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July 2, 2009

Mr. Ernie Passailaigue
Executive Director
Arkansas Lottery Commission
500 President Clinton Avenue, #215
Little Rock, Arkansas
72201

Re: Arkansas Lottery Commission Request for Proposal for Online Lottery Game Services and Lottery Gaming System and Services, RFP Number: ALC-090002

Dear Mr. Passailaigue:

GTECH Corporation is pleased to submit its questions to the Arkansas Lottery Commission, in regard to its Request for Proposals for Online Lottery Game Services and Lottery Gaming System and Services, RFP Number ALC-0002. We look forward to receiving your clarifications, and we appreciate your time and assistance.

Please contact me at the telephone number or email address listed below should you have any questions or need further information.

Sincerely,

Alan Eland
Senior Vice President, GTECH Americas
GTECH Corporation
(o) (401) 392-1000 Ext. 7332
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Email: Alan.Eland@GTECH.com

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<table>
<tr><th></th><th>RFP Section</th><th>RFP Page #</th><th>Question</th></tr>
<tr><td>1</td><td>1.3
Caution to Vendors</td><td>5</td><td>
In its Addendum, dated June 30, 2009, the ALC has made the following modification to its original RFP:
"<u>PAGE 5, SECTION 1.3, PARAGRAPH 4</u>: Paragraph 4. should read as follows: "For a proposal to be considered, an official authorized to bind the Vendor to a resultant contract must have signed the proposal and the Official Proposal Price Sheet".
The Official Proposal Price Sheet provided with the Addendum requires Vendors to submit "the lump sum price" in accordance with a specified format, as well as an itemized listing of pricing for "each of the component parts and services that comprise the lump sum price."
Despite this modification to Section 1.3 and the inclusion of the Official Proposal Price Sheet, The ALC's Addendum does not modify any portion of RFP Section 4, Cost. Section 4.1, Pricing Formula, sets forth a specific pricing formula bidders must use in preparing and submitting price based on a percentage of total net sales and refers variously to "the cost quotation" and to "all prices quoted" in describing how a Vendor must submit its price offering.
<u>Qs:</u>
(1) Will the Lottery please confirm that the terms "lump sum price" and "itemized listing of pricing" as used in the Official Proposal Price Sheet" and "price" and "cost" as used in RFP Section 4 are all intended to mean the "percentage of total sales required for compensation" as that term is used in RFP Section 4.1?
(2) Will the Lottery please confirm that the Addendum is not intended to modify any provision of RFP Section 4? The format and text of the Official Proposal Price Sheet ("Price Sheet") prompt several questions.
(3) Will the ALC please clarify its intentions regarding the following:
1. The first line of text in the Price Sheet contains a blank line before the word "Services." Will the ALC please advise what description of the Services is to be placed in this blank?
2. The Price Sheet refers to a "LUMP SUM PRICE (Written in Words and Number)," followed by three (3) blank lines and then a fourth (4^{th}) line preceded by a "$" sign.
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	RFP Section	RFP Page #	Question
			2.1 Will the ALC please confirm that the three blank lines are to be filled in with a statement of a Vendor's proposed total percentage rate of compensation, presented both in words and as a numeric percentage? 2.2 Will the ALC please confirm that the "$" sign is included in the Price Sheet in error and has no application to the pricing requirements as described in RFP Section 4? 2.3 Alternatively, if the ALC intends Vendors to propose a dollar ($) price, will the ALC please provide Vendors an estimate of the annual sales for each year of the Contract term broken down by Online and Instant sales so that competing proposals can be compared against a common baseline? 2.4 Does "LUMP SUM PRICE" mean an annual price (or rate), or, alternatively, the total price (or rate) for the full seven-year Contract term? (4) The second sentence (**bolded text**) of the Price Sheet requests "*an itemized listing of the pricing for each of the component parts and services that comprise the lump sum price.*" Will the ALC please define what is meant by "*component parts and services*" (e.g., by subsection of RFP Section 3) as used in this sentence, including whether each such "*component*" is to be stated as a percentage rate or as a dollar price?

	RFP Section	RFP Page #	Question
2	6.0 Evaluation Points	29	**6.0 EVALUATION POINTS** ***Criteria*** ***Points*** *Experience, including start-up experience .... 5* *Background and Integrity .... 2.5* *Early Start-Up Date Instant Tickets _____________, 2009 .... 5* *Early Start-Up Date Online Tickets _____________, 2009 .... 5* *Online lottery gaming operations plan .... 5* *Security plan and security track record .... 2.5* *Proposed technical solution .... 15* *Financial viability and ability to perform the Contract as required and proposed .... 2.5* *Minority Owned and Female Owned Business Participation .... 2.5* *Lottery gaming System, including telemarketing, ticket ordering software and systems, ticket inventory control, management services and internal control system .... 5* ***Subtotal*** <u>***50***</u> *Cost* <u>***50***</u> ***Total Points*** <u>***100***</u> <u>**Qs:**</u> **(1)** The RFP does not inform Vendors how; i.e., by what process/formula, the ALC will determine the "Cost" Evaluation Points earned by each competing Vendor. Therefore, would the ALC please explain how "Cost" Evaluation Points will be determined for the low-cost proposal and for other proposals? **(2)** It appears from the breakdown of available Evaluation Points in Section 6.0 that the ALC intends Technical and Cost Criteria each to be weighted 50% of the total available Points. To achieve this intended weighting, it is important that the ALC use a <u>common scale</u> in evaluating Technical and Cost Proposals. However, if the ALC plans to automatically award the maximum number of "Cost" points to the low-cost Proposal (i.e., a "*Maximum*" Point Scale) but does not, similarly, award the highest rated Technical Proposal the maximum number of "Technical" Evaluation Points (i.e., a "*Relative*" Point Scale), then the ALC will not realize its intended weighting as "Cost" points will in

	RFP Section	RFP Page #	Question

fact count more than 50% of the total Points awarded and have a disproportionately greater impact on the contract award decision. To avoid this unintended consequence, would the ALC please confirm that it will use a <u>common scale</u> in assigning Technical and Cost Evaluation Points?

