

**REQUEST FOR PROPOSAL (RFP) #R002925**

**LEAD MARKETING & ADVERTISING AGENCY**

**DATE: July 28, 2025**

CALIFORNIA STATE LOTTERY

700 NORTH 10TH STREET

SACRAMENTO, CA 95811

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# General Information

## Purpose

This Request for Proposal (RFP) #R002925 (also referred to as a “solicitation”) is for the California State Lottery (Lottery) to solicit proposals from qualified agencies to serve as the Lead Marketing & Advertising Agency responsible for the strategic planning, creative development, and implementation of the Lottery’s consumer marketing initiatives to raise awareness, elevate brand perceptions, and maximize product sales to increase Lottery profits and contributions to California public schools. The Lottery will also consider proposals from partnerships and joint ventures; for example, a creative advertising agency and a media agency.

By submitting a proposal, the proposer (Proposer or Agency) agrees to the terms and conditions stated in this RFP.

**Read this document and any attachments in their entirety and carefully, as they may contain binding provisions that affect your rights and obligations.** You must comply with the instructions contained in this document. Responses to this RFP must be submitted to the Lottery contact listed below.

## Contact

For questions regarding RFP #R002925, please email Timur Kopbayev at solicitations@calottery.com.

For all communications, subject line must include RFP #002925 Lead Marketing & Advertising Agency.

California State Lottery

Attention: Timur Kopbayev

700 North 10th Street

Sacramento, CA 95811

Phone calls will not be accepted.

No contact or communications regarding this RFP will be allowed between Proposers or potential Proposers and members of the Lottery Evaluation Team, Lottery Commissioners, or Lottery staff during the RFP process with the exception of the Lottery contact person named above. Any such contact may disqualify a Proposer or potential Proposer from further consideration. Requests for clarification will be allowed, provided such requests are made through the above contact person.

**For additional information on RFP submissions, see Section IV.B.**

## Background

The California Lottery’s mission is to generate supplemental funding for public education through the responsible sale of lottery products. Fiscal Year 2023/24 was a strong year for the Lottery, with sales exceeding $9.2 billion and more than $2.3 billion earned for California public schools, and Fiscal Year 2024/25 sales are currently on pace to exceed prior years’ sales. Lottery products are sold statewide at more than 23,000+ retail locations, from independent neighborhood shops to convenience stores, liquor stores to supermarkets, and more. The Lottery’s retail product offerings include an average of 54 fun and entertaining Scratchers® games annually and several draw games, including jackpot games such as Powerball®, Mega Millions®, and SuperLotto Plus®, and daily games such as Fantasy 5 and Hot Spot®. Through the alignment of product plans, marketing campaigns, and sales team efforts, the Lottery has grown to be the second largest lottery in the U.S. The Lottery’s goal is to become the largest lottery in the U.S.

The Lottery’s current lead agency partner is David & Goliath (D&G), with its subcontractor Horizon Media handling media planning and buying. D&G’s contract expires May 18, 2026.

Additionally, the Lottery has contracts with the following agencies:

* Monks for Hispanic in-language marketing and advertising
* Intertrend for Asian in-language marketing and advertising
* Quantasy for African American marketing and advertising
* Alcone Marketing Group for promotions and retail marketing

## Description of Service

The Lottery is seeking a strategic agency partner (Agency) capable of helping it to approach the consumer in an innovative way and help position the Lottery for future growth. The Proposer must be able to address critical issues facing the Lottery, including but not limited to the following:

* How can the Lottery responsibly grow sales and, in turn, maximize contributions to California public schools?
* How can the Lottery improve brand perceptions, continue to position itself as a fun and entertaining brand, and build appeal with consumers for future growth?
* How can the Lottery maintain relevancy in the ever-changing consumer landscape to effectively broaden its player base?
* How should the Lottery communicate with and reach California’s diverse population through marketing and advertising efforts?
* How should the Lottery navigate the evolving media environment to reach California’s diverse population?
* How can the Lottery engage with its valued core consumers while also successfully broadening its appeal to new and casual players? How can the Lottery re-engage lapsed players?

## The Challenge

The advertising landscape continues to evolve dramatically as technology continues to change consumer media behavior and marketing realities. Understanding player motivation and helping to better differentiate and position the Lottery’s brand and its various games and products to enhance consideration and increase sales will be a critical role for the Lottery’s Agency moving forward. The Proposer must be able to combine rigorous and insightful account planning and strategic development with best-in-class creative solutions that drive sales and stand out in a fragmented media environment where consumers need to be continually re-engaged and re-motivated to play. The Lottery expects the Proposer to function as a true partner, challenge the status quo, and lead the way to meaningful strategy combined with media and creative solutions that drive brand and product demand while maximizing contributions to public education through increased sales.

## Summary of Wants, Needs and Expectations

The Lottery needs a highly creative Agency with best-in-class capabilities in strategic planning, media planning and buying, and analytics across all channels, including traditional, digital, social, mobile, and emerging channels to develop and deploy integrated marketing and advertising programs and navigate future challenges and opportunities. The Lottery is seeking a Proposer capable of developing breakthrough work and highly-integrated omnichannel strategies that deliver contextually relevant communications and experiences that elevate the Lottery’s brand and drive sales.

The Lottery seeks an Agency that will:

* Commit a team of experienced professionals to the account that is fully immersed in the business from top to bottom, takes initiative, and continually strives to improve.
* Foster an environment where “partnering with the Lottery” and “thinking outside of the box” are part of the Agency culture.
* Demonstrate unequivocal marketplace success at building and sustaining brands in positions of category leadership.
* Deliver breakthrough creative based on data driven consumer insights that engages consumers and generates sales. Specifically, demonstrate outstanding creative capabilities across all media channels (traditional /digital/social/experiential).
* Demonstrate: expertise in leveraging data-driven consumer insights to inform media strategies; innovation in media and communications planning; and be on the cutting edge of the latest ad technology.
* Maximize media investment for optimal ROI by utilizing data analytics, econometric modeling, and other tools to develop and evaluate media plans.

* Ensure the alignment of the Lottery’s creative and media strategies to meet ongoing and evolving expectations of consumers who are less motivated by traditional advertising.
* Embrace a marketing and communications approach that addresses California’s diverse multicultural population.
* Deliver best-in-class account leadership with strong involvement in the strategic process and the ability to lead integration across all projects to ensure consistency and excellence in the Agency’s work product.
* At the Lottery’s direction, provide effective leadership and a collaborative approach with other agency partners, third parties, and internal Lottery teams to foster cross-team collaboration and minimize foundational disagreements.

Preferred Agency Experience:

The ideal Proposer will have a successful track record of:

* Developing and executing innovative creative that meets business goals and objectives by utilizing strategic account planning and insights.
* Developing highly integrated, consumer-centric marketing programs across different media and channels with a significant focus on digital and emerging channels.

* Developing best-in-class digital, social media, and influencer marketing programs.
* Experience with clients in gaming and entertainment industries.
* Experience with fast-moving consumer products sold in convenience stores, liquor stores, and supermarkets.

Additionally, the ideal Proposer will have a successful track record of:

Media Capabilities:

* Developing innovative and integrated multi-channel communications plans, where creative strategy and media strategy are aligned from the beginning and messaging leverages the inherent value of each specific medium to meet desired objectives.
* Best-in-class media research, tools, and analytics, including audience insights, programmatic buying for established and emerging formats, cross-channel measurement and attribution, and econometric models to inform and evaluate media plan performance and optimize media ROI.
* Comprehensive media buying capabilities across all relevant and emerging media channels including video, audio, out-of-home, print, retail media, and digital (social, display, search, etc.), and branded content.
* Strong media buying power and negotiation abilities that will deliver optimal rates and added value to Lottery and enhance overall paid media ROI.
* Experience planning and buying media in California designated market areas including vehicles reaching diverse and in-language audiences, with a commitment to minority-owned suppliers.

Digital & Social:

* The Lottery expects its Agency to be on the forefront of innovation with the latest strategies and technologies in digital, social, and emerging platforms.
* Extensive experience in all aspects of digital marketing (strategy, media planning, creative development, tracking and optimization) across all digital channels including digital display, programmatic, search marketing and other channels within the digital and social space.
* Ongoing analysis of digital and consumer trends to identify and deliver innovative ways to increase social and digital engagement.
* Deep experience in all aspects of social media, including strategy, paid social, creative, content, analytics, new platforms, social listening, and social best practices.
* Experience developing, managing and optimizing influencer marketing campaigns, either in-house or through specialized influencer/creator agencies.
* Please note that the Lottery’s website and mobile app are managed in-house.

Production: The Lottery expects its Agency to have best-in-class digital and broadcast TV/video production capabilities and experience, including production management, post-production expertise, off-line editing, talent/casting, and business affairs.

Research: Proposer must have the ability to conduct market research studies (e.g., recall tests, copy and motivation tests, media weight tests, and attitude studies), that assist the Lottery in the areas of strategic and media planning, communications testing, and consumer attitudes.  These studies may be qualitative or quantitative and may be ad hoc or ongoing projects. Expertise in research stimulus development for research.

Promotions and Experiential Marketing: The Lottery seeks an Agency that can bring fresh thinking and big ideas outside of traditional advertising and media channels to its marketing efforts. The Agency may be responsible for developing experiential and promotional programs that forge deeper engagement between the Lottery and its players.

Public Relations: The Lottery may require its Agency to develop earned media strategies and provide integrated PR capabilities in the areas of media relations, crisis communications, event management, and cross-cultural outreach.

## Minimum Qualifications

This RFP is open to all agencies and joint ventures that, at the time Phase I Submittals are due, meet the following minimum qualifications. Qualified agencies must:

1. Have a minimum of 50 employees.
2. Have a minimum average annual revenue of $20 million across 2022, 2023, and 2024.
3. Be a legal business entity licensed to do business in California.
4. Currently have, or establish and maintain, an office located in California, throughout the duration of the proposed contract (Contract or Agreement). In addition, be able to support California Lottery business needs and hours of operation on the West Coast.
5. Meet the requirements as set forth in Section II, Phase I Submittals.

## Contract Term

The initial term (Contract Term) of the proposed Contract resulting from this RFP will be five years. The Lottery may unilaterally extend the Contract Term under the same terms and conditions, including pricing terms, for up to two one-year terms.

The Contract Term may change if the Lottery makes an award earlier than expected or if the Lottery cannot execute the agreement due to unforeseen delays.

The resulting Contract will be of no force or effect until signed by both parties. The Agency will not commence performance until a valid contract has been executed between the successful Proposer and the Lottery.

## Anticipated Funding

The maximum expenditure authority for the initial five-year Contract Term is estimated at approximately $400million. Funding for the annual and total contract expenditures is not guaranteed. Funding is subject to annual marketing budget approval by the Lottery Commission. Depending on the Lottery’s goals and objectives, funding within the annual contract expenditures may decrease and/or increase from year to year. Proposers should not base their proposal on the potential for increased funding in any given year. If full funding does not become available, the Lottery may amend or terminate the agreement to reflect reduced funding and deliverables.

## Scope of Work

See Attachment 12, Proposed Contract Terms and Conditions, Exhibit A, for a detailed description of the services and work to be performed as a result of this procurement.

## Joint Proposals/Subcontractors

**Joint Proposals**

The Lottery will accept joint proposals from more than one agency in response to this RFP that, if successful, will result in the award of one indivisible contract. Each agency submitting the joint proposal will be jointly and severally liable for the performance of the entire contract.

Agencies submitting a joint proposal must include a written statement with their Mandatory Submittals that clearly identifies the agencies submitting the joint proposal and that designates a single person who is authorized to represent all agency parties in all matters relating to the RFP. The statement must be signed by a representative identified in the Certification, as legally authorized to contractually bind the agency. At least one of the agencies must independently meet all the Minimum Bidder Qualifications listed within this RFP. The Agency Fact Sheet, Attachment 4, must be completed by all parties participating in a joint proposal.

**Subcontractors**

If a Proposer needs to subcontract part of the services and/or work because the Proposer does not have the full-service capabilities to effectively accomplish all components of the SOW and/or to offer cost competitive pricing to the Lottery, Proposers are required to identify proposed subcontractors and which services they will provide.

The Lottery reserves the right to deny any or all proposed subcontractors of the selected Proposer. Posting the “Notice of Intent to Award” does not imply the Lottery’s approval of proposed subcontractors.

If a proposed subcontractor is denied or if the selected Agency does not demonstrate the capabilities to meet the Lottery’s needs to the Lottery’s satisfaction, the selected Agency may be required to procure a subcontractor or consultant through a separate competitive process to address our required needs.

## Reassignment of Personnel

The selected Agency will not assign new key personnel or reassign key personnel working on Lottery business during the term of the contract without prior approval from the Lottery. If an Agency employee is unable to perform duties due to illness, resignation, or other factors beyond the Agency’s control, the Agency will make every reasonable effort to provide suitable replacement personnel in a timely manner.

## Nonexclusive Rights

The Lottery does not grant the selected Agency the exclusive rights to provide all advertising and marketing services tied to this contract during the contract period. The Lottery reserves the right to acquire additional advertising and marketing services from other agencies and/or subcontractors without infringing upon, or terminating, the awarded contract.

## Key Action Dates

Proposers are advised of the key dates and times shown below and are expected to adhere to them. All times noted in this document are Pacific Time (PT). The Lottery may change the dates after Proposals Due without further amending this RFP.

|  |  |  |
| --- | --- | --- |
| **KEY ACTION** | **DATE**  | **TIME** |
| Request for Proposal Release Date | July 28, 2025 |  |
| Written Questions Due  | August 13, 2025 | 3:00 p.m. PT |
| Written Intent to Bid (optional) | August 13, 2025 | 3:00 p.m. PT |
| Responses to Proposer Questions Posted | September 5, 2025 |  |
| Phase I – Eligibility Proposals Due | September 24, 2025 | 3:00 p.m. PT |
| Notification to Phase II-Semi Finalists & Schedule Onsite Visits with Semi-Finalists | October 17, 2025 |  |
| Phase II – Onsite Visits and Evaluations  | November 2025 |  |
| Notification to Phase III-Finalists (posted) | December 15 to December 19, 2025 |  |
| Phase III – Briefing Day -Lottery presents work assignment-Proposers may ask questions at the Briefing Day and/or email questions to the Lottery  | January 7, 2026 |  |
| Phase III Finalist Work Sessions  | February 9 to February 13, 2026 |  |
| Phase III – Work Assignments and Financial Packages due to the Lottery | March 16, 2026 |  |
| Phase III – Finalist Presentations of the Work Assignment and Phase III evaluations | March 16 to March 20, 2026 |  |
| Notice of Intent to Award Posted (Subject to Commission Approval) | May 11, 2026 |  |
| Proposed Effective Date of Contract  | July 7, 2026 |  |

The Lottery reserves the right to consolidate the solicitation process from three to two phases (i.e., remove Phase II) and will notify agencies advancing from Phase I of the change.

Written questions sent in advance will only be answered on the scheduled response date. Only questions addressed to the contact person listed in Section I.B. will be accepted. Questions from the Proposer must be sufficiently written and include adequate information to enable the Lottery to provide the most accurate responses. When submitting questions, please reference Lead Advertising Agency RFP #002925.

At its sole discretion, the Lottery may contact a Proposer to seek clarification or additional information regarding any questions received.

It is the Proposer’s responsibility to check for notices, date changes, and addenda for this RFP on the Lottery’s [website](https://www.calottery.com/vendor-opportunities) or by going onto the California State Contracts Register.

# Proposal Submission & Phases

## Overview

There are three phases within this RFP. At the completion of each phase, Proposers will be notified in writing by the Lottery as to whether they qualify to continue to the next phase. Additional instructions will be provided by the Lottery to those Proposers advancing to Phases II and III.

Proposals submitted in response to this RFP must comply with the requirements of this section. Failure to complete and submit the information listed in this section in the specified format may result in rejection of the agency’s proposal.

Agencies must complete and submit the following, as detailed below. See Section III, Evaluation Process & Criteria, for scoring details.

## Nondisclosure Agreement - News Releases and Social Media

Proposers must complete and submit Non-Disclosure Agreement, Attachment 10, in their proposal package. By submitting a Proposal, Proposers and the selected Agency agree that they will not share any information, including issuing news releases, make statements to the news media, or through social media channels pertaining to this RFP, their proposals, the data and information provided by the Lottery, contract, or work resulting therefrom, without first obtaining prior approval from the Lottery.

Proposals are Public Record:

The California Public Records Act requires public disclosure, upon request, of documents that pertain to state business. Exceptions to this requirement are limited. The Lottery may, in its discretion, withhold Agency material specifically and conspicuously identified by Agency as confidential if Agency has provided sufficient legal justification for doing so. The Lottery is under no obligation to inform Agency that a request for information has been made or that documents are being released. However, the Lottery may, in its discretion, allow Agency the opportunity to provide the Lottery with further legal justification for withholding specific information. Unless it receives a court order to the contrary, the Lottery retains the right to determine whether an exemption to the Public Records Act applies to Agency information being sought. Under no circumstance will the Lottery be liable to Agency or to any other person or entity for disclosing any Agency material, regardless of its designation by Agency as trade secret or confidential information.

## Phase I: Submittals

**Overall Phase I Instructions:**

* Complete forms and attachments as directed below.
* See Section IV, Submission Requirements, for formatting and submission address.

Items 1, 2, and 4 will be scored by the Lottery Evaluation Team using the evaluation criteria set forth. The other items outlined below, will be used to determine eligibility, and will be scored on a pass/fail basis.

**Items:**

1. **Proposal Cover Pages (Attachment 1):**
* Table of Contents
* Introduction Letter

Instructions: Agencies must submit a table of contents and an introduction letter, indicating that they are responding to the RFP and that all the RFP minimum requirements have been met. The table of contents must list all documents and forms included in the proposal and their corresponding page numbers. The introduction letter must be signed by the representative identified in the Certification, as legally authorized to contractually bind the agency. The introduction letter must confirm the agency’s qualifications and interest in participating in this solicitation.

The introduction letter must explain the following:

1. Basis for the Proposer’s interest in the Lottery’s business.
2. Particular strengths and how those strengths will benefit the Lottery with respect to Lottery’s wants, needs, and expectations.
3. Positioning and vision: How does the Proposer differ from competing proposers? What is the Proposer’s vision for themselves and their partnership with the Lottery? What is the Proposer’s overall philosophy?
4. Describe the Proposer’s approach, process and tools utilized to produce consistently effective marketing. How does the Proposer envision its role in Lottery’s strategic and creative development processes?
5. Describe the Proposer’s experience functioning as a Lead Agency for a roster of partner agencies to develop various marketing strategies, creative approaches, plans, tactics, programs and campaigns.
6. Background of the Proposer’s key personnel and who will be assigned to handle the Lottery account.
7. A summary of the key contributions the Proposer believes it can bring to the Lottery’s advertising and marketing communications efforts.
8. Identify any potential, actual, or apparent conflicts of interest that may arise between any current client and/ or the Lottery. If no potential, actual, or apparent conflicts exist, then the Proposer must make a statement to that effect.
9. Contact information, including name, phone number, and email address, for the representative who will be the main contact person between the agency and the Lottery during the evaluation process. This contact person will also be identified in Attachment 6, Certification.
10. If the Proposer is submitting a joint proposal, the Proposer must disclose this in the introduction letter and submit detailed information for each of the entities submitting the joint proposal arrangement. The Proposer must identify the name of the representative who is legally authorized to contractually bind all entities submitting the joint proposal.
11. **Agency Profile (Attachment 2):**

Instructions: Complete a narrative response to Items 2a, 2b, 2c, 2d below:

1. **Agency Strengths, Capabilities, and Experience:**

Instructions:

Address the following items as they apply to your agency and how each would benefit the Lottery:

* + 1. Strengths: Describe your agency’s strengths including accomplishments, unique services, account leadership, strategic planning, and creative processes.
		2. Agency Capabilities: Describe your agency’s total capabilities as a marketing and advertising Agency. What is the Agency’s experience as a lead agency?
		3. Experience: Describe your agency’s experience working within the gaming, entertainment, and fast-moving consumer goods categories and on accounts of similar size and scope to the Lottery.
1. **Marketing & Advertising Approach:**
2. Strategic Services: Describe your agency’s experience in creating annual strategic plans. Include the steps taken to develop a plan, the level of client collaboration in the process, and how your agency ensures synergy between the client’s partner agencies.
3. Creative Process: Discuss your agency’s process to creatively concept and develop marketing and advertising programs. Include the steps taken to ensure the program has maximum impact on the target audience. Also provide the processes used by your agency to produce and implement marketing and advertising programs and list the methodology used to track and ensure the quality and quantity of deliverables.
4. Comms Planning, Media Planning & Buying Approach: Describe your agency’s approach and expertise in comms planning, media planning and buying process. Please also describe your media purchasing experience and purchasing clout within the state of California. What is your approach to reaching diverse and in-language audiences? How do you utilize innovative and emerging technologies or platforms in development of omnichannel and comms plans?

1. Research and Evaluation: Describe your agency’s approach to research, including conducting consumer research, your evaluation tools and sources of research. Detail how these tools are used to gain insights into the strategic development of future marketing and advertising programs. List how these tools are used to help determine return on investment, media value, and the effectiveness of marketing & advertising programs. Provide how the data collected is communicated to the client. Include in your description whether these evaluation functions are normally performed in-house or by a subcontractor or consultant.
2. Project Management: Describe your agency’s overall process for project stewardship, including project timelines, deliverables items, quality assurance, budget tracking, and billing.
3. **Two Campaign Case Histories:**

Proposers must submit, in accordance with Section IV, two case histories of recent and relevant campaign work. The campaign case histories must demonstrate the agency’s capabilities, expertise, and skills in strategic and creative plan development and implementation of marketing and advertising efforts. For each case history, please include the following:

* + - 1. Case overview for each ad, marketing initiative, or campaign, including objectives, strategy, consumer/creative insight, and results. Please include a notation of the timeframe in which the work ran, a description of the agency’s role in this project, and how it was implemented. The succinct description must not exceed four pages in length for each campaign.
			2. Information on how your agency used research, data. and analytics to determine strategy to optimize the effectiveness of your plan and work.
			3. Multiple creative elements from each campaign that show how the agency incorporates a brand across multiple platforms, including video, audio, and visual representations of outdoor, collateral, digital, promotional material, print, and any viral, non-traditional, or social media elements.
			4. All case histories must be from the office submitting the proposal.
			5. Please provide six hard bound copies and submit a soft copy version of submittal through the Lottery secure site that will be provided in Section IV.
1. **Two Media Case Histories:**

Proposers must submit, in accordance with Section IV, Submittal Requirements, two case histories of recent and relevant media work. The media case histories must demonstrate the agency’s media capabilities, expertise, and skills in media planning and buying. Please develop the case histories in a manner that helps demonstrate the agency’s ability to meet the Lottery’s preferred experience listed in Section I.F - Summary of Wants, Needs and Expectations above. For each case history, please include the following:

1. Agencies must include a written summary, not to exceed three pages in length, of the media objective, target market, consumer insights, strategy, budget, and results for each case history.
2. The first media case history must showcase the agency’s media planning capabilities and demonstrate the agency’s strategic and creative planning skills.
3. The second media case history must showcase the agency’s buying and negotiating skills to demonstrate that the agency’s ability to deliver best value, premier placements, and ROI.
4. The media case histories should address what was involved and considered in developing the highlighted media example from research, data, analytics, and tools to formulate strategy, plan, and channel selection (traditional, digital, and new solutions).
5. Media case histories must be from the office submitting the proposal.
6. **Mandatory Submittal Checklist: (Attachment 3)**

Instructions: Agencies must submit all items listed on the mandatory submittal checklist by the due date for Phase I – Eligibility Proposals listed in Section I, General Information, N. Key Action Dates.

1. **Agency Fact Sheet (Attachment 4)**

Instructions: Complete and sign the Agency Fact Sheet.

**If the agency is submitting a joint proposal, each agency comprising the joint venture must complete and submit an Agency Fact Sheet.**

1. **Form STD 204 – Payee Data Record (Attachment 5)**

Instructions: Complete and sign “Form STD 204 – Payee Data Record”

1. **Proposer Certification Form (Attachment 6)**

Instructions: Complete and sign the “Certification” Form

1. **Schedule of Subcontractors (Attachment 7) – (only if applicable)**

Instructions: Complete and sign if there are any necessary subcontractors that will assist with fulfilling the scope of work.

1. **Small and Micro Business Participation (SB) