.703(a).

Q.704. Certain aspects of the RFA response will necessarily be based on point-in-time financial data. For example, responses to requests related to Financing Sources' capital structure or available liquidity may reference data as of the most recent quarter end prior to submission of the response. Does the Gaming Facility Location Board want full updates of each impacted narrative response as updated financial data is available?

A.704. Yes.

Q.705. With respect to the continuing duty to update the Application, will the Gaming Facility Location Board consider quarterly updates from Applicant (rather than real-time updates) to minimize the volume of submissions and administrative burden?

A.705. Yes, provided however, that if the Applicant experiences change that substantially changes the Applicant's position, such update must be provided as soon as practicable.

Contracts with the State of New York

[See also First-Round Question & Answer 153]

Q.706. Must each individual construction permit or building permit (*i.e.*, construction permits issued by the City of New York) be listed and identified under the "Contracts with State of New York" section?

A.706. No.

Q.707. Is there a definition of "state contract" for applicants and qualifiers to use in disclosing existing state contracts and potential contracts?

A.707. The customary and general use of this term applies.

Current and Planned Diversity Efforts

[See also First-Round Questions & Answers 154 through 157]

Q.708. Regarding .DiversityBusinessModel on RFA page 56, the key components of the Applicant’s and, as applicable, the Operator’s, plan of action that shall promote diversity in its business model, financing, employment goals, and other social and economic equity roles in the gaming industry. What are the definitions (or examples) of “social and economic equity roles” in the context of this question?

A.708. The customary and general use of this term applies.

Definitions

[See also First-Round Questions & Answers 158 through 171]

Q.709. The answer to Question 161 defines “diverse communities and diverse individuals” and includes such groups as age, geographical location (urban/rural), veterans, and other minorities.

a. Do any of the historically marginalized communities carry greater weight than the others?

b. There is also reference to “and/or other pertinent characteristics.” What are the other pertinent characteristics?

A.709.

a. No.

b. Such may be delineated by the Applicant, if the Applicant believes the characteristics are pertinent.

Q.710. In the RFA on page 51, under “Submit (.WorkforceTable), provides “Describe how the plan utilized the existing labor force in the State, Host Municipality, and local neighborhood.” Please define the geographic extent of a “local neighborhood.”

A.710. Please strike the phrase “local neighborhood” and replace the phrase with “nearby municipality.” Also, please see answer to Q.165.

Q.711. In the answer to Question 166, “host community” is defined as the “the most localized political subdivision.” However, in the example provided in the answer to Question 470, “Alexandra and Arlington, VA and Silver Spring, MD,” does not constitute a single “most localized political subdivision” but rather three distinct adjacent municipalities. Please clarify what is meant by: “the host community,” “the host municipality,” “nearby municipalities,” and “the region.”

A.711. Host community is defined in the answer to Q.165. Nearby municipality is defined in the answer to Q.166. Host municipality and Region are defined on RFA Page 66.

Q.712. Per the RFA definitions, “Financing Source” means each of: (i) the Applicant; (ii) the Operator, if applicable; and (iii) any person or entity that will provide, or is expected to provide, any equity, debt, credit support or credit enhancement for the proposed Gaming Facility.” If the Operator is not providing any “equity, debt, credit support or credit enhancement” beyond its own expenses in connection with the Application or a portion of the Application fee, is it still considered a “Financing Source?”

A.712. No.

Q.713. Following up on the answer to Question 166, for purposes of the boroughs of New York City, if the proposed project is located in a borough would the “nearby municipalities” be defined as the contiguous boroughs and counties to the host borough?

A.713. Please see the answers to Q.166 and Q.711.

Q.714. To avoid differing interpretations, can any additional guidance on/parameters for the following key financial variables be provided:

- a. Capital investment.
- b. Amount of the License Fee.
- c. Tax Rate.
- d. Tenure of License.

A.714.

- a. In general, please review the narrative starting on RFA Page 29.
- b. In general, please review the narrative starting on RFA Page 59.
- c. In general, the tax rate is the percentage of adjusted gross gaming revenue directed to the State for the privilege of conducting gaming activities at a licensed gaming facility.
- d. The length of license will be determined through Commission rulemaking.

Demonstrating Ability to Finance the Project

[See also First-Round Questions & Answers 172 through 213]

Q.715. If the Applicant is a newly formed joint venture for the purposes of responding to the RFA and does not have any auditable activities to-date, what will be acceptable in lieu of an independent audit?

A.715. An independent audit of the joint venture participants will suffice.

Q.716. If a party in a joint venture is contributing land and is not providing debt, equity, or any other credit enhancement/support to the proposed project, is that joint venture party still included as a financing source?

A.716. Because Racing, Pari-Mutuel Wagering and Breeding Law § 1321(f) requires demonstration that the land is owned or acquired, disclosure as a Financing Source is not required.

Q.717. Should debt schedules and normal course maturities be provided for each individual owner of the Applicant over the course of the project, or just for the Applicant?

A.717. Debt schedules and normal-course maturities must be provided by the Applicant and any individual owner for which the Applicant is dependent upon for project financing.

Q.718. If any individual owner of the Applicant is making its entire cash equity contribution upon license award (and will not have any future incremental capital contributions over the course of the project), will the requirements under the “Financial Plan Analysis” and “Financing Source Schedule” sections still be applicable for such Financing Source?

A.718. If the equity contribution has not been provided as of the date of the Application, the requirements of the section apply.

Q.719. Public financing sources will be unable or unwilling to provide anticipated capital structure for construction + 3 years post opening (5+ year projection model would be required). Will the Gaming Facility Location Board consider third-party research to illustrate such forecasts?

A.719. The Board does not understand the question posed.

Q.720. If an entity is contributing equity but will not be required to obtain a gaming license given its pro forma ownership percentage, will such entity be required to provide all information required for Financing Sources?

A.720. See the answer to Q.718.

Q.721. If an individual or trust deemed as a Financing Source is contributing only land as part of the proposed project, what level of evidence will the Gaming Facility Location Board require to comply with the “Financing Source Details” section in the RFA?

A.721. See the answer to Q.716.

Q.722. If an individual (or trust) is deemed as a Financing Source, and is separately providing a licensing application, how many years of annual financial statements must be provided to comply with the “Financing Source Schedule” requirements (sub-bullet # 4 under .IndividualFinancialStatements located on the top of RFA page 44)?

A.722. Five years.

Q.723. If an individual or trust deemed as a Financing Source is contributing only land as part of the proposed project, is such Financing Source required to provide financial references?

A.723. See the answer to Q.716.

Q.724. If an individual or trust deemed as a Financing Source is contributing only land as part of the Proposed Project, can the Application state “Does not Apply” for any section that cannot be answered for such a Financing Source?

A.724. See the answer to Q.716.

Q.725. For the following items, the updated naming convention included separate A, B, and C forms. Can you please confirm the intent of providing three separate version of the forms versus one?

- .AuditedAnnualFinancialStatement
- .QuartelryFinancialStatement
- .UnauditedAnnualFinancialStatement
- .IndividualFinancialStatements
- .IndependentAudit
- .FinancialStability
- .FinancialReferences
- .SecurityCreditReports
- .SEC
- .Legal
- .Bankruptcies
- .ContractBreach
- .TaxDelinquencies
- .FinancialCommitmentGuarantee

A.725. One form should be submitted for each Financing Source. For example, if an Applicant has two Financing Sources, the Applicant should submit two of each item (A & B). If an Applicant has four Financing Sources, the Applicant should submit four of each item (A, B, C & D), and so forth.

Q.726. If banks or financial institutions have provided highly confident letters, yet due to the prolonged nature of the RFA process that could take several years due to ULURP/rezoning, such banks or financial institutions have not been awarded as the lead syndicator or underwriter and, thus, they are not considered a Financing Source per the answer to Question 185, are they still required to provide all the information relating to a Financing Source per the answer to Question 186?

A.726. The premise of the question is flawed, in that zoning entitlements must be obtained for an application to be considered by the Board. The Board has set September 30, 2025 for action by each CAC, meaning all entitlements are due by that date.

Q.727. Per the answer to Question 196, three financial references from banks or other financial institutions are to attest to each Financing Source's

creditworthiness. Can the same bank or financial institution reference letter apply to multiple Applicant parties and/or Financing Sources?

A.727. The bank or financial institution reference letter should be specific to each Applicant party and/or funding source.

Q.728. If any Applicant or Applicant party has an ownership interest in a bank or financial institution, would such an ownership interest constitute a conflict for purposes of the bank or financial institution issuing a reference letter or a “highly confident” letter?

A.728. Yes.

Q.729. a. On RFA page 41, for the financial forecast section under Demonstrating Ability to Finance the Project, is the list of criteria exhaustive?

b. In other words, can an applicant use other criteria in addition to the criteria listed on RFA pages 41-42?

A.729.

a. An applicant must provide the materials listed in the RFA, but may include additional materials that supplement the financial forecast.

b. See answer to Q.729(a).

Q.730. The response to Question 180 references expected damages in litigation. Can that apply not just to reserves and “expected damages” but also to actual damages awarded or agreed to in settlement of prior claims?

A.730. If damages have been awarded or agreed to in settlement but unpaid as of the date of submission, they must be reflected.

Q.731. The answer to Question 180 refers to claims that are “fully and completely covered under an insurance policy.” If an entity or affiliate is a qualified self-insurer for workers’ compensation or otherwise covered under primary or excess policies with insurance carriers doing business in New York State but has a deductible or self-insured retention, can such claims still be considered as fully and completely covered?

A.731. No.

Q.732. a. Please clarify what the reference in the question response relating to audits or examinations, what does the phrase “to this item” refer to?

b. Is this intended to describe the materiality threshold referenced in the preceding question?

A.732.

a. It refers to Tax Delinquencies

b. No.

Q.733. a. How is “sufficient capital commitment” assessed?

b. For example, if an Applicant's financing for its project includes, in whole or part, debt/bond issuances from the capital markets upon award of license, what are acceptable forms of evidence to demonstrate the sufficiency of an Applicant's capital commitment at the time of its application?

A.733.

a. Documentation that provides the Board with reasonable assurance that the Applicant will have the ability to access the equity or debt instruments included in the Applications and will have the ability to completely finance and complete the proposed project.

b. A letter or analysis from an underwriter providing assurance in the ability to place the debt or bond in the market.

Q.734. a. Who shall the financial references come from in attesting the Financing Source's creditworthiness?

b. What sort of financial references are expected?

c. What are the specific parameters to be attested for in the financial references?

A.734.

a. From traditional corporate credit reference companies.

b. Generally, a trade reference from a business such as Dun & Bradstreet, or a similar company.

c. Payment experiences that demonstrate a pattern of responsible financial behavior.

Q.735. Please confirm that highly confident letters may cover multiple submission requirements for the application. For example, can a single highly confident letter cover the availability of pre- and post-opening financial commitments, obligations and guarantees?

A.735. Yes.

Q.736. The RFA requires an applicant to submit (.IndependentAudit). For the required independent audit report of all financial activities and interests.

a. What is the definition of a gaming entity?

b. What is specifically included in “any other financial transactions” (*e.g.*, is there a materiality threshold for reporting)?

c. Are related companies in this scope?

d. Definition of a loan in this context.

A.736.

a. An entity with a non-negligible ownership interest in some facet of gaming, regardless of its status as a gaming operator.

b. Any other monetary transaction made outside of the ordinary course of business.

c. No.

d. The standard and general use of the term should be used.

Q.737. The answers to Questions 188 and 192 seem to require firm financing commitments from banks. This is a challenge when the money will not be drawn for several years and hence the banks would likely be very reluctant to park billions of dollars for a project this early. It would be helpful to understand what kind of conditions on the commitments would be viewed as acceptable to the Commission.

While applications could surely get early letters from banks they may say something like “we have every intention of funding but not guarantee funding until the project gets closer.” Would such language be satisfactory?

A.737. Yes.

Q.738. The answer to Question 185 provides that only the lead syndicate or underwriter will be considered a financing source for purposes of reporting.

a. Can the Applicant submit a waiver request for a Financing Source that is a global investment bank following the form outlined in response to Question 12?

b. It does not appear feasible or reasonable for each Applicant to provide detailed capital structure information, or evidence of financial wherewithal to participate in the proposed financing, for large, global investment banks. As an example, it is not possible or reasonable to provide the projected future capital structure for a large, global investment bank. Please confirm we can request a waiver from these institutions as a Financing Source.

A.738.

a. Yes.

b. Yes.

Q.739. The answer to Question 196 provides that the Applicant shall include at least three financial references from banks or other financial institutions attesting to each Financing Source’s creditworthiness in its submission under (.FinancialReferences). We do not believe it is reasonable to request financial references for Financing Sources that are large, global investment banks, which would need to come "from banks or other financial institutions," each of which may also be Financing Sources themselves. Please confirm the answer to Question 175 does not conflict with other responses and Applicants are not required to provide financial references for banks serving as Financing Sources.

A.739. If a Financing Source is an institutional lender, financial references are not required.

Deposit Amount

[See also First-Round Questions & Answers 214 through 226]

Q.740. The answer to Question 223 refers to 9 NYCRR § 5301.10(d)(3) and certification of the final stage of construction and return of that deposit or release of the bond. The answer also says that the Commission may create guidelines to review and monitor the project and “Such guidelines will be shared with the gaming facility licensee and may be amended....”

- a. Historically, has the Commission created such guidelines and are they available online or otherwise from the Commission or have they been shared privately with prior licensees?
- b. Has the Commission approved amendments to construction schedules previously without imposing fines or other remedies for delays in construction?
- c. Are prior decisions by the Commission on unforeseen changes or other delays in construction both before certification of the final stage or after that certification and before opening publicly available or have they been provided to FOIL applicants but not made publicly available on the Commission’s or other state websites?

A.740.

- a. **No.**
- b. **No, as all previous licensees commenced gaming operations within their scheduled timelines.**
- c. **See answer to Q.740(b).**

Q.741. With respect to the 5-10 percent total project cost deposit or bond:

- a. What criteria will be used to determine the exact amount required to be deposited or bonded?
- b. Will this percentage apply to each of the successful Applicants or differ by project?
- c. When will this figure be known to Applicants?

A.741.

a. See answer to Q.220. Criteria will likely include overall size of the project, financing structure, Applicant’s ability to cover unanticipated costs, and Applicant’s record in previous projects.

b. A percentage will be set for each project.

c. This figure will be established following Board recommendation to the Commission, but prior to license award.

Q.742. Please clarify the “proof of funds” requirements as it relates to the specific amount and timing of the escrow deposit (either to be placed in escrow on the day of the award or within a certain of number of days following).

A.742. The deposit will be required to be made within a certain period of time following award. The amount of time provided has yet to be determined.

Q.743. a. Please identify what line items will be included in the calculation of the escrow deposit, to determine the range of between 5 to 10 percent as referenced in the RFA

b. Given the material amount of funds required for large projects, what if any additional detail can the Commission provide on the percentage to be set aside for the License Deposit?

c. For example, will a cap on the License Deposit be considered such that Applicants can proceed with the understanding that the License Deposit will not be greater than a certain amount (*e.g.*, \$50M, \$100M, etc.)?

d. Are there any other parameters to be placed around the percentage to be set aside for the License Deposit?

A.743.

a. Total Investment proposed in the Application.

b. Further guidance concerning the License Deposit percentage will be forthcoming in Commission rulemaking.

c. No. Racing, Pari-Mutuel Wagering and Breeding Law § 1321-e(1) requires that “upon award of a gaming license by the commission, the commission shall require the applicant to deposit no less than five percent and no more than ten percent of the total investment proposed in the application into an interest-bearing account based on the liquidity of the applicant.” Accordingly, there can be no limitation on the deposit amount outside the percentage range specified by law.

d. No. Please see answer to Q.743(c) above.

Q.744. With regard to the “deposit amount,” the RFA says the Commission will accept a “deposit bond” instead of cash, but the answer to Question 225 provides that a “letter-of-credit” is not acceptable to satisfy this obligation.

a. What is an acceptable form of “deposit bond” and how does it differ from a “letter of credit”?

b. Effectively, how can a licensee satisfy this obligation other than using cash?

A.744.

a. A bond must be in a form that guarantees payment upon a default, while a “letter of credit” is a line of credit that may be drawn down in case of default.

b. An Applicant must demonstrate a guarantee of payment in case of default in order for a non-cash alternative to be considered.

Diversity

[See also First-Round Questions & Answers 227 through 232]

Q.745. On RFA page 28, what is meant by “diversity framework?”

A.745. Diversity framework is the maintenance of standards to integrate diversity and inclusion practices into an Applicant’s organization.

Q.746. For the “diversity framework” factor on RFA page 28, what areas of diversity will the Board consider?

A.746. The Board will consider areas of diversity including, without limitation, committed leadership, continuous policy development around diversity and inclusion, education of staff, performance measurements, and dedicated staffing resources.

Q.747. On RFA page 55, are there any other diversity groups the Board will consider besides gender, race, and service-disabled veterans for workforce demographics or for ownership and leadership?

A.747. A proposal must include gender, racial and service-disabled veteran composition of ownership and leadership and other population characteristics may be included.

Q.748. In the context of Current and Planned Diversity Efforts, for the diversity breakdown for the construction jobs, will other diversity factors be considered besides “minorities, women and veterans?”

A.748. Other diversity factors are encouraged. A licensee will be required to abide by Executive Orders 15-A and 17-B to make good faith efforts in established goals for the hiring of N.Y.S. certified businesses owned by minorities, women, and service-disabled veterans.

Q.749. In the context of Current and Planned Diversity Efforts, has the Commission previously taken any adverse action with respect to licensees under the Upstate Gaming Act regarding “good faith efforts” during construction and/or operating phases?

A.749. The Commission has not had occasion to take such adverse action.

Q.750. In the context of Current and Planned Diversity Efforts, for recruitment, is there a minimum or maximum number of “percentages” or “thresholds” for the “hiring of people from historically marginalized communities into entry and mid-level positions”?

A.750. An Applicant must describe how it will “leverage partnerships to recruit from diverse communities and support workers hired from such communities” which would apply to all levels of staffing without having a set goal.

Q.751. In the context of Current and Planned Diversity Efforts, for professional development, what is meant by “other critical support for employees?”

A.751. Examples of critical support to employees are wheelchair-accessible workplace, job restructuring, modified work schedules, modified technology, and providing interpreters.

Q.752. If the Operator or Applicant plans to operate non-gaming amenities or lease space to third parties for non-gaming amenities, will the diversity framework factors be applied to the staffing of those amenities, whether in-house or by third parties?

A.752. The diversity framework applies to the gaming area and any other non-gaming structure related to the gaming area and may include hotels, restaurants, or other adjoining amenities.

Q.753. Does the diversity-spend requirements apply exclusively to New York-based vendors or is this requirement applicable to any diverse vendor that could potentially be outside of New York state?

A.753. If the reference to “diversity spend” describes a minority, women, or service-disabled veteran business, the business must be certified by New York State and this list of certified businesses may include businesses outside of New York State.

Q.754. The RFA requires an applicant submit (.Mentorship). Is the reference to “mentorship opportunities” for team members (employees) or businesses, or is the reference to both team members and businesses?

A.754. The reference applies to the applicant’s workforce.

Q.755. The RFA requires the applicant to submit (.Recruitment). Was the last bullet intended to read “Describe the Applicant’s and, as applicable, the Operator’s, diversity, equity, inclusion and accessibility plans?” as opposed to what is currently listed “Describe the Applicant’s and, as applicable, the Operator’s, diversity, equity, and inclusion accessibility plans.”

A.755. The question is written as intended.

Q.756. The RFA requires an applicant to submit (.MWBE). For capital construction, are Service-Disabled Veteran Owned Business (SDVOB) enterprises part of the overall MWBE utilization requirement of 30 percent or is there a separate requirement for SDVOB enterprises?

A.756. The MWBE goal is 30 percent and the SDVOB goal is separate at 6 percent.

Duties of the Board

[See also First-Round Questions & Answers 233 through 244]

Q.757. The RFA refers to complying with State Building and Fire Prevention codes. However, if a proposed privately owned and operated site is in New York City, we assume that project would be subject to New York City Building Code and New York City Fire Code and the permitting authority would be New York City Department of Buildings, which would have review authority for code compliance. Please confirm if it would be prudent for the project to adhere to all applicable state and local laws.

A.757. Correct. Within the City of New York, excepting proposals on State land, projects will be subject to the New York City Building Code and the New York City Fire Code and the permitting authority will be New York City Department of Buildings.

Q.758. In the answer to Question 235, the Gaming Facility Location Board acknowledges that a lead agency, in accordance with SEQRA, will be selected on a case-by-case basis. When in the process will the lead agency be selected?

A.758. At the time of request. At present, several projects are within the New York City Uniform Land Use Review Procedure (ULURP). These projects require City Environmental Quality Review and are being led by the City of New York. Environmental coordination for all other projects inside the City of New York will be led by the Commission, excepting the proposal at Aqueduct Racetrack, which is being led by the New York Franchise Oversight Board. Outside the City of New York, local agencies have accepted lead agency responsibility for all other known projects.

SEQR / CEQR Lead Agency, Known Additional Casino License Proposals			
Project Name	AKA	Location	Lead Agency
Avenir	Avenir Hudson Yards	Hudson Yards, Manhattan	N.Y.S. Gaming Commission
Bally's Casino	Bally's New York Operating Company, LLC	450 Hutchinson River Parkway, The Bronx	N.Y.C. Deputy Mayor for Housing and Economic Development and Workforce

Caesars Palace Times Square	Caesars Palace Times Square	1515 Broadway, Manhattan	N.Y.S. Gaming Commission
The Coney	TSG Coney Island Entertainment Holdco LLC	Multiple locations in Brooklyn	N.Y.C. Department of City Planning
Freedom Plaza	Freedom Plaza	686 1st Avenue, Manhattan	N.Y.S. Gaming Commission
Metropolitan Park	Queens Future LLC	126th Street, Willets Point	N.Y.C. Deputy Mayor for Housing and Economic Development and Workforce
MGM Empire City	MGM Empire City	810 Yonkers Avenue, Yonkers	City of Yonkers Planning Board
Resorts World New York City at Aqueduct	Resorts World Casino Expansion Phase 2	110-00 Rockaway Boulevard, Jamaica	N.Y.S. Franchise Oversight Board
Saks Fifth Avenue Casino	Saks Fifth Avenue	611 5th Avenue, Manhattan	N.Y.S. Gaming Commission
Sands New York	Sands New York Integrated Resort	1255 Hempstead Turnpike, Uniondale	Town of Hempstead Town Board
Wynn New York City	WRY Tenant LLC	Hudson Yards, Manhattan	N.Y.C. Department of City Planning

Q.759. Will the ultimate number of licenses recommended by the Gaming Facility Location Board to the Commission be a factor in the Gaming Facility Location Board Applicant’s selection process?

A.759. Yes, as the number recommended will necessarily have economic impact on the market and individual applicants within that market.

Economic Activity and Business Development

[See also First-Round Questions & Answers 245 through 246]

Q.760. We are seeking clarification to the answer to Question 441. It is not uncommon for operating conditions to deviate from initial business projections, and it is crucial for business operators to maintain the flexibility to make operating decisions that are aimed at optimizing the revenue opportunity in every business vertical, including casino operations. As part of the ongoing revenue optimization exercise, will gaming facility licensees have the ability to make ongoing changes to their casino program and operating plans, which includes the ability to increase or decrease the table counts, slot counts, and/or alter the mix between table and slot counts, relative to the initial plans submitted in the response to the RFA?

A.760. The answer provided to Q.441 stands.

Q.761. During normal course operations, can an operator unilaterally increase the number of tables and slots in operation?

A.761. All modifications to the gaming floor require the approval of the Commission.

Q.762. If there is no license award date identified and we are only to use “Year 1”, “Year 2”, etc. in our responses, how can an Applicant ensure their projections and budgets are measured fairly against others when each will have varying assumptions regarding timing with respect to escalation or inflation factors?

A.762. All applicants must use Calendar 2026 as Year 1.

Q.763. Will the Economic Activity and Business Development factors be scored among the Applicants over the same timeframe taking into consideration dates for which this economic activity is created or in the aggregate irrespective of dates for commencement?

A.763. Yes.

Q.764. Please provide the material elements that the Gaming Facility Location Board will take into consideration when measuring and evaluating “Economic Activity.”

A.764. The RFA outlines what is necessary. To the extent it might be helpful, please reference the 2015 and 2016 Report and Findings of the Board for insights as to how those Boards evaluated what were very similar “Economic Activity” elements.

Evaluation Criteria and Required Submissions

[See also First-Round Questions & Answers 247 through 263]

Q.765. a. Can you confirm that when evaluating cannibalization, current video lottery gaming facilities, including any anticipated expansion, should be included in the analysis?

b. With respect to the answer to Question 259, for any Financing Source that has been recently formed, should the Application reference the parties or persons that

formed such Financing Source for any questions it cannot answer (*i.e.*, audited financial statements, current capital structure, etc.)?

c. Will the parties or persons tied to the newly-formed entity be required to submit all information required for Financing Sources?

A.765.

a. Yes.

b. Responsive information for each of the parties forming the Financing Source must be submitted by an Applicant.

c. Yes.

Q.766. With respect to the hard-copy submission of the RFA, can an Applicant separate voluminous technical, legal, and supplemental information into ancillary submissions from the core RFA response and incorporate by reference or must the submission be part of one cohesive response document?

A.766. Applicants may separate voluminous technical, legal, and supplemental information into ancillary submissions from the core RFA response for the hard-copy submission.

Q.767. a. Does the answer to Question 252 mean that Applicants will be restricted from submitting background and supporting materials to supplement the licensure forms for the suitability review described in RFA pages 16-19?

b. Has the Gaming Facility Location Board and/or Commission established the criteria to evaluate the differences between a project that is a conversion of an existing video lottery gaming facility or a new facility construction?

c. When will the Gaming Facility Location Board and/or Commission be able to share these criteria if they were not established yet?

A.767.

a. No. The Board fails to see how the answer to Q.252 implicates submission of the background and supporting materials.

b. No.

c. Such criteria may not be released prior to the Board's Report & Recommendation to the Commission.

Evidence of Compliance with Zoning Requirements

[See also First-Round Questions & Answers 266 through 281]

Q.768. For projects on State land, would the State consider a General Project Plan process for zoning approvals?

A.768. No.

Q.769. Following CAC approval, if in the judgment of the Commission there is an unreasonable delay in local zoning processes, would the State consider a General Project Plan process for zoning approvals so as to allow proposals to maximize economic impact as soon as possible?

A.769. No.

Q.770. If New York City passes the text change to its Zoning Resolution that the Department of City Planning is currently contemplating, and New York City-based sites do not individually have to go through ULURP, will the State require each New York City site approved by a CAC to go through a SEQRA process before it is submitted to the Gaming Facility Location Board, so that all the adverse environmental impacts (such as quality-of-life issues exacerbated by zoning envelopes in excess of underlying zoning controls) that would have been studied through ULURP are studied and mitigated to the extent possible?

A.770. The City of New York has passed the text amendment, thus all projects not availing themselves of the zoning-by-right are involved in the ULURP process, which requires City Environmental Quality Review consideration. Otherwise, yes. All other projects must process through SEQR for Board consideration.

Q.771. New York City has been transparent that a zoning text amendment will facilitate a gaming facility's as-of-right compliance with the City's Zoning Resolution. The proposed zoning text amendment has not yet been released for review. Will there be an opportunity to ask the Gaming Facility Location Board clarification questions about the effect of the proposed zoning text amendment on

the RFA process, the submission requirements and the submission deadlines prior to the proposed zoning text amendment's passage?

A.771. The City of New York has passed the text amendment, thereby mooting this question.

Q.772. New York City has been transparent that a zoning text amendment will facilitate a gaming facility's as-of-right compliance with the City's Zoning Resolution. If such zoning text amendment was proposed today, it would not be approved until the First Quarter 2024, at the earliest. Will there be an opportunity to ask the Gaming Facility Location Board clarification questions about the effect of the approved zoning text amendment on the RFA process, the submission requirements and the submission deadlines upon approval of such zoning text amendment?

A.772. The City of New York has passed the text amendment, thereby mooting this question.

Q.773. If New York City approves a proposed zoning text amendment to facilitate a gaming facility's as of right compliance with the City's Zoning Resolution, and that legislation is challenged in court, will the RFA process be suspended pending resolution of such litigation?

A.773. The City of New York passed the text amendment, which has not been challenged, thereby mooting this question.

Q.774. In responding to Question 266, the Gaming Facility Location Board stated that "evidence of engagement" with the zoning entity must be submitted. In New York City, if a proposed zoning text amendment is approved, which deems all gaming facilities, subject to receipt of a casino license, compliant with zoning, Applicants would not be required to (nor would they be permitted to) formally engage with the City's zoning entity (*i.e.*, the Department of City Planning). In that case, would the Gaming Facility Location Board then waive the "evidence of engagement" requirement?

A.774. Yes. An Applicant would simply reflect that its location has been approved as of right and provide evidence of such assertion, such as a letter from the zoning entity confirming that no discretionary zoning approvals are needed.

Q.775. a. In response to Question 266, if an Applicant will not require discretionary zoning approvals, is the Board's expectation of how to "illustrate engagement of the applicable zoning entity," merely a list of dates and times of meetings with the zoning entity to discuss the proposed casino facility project?

b. Will a letter from the zoning entity be required confirming that no discretionary zoning approvals are needed for each gaming facility?

A.775.

a. An Applicant should provide evidence that their location has been approved as of right, such as a letter from the zoning entity confirming that no discretionary zoning approvals are needed.

b. Yes, if such is the case.

Q.776. a. Given the response to Question 267, stating that City of New York is considering a citywide zoning text amendment that would "deem casinos licensed by the State as compliant with zoning," how are Applicants expected to illustrate compliance with zoning by the Supplemental Return Date, when the Supplemental Return Date is prior to any Applicant receiving a license, and zoning compliance is conditioned upon the issuance of a State license?

b. Does the Gaming Facility Location Board plan to address this discrepancy with the City of New York?

A.776.

a. The City of New York has approved a text amendment granting zoning as of right in certain locations. All entitlements must be received by September 30, 2025 so that the Board may consider the application.

b. See answer to Q.776(a).

Q.777. Per the SEQRA regulations (6 NYCRR Part 617.4), Type I actions may require the preparation of an Environmental Impact Statement where there is a discretionary action, in certain circumstances, including "in a city, town or village having a population of more than 150,000 persons, a facility with more than 240,000 square feet of gross floor area." Is the selection of a gaming facility by the Gaming Facility Location Board considered a discretionary action subject to SEQRA?

A.777. Yes.

Q.778. In the answer to Question 235, the Gaming Facility Location Board acknowledges that at some point, in accordance with 6 NYCRR Part 617.4, there will be a SEQRA review. Assuming there is no requirement to undertake an environmental review for local zoning approval to be issued, please identify at what point in the process a SEQRA review will be required to be completed.

A.778. Applicants should have already commenced an environmental review. If an Applicant has not, an Applicant should take quick action.

Q.779. Please clarify that if an Environmental Impact Statement (EIS) will be required upon the issuance of a license by the Gaming Facility Location Board, in accordance with the SEQRA regulations, at what point in the selection process must the EIS be completed?

A.779. To clarify, the Board does not issue a commercial casino license. Issuance consideration is squarely the province of the Commission. Please note that environmental review must be completed by the time of the CAC vote, or September 30, 2025.

Q.780. Assuming that no discretionary zoning approvals will be required, will a completed Environmental Review in accordance with the SEQRA regulations be required prior to the Supplemental Return Date?

A.780. See answer to Q.779.

Q.781. If the adoption of local zoning text amendments come after the application is submitted and after the supplemental return deadline, and could have material impact to application, will the Commission offer an additional supplemental deadline, or can the Commission provide further clarity to how this situation will be handled?

A.781. The City of New York has adopted the text amendment, thereby mooting this question.

Q.782. Will the Gaming Facility Location Board set the Return Date prior to New York City's approval of the proposed casino text amendment?

A.782. No. The City of New York has already adopted the text amendment, thereby mooting this question.

Q.783. If the Return Date is prior to New York City’s approval of the proposed casino text amendment, how should an Applicant, whose gaming facility is subject to the New York City Zoning Resolution, proceed with the zoning compliance section of the Application to be submitted upon the Return Date, when it was announced that New York City’s casino text amendment will not be released until the end of 2023, at the earliest?

A.783. The City of New York has adopted the text amendment, thereby mooting this question. The Board has set a return date of June 27, 2025.

Q.784. The answer to Question 287 requires “Any State and/or local permits or special use permits that the Applicant must obtain for the Project Site, and for such permits describe the procedure by which the Applicant shall obtain the permits; and the estimated dates by which the Applicant will obtain the permits.” Are these permits limited to zoning and land use approvals only or is the Applicant required to include other building and construction-related permits?

A.784. Only permits for zoning and land-use approvals are necessary.

Q.785. Please confirm which building and land-use code(s) will be required to follow for the submission of the project.

A.785. See answer to Q.757.

Executive Summary

[See also First-Round Questions & Answers 296 through 297]

Q.786. RFA Page 20 states, “The Executive Summary should include specific metrics including but not limited to: Employment figures (including number of full-time and part-time jobs and median wage, weighted by full-time equivalents) ...median wage...proposed investment...anticipated annual gross gaming revenue.” Please specify whether dollar values should be reported in nominal or real dollar terms, the operating year(s) for which these values should be provided, and whether net present value (NPV) estimates are desired.

A.786. Dollar amounts should be reported in both real and nominal values. Annual data must be provided beginning in calendar year 2026 and continue through at least 10 years of gaming operations.

Q.787. RFA Page 57 notes that the “amended executive summary” shall not exceed 4 pages in length. Is that page limitation for double-spaced or single-spaced pages?

A.787. The Applicant may choose to utilize either double-spaced or single-spaced pages.

Q.788. RFA Page 57 notes that the “amended executive summary” should have “no changes to any other metrics.” What is meant by “metrics?”

A.788. The customary and general use of this term applies.

Q.789. Per the answer to Question 296, any drawing or rendering to be referenced in its Executive Summary “should be submitted as a supplement.” There is also the “.ExecutiveSummary.Supplement” to be submitted on the Supplement Return Date. Please advise if a supplement to the Executive Summary with the Application is also permitted, in addition to the ExecutiveSummary.Supplement on page 20 of the RFA; and, if permitted where it should be filed, and any limitations?

A.789. A separate submission of drawings or renderings to accompany the Executive Summary is permitted with the same limitations described in the answer to Question 616 and should be identified as GI1.BRAND.ExecutiveSummary.Rendering, GI1.BRAND.ExecutiveSummary.Drawing, etc.

File and Naming Parameters

[See also First-Round Questions & Answers 299 through 328]

Q.790. If image files are included within a PDF, do they also need to be provided separately as a JPG file?

A.790. No.

Q.791. Per the answer to Question 287, the RFA has been amended. Should these amendments be considered an addendum for which an Addendum Acknowledgement Form should be submitted, or will they be reflected in a more formal Addendum to the RFA at another date?

A.791. The amendments should be considered an addendum for which an Addendum Acknowledgement Form should be submitted.

Q.792. The “Addendum Regarding Schedule” issued on August 30, 2023 is identified as an Addendum. Should that be identified as Addendum No. 1 on the Addendum Acknowledgement Form?

A.792. Yes.

Q.793. Are there new file-name conventions for the Addendum Acknowledgement Form(s)?

A.793. No. They may be combined into a single file when making an Application submission.

Q.794. Are there file name conventions for the Non-Collusive Bidding Certification and other documents that are filed on the Supplement Return Date?

A.794. The Non-Collusive Bidding Certification should be identified as BRAND.Non-CollusiveBiddingCertification.

Q.795. For the hard copy of the Application to be submitted, would two copies be acceptable, including one for use by the CAC?

A.795. Yes.

Q.796. On RFA Page 11 there are references to the “Application and associated materials” and the “Supplement and associated materials,” but there is no definition of associated materials. May an Applicant designate the “General Information” starting with the Executive Summary and all subsequent sections in the new file name convention as the “Application” and the “Background Investigation” sections, waivers and FOIL statement as “associated materials” for purposes of binding and presenting a complete book of the Application, with a more confidential and necessarily redacted set of Multi Jurisdictional Personal History Disclosure Form and New York Supplement materials in a separate, unbound folder, along with the redacted copy?

A.796. In context to the references on RFA page 11, associated material refers to any and all material submitted by an Applicant to support its

Applications. For purposes of organization, please refer to the answer to Q.629.

Q.797. Is there a file-naming convention for waiver requests from natural persons and entities and should they be separated according to whether they are financial sources or indirect owners, etc., of entities that are not financial sources?

A.797. Waivers from natural persons and entities should follow the established file-naming convention, replacing “.Applicant” or “.Operator” with the name of the natural person or entity. Waivers do not need to be separated.

Q.798. Is it permissible to add a password protection feature to any flash drives submitted as part of the Application to enhance security of sensitive or otherwise confidential information? The password would be separately provided to the Board.

A.798. Yes.

Q.799. Following up on the answer to Question 315, if federal law or regulations, such as those of the U.S. Securities and Exchange Commission (SEC) prohibit certain corporate disclosures at a particular time (prior to SEC filing deadlines), should the Applicant abide by such federal laws and regulations and submit such information later as an update to the Application when permitted by federal law?

A.799. Yes.

Q.800. For large-scale drawings and high-resolution files, for best quality a file size larger than 5MB is recommended. Can this be accommodated as a separate exhibit file to the responses?

A800. Yes.

Q.801. RFA Page 12 states “Within responsive files and wherever possible, Applicants should employ hyperlinks to supplemental, external, referenced and related materials.” Page 41 of the RFA further states that in response to requests under Demonstrating Ability to Finance Project, “PDFs with hyperlinks to responsive files (with a brief summary of each) are acceptable.” However, the answer to Question 315 indicates an Applicant may not submit hyperlinks to documents within a response for items greater than 5 MB, unless linking to certain SEC filings, audited financials or other regulatory filings. This appears to

contradict the RFA as it relates to hyperlinks. Can you please clarify whether hyperlinks may be used and, if so, under what circumstances?

A.801. Hyperlinks should only be used when an Applicant can ensure Commission and Board accessibility. An Applicant runs a risk that associated material will be unavailable at a hyperlink, resulting in a deficient applicant filing.

Q.802. RFA Page 12 states “Each responsive file (.pdf or .jpg) should be no greater than 5MB.” The answer to Question 317 states, “All contents of the hard copy of Application material must be included in the electronic version. Applicants are encouraged to keep electronic file sizes within reason (as close to 5MB as possible) to enable ease of transfer.” If a responsive file is substantially greater than 5 MB, can Applicants name the response such that it is made up of more than one 5MB file (for example, EvalEconSLRR2.Brand.DescriptionPartA, that is less than or equal to 5MB, and EvalEconSLRR2.Brand.DescriptionPartB, that is less than or equal to 5MB)?

A.802. See answer to Q.616. Due to the large number of responsive files anticipated in response to this RFA, Applicants are cautioned from separating large files into multiple smaller files.

Financial Stability

[See also First-Round Question & Answer 197]

Q.803. Assuming the funding for the Project is entirely self-funded through the Parent Company’s liquidity (cash on hand and revolver availability) and no new incremental debt will be assumed to fund the project, does the internal accounting treatment for the Parent funding of the Project as an intercompany loan from the Parent to the Project subsidiary require disclosure of terms or commitment letters?

A.803. Terms of any intercompany loan must be disclosed.

Q.804. In regard to “.FinancialStability” and the request to provide tax returns, please confirm that an Applicant may provide its most recent combined New York state tax return for its Parent Company (which includes the Applicant) and the most recent consolidated federal tax return for its Parent Company (which includes the Applicant) to satisfy the requirement. Applicant would also provide a list of any other tax returns filed by Applicant.

A.804. Confirmed.

Gaming Facility of the Highest Caliber

[See also First-Round Questions & Answers 329 through 367]

Q.805. How long must a phased facility be open in order to be considered permanent?

A.805. Phased construction refers to the construction and completion of permanent features of the gaming facility, not the utilization of temporary facilities prior to opening.

Q.806. How will the Commission define a permanent gaming area for the purposes of phasing?

A.806. See answer to Q.805.

Q.807. Can operations within a phased gaming facility be relocated over time during operations?

A.807. With the exception of the gaming floor, yes, upon approval by the Commission.

Q.808. Regarding the answer to Question 364, please confirm a project may have multiple areas “designated as gaming floor areas” within a Gaming Facility and those areas are not required to be contiguous so long as they adhere to all the gaming floor requirements for security, surveillance, and other internal controls.

A.808. Yes.

Q.809. In the context of the definition of “Gaming Facilities,” what is meant by “other amenities?”

A.809. The customary and general use of this term applies.

Q.810. RFA Page 32 discusses the requirement for a “table of organization.” Is there a minimum or maximum number of staff positions that should be “responsible for communications with the Commission?”

A.810. No.

Q.811. Please clarify how the Gaming Facility Location Board intends to measure the total size of a Project Site. For instance, if designated gaming floors are separate but connected through stairs, elevators or escalators, will these individual gaming floors count as a single gaming floor area?

A.811. In terms of square footage, the total square footage of the development will be considered, but an Applicant must provide a schedule of square-footage usage detailing intended usage (*i.e.*, gaming floor, retail, back of house, utilities, etc.). Connecting space, such as stairs, elevators or escalators, shall be indicated as such and not included as part of the square footage of the spaces they connect.

Q.812. a. The RFA requires the gaming floor to be “contiguous.” Please refine what is meant by this specifically?

b. Will more than one gaming floor be permitted within the gaming facility?

A.812.

a. The Board is unable to identify any reference in the RFA to a requirement that the gaming floor be “contiguous.”

b. Yes.

Q.813. The RFA requires the gaming floor to be contiguous. Will more than one gaming floor be permitted within the gaming facility?

A.813. See answer to **Q.812(a)**.

Q.814. Can the permanent casino area be later expanded?

A.814. Yes, with the permission of the Commission.

Gaming Regulations

[See also First-Round Questions & Answers 368 through 373]

Q.815. The RFA, consistent with N.Y. Racing, Pari-Mutuel Wagering and Breeding Law § 1321-e and other sections of Article 13, Title 2-A, necessarily includes some changes to the existing regulations that have not yet been implemented. For

example, Section 1321-e and the RFA empower the Board to set the deposit between 5 percent and 10 percent, whereas 9 NYCRR § 5301.9 call for such a deposit to be 10 percent. Also, there is a requirement to commence gaming within 24 months following the award of the license, but the Board, in the answer to Question 223, has affirmed related sections such as the release of the deposit or bond with certification of the final stage of construction. Will the Board or Commission be publishing proposed changes in the rules prior to the Application Date or the Supplement Return Date, including any amendments to 9 NYCRR § 5301.9?

A.815. The Commission anticipates proposing conforming amendments prior to the Application filing deadline.

Q.816. We note that 9 NYCRR § 5301.1 lists and refers to “manager” and “operator” separately in subsection (v)(5) and uses the term “manager” primarily. Is there a distinction or difference or any significance in the change from prior RFAs from the prior Gaming Facility Location Board referring to managers instead of operators?

A.816. Unless context of the usage indicates differently, manager refers to the entity providing management of the Facility or a non-gaming element of the Facility, while operator refers to the entity providing management of the gaming operations within the Facility, which may or may not be the same entity as the manager.

Q.817. N.Y. Racing, Pari-Mutuel Wagering and Breeding Law § 1305 refers to the Commission’s power to determine suitable debt-to-equity ratios of licensees and conditions included in licensing awards have referenced the licensee’s obligation to comply with the Commission’s regulations regarding debt-to-equity ratios. Has the Commission set such ratios in the past or will it set such a ratio for new licensees prior to licensing?

A.817. The Commission has not yet regulated in this arena and is unlikely to propose regulation prior to the Application filing deadline.

Gaming Taxation

[See also First-Round Questions & Answers 595 through 598]

Q.818. Following up the answer to Question 505, please clarify precisely how the “base taxable gross gaming revenue amount” is being calculated. There are certain dedicated payments that will affect what constitutes base taxable gross gaming revenue (GGR), including but [not] limited to statutory horse racing support

payments. In calculating the taxable base, please explain what items are being paid from GGR before and after until the GGR falls within the definition of “base taxable gross gaming revenue.”

A.818. Racing, Pari-Mutuel Wagering and Breeding Law § 1351(2)(b) defines "base taxable gross gaming revenue amount" as that portion of gross gaming revenue not attributable to deductible promotional credit.

Q.819. a. Will an Applicant be permitted to offer a minimum annual guarantee payment in USD as an alternative to, or in addition to, submitting a tax percentage for Gross Gaming Revenue?

b. If so, may an Applicant break down such payments by slot machine and table gaming GGR?

A.819.

a. An applicant may offer a supplemental fee equal to the difference between a set minimum annual guaranteed amount and the actual amount generated by the tax percentage on Gross Gaming Revenue, provided that the supplemental fee cannot be negative. This supplemental fee must be in addition to the tax percentage and not be an alternative to paying tax on a percentage of Gross Gaming Revenue.

b. Yes.

Q.820. Is it also the intent of this legislation that this be measured for the period of each State Fiscal Year, the calendar year, every year over the license period or only for a certain number of years?

A.820. State Fiscal Year, each year.

Q.821. a. Is it a requirement that tax rates bid as part of this RFA result in amount sufficient to meet education aid requirements or may an Applicant bid a lower tax rate and offer a supplemental payment to the State for the shortfall amounts until such time as regular education tax payments meet the threshold?

b. Would the projected shortfall be viewed negatively in the evaluation by the Gaming Facility Location Board?

A.821.

a. No, except for applicants subject to the hold-harmless payment.

b. Impact on State revenue is a factor, among many factors, that will be considered by the Board.

Q.822. Given that the license terms, tax rates and resulting financial returns to the State may vary significantly amongst Applicants, how will the Gaming Facility Location Board and/or Commission ensure fairness to the local communities and competing facilities?

A.822. The Board will consider all aspects of a proposal.

Q.823. Given that the RFA describes how Annual Machine and Table Fees are determined by Zone, and how “Tax on Gaming Revenues [Will Be] Based on Zone and Region,” what steps if any will the Gaming Facility Location Board and/or Commission take to align or equalize the license tenures and tax rates of Gaming Facilities licensed in the same Region and Zone?

A.823. As stated in the RFA, for a Gaming Facility licensed for one of the additional casino licenses (Title 2-A), the tax rate imposed on gross gaming revenues shall be determined by the Commission pursuant to the competitive bidding process. The Commission may not necessarily align or equalize the license tenures and tax rates for these licensees by Region or Zone.

General Applicant Information

[See also First-Round Questions & Answers 180, 374 through 390]

Q.824. The answers to Questions 378 and 379 provide that Applicant must disclose litigation involving all subsidiaries including entities that have ceased operations. Please confirm this response applies specifically to the Gaming Facility License Application Page 14, Item 27 and not the litigation questions in the RFA. We note that the litigation questions in the RFA require information on the “Applicant Party,” which does not apparently include subsidiaries.

A.824. An Applicant must disclose any litigation that may have a material impact to the Applicant Party, whether filed against the Party itself or a

parent or subsidiary, in response to any litigation questions contained in the RFA.

Q.825. With respect to all litigation questions generally, please confirm that the Applicant may exclude matters where Applicant is Plaintiff (rather than Defendant) and is seeking damages against another party.

A.825. No.

Q.826. With respect to the answer to Question 384, what would qualify as “certified” certificates of ownership structure?

A.826. A notarized certification by the corporate secretary or other officer attesting to the accuracy of the included charts detailing the ownership structure.

Q.827. Can an officer or attorney certify as to such ownership or if the LLC is not certificated must certificates be issued?

A.827. See answer to Q.826.

Q.828. Please confirm if bylaws and operating agreements are required for each operating subsidiary of the Applicant

A.828. Yes.

General Taxation

Q.829. When casino guests redeem offers at outside businesses, should the applicable taxes be calculated on the face value of the offer redeemed or the discounted value reimbursed to the outside business, if applicable?

A.829. Taxable transactions will be calculated pursuant to the applicable provision of the N.Y. Tax Law.

Q.830. Will commercial casinos have a different designation with respect to determining property taxes as opposed to other commercial uses?

A.830. All property tax determinations will be made by the taxing jurisdiction.

Highest Number of Quality Jobs

[See also First-Round Questions & Answers 524 through 526]

Q.831. RFA Page 30 uses terms including “ensure” and “commitments” in relation to providing the highest number of quality jobs, but does not describe the extent to which any such commitments would be contractually obligated. To the extent such commitments are not contractually obligated, can the Board describe the verification process?

A.831. Employment commitments will be a condition of any license granted, thus subjecting the licensee to remedial action for failure to meet the commitment.

Q.832. Please clarify what “annual biddable spend” means and/or how it should be calculated for purposes of the RFA.

A.832. The total of all contracting opportunities that is capable of being offered through a bidding process to a diverse group of contractors.

Q.833. RFA Page 30 requires submission of (.JobQuality). Please provide additional detail on the calculation of “median pay weighted by the number of full-time equivalent employees receiving each wage.” Could you please provide an example of this calculation?

A.833. If a job classification has more than one pay range, the average and median pay for each range is to be weighted by the number of FTEs in each range to calculate the average and median pay for that job classification.

Q.834. RFA Page 30 provides that an Applicant’s effort in providing the highest number of quality jobs will be considered, with reference to both full-time and part-time employees. Are there minimum requirements for a part-time job to be considered a “quality job?”

A.834. The applicant should utilize the “Good Jobs Principles” established by the United States Departments of Commerce and Labor in determining if jobs are considered as quality. These principles can be found at <https://www.dol.gov/general/good-jobs/principles>.

Hold-Harmless

Q.835. Is the calculation of the Hold-Harmless Payment based on the calendar year or the State's fiscal year? The timing of the payment and calculation will impact the cash-flow model. If calculated by calendar year, Applicants would calculate from January 1 to December 31st and then remit payment in accordance with the State's terms. If calculated by State's fiscal year, Applicants would calculate based on April 1 to March 31 and then remit payment in accordance with State's terms.

A.835. The calculation is based on the State Fiscal calendar.

Independent Consultant Studies

Q.836. In the answer to Question 573, the Gaming Facility Location Board states the market study is "where the Applicant plans on drawing its customers from, while the Revenue Study details the revenue derived from such customers." However, we note that on RFA Page 57 a revenue study includes "...projections for all estimated State, county and local tax revenue..." and a market study is to provide insight on gaming revenue projections. In the market analysis, described on RFA Page 40, Applicants are to detail gaming and non-gaming revenue. Can the Gaming Facility Location Board please further clarify, is the revenue study to be focused on tax revenues as the RFA stipulates?

A.836. Yes, the revenue study is to be focused on revenue generated for the benefit of State and local government.

Issuance of Licenses

[See also First-Round Question & Answer 394]

Q.837. Per the answer to Question 294, "the Commission will work with each successful applicant to establish an effective date for each license to align the terms with the start of gaming operations." Does this mean that the twenty-four month requirement to open, if still in effect from N.Y. Racing, Pari-Mutuel Wagering and Breeding Law § 1311, will be left to the discretion of the Commission even if speed-to-open was a key reason why the Gaming Facility Location Board selected an Applicant for the award of a license?

A.837. The language of § 1311 applied specifically to the Upstate Licensing Process.

Q.838. Please confirm whether the “award of Commission license” and “award of license” referred to in the answers to Questions 206 and 214 are the same or for purposes of when the 5-year plan is to commence and the deposit.

A.838. Same.

Q.839. Is there a defined term for the selection date of an Applicant by the Board or estimated period for the Commission to award a license before a license is actually issued upon opening of a casino to the public for gaming?

A.839. No, however the Commission has historically worked with a licensee to establish an effective date acceptable to all.

Q.840. Is the “award of license” referred to in the answer to Question 214 the date of Applicant selection by the Board or a determination by the Commission upon completion of all background investigations but before opening?

A.840. The Board does not issue a license. Rather, the Board is statutorily limited to making recommendations for licensure to the Commission. Historically, the Commission has not made a license determination until backgrounding finalization.

Q.841. Regarding the answer to Question 355, please confirm an Applicant may open the permanent casino area upon demonstration of investing the Minimum Capital Investment requirement once completed while the remaining non-gaming project components, such as the hotel, are still under construction.

A.841. Confirmed.

Q.842. In light of the earlier response to Question 294 suggesting that the Commission will align the effective date of a license with the start of gaming, should the “.PostLicenseConstruction” summary referenced on RFA Page 41 address the period from selection by the Board or some other pre-licensing suitability determination by the Commission or only the period from issuance of the license?

A.842. The latter.

Q.843. In previous Gaming Facility License Awards issued by the Commission and subsequent amendments to those awards, there has been an Exhibit 1 with approximately 23 conditions related to construction and opening. If the award and

issuance of the license is aligned closely to opening, will any of those model conditions be eliminated or replaced by others?

A.843. Conditions will be established on a case-by-case basis.

Q.844. Are there standard conditions that the Commission has imposed on prior Managers or Operators of casino gaming or VLT facilities that will be applicable to an Operator under this RFA?

A.844. No.

Q.845. a. If an existing VLT facility is awarded a full commercial casino license, will the VLT license expire as a matter of law upon award of the commercial casino license?

b. Will an existing VLT operator be permitted to maintain the license and operate VLTs?

c. Will an existing VLT operator winning a commercial casino license operate “hosted games” if they don’t operate a VLT facility?

d. Are these factors that the Applicant needs to consider as part of the 50-mile radius criteria in the RFA?

A.845.

a. Not as a matter of law, but historically a Video Lottery license was considered expired at the effective date of the commercial casino license.

b. No.

c. No.

d. The Board fails to understand the question. For the Additional License Process, all bidders should anticipate a continuation of existing video lottery gaming facilities at Aqueduct Racetrack and Yonkers Raceway should either or both fail to be awarded a commercial casino license.

Licensing Fee and Term

[See also First-Round Questions & Answers 395 through 427]

Q.846. Since the length of the initial license is unknown, Applicants may be more conservative in their projections. Would the Board consider establishing a framework or formulation for how the length of the initial license will be determined?

A.846. Yes. The Commission will propose a term-of-license regulation.

Q.847. With the cost of renewal unknown, Applicants are disincentivized to invest capital in later years. If unwilling to establish a cost of renewal prior to the Return Date, would the Board consider establishing at a minimum a clear framework or formulation for how the cost of renewal will be determined?

A.847. A failure of a license holder to invest into and maintain a commercial gaming facility may be used as a factor in not authorizing a renewal.

Q.848. Is the tax rate bid by Applicant, upon award of a license, fixed for the term of the license or is it possible that the State could change the tax rate via legislation during the license term?

A.848. While the State may always alter its laws, the example of failed efforts by the licensed mobile sports wagering industry to change the rate of taxation illustrates the difficulty in making such changes. An Applicant should not bid an amount higher than they can afford in anticipation of the Legislature lowering that rate due to “economic hardship.”

Q.849. a. Is it permissible for Applicant to submit alternative bid constructs for consideration by the Gaming Facility Location Board as the submission relates to license tenure, license fee, and tax rate?

b. Can, for example, Applicant bid to pay a license fee of [X] and tax rates of [Y] for a 10-year license, a license fee of [Z] and tax rates of [A] for a 20-year license, and a license fee of [B] and tax rates of [C] for a 30-year license?

A.849.

a. Yes, so long as consistent with forthcoming Commission regulations related to licensing terms.

b. See above.

Q.850. May Applicant propose two or more alternative license fees/terms in the Application to be selected at the discretion/preference of the Gaming Facility Location Board? For example, Applicant would propose a 10-year license with a license fee of \$500 million OR in the alternative a 20-year license with a license fee of \$X (a determined higher amount of \$500 million +).

A.850. Yes.

Q.851. Please confirm whether Applicant may modify a desired license term as set forth in the Application submitted on the Return Date as part of the Supplement submitted by the Supplemental Return Date.

A.851. An Applicant may, but it is expected that the Commission will propose term-of-license rules by the date of application submission.

Q.852. As license-fee and tax-rate proposals may impact the license term necessary to make a project financially viable, should Applicants propose the license term in their Return Date or Supplemental Return Date submission?

A.852. The license-fee and tax-rate proposals must be submitted by the Supplemental Return Date.

Q.853. Would a request for a longer license term be viewed as a negative aspect of an Applicant's proposal versus another party with a shorter license term request?

A.853. Consideration will be given with all other aspects of an application.

Q.854. If an Applicant does not propose a license term, is the default term 10 years?

A.854. See answer to Q.851.

Q.855. If the entity owning the land comprising the Project site is not the Applicant or the Operator, will the land-owning entity be required to submit a Gaming Facility License Application Form?

A.855. Presuming the landowner is simply acting as a landlord, no. However, other facts and circumstances may require licensure of the entity.

Q.856. Can you confirm that the renewal fee is separate from the subsequent licensing fee and those fees will not be determined by the Supplement Return Date?

A.856. Confirmed.

Q.857. a. In consideration of the impact that license terms have on financial viability, can the Commission provide more clarity on the terms and manner of license renewals/extensions (*e.g.*, will renewals/extensions require a new RFA process?)

b. How will the potential for differing license tenures and tax rates impact renewals/extensions?

A.857.

a. The renewal procedure will be set by Commission rulemaking.

b. Further guidance concerning the renewal procedures will be forthcoming.

Local Impact Siting

[See also First-Round Questions & Answers 433 through 434]

Q.858. The proximity of two casinos five miles apart but in the same borough is vastly different than the proximity of two casinos five miles apart in different boroughs. As a result, isn't average travel time and not distance the most relevant metric in considering whether casinos are in proximity to one another?

A.858. No.

Q.859. Should the "Housing Impacts" section also speak to new housing being created by the project, or focus solely on impacts to existing housing stock?

A.859. If an Applicant proposes housing as part of their proposed development, the relevant section must include the anticipated impact of that aspect of the proposal.

Q.860. Please clarify the Gaming Facility Location Board’s definition of what constitutes “Diverse Populations.”

A.860. Diversity includes, without limitation, race, color, ethnicity, nationality, religion, socioeconomic status, veteran status, education, marital status, language, age, gender, gender expression, gender identity, sexual orientation, mental and physical ability, and genetic information.

Q.861. Please clarify what type of documentation is expected as part of “documentation to demonstrate inclusion within, and coordination with regional economic plans” for this subsection.

A.861. Any documentation produced in conjunction with any such regional or local economic development plan that demonstrates inclusion.

Q.862. Please clarify which population segments make up “underserved communities.”

A.862. The term “underserved communities” refers to populations sharing a particular characteristic, as well as geographic communities, that have been systematically denied a full opportunity to participate in aspects of economic, social, and civic life.

Maximizing State and Local Revenues

[See also First-Round Questions & Answers 435 through 464]

Q.863. The answer to Question 461 noted that “valuation methodology has not been determined yet.” Will the valuation methodology direct Applicants to report dollar values for the various projections in nominal or real dollar terms and will the methodology be determined and communicated well in advance of the Return Date?

A.863. Values should be reported in nominal dollar terms.

Q.864. What is the distinction between “host municipality,” “host county,” and “non-host counties” in the context of a New York City casino?

A.864. See Racing, Pari-Mutuel Wagering and Breeding Law § 1352.

Q.865. Understanding that 10 percent of the State gaming tax is split equally between the host municipality and the host county, and 10 percent is split among non-host counties within the region on a per capita basis, how does this work when the host municipality consists of five counties? Does New York City keep the full 10 percent?

A.865. See Racing, Pari-Mutuel Wagering and Breeding Law § 1352(b).

Q.866. a. What would be considered “non-host counties within the region”?

b. Would these be Bronx, Kings, Queens, and Richmond in the case of a Manhattan casino?

A.866.

a. See Racing, Pari-Mutuel Wagering and Breeding Law § 1352.

b. See Racing, Pari-Mutuel Wagering and Breeding Law § 1352(b).

Q.867. On RFA Page 30 in the .StateLocalRevenue request, in the average case, Applicant is asked to assume “one similar casino project within 50 miles of the proposed facility and another comparable outside the 50-mile range.”

a. How far outside the 50-mile range is considered “reasonable”?

b. Does the facility outside of 50 miles have to be in New York State?

c. With existing facilities in Connecticut, Pennsylvania and Atlantic City, should Applicants assume that already existing casinos fit the requirement of the average case assumptions?

d. Does the Commission consider a proposed northern New Jersey casino[s] (Meadowlands, Jersey City, and/or Newark) to be beyond the 50 miles of any casino in region one of zone one?

A.867.

a. An Applicant must use its judgment as to where a competing casino is likely to be sited.

b. Yes.

c. An Applicant should consider the existing market competition in all case scenarios.

d. The intention of this direction was to provide guidance on how to make assumptions on where the other available licenses might be sighted in relation to the applicant's proposal. Assessing the impact of potential out-of-state competition is not the intended purpose.

Q.868. Are Applicants limited to assuming a 25 percent tax rate on gross gaming revenue on slot machines and a 10 percent tax rate on gross gaming revenue from table games in its first submission due on the Return Date, or may they also include the impacts of a higher rates?

A.868. The applicant must assume a 25 percent tax rate on gross gaming revenue on slot machines and a 10 percent tax rate on gross gaming revenue from table games in its first submission due on the Return Date.

Minimum Capital Investment

[See also First-Round Questions & Answers 465 through 480]

Q.869. Please clarify that existing VLT facilities may not commence operations of slot machines or table games prior to having invested the Minimum Capital Investment of \$500 million.

A.869. Yes, all selected applicants must demonstrate that required capital investments necessary for operation have been made to the facility, which shall be equal to or greater than \$500 million, prior to the commencement of commercial gaming operations.

Q.870. Is a land appraisal of the proposed project site required to be submitted as part of the Application?

A.870. Yes.

Q.871. If a land appraisal is required to be submitted, must the appraisal be prepared by a Member, Appraisal Institute "MAI" certified appraiser?

A.871. No, however, the appraisal must be prepared by an appraiser holding a valid real estate appraiser license issued by the New York State Department of State.

Q.872. a. On RFA Page 24, for the Minimum Capital Investment section, are the requirements listed on page 24 exhaustive?

b. In other words, can an applicant use other criteria in addition to the criteria listed on RFA Page 24?

A.872.

a. For purposes of calculating the Minimum Capital Investment, the list on RFA Page 24 constitutes the only expenditures that will be considered.

b. An Applicant may use other criteria for total project costs, provided that those criteria are for expenditures over and above the Minimum Capital Investment. An Applicant must separately identify these criteria and provide sufficient justification why such additional criteria should be included in the total project cost.

Q.873. Will the Board consider initially rejected applications for Federal, state, and municipal permits as part of the Minimum Capital Investment?

A.873. No.

Q.874. On RFA Page 24, what specific factors will the Board consider when deciding to discount a percentage of the investment made based on prior capital investments for the minimum capital investment?

A.874. The Board will consider each case based on the specific facts and circumstances of the prior investments, but will consider among other factors, the time since the prior investment was made, the depreciation of the prior investment, return on investment realized on the prior investment, and circumstances in which the investment was made.

Q.875. For the minimum capital investment, will the Board consider any legal fees associated with the “actual construction of the Gaming Facility” as part of the minimum capital investments?

A.875. No.

Q.876. For the minimum capital investment, will the Board consider any legal fees associated with the “Design of the Gaming Facility including building design, interior design, and exterior site design?”

A.876. No.

Q.877. For the minimum capital investment, will the Board consider any legal fees associated with the “remediation of environmental conditions or hazardous materials?”

A.877. No.

Q.878. For the minimum capital investment, will the Board consider any legal fees associated with the “preparation of the site including demolition, excavation, clearing, grading, earthwork and abatement?”

A.878. No.

Q.879. For the minimum capital investment, is there a limit of “professional and management fees” that the Board would consider?

A.879. No, provided fees are reasonably within industry standards. Fees considered excessive may be excluded.

Q.880. For the minimum capital investment, will the Board consider any legal fees associated with the “improvement of the existing or construction of new infrastructure in the property boundaries of the site of the Gaming Facility?”

A.880. No.

Q.881. For the minimum capital investment, what will the Board consider as the pre-opening purchase of “other components associated with the Gaming Facility?”

A.881. The example provided is too open-ended for the Board to provide proper guidance.

Q.882. For the minimum capital investment, what does the Board consider as an “indirect and overhead cost [] related to the development of the Gaming Facility?”

A.882. The example provided is too open-ended for the Board to provide proper guidance.

Q.883. a. If an applicant is subject to land-alienation rules and is required to replace park land that will not be used as part of the Gaming Facility, is the amount of investment to replace the park land included in the definition of proposed investment?

b. Will the cost of replacing park land outside of the Project Site count toward the Minimum Capital Investment?

A.883.

a. Yes.

b. No.

Q.884. If an applicant is required as part of land-alienation rules to submit replacement parcels that will not be part of the Gaming Facility, is the applicant required to provide legal descriptions, maps, aerial and surface photography and any other topographic or vegetative characteristics for the replacement land tracts identified?

A.884. Yes.

Q.885. a. If an applicant is required as part of land-alienation rules to submit replacement parcels that are not part of the Gaming Facility, will the Applicant be required to provide ownership detail for the last 20 years for each of the individual land parcels?

b. What if the Applicant is unable to obtain this historical information?

A.885.

a. Yes.

b. The Applicant must provide as complete detail as possible, and an explanation of efforts undertaken in attempt to fill in any gaps.

Q.886. a. Given the \$500M license fee will be excluded from the definition of total investment, will total investment include any of the following: brokerage

fees/expenses, assignment of land contracts, costs related to park land alienation, legal fees, site preparation, site remediation, community engagement fees or other related, similar items?

b. Please specify any other exclusions or inclusions that are contemplated?

A.886.

a. Generally, expenditures necessary for the construction and opening of the development will be included in the total investment, while costs incurred to support an application but not subsequently required for construction, such as community engagement, shall be excluded.

b. See answer to Q.886(a).

Q.887. Please confirm that all expected/estimated capital improvements throughout the entire initial licensing period will be included in the review and scoring of an Applicant's Capital Investment. For example, will post-opening and phased capital investment be credited as Capital Investment?

A.887. All aspects of an Applicant's capital project will be considered in review of the proposal; however, some capital expenditures may be discounted dependent on when the proposed expenditure occurs on the development timeline.

Miscellaneous

Q.888. What are the obligations of an Applicant, if the Applicant is selected for a license but decides to decline the license?

A.888. The Applicant could be subject to liquidated damages.

Q.889. Will the new downstate commercial licensees be eligible to receive the payment offsets from mobile sports betting operators?

A.889. No.

Q.890.a. Please define "specialty games."

b. Would this constitute games that are not considered Blackjack, Craps, Roulette, Baccarat such as "Let it Ride" or "Ultimate Texas Hold'em"?

A.890.

a. Specialty games consist of any game or wager not currently contained within Part 5324 of NYCRR Title 9.

b. See answer to Q.890(a).

Q.891. Can permit drawings be submitted to the authority having jurisdiction before a license is awarded?

A.891. Yes.

Mitigating Potential Impacts on Municipalities

[See also First-Round Questions & Answers 481 through 496]

Q.892. The RFA includes a section on FULL DIVERSIFIED REGIONAL TOURISM however no definition is provided for what constitutes a “tourist.” Does the Gaming Facility Location Board have any clarification between the categories of tourism (local, regional, out-of-state, international) and/or a physical radius for defining these categories?

A.892. No. The Applicant should define parameters as they apply to any responsive plans.

Multi Jurisdictional Personal History Disclosure Form

Q.893. On Page 64 of the Multi Jurisdictional Personal History Disclosure Form, the individual applicant is required to provide three (3) character references. On page 18 of the New York Supplemental Form, the individual applicant is required to provide five (5) character references. Do the character references listed in the Multi Jurisdictional Personal History Disclosure Form and the New York Supplement need to be different persons?

A.893. As the New York Supplemental Form only has six pages, the Board does not understand the reference.

MWBE Utilization Goal

Q.894. In the answer to Question 154, the Gaming Facility Location Board clarifies the 30 percent utilization goal of Minority and Women-Owned Business Enterprises is to apply to pre-opening spend and ongoing capital expenditure. Could the Gaming Facility Location Board please clarify their definition of “pre-opening spend”?

A.894. Pre-opening spend is all purchases and construction related to opening a gaming facility.

Q.895. To meet the State's 30 percent utilization goal for MWBE contracts: Will there be an exclusions process in place for certain construction categories if the Licensee can demonstrate a clear reasoning for why it cannot source to MWBEs in the requested category?

A.895. There is a process in place to exclude areas where no opportunities exist. Good-faith efforts must be thoroughly documented, and approval sought from the Commission. Efforts must be made to seek other areas of opportunities to still meet the established goal.

Q.896. To meet the State's 30 percent utilization goal for MWBE contracts can Furniture, Fixtures & Equipment expenditures be included into the total construction cost used to calculate the 30 percent utilization goal?

A.896. Yes. All purchases are included to reach utilization goals.

Q.897. To meet the State's 30 percent utilization goal for MWBE contracts can Operating Supplies and Equipment expenditures be included into the total construction cost used to calculate the 30 percent utilization goal?

A.897. Yes. All purchases are included to reach utilization goals.

Q.898. Is construction workforce diversity tracking required for this project?

A.898. Yes, workforce diversity tracking is required.

Q.899. Are there any specific forms for diversity reporting required?

A.899. Data requirements for workforce diversity reporting are specified in 9 NYCRR § 5312.3 and there is not a formatting requirement.

Q.900. During construction, how often will the Commission require Diversity status updates?

A.900. Reporting is on an annual basis.

Q.901. To meet the State's 30 percent utilization goal for MWBE contracts can Service Veteran Owned or Disability Owned businesses count towards the 30 percent, or is the 30 percent only for Women and Minority owned companies?

A.901. The MWBE goal is 30 percent and the SDVOB goal is separate at 6 percent.

Q.902. To meet the State's 30 percent utilization goal for MWBE contracts we anticipate insurance costs to be extremely high for a project of this magnitude. Will Owner Controlled Insurance Program expenditures be included into the total construction cost used to calculate the 30 percent utilization goal?

A.902. A determination will be made by the Commission on a case-by-case basis.

Non-Collusive Bidding

[See also First-Round Question & Answer 497]

Q.903. The Non-Collusive Bidding Certification form refers to the “Applicant and each person signing on behalf of Applicant.” Can you confirm that an Operator or other Applicant Party is not required to complete that form, only the Applicant?

A.903. Yes, however, it is the responsibility of an Applicant to ensure that any Operator or other party to the Application has not violated the conditions of the certification.

Partnerships with Entertainment Venues

[See also First-Round Question & Answer 498]

Q.904. Despite the answer to Question 499, given the importance of the restaurant community in the entertainment experience of New York City, does the Board agree that it is unreasonable to deny these constituents participation on equal footing with other live entertainment venues at the public hearings?

A.904. All interested parties have equal rights to submit comments or to be heard at public hearings.

Permissible Contacts

[See also First-Round Questions & Answers 508 through 509]

Q.905. Are potential Applicants permitted to continue to engage in written and oral communications with statewide and local government elected officials, employees, and other individuals representing the community where their respective gaming facility may be located, including those individuals who will be responsible for (or otherwise participate in) the selection of CAC members?

A.905. See answer to Q.633.

Q.906. The answers to Questions 38 and 508 provide that the permissible point of contact identified in the RFA is the appropriate person with whom to “discuss” questions concerning the scope of required license applications, and that all questions regarding the scope of background investigations must be submitted through the permissible point of contact. Further, the answer to Question 509 appears to provide that an Applicant may contact the Commission’s Bureau of Licensing to “discuss” license applications, provided the discussions are through the permissible contact.

A.906. All questions must flow through the Permissible Contact. Upon review of the question or request, the Board may designate an additional point of contact specific to that question or request.

Q.907. Prior to the Return Date, may an Applicant orally discuss the scope of required Background Investigation Forms with the Permissible Contact?

A.907. The permissible contact may initiate oral communication concerning a specific question or request, but only after the Applicant has submitted such question or request in writing to the Permissible Contact.

Q.908. May the Applicant have multiple points of contact in connection with communications with the GLFB’s Permissible Contact? For example, Applicant may want to have one individual to communicate re Background Investigations related to the Multi Jurisdictional Personal History Disclosure Form and another contact to communicate re zoning matters.

A.908. Yes, provided that the Applicant maintains a single point of contact for general communications between the Applicant and the Board.

Q.909. Is it permissible for the Applicant to create a single RFA email account to provide to the Gaming Facility Location Board Permissible Contact, that is accessible to multiple individuals?

A.909.Yes.

Q.910. a. Will the Gaming Facility Location Board be designating a person(s) prior to the Return Date to assist with facilitating IT issues that may arise during the application submission process?

b. If so, since these are ministerial tasks and not for “purposes of influencing the award” would these IT discussions be permitted under the RFA?

A.910.

a. For purposes of electronic file submission, a point of contact concerning access to and issues utilizing the file transfer system will be provided along with the instructions for submission.

b. See answer to Q.910(a).

Phased Construction

[See also First-Round Questions & Answers 403 and 513]

Q.911. Applicant’s intention is to build its overall development—including the gaming facility—in at least two phases. Please confirm that so long as the first phase of the gaming facility opened remains open during the length of the license that the prohibition on temporary casinos is not implicated.

A.911. Yes, provided that no temporary gaming floor is utilized to supplement the permanent floor contained within the Phase One development.

Q.912. Applicant’s intention is to build its overall development—including the gaming facility—in at least two phases, which would necessarily mean commencing operation of the first phase of the gaming facility with fewer activated gaming positions than the total authorized under the license; the full number of authorized

gaming positions would be operational when the full development is complete. Please confirm that it is permissible to activate authorized gaming positions in phases so long as once all authorized gaming positions are activated the number of active positions is not reduced without permission from the gaming authorities.

A.912. Yes, provided the gaming positions are activated only upon the opening or expansion of a permanent gaming floor. Such phased opening of the permanent gaming floor(s), along with the development timeline and the number of gaming positions associated with each phase must be identified within the application.

Q.913. Are there any restrictions against building out and opening a gaming facility in a planned phased approach whereby portions of the facility are opened on staggered dates after the initial opening? The specific details of this phased approach would be outlined in the Application.

A.913. No. See answer to Q.912.

Q.914. In the previous New York casino gaming licensing process, certain licensees opened their gaming facilities in phases, building toward the planned square footage, full number of authorized gaming positions, and on- and off-premises gaming amenities over time. Please confirm that those granted licenses under the current process will be permitted to do the same.

A.914. Yes. See answer to Q.912.

Post-Licensure Responsibilities

[See also FirstRound Questions & Answers 510 through 522]

Q.915. When does the Commission expect to determine the parameters concerning licensing renewal? Please note, this information is necessary to calculate how an Applicant bids within the RFA for items such as licensing fee, tax rate, etc.

A.915. It is anticipated that the procedure for license renewal will be issued prior to the Return Date.

Q.916. Does the Commission anticipate the downstate casino licensing renewal process will be the same as the upstate casino licensing renewal process?

A.916. Yes.

Public Disclosure

[See also First-Round Questions & Answers 527 through 544]

Q.917. Will the independent advisor authorship of the various independent studies be publicized in the application, or can the author's identity be redacted?

A.917. The authorship will not be redacted.

Q.918. Will unredacted applications for key employees and other individual applicants be shared with the CAC?

A.918. No.

Q.919. Are unredacted financial statements for key employees and other individual applicants shared with the CAC?

A.919. No.

Q.920. Will redacted applications for key employees and other individual applicants be shared publicly?

A.920. No, however all Applications are subject to FOIL.

Q.921. Will redacted financials for key employees and other individual applicants be shared publicly?

A.921. No, however all Applications are subject to FOIL.

Q.922. If a FOIL request is granted by the Board or Commission, will the information be released only to the FOIL applicant or be made publicly available through the Board or Commission's websites?

A.922. The Commission intends to publish all relevant FOIL response disclosures.

Q.923. Will Applicants be required to file sealing requests with either the Gaming Facility Location Board or the Commission for confidentiality or will the FOIL Statement of Necessity suffice?

A.923. The FOIL Statement of Necessity will suffice.

Q.924. Will a sample/example FOIL Statement of Necessity be provided by the Commission or the Gaming Facility Location Board?

A.924. No.

Q.925. At the bottom of page 12 of the RFA, there is the following statement: "... Applications, Supplements and associated materials will be treated as public records and, as soon as possible after both Return Dates, will be posted online for public review...."

a. What is meant by "after both Return Dates"?

b. Does this mean each date or only after both dates have passed?

A.925.

a. The Application and Supplemental Application return dates are independent. Materials concerning each will be posted following the date for such separate submission.

b. Each date, respectively.

Q.926. Will any information on the tax returns, or the tax returns themselves, be made available under the State's Freedom of Information Law?

A.926. No, as presumably an Applicant will seek applicable statutory exemption from disclosure.

Racing Industry Support Payments

[See also First-Round Questions & Answers 503 through 507]

Q.927. a. What will be the methodology for adjusting racing support payments going forward?

If a CPI adjustment is envisioned:

b. How often will the CPI adjustment be applied (annually, every [X] years, etc.)?

- c. Can the adjustment be upwards and downwards?
- d. Has a specific source been identified for CPI?
- e. Can the CPI adjustment be upwards and downwards?
- f. Has a specific source been identified for CPI?
- g. Should applicants include an estimate of their pro rata share of racing support payments as an expense in their financial model?

A.927.

a. Racing support payments will be adjusted by the Consumer Price Index for all urban consumers, as published annually by the U.S. Department of Labor, Bureau of Labor Statistics.

b. Annually.

c. Yes.

d. Consumer Price Index for all urban consumers, as published annually by the U.S. Department of Labor, Bureau of Labor Statistics.

e. See answer to Q.927(c), above.

f. See answer to Q.927(d), above.

g. Yes.

Q.928. Please confirm the methodology for calculating a Gaming Facility's share of racing support payments based on the 2022 data provided in the answer to Question 505 would be: (Applicant's estimated pro rata share of gross gaming revenue generated by all licensees, including VLT facilities, in regions two and three of zone one) multiplied by $(\$151,670,185.12 + \$69,730,452.25)$.

A.928. No, the calculation is based on the 2019 actual payments adjusted annually for inflation.

Q.929. Are racing support payments an item that should be included in items such as ".StateLocalRevenue" and/or economic impact studies?

A.929. No.

Q.930. Will racing support payment obligation be subject to *force majeure* or other protection in the event of unforeseen widespread industry disruption?

A.930. No.

Q.931. If an existing video lottery gaming facility is not awarded a gaming license, will the existing video lottery gaming facility have to maintain some level of racing support payments based on its revenue?

A.931. All video lottery gaming facilities will continue to pay their applicable statutory percentage of net machine income to racing support.

Q.932. If a gaming facility license is awarded to a facility currently licensed for video lottery gaming, will that facility be required to maintain the existing video lottery terminals at current levels or will that facility be permitted to convert all or some of the video lottery terminals to slot machines and/or a table gaming area?

A.932. The facility would no longer be licensed for video lottery terminals, mooted the question.

Q.933. If there is not an award of a gaming license in region one of zone one, and there is a shortfall in Yonkers Raceway's payment(s) to the relevant horsemen and breeders racing support funds, will the gaming licensees in region two or three of zone one be required to make up the shortfall?

A.933. No.

Q.934. If there is a casino license awarded in Zone 1, region 2, what base of 2019 payments are the Racing Support Payments calculated off of? The table provided in the answer to Question 505 illustrates two subtotals (NYRA Total: \$132.5 million; Yonkers Total: \$60.9 million) so would the Racing Support Payments for this casino be calculated off of the "NYRA Total" (\$132.5 million), the "Yonkers Total" (\$60.9 million) or the sum of those two (\$193.4 million)?

A.934. The NYRA total.

Q.935. a. For modelling purposes, should we assume that racing purses will go to zero, and therefore the entire amount of the racing support payments will need to be paid by the three licensees?

b. Will these payments be deductible for tax purposes or provide any other offsets?

A.935.

a. The Applicant should make appropriate assumptions based on scenarios where there are/are not conversions of existing VLT facilities.

b. No.

Q.936. a. If there is a casino license awarded in Zone 1, region 2, will that casino, which is not associated with or adjacent to a horse track or a current VLT facility, be responsible for a portion of the total racing support payments?

b. Would that payment be calculated in proportion to the gross gaming revenue of all Zone 1 licensees?

c. For purposes of racing support payments, will gross gaming revenue in the future be inclusive of table revenue or only slot revenue per current definition in N.Y. Racing, Pari-Mutuel Wagering and Breeding Law § 1355?

d. For clarity, when does the responsibility to maintain the racing support payments begin: at licensing or when the casino actually opens and begins generating gross gaming revenue?

A.936.

a. Yes.

b. It is anticipated that racing support payments would be proportional to gross gaming revenue of all licensees in regions two and three of zone one.

c. The reference provision of § 1355 applies only to licensees awarded pursuant to Upstate Gaming Facilities process. Slot revenue may be considered in the liability allocation for facilities awarded a license under this process.

d. At the commencement of commercial casino gaming operations.

Q.937. a. If an existing video lottery gaming facility (which does not receive a license under the 2023 Request For Application) is situated within the same region as a new licensee, will the existing video lottery gaming facility continue to be required to make any racing support payments?

b. Will both facilities—the existing video lottery gaming facility and the new licensee—be required to share in racing support payments for any other region(s)?

A.937.

a. Yes.

b. No.

Q.938. Should no new license(s) be granted in zone one, region one, will the new licensees in regions two and three share in the horsemen and breeders organizations payments benefitting the racing facility in region one?

A.938. No.

Q.939. Is a zone one, region one licensee responsible for any racing support payments to NYRA aside from payments for Yonkers purses and the Yonkers horsemen and breeders organizations?

A.939. No.

Questions and Inquiries

[See also First-Round Questions & Answers 560 through 561]

Q.940. Are additional rounds of questions contemplated by the Gaming Facility Location Board at this time?

A.940. No.

Q.941. What is the process if an Applicant has additional questions that are presented by the second-round responses if no additional rounds of questions are contemplated?

A.941. The Applicant should use its best judgment and make its best effort to respond appropriately.

Schedule

[See also First-Round Questions & Answers 564 through 571]

Q.942. Does the GLFB expect to award all three gaming licenses at the same time?

A.942. The Board issues no licenses, as that power is reserved to the Commission. The Board will make all its license recommendations concurrently.

Site Visit

Q.943. Will site visits by the Board or representatives of the Board as permitted in the RFA include CAC representatives or be incorporated into the CAC process?

A.943. Each CAC may make its own determination whether a site visit is warranted.

Q.944. Does the Board anticipate site visits to proposed gaming facility locations only or to an Operator's existing facilities in the United States or abroad?

A.944. No site visits are presently contemplated by Board members.

Structure

[See also First-Round Questions & Answers 573 through 577]

Q.945. The answer to Question 573 provides that the Market Study is where Applicant plans on drawing its customers from, while the Revenue Study details the revenue derived from such customers. Please clarify if this means that the Market Study is where the Applicant should detail where it expects to draw its customers from as well as the property's revenue; whereas the Revenue Study is meant to be focused on how the local area, regional area, and state are expected to benefit from a revenue perspective (*e.g.*, taxes and other payments)?

A.945. The purposes expressed in this question are correct.

Supplement Return Date Materials

[See also First-Round Questions & Answers 578 through 588]

Q.946. If design drawings have advanced between the initial return date and the supplement return date, can Applicants submit updated plans, renderings, elevations, etc. at the time of the Supplement Return? We anticipate this will be needed to show any changes made as a result of the CAC and Zoning processes.

A.946. If the Applicant makes changes as a result of the Zoning process or seeks changes to the layout or design that do not materially change the overall development proposed in the application, such design drawings must be submitted for consideration of application amendment as soon as practical (See answer to Q.684). Updated drawings solely reflective of higher percentage detail completion may be submitted at the time of the Supplement Return.

Q.947. For project scheduling purposes, how many days after zoning requirements are met should Applicants assume the Supplement to the Application will be due?

A.947. The supplemental return date will be established independent from when any Applicant receives zoning approvals.

Q.948. The Commission is asking for revenue and tax calculations with the High, Medium and Low scenarios assuming 0, 1 and 2 competing casino licenses within 50 miles.

a. For these scenarios, how should an Applicant handle two existing VLT licenses?

b. Should these licenses be factored into the scenarios in addition to the casino licenses, or be withheld from the scenarios as though they no longer exist as VLT licenses?

c. Alternatively, would the Commission require six scenarios where the High, Medium and Low scenarios are calculated both with and without the 2 VLT licenses existing?

A.948.

a. An Applicant shall make its own assumptions regarding the likelihood of a conversion in developing its scenarios. An Applicant should consider

the relationship between the proximity of existing facilities to its proposed location, and the market layout that would maximize market participation and tax revenue, in the development of the Applicant’s scenarios.

b. Existing facilities must be factored into the scenario, regardless of whether conversion is or is not assumed.

c. No.

Q.949. Are income statements and balance sheets required for each local revenue scenario?

A.949. If the question refers to .Financials, income statements and balance sheets are required for each scenario.

Q.950. On RFA Page 58, there is a reference to qualifications of an “independent expert.” What is meant by “appropriate credentialing”?

A950. An Applicant must demonstrate sufficient experience and expertise of the “independent expert” to lend credibility to the findings.

Q.951. On Page 58 of the RFA and per the answer to Question 582, for the competitive environment supplement should high/low/mid estimates be included?

A.951. Yes.

Temporary Casino

[See also First-Round Questions & Answers 355 and 361]

Q.952. a. What is the definition of a “temporary casino” as referenced in the August 30, 2023, responses?

b. Is a temporary casino limited to a facility that is not integrated into the final proposed Gaming Facility?

A.952.

a. A gaming floor that is not located within the footprint of the final, fully developed gaming floor, requires substantial reconstruction to be

incorporated into the final, fully developed gaming floor, or lacks features required to be considered fully operational.

b. See answer to Q.952(a).

Q.953. Is a temporary casino limited to a facility that is not integrated into the final proposed Gaming Facility?

A.953. See answer to Q.952(a).

Q.954. We are seeking clarification to the answer to Question 355. An operator that intends to construct the entire development masterplan via a multi-phased approach could develop various building amenities and components, including the casino, in phases that could be several years apart. As such, what critical milestones must the gaming facility licensee satisfy to be able to qualify for the issuance of a gaming license that would permit the licensee to initiate operations of a smaller-scale casino, even as the overall development masterplan continues to be under development? For the avoidance of any doubt, the smaller-scale casino that is referred to pertains to a section of the overall casino masterplan, and the said area is intended to seamlessly integrate into the future phases of the overall development masterplan, will formulate a part of the ongoing permanent casino area, and will continue operations throughout the duration of the gaming license.

A.954. The gaming floor, along with adequate amenities, may be opened in phases so long as the gaming floor is within the footprint of the final, fully developed gaming floor and will not require closure and reconstruction to be fully integrated into the permanent gaming floor.

Workforce Development Plan

[See also First-Round Questions & Answers 607 through 613]

Q.955. Regarding .WorkforceTable,, does the breakdown of data need to be by trade or is an elemental (uniformal) breakdown acceptable? And if a trade breakdown is required, is this by traditional trade package, or by trade union (*i.e.*, Teamsters, etc.)

A.955. A trade breakdown is required, and no other classification applies.

Q.956. Regarding .WorkforceTable, if a trade breakdown is required, is this by traditional trade package, or by trade union (*i.e.*, Teamsters, etc.)

A.956. A trade breakdown is required, and no other classification applies.

Q.957. MWBE on RFA Page 51 reads: “The Applicant and, as applicable, the Operator, specific goals for the utilization of minorities, women and service-disabled veterans on construction jobs and an overall workforce diversity framework. It is expected that such goals meet or exceed New York State's 30 percent utilization goal of Minority and Women-Owned Business Enterprise contracts. The specifics of such goals and framework will be evaluated in the Diversity Framework section.”

a. Does the “overall diversity framework” referenced in this question relate only to minorities, women, and service-disabled veterans on construction jobs or does the “overall diversity framework” apply to employees of the ongoing operating business?

b. Does this question apply only to MWBE in construction?

A.957.

a. The utilization goals apply to purchases and construction of the gaming facility.

b. See answer to Q.957(a).

Q.958. Is there a minimum percentage of “domestically manufactured slot machines” that the Commission has previously approved or required?

A.958. Whenever possible, domestically manufactured slot machines should be acquired.

Q.959. a. As part of the Minority and Women-Owned Business enterprises exhibit response, is this inclusive of only MBE & WBE?

b. Are there other diverse groups that would count towards the 30 percent requirement or is the measurement strictly limited to entities certified by the Division of Minority and Women's Business Development at Empire State Development?

A.959.

a. Yes, the response applies to MWBE.

b. Minority and women-owned businesses are defined by N.Y.S. Empire State Development, Division of Minority and Women's Business Development, and a business must be New York State-certified to count toward the MWBE participation goal.

Workforce Enhancement

Q.960. Does the “.workforceDevelopment” section only address operations of the Gaming Facility, or should it also take into account workforce development initiatives during construction?

A.960. The workforce development initiatives are required at all stages of the project.

Q.961. Does the RFA requirement to provide pay rate and benefits for contractors include contract employees/independent contractors or smaller business that could be contracted for procurement opportunities?

A.961. If this question is in reference to the Organized Labor Agreements (see RFA Page 53), the requirement applies to all contractors.

Zoning and Zoning Schedule

[See also First-Round Questions & Answers 282 through 295]

Q.962. In the CAC process, the CAC may request changes to the plan that could have a material impact on either the zoning application, the environmental review process, or both. Since concurrent CAC and zoning approval processes are being contemplated, how will the timeline allow for CAC updates to the zoning submission?

A.962. See answer to Q.684(a). The zoning completion date follows the CAC completion deadline. See RFA Addendum - June 27, 2024 Schedule Update.

Q.963. The answer to Question 279 states that “evidence of compliance with zoning requirements is a local determination.” In New York City, when a project does not require discretionary entitlements, the Department of Buildings is responsible for approving a project’s compliance with zoning. As such, is the Gaming Facility Location Board requiring DOB approval of a gaming facility by the Supplemental Return Date?

A.963. Yes, as to whether a project proposed within the limits of the City of New York has obtained appropriate zoning.

Q.964. The answer to Question 287 states that on the Return Date, the Applicant must provide a description of what will be required “for entitlement to construct pursuant to applicable zoning law, including, without limitation, a realistic timeline and milestones for achievement of entitlement to construct.” In NYC, the Department of Building issues permits to construct; however, DOB’s ability to issue building permits is ministerial and therefore, not an “entitlement,” which is more typically discretionary in nature. Is it Gaming Facility Location Board’s preference that Applicants list all permits required whether discretionary or ministerial?

A.964. An Applicant must provide a general outline of permits that will be required but will not need a list of every individual permit that may be needed.

Q.965. The answer to Question 287 states that, by the Supplemental Return Date, Applicants must submit a description and timeline of any approvals received for local zoning approvals and land-use approvals. Can you please clarify the difference between “local zoning approvals” and “land-use approvals” and/or define “land-use approvals”?

A.965. Land-use approvals refers to any necessary approvals required for the improvement of a property, including permitting and environmental reviews.

Q.966. The answers provided in the Round One set of questions make it clear that zoning approvals must be received prior to the Supplemental Return Date. Assuming that “land-use approvals” means all other approvals not regulated by the City’s Zoning Resolution, do land-use approvals also have to be obtained prior to the Supplemental Return Date? For example, street demapping and alienation of parkland? Compliance with Building Code, Energy Code, and Fire Code? Etc.?

A.966. Any approval that must be in place prior to any or a portion of the development to commence must be in place prior to the Supplemental Return Date. Compliance certificates that are contingent upon completion of work are not included.

Q.967. The answer to Question 284 assumes that SEQRA will be required to obtain zoning approvals. If gaming facilities in New York City are “deemed zoning compliant” and therefore require no discretionary approvals from the City, is there

then no discretionary action subject to SEQRA, and therefore no environmental review documentation required as part of an Applicant's response to the RFA?

A.967. See answer to Q.777.

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