The ALC's weighting of "Cost" as 50% of a Vendor's total available Proposal score contrasts sharply with the weighting of evaluation criteria in other state lottery procurements in recent years that, like the ALC seek a "best value" solution to meet their requirements. Here are six recent examples:

[redacted]	
85	15
70.1	29.9
70	30
66.6	33.4
65	35
62.5	37.5

We respectfully submit that the material overweighting of Cost in the Lottery's award decision is inconsistent with, and jeopardizes the ALC's ability to meet, the Lottery's procurement objectives as stated both in **Section (7)(C)(x)** of the **Major Procurement Rules**:

(d) *Neither the technical proposal, the cost nor any other single criterion shall be the only criterion for a major procurement contract award recommendation. Rather,* ***evaluations shall be conducted*** *and criteria shall be established* ***to select proposals that provide the <u>greatest overall value</u>, the greatest long-term benefit to the State of Arkansas, the greatest integrity for the Commission, and the best services and products for the public.*** **[emphasis added]**.
and in **Section (7)(F) [Contractual Award and Agreement]** of the **Major Procurement Rules**:
(i) *Each major procurement contract shall be awarded by the Commission by prompt written notice to the responsible and responsive vendor pursuant to a solicitation whose bid, offer, quote or proposal represents the* ***<u>best value</u>*** *to the Commission and offers what the Commission believes will result in the greatest long-term benefit to the State of Arkansas, the greatest integrity for the Commission, and the best services and products for the public.* **[emphasis added]**.

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	RFP Section	RFP Page #	Question
			Instead of reaching an award decision based on "best value" or "greatest overall value," an award decision based at least 50% on cost is almost certain to result in the ALC awarding a contract to the Vendor submitting the "**lowest cost, technically acceptable proposal**." Such approach will encourage a marginally compliant approach that may meet but will seldom exceed the requirements. It will feature cost cutting, penalize services, reduce innovation, etc. To avoid this outcome and be consistent with the approach followed by other state lotteries, would the ALC be willing to adjust its currently intended weighting of the evaluation criteria to bring the basis for the award decision in line with other state lotteries and facilitate meeting the performance goals of this procurement? **Q:** (3) The Evaluation Criterion "*Proposed technical solution*" appears to encompass, and therefore duplicate in part, several other Evaluation Criteria; specifically, "*Online lottery gaming operations plan,*" "*Security plan,*" and "*Lottery gaming System, including telemarketing, ticket ordering software and systems, ticket inventory control, management services and internal control system.*" Would the ALC please confirm whether or not this is correct? If so, could you please explain how the ALC will avoid giving a Vendor's "Proposed Technical Solution" duplicate credit (and assigned Evaluation Points) when evaluating and scoring the three (3) other, related categories listed above? If not, could you please confirm that the "Proposed Technical Solution" Evaluation Criterion does not include any of the three above-listed Evaluation Criteria? **Q:** (4) Certain sections or subsections of the RFP clearly relate to a single Evaluation Criterion, e.g., Vendor responses to RFP Section *5.9 BACKGROUND AND FINANCIAL VIABILITY,* are obviously relevant solely to the Criterion "*Financial viability and ability to perform the Contract as required and proposed.*" Similarly, RFP Section *3.2 SECURITY PLAN* relates solely to the Evaluation Criterion "*Security plan and security track record.*" However, Vendor responses to other provisions of the RFP may be relevant to multiple Evaluation Criteria, including the following: • 3.01.1. Online Lottery Games and Operating System • 3.0.1.2. Prize Validation and Payment Requirement • 3.0.1.4. Disaster Recovery Plan • 3.0.1.5. Addition and Modification of Games

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	RFP Section	RFP Page #	Question
			• 3.0.2.2. Lottery Management Terminals • 3.0.5. Lottery Backoffice Management Systems • 3.0.5.2. Retailer Master File • 3.0.5.4. Retailer Accounting and Billing System • 3.1.9. Play Stations • 3.1.10. Electronic Displays • 3.1.11. Neon or Equivalent Signs To avoid any ambiguity as to the linkage between these listed RFP provisions and applicable Evaluation Criteria, would the ALC please identify the relevant Evaluation Criteria for each? **Q:** (5) The following sections/subsections of the RFP are not clearly among the RFP provisions to which Evaluation Points may be assigned. Would the ALC please confirm that these provisions will not be considered in the scoring of Vendor proposals or, alternatively, for those RFP provisions that will count in the scoring, could you please identify the specific Evaluation Criterion to which these RFP provisions pertain? **Q:** (6) Would the ALC please advise as to whether or not Vendor responses to the following RFP provisions will be evaluated and scored and, if so, could it please identify the applicable Evaluation Criterion for each such Vendor response? **RFP PROVISION** — **APPLICABLE EVALUATION CRITERION** 5.6 - Project Staff 5.7 – Computation of Liquidated Damages

	RFP Section	RFP Page #	Question
3	Section 6 Evaluation Criteria for Selection	28	**6 EVALUATION CRITERIA FOR SELECTION** *. . . In order to ensure the maximization of revenue for higher education scholarships and grants during startup, the ALC has developed evaluation criteria that will be used by the ALC evaluation committee which is incorporated in Section 6.0 of this RFP.* **Q:** Would the ALC please explain how the "evaluation criteria" identified in Section 6.0 "will be used by the ALC evaluation committee" to evaluate and rate (score) Vendors' proposed solutions. *The ALC requires that instant ticket sales begin on or before October 29, 2009 and online ticket sales begin on or before December 14, 2009. Since time is of the essence, in addition to other stated evaluation criteria, the ALC will evaluate the Vendor response of a date before October 29, 2009 ("Early Start-Up Date Instant Tickets") and an online ticket start-up date before December 14, 2009 ("Early Start- Up Date Online Tickets") that the Vendor believes the ALC could begin the sale of instant tickets and online tickets. . . . the Vendor should provide an explanation of how it will reasonably and responsibly achieve the early start-up date proposed by the Vendor.* **Q:** Would the ALC please explain how it intends to assign evaluation "points" to a Vendor's online proposal that proposes an "Early Start-Up Date [for] Instant Tickets," since the Vendor awarded the online contract may not control the start-up date of the instant system if a different Vendor is awarded the instant ticket contract? *Submission of a proposal implies Vendor acceptance of the* ***evaluation technique*** *. . . ."* **[emphasis added]** **Q:** Because the RFP does not disclose the ALC's intended "evaluation technique," and because there are various established methods and processes – i.e., techniques – in public procurements for evaluating proposals, would the ALC please identify and describe the elements of the "evaluation technique" (i.e., method and process) that it intends to use in evaluating Vendor proposals? *. . . and Vendor recognition that* ***subjective judgments*** *must be made by the ALC evaluation committee during the* ***assignment of rating points****.* **[emphasis added].**

	RFP Section	RFP Page #	Question
			<u>Qs:</u> **(1)** Since there are various, well-established methods for "assignment of rating points," i.e., scoring, Vendor proposals in public procurements, could the ALC please explain how it plans to convert evaluation assessments and judgments about the quality of each element of a Vendor's proposal into "rating points?" **(2)** We assume that the assignment of rating points will depend, in part, on the extent to which a Vendor's proposed solution <u>exceeds</u> the stated requirements. **RFP 3 for ONLINE LOTTERY GAME SERVICES AND LOTTERY GAMING SYSTEM AND SERVICES** describes various requirements as "*at a minimum*" or "*at least*" or "*including, but not limited to*" – specifically, **RFP Sections 3.0.1.2, 3.0.2.1, 3.0.2.1, 3.0.4, 3.0.5.4, 3.0.5.6, 3.1.1, 3.1.2, 3.1.3, 3.1.4, 3.2, and 3.3.** Therefore, would a Vendor earn "extra" points for proposing solutions that exceed the minimum stated requirements? If so, would the ALC please explain how it will account for such proposed solutions in terms of rating and scoring proposals? Similarly, would you please explain how a Vendor could earn "extra" points for proposing solutions that exceed stated requirements that are not identified as "minimums?" We recognize that a proposal evaluation process, to some extent, will involve making subjective judgments. A rational, well-designed evaluation process, however, will greatly limit the element of subjectivity. We submit that the ALC's achievement of its procurement and long-term business objectives will hinge on limiting subjectivity and implementing the most objective evaluation and scoring process possible. One important way to "objectify" the <u>process</u> – and ensure that the <u>result</u> will be based on clear distinctions drawn among competing proposals – would be to (a) substantially increase the total number of available rating points, e.g., beyond the total of 50 Evaluation Points in the current RFP, that may be assigned to Vendors' proposed solutions besides "cost;" and to (b) allocate the increased number of available points among the numerous RFP requirements. Besides providing critical guidance to the ALC's evaluation committee on the relative importance of discrete requirements, this expansion and allocation of the Evaluation Points would ensure that more precise distinctions would be made in terms of evaluating and scoring each Vendor's proposal. In this regard, we note that this approach is increasingly being followed in state lottery procurements, e.g., in the recent New York Lottery procurement, 1,700 available technical evaluation points (representing 85% of the total available points, with the remaining 15% of the total available points being allocated to price) were spread among hundreds of evaluated requirements:

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<tr><td></td><td></td><td></td><td>
<table>
<tr><th>Sample of State Lottery Proposal</th><th>Evaluations</th></tr>
<tr><td><u>Jurisdiction</u></td><td><u>Available Points</u></td></tr>
<tr><td>NEW JERSEY</td><td>6,000</td></tr>
<tr><td>NEW YORK</td><td>2,000</td></tr>
<tr><td>OHIO</td><td>2,000</td></tr>
<tr><td>OREGON</td><td>1,429</td></tr>
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<u>Q:</u> Will the ALC modify Section 6.0 (i) to increase the number of available Points to be spread among the Criteria and (ii) to allocate those Points among the RFP requirements to be evaluated such that an objective evaluation of proposals is made to the maximum extent possible and a clear roadmap is provided to the ALC's evaluation committee regarding the relative importance of specific requirements within each of the Criteria by which Vendor proposals will be evaluated and scored?
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	RFP Section	RFP Page #	Question
4	1.30 Negotiations	11	**1.30 NEGOTIATIONS** *As provided in this RFP and under the ALC's Major Procurement Rules, discussions may be conducted with responsible* ***Vendor*** *who submit proposals determined to be reasonably susceptible of being selected for award for the purpose of obtaining clarification of proposal response and negotiation for best and final offers.* **[emphasis added].** **Q:** **(1)** The context of the word "Vendor" as used in this section suggests that it is intended to be "Vendors." Could you please clarify whether the singular, or plural, of "Vendor(s)" is intended? **(2)** Section 5.J of the Lottery Major Procurement Rules appears to preclude negotiations with more than one Vendor after the ALC has determined the highest-rated proposal: "*Specifically, in connection with a major procurement, the Commission will only be permitted to negotiate with the vendor whose bid, offer, quote, or proposal is the highest rated bid, offer, quote, or proposal.*" [Emphasis added]. Could you please confirm that this provision of the Rules does not preclude, and that the ALC may conduct, concurrent discussions (i.e., "negotiations") with all eligible Vendors (i.e., "Vendors . . . reasonably susceptible of being selected for award") prior to seeking Best and Final Offers – as contemplated by the **Arkansas Code, Section 19-11-230 [Competitive sealed proposals]** of the **Arkansas Procurement Laws,** which states "(a)(3) *Discussions with responsible* ***offerors*** *whose proposals have been determined to be reasonably susceptible to being selected for award*" **(emphasis added)**], and as is done in Federal negotiated procurements under Part 15 of the FAR prior to seeking "final proposal revisions?" **(3)** Would the ALC please clarify whether or not it definitively plans to solicit BAFOs from Vendors submitting initial Proposals that, following evaluation, remain eligible for the award or if not, could the ALC please describe the circumstances/conditions under which BAFOs will be sought from Vendors?

	RFP Section	RFP Page #.	Question
5	5.6 Project Staff	28	**5.6 PROJECT STAFF** *A Vendor's Proposal shall include an organization diagram and a staffing plan.* ***Key staff*** *must be identified, the nature and scope of each person's responsibilities and duties must be outlined and* ***detailed resumes must be provided.*** *Vendor must identify six (6) experienced start-up professionals who will be made available to the ALC for general start-up assistance from the time of contract award through the first two (2) months after start-up of instant and online operations.* [**emphasis added**]. **Qs:** (1) Would the ALC please confirm that "experienced start-up professionals," as required by this RFP section, is intended to mean professionals who have experience working on the start-up of a *new* lottery, and does not mean professionals whose experience is limited to an existing Lottery's conversion to a different vendor? (2) With regard to the required "detailed resumes," would the ALC please confirm whether or not Vendors are required to identify the specific lottery venues where each of the six identified persons obtained their lottery start-up experience, the nature and scope of each such person's responsibilities for each identified start-up, and the location(s) and inclusive dates of each person's start-up experience? (3) Would the ALC please provide a definition of "*key staff*?"
6	3.0.1.1 Online Lottery Games and Operating System	15	**Q:** The RFP calls for up to 5,000 retailer terminals, which results in a very aggressive terminal to population ratio of approximately 1:600. A typical terminal to population ratio in the US is in the range of 1:200 to 1:1500. As retailer terminals are a significant driver of vendors' costs, the higher number of terminals can adversely affect the rates proposed to the Lottery. Will the Lottery consider reducing the number of terminals required in the base bid, with additional blocks of terminals as options, in order to optimize the value in vendor's bids and proposed pricing.

	RFP Section	RFP Page #	Question
7	RFP 3.0.2.1 Retailer Operated Terminals; & RFP, 4.1, Pricing Formula	17	RFP Section 3.0.2.1, *Retailer Operated Terminals*, refers in the first sentence to "*The terminal models proposed*" and the second paragraph of that section makes clear that "*The terminals proposed may be varied to include high volume and mid-range terminals.*" The reference to varying types of terminals, and a further statement in the second paragraph advising that "*The ALC will consider other options . . . .*" appear to suggest that the Vendor has the option to propose more than one type of terminal that satisfies the RFP's technical requirements. RFP Section 4.1, *Pricing Formula*, however, advises that Vendors "*must state the percentage of total sales required for compensation* [as] . . . *a single cost quotation*" that "*assume[s] in its pricing the use of its top-of-the line terminal*" and if the Vendor "*would like the ALC to consider some other option, please so indicate.*" To avoid any misunderstanding by Vendors as to the ALC's intentions regarding these provisions, which appear potentially inconsistent in, on the one hand, permitting "*varied*" terminals to be proposed but, on the other hand, requesting "*a single cost quotation,*" would the ALC please clarify/confirm the following: 1) The intended distinction(s), if any, among "high volume," "full range," and "top-of-the-line" terminals? 2) May a Vendor, at its option and without violating the RFP Section 4.1 requirement for "a single cost quotation," propose to provide one or more combinations of terminal types, and propose a separate cost quotation for each such proposed combination?
8	1.26 Cost & 4.1 Pricing Formula	10 & 25	**1.26 COST & 4.1 PRICING FORMULA** *4. Vendors may expand items to identify all proposed services.* ***A separate listing, which must include pricing, may be submitted with summary pricing.*** *4.1 . . . A Vendor must state* ***the percentage*** *of total sales required for compensation to accomplish the tasks specified in the Proposal. The* ***single cost quotation*** *should be presented on a separate, signed page and be expressed as a numeric percentage of net sales. . . .* **[emphasis added]**. **Q:** It is not clear from the highlighted portions of these provisions whether or not Vendors are permitted to submit separate line item cost quotations for discrete proposed services, or, alternatively, may submit only a single cost quotation. Would the ALC please clarify its intention?

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	RFP Section	RFP Page #	Question
9	1.28 Ongoing Performance Requirements	11	**1.28 ONGOING PERFORMANCE REQUIREMENTS** *The ALC may terminate the Contract by the Successful Vendor or its subcontractors under the terms of the Contract if, within ten (10) days after the ALC gives the Successful Vendor written notice specifying a default, the Contractor has not, in the ALC's sole judgment, either cured the default or given adequate assurance that assures the default will not adversely affect the timely implementation of the lottery or its continued operation.* **Q:** (1) Will the ALC please confirm that the right to terminate under RFP Section 1.28 will be limited to a contractor's failure to cure a "MATERIAL" default? (2) Recognizing that both the types of defaults and time to cure them may vary, would the ALC be willing to modify this provision to make the 10-day cure period subject to the parties agreeing on a longer time, if determined to be reasonable and necessary under the circumstances?
10	RFP 1.13 Performance Bond	7	It is common practice in an Online RFP to have an amount specified for the Performance Bond. Thus, would the Lottery be willing to amend this section to state that a $5,000,000 Performance Bond is acceptable?
11	RFP 1.13 Performance Bond	7	The Surety Industry requires having bonds that are annually renewable. Therefore, would the ALC amend Section 1.13, Performance Security, to include a statement that the Performance Bond may be renewed on an annual basis?

	RFP Section	RFP Page #	Question
12	RFP 1.19 Ownership of Materials and Rights of Use	9	As drafted, Section 1.9, Ownership of Materials and Rights of Use, grants the ALC certain ownership rights with regard to Intellectual Property that are inconsistent with the nature of the commercial relationship proposed by the ALC in this RFP. As the ALC is aware, the RFP contemplates a commercial relationship whereby a Successful Vendor runs the Central Lottery System on behalf of the ALC but title to the Central Lottery System, including all hardware and software, does not pass to the ALC. Such a commercial relationship is consistent with almost all commercial relationships between vendors and other state lotteries within the United States and is set forth in what is commonly referred to as a "Facilities Maintenance Contract." Q: Given that a Facilities Maintenance Contract has been proposed in this RFP (and title to the Central Lottery System does not pass to the ALC), would the ALC please confirm that, notwithstanding the language set forth in the first three paragraphs of Section 1.19, it shall only have the right to own materials and information that first originated under the Contract, are created exclusively for the ALC pursuant to the Contract, are unique to the ALC, and were paid for by the ALC? Additionally, would the ALC please confirm the following: (i) that its right to use whatever materials and information it will own pursuant to this provision shall be subject to the rights in Intellectual Property held by the Contractor ("Contractor Intellectual Property") or applicable third parties; (ii) that any grant of a license to the ALC to make use of Contractor Intellectual Property or the Intellectual Property of third parties will be granted solely for use during the term of the Contract and any extensions thereof; (iii) that any grant of license to the ALC to make use of Contractor Intellectual Property or the Intellectual Property of third parties shall not include the right to sublicense; and (iv) that its right to creative derivative works from Contractor Intellectual Property or the Intellectual Property of third parties shall be limited only to modifying and/or creating works reasonably contemplated by the ALC and Contractor under the Contract?

	RFP Section	RFP Page #	Question
13	RFP 1.9 Ownership of Materials and Rights of Use	9	The ALC requests that the Successful Vendor deposit source code and other proprietary materials with an independent third party to be accessed by the Lottery in the event of "expiration or termination of the Contract." It is consistently the case with other U.S. lotteries that a lottery may only access source code and proprietary materials from a third party escrow agent in the event the Successful Vendor can no longer operate the system due to a specific set of circumstances. <u>Q:</u> Accordingly, would the ALC please confirm that, notwithstanding the language set forth in the last two paragraphs of Section 1.19, it shall not have access to Successful Vendor's source code or proprietary materials due to the ordinary expiration of the Contract after all obligations have been fulfilled or in the event the contract is terminated for the Lottery's convenience? Additionally, would the ALC please confirm that, notwithstanding the language set forth in the first three paragraphs of Section 1.19, it shall only have access to the Successful Vendor's source code and proprietary materials in order to continue to operate the system where the Successful Vendor has failed to maintain system operations due to failure of Successful Vendor to function as an ongoing concern or operate in the ordinary course, or Successful Vendor is subject to voluntary or involuntary bankruptcy? Further, in the event that the ALC does obtain access to the Successful Vendor's source code or proprietary materials, would the ALC please confirm that (i) it will not disclose the source code and/or proprietary materials to third parties, except for subcontractors and third parties required to operate the System, and that (ii) prior to any disclosure of Successful Vendor's source code or proprietary materials to such subcontractors and third parties, the subcontractors and third parties will have entered into a non-disclosure and restriction on use agreement with the Successful Vendor that is deemed sufficient by the Successful Vendor?

	RFP Section	RFP Page #	Question
14	**PAST PERFORMANCE,** Performance-Major Procurement Rules	3	*In accordance with provisions of **Arkansas Lottery Commission Major Procurement Rules Section (7)(C)(iii)(g)** a vendor's **past performance** with the State may be used in the evaluation of any offer made in response to this solicitation. The past performance should not be greater than three (3) years old and must be supported by written documentation on file in the Arkansas Lottery Commission at the time of the proposal opening. Documentation may be in the form of either a written or electronic report, VPR; memo, file or any other appropriate authenticated notation of performance to the vendor files.* Q: The cited section of the Major Procurement Rules does not exist. The ALC appears to be referring to Section (7)(C)(x)(g). Would the ALC please confirm that this is correct? The "PAST PERFORMANCE" text quoted above limits the intended scope of any ALC inquiry into a Vendor's "past performance" to that "with the State." This appears inconsistent with applicable terms of the Major Procurement Rules, including the above-referenced Section (7)(C)(x)(g), which states in relevant part that "*The past performance of a bidder on a state contract may be used by the Commission . . .*;" i.e., not limited to Arkansas state contracts. **[emphasis added]**. Similarly, Section 6. [General Provisions], Subsection D [Procedures Regarding Submissions] of the Major Procurement Rules states, regarding past performance: **xi.** *The Commission reserves the right to obtain any information from **any lawful source** as required by the Act and regarding the past business history, practices, and abilities of vendors, their officers, directors, employees, owners, team members, partners, or subcontractors. Such information may be taken into consideration in evaluation of the proposals.* **[emphasis added]**. Q: Since the ALC has only recently been established, Vendors submitting proposals in this procurement are not likely to have relevant experience with this State. Moreover, we respectfully suggest that a Vendor's past performance on comparable projects in other U.S. jurisdictions, such as the start-up of a state lottery, is of critical importance in evaluating and comparing each Vendor's ability to meet the ALC's procurement objectives. Accordingly, would the ALC please confirm that it intends, as part of its evaluation of Vendor proposals in this procurement, to inquire about a Vendor's relevant past performance in other venues?

	RFP Section	RFP Page #	Question
15	1.2 Schedule of Events	4	**1.2 SCHEDULE OF EVENTS** Section 7.C.ii of the Major Procurement Rules states that: "c. . . . ***Vendors must be given a reasonable time****, as determined by the Commission, to consider the required scope of products and services and the proposal evaluation factors before proposals must be submitted;* . . . "[**emphasis added**]. This section of the rules recognizes the importance of giving Vendors sufficient time to prepare proposals. Correspondingly, we respectfully submit that the ALC must afford itself sufficient time to conduct a comprehensive review and analysis of Vendor proposals for this long-term contract. The RFP describes hundreds of discrete performance requirements to which Vendors will be responding. Based on past experience, Vendor proposals may exceed 1,000 pages in length. Initially reading and understanding them will obviously take considerable time. Implementing a process that includes a detailed, rigorous and comprehensive evaluation of these documents will of course add materially to the elapsed time needed to reach a fair, supportable result that achieves the Lottery's procurement goals. Moreover, there are important steps in this process that go beyond consideration of the documents themselves; e.g., (i) the evaluation committee's communications with other entities and persons to complete an inquiry into each Vendor's "**PAST PERFORMANCE**" per statement on p. 3 of RFP and (ii) "**ORAL AND/OR WRITTEN PRESENTATIONS / DEMONSTRATIONS**" per RFP 1.12. **Q:** RFP Section 1.2 [Schedule of Events] advises Vendors that the ALC has allotted a period of only seven (7) days from the receipt of proposals to complete its "Evaluation," with "Intent to Award" occurring one (1) day later. Experience with numerous state lottery procurements indicates that this period falls well short of the time needed to complete a proper assessment and scoring of competing proposals and preparation of the procurement record required by the Rules. Accordingly, would the ALC be willing to expand the time frame allotted for evaluating proposals and reaching its award decision so as to allow the process to be implemented and completed in a measured and orderly manner?

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	RFP Section	RFP Page #	Question
16	RFP EO-98-04 GOVERNOR'S EXECUTIVE ORDER	3	**EO-98-04 Governor's Executive Order:** Completion of Disclosure Forms located at www.state.ar/dfa/procurement/pro eo9804.html is required by the Governor's Executive Order EO-98-04 as a condition of obtaining, extending, amending or renewing a contract, lease, purchase agreement, or grant award with any Arkansas state agency. Regarding the reference at the bottom of page 3 of the RFP to EO-98-04 GOVERNOR'S EXECUTIVE ORDER, the ORDER includes two types of Disclosure Forms, i.e., "Contract and Grant" and "Employee" Forms. Would the ALC please clarify the following: (i) Whether or not the Contract and Grant Disclosure Forms are to be submitted as part of each Vendor's Proposal, or only by the Successful Vendor following the ALC's selection of that Vendor and prior to award of the Contract? (ii) If Contract and Grant Disclosure Forms are required to be submitted as part of each Vendor's Proposal, whether this submission requirement also includes such Disclosure Forms for "Subcontractors" identified in Section 3.C of the Executive Order? (iii) That the requirement for Employee Disclosure Forms does not apply to Vendors?
17	7.C Procurement Methods, Major Procurement Rules	17	**Section 7.C, Procurement Methods**, states that: *The provisions of this subsection (7)(C) shall be applicable solely to solicitations of major procurement contracts by means of a Request for Proposal (RFP).* Subsection 7.C.ii states that "*An RFP shall set forth provisions including: . . . f. **A declaration of certain contract terms and conditions** which shall be required by the Commission.*" [**emphasis added**]. Q: The RFP does not include a "*declaration of certain terms and conditions;*" does the ALC intend to amend the RFP to add such declaration?

	RFP Section	RFP Page #	Question
18	1.30 Negotiations	11	**<u>Q:</u>** (1) The context of the word "Vendor" as used in this Section suggests that it is intended to be "Vendors". Please clarify whether the singular, or plural, of "Vendor(s)" is intended. (2) Section 5.J of the Lottery Major Procurement Rules appears to preclude negotiations with more than one Vendor <u>after</u> the ALC has determined the highest rated proposal: "*Specifically, in connection with a major procurement, the Commission will only be permitted to negotiate with <u>the vendor whose</u> bid, offer, quote, or <u>proposal is the highest rated</u> bid, offer, quote, or proposal.*" [Emphasis added]. Please confirm that this provision of the Rules does not preclude, and that the ALC may conduct, <u>concurrent discussions (i.e., "negotiations")</u> with <u>all</u> eligible Vendors (i.e., "Vendors . . . reasonably susceptible of being selected for award") <u>prior to</u> <u>seeking Best and Final Offers</u> – as contemplated by the **Arkansas Code, Section 19-11-230 [Competitive sealed proposals**]of the **Arkansas Procurement Laws** ["(a)(3) *Discussions with responsible **offerors** whose proposals have been determined to be reasonably susceptible to being selected for award*" **(emphasis added)**], and as is done in Federal negotiated procurements under Part 15 of the FAR prior to seeking "final proposal revisions." (3) Please clarify whether the ALC definitely plans to solicit BAFOs from Vendors submitting initial Proposals who, following evaluation, remain eligible for the award or, if not, please describe the circumstances / conditions under which BAFOs will be sought from Vendors.
19	3.0 Technical Specifications	14	**3.0 TECHNICAL SPECIFICATIONS** . . . *The Successful Vendor has the **option to propose state-of-the-art technology** if it is deemed more appropriate and cost-effective than that specified in Section 3 of this RFP. . . .* **[emphasis added].** **<u>Q:</u>** The RFP, unlike other state lottery RFP, does not identify "specified" or "invited" options. Does the ALC intend to include any such options, or simply rely on Vendors to propose "offered" options in addition to, or in substitution for, the stated requirements?

	RFP Section	RFP Page #	Question
20	3.0 Technical Specifications & 3.4 Other Requirements	14 & 24	**3.0 TECHNICAL SPECIFICATIONS** *. . . All required supplies and materials* ***necessary for*** ***<u>the success of the overall operation of the ASL</u>*** *are to be included in the based* (sic) *Proposal price, even though those items may not be specifically requested under this RFP.* **[emphasis added]** **3.4 OTHER REQUIREMENTS** *Vendors must list in this section other significant services, procedures, materials, supplies, programs, policies, equipment, facilities, etc., necessary for the successful daily operational aspects of the System, even though there are no specific requirements for those items listed in the RFP.* ***The Successful Vendor is not released from the responsibility of providing all needed items to make the <u>System successful</u>.*** **[emphasis added].** **<u>Q:</u>** The highlighted terms of RFP 3.0 and RFP 3.4 are potentially subject to varying interpretation by Vendors. Would the ALC please clarify the intended meaning of the phrases "*necessary for the success of the overall operation of the ASL*" and "*providing all needed items to make the System successful,*" <u>if different</u> from simply requiring that the Successful Vendor provide all "*services,*" etc., necessary to meet the performance requirements of the System as described in the RFP?
21	5.0 Vendor Profile	26	**5.0 VENDOR PROFILE** *Vendor must submit the following: . . . .* *11. A disclosure of the details of any finding or plea, conviction, or adjudication of guilt in a state or federal court of the vendor. . . .* **<u>Q:</u>** Would the ALC please clarify the time frame covered by this disclosure requirement?

	RFP Section	RFP Page #	Question
22	5.4 Disclosure of Litigation	27	**5.4 DISCLOSURE OF LITIGATION** *A Vendor must include in its Proposal a complete disclosure of any civil or criminal litigation or indictment involving such Vendor. . . .* **Qs:** (1) Would the ALC please confirm that this request is limited to pending matters? (2) Would the Lottery please confirm that the disclosure required by this provision is limited to any civil or criminal litigation or indictment involving the Vendor, etc., that potentially has a material impact on the Vendor's, etc., business and/or ability to perform its services under any future contract with the ALC?
23	1.14 Prime Contractor Responsibility	8	**1.14 PRIME CONTRACTOR RESPONSIBILITY** . . . **The ALC reserves the right to approve subcontractors for this project** . . . . *Responses to this RFP must include a list of subcontractors, including: . . . descriptive information concerning* ***subcontractor's organizational activities.*** **[emphasis added].** **Qs:** (1) Would the ALC please confirm that its right to approve subcontractors for this project pertains only to subcontractors that will have material involvement in providing goods or services to the ALC? (2) Would the ALC please clarify the phrase "*subcontractor's organizational activities*" as it concerns the information to be included in a Vendor's proposal?
24	1.16 Conditions of Contract	8	**1.16 CONDITIONS OF CONTRACT** Vendors may obtain a copy of the ALC's Policies and Procedures at: http://lotterycommission.arkansas.gov. **Q:** ALC's "*Policies and Procedures*" are not accessible on the referenced Website; therefore, would the ALC be willing to furnish Vendors a copy?

	RFP Section	RFP Page #	Question
25	1.17 Cancellation	8	**1.17 CANCELLATION** *In the event the ALC no longer needs the service or commodity specified in the Contract or purchase order due to program changes, changes in laws, rules, or regulations, relocation of offices, or lack of appropriated funding, the ALC may cancel the Contract or purchase order by giving the contractor written notice of such cancellation thirty (30) days prior to the date of cancellation.* Q: This provision would permit the ALC in specified circumstances to terminate the Contract for the ALC's convenience, i.e., without Contractor fault. It is standard practice in state and federal government procurement to require the government agency to compensate the Contractor in the event of a no-fault termination. However, the term makes no reference to any ALC obligation to compensate the Contractor should such termination occur. Absent a compensation provision, a Contractor would be at significant economic risk, especially during the early years of the Contract, should the ALC elect to terminate the Contract for convenience, as its significant capital investment will not have been recovered through sales through the Contractor's terminals. Since the Contractor's compensation will be based on agreed-upon, fixed percentage rates of ticket sales established through the bidding process and any subsequent negotiations, rather than on separately established payments for Deliverables, would the ALC be willing to supplement RFP Section 1.7 by adding a provision that would obligate the ALC in the event of a termination under this section to compensate the Contractor, including payment of Contractor's previously uncompensated labor, material and equipment costs incurred in performing the Contract prior to the effective date of termination, plus a fair and reasonable profit on such costs.
26	1.18 Statement of Liability	8	**1.18 STATEMENT OF LIABILITY** *The* ***ALC will demonstrate reasonable care but shall not be liable in the event of loss, destruction, or theft of contractor-owned technical literature*** *to be delivered or to be used in the installation of deliverables.* ***The Vendor is required to retain total liability for technical literature until the deliverables have been accepted*** *by the "authorized agency official."* ***At no time will the ALC be responsible for or accept liability for any Vendor-owned items.*** ***The Successful Vendor shall indemnify and hold harmless the ALC*** *. . . [etc.] . . .* ***against*** *any and all suits,*

	RFP Section	RFP Page #	Question
			damages, . . . [etc.] . . . arising out of . . . ***disclosure*** *. . . of any copyrighted or non-copyrighted materials, trademark, service mark, secure process, invention, process or idea (whether patented or not), trade secret, confidential information, article, or appliance furnished or used in the performance of the Contract.* **[emphasis added].** **<u>Qs:</u>** **(1)** Regarding the first paragraph of this provision, would the ALC please (i) clarify what is meant by the statement in the second sentence that "*The Vendor is required to retain total liability*;" (ii) confirm that, following the ALC's acceptance of the "*technical literature*," the ALC will then assume liability for any "*loss, destruction, or theft*" thereof; (iii) clarify what is meant in the third sentence by the phrase "*Vendor-owned items*;" and (iv) confirm that, notwithstanding the third sentence, the ALC will be responsible for and accept liability for any Vendor-owned items whose damage or loss results from any negligence or willful misconduct of the ALC? **(2)** Regarding the second paragraph of this provision, would the ALC please confirm that the Vendor indemnity described therein shall not extend to any negligent or otherwise improper disclosure by the ALC of any of the protected information described in that paragraph?

	RFP Section	RFP Page #	Question
27	Section 6 General Provisions, Major Procurement Rules 6.D Procedures Regarding Submissions, Major Procurement Rules 1.9 Proprietary Information 7.G Inspection of Purchasing Records [of the Major Procurement Rules]	11 13 7 26	*iii. All data, materials, and documentation originated and prepared for the Commission pursuant to solicitations shall belong exclusively to the Commission and, subject to rules and the provisions of Ark. Code Ann. § 23-115-404, may be available to the public in accordance with Arkansas law.* ***Under no circumstances will the Commission be liable to any vendor or to any other person or entity, for any disclosure of any trade secret or confidential information.*** **[emphasis added].** *vi. All materials submitted to the Commission by vendors shall upon submission become the property of the Commission and* ***may be used as the Commission deems appropriate.*** **[emphasis added].** Also, **RFP 1.9 [PROPRIETARY INFORMATION]** states in relevant part that "***Proposals and documents*** *pertaining to the RFP become the property of the ALC and* ***shall be open to public inspection subsequent to proposal opening.***" **[emphasis added].** (i) *the Commission shall not be required to make available for public inspection* ***information protected by or otherwise not required to be disclosed pursuant to applicable law, these Procurement Regulations, or information that the Commission determines in accordance with Ark. Code Ann. § 23-115-404 shall not be disclosed to the public; . . . .*** **" [emphasis added].** <u>**Qs:**</u> (1) Would the ALC please confirm that, notwithstanding any arguably contrary statements in the above-quoted provisions of **Section (6)(D) of the Rules** and **Section 1.9** of the **RFP** regarding the ALC's use and disclosure of a Vendor's information, materials, etc., the ALC's rights and/or duties to disclose same shall be governed by applicable Arkansas statutory and case law and regulations as stated **in Section (7)(G) of the Rules** and in accordance with **Section 23-115-404. Confidential information of the Arkansas Scholarship Lottery Act?** (2) Would the ALC be willing to agree to promptly notify a Vendor when a request is received for public disclosure of information that the Vendor has claimed is Confidential, and withhold such documents from public disclosure pending the Vendor's exhaustion of its administrative and judicial remedies opposing such disclosure or, alternatively, receipt from the Vendor of a written waiver of its rights to oppose disclosure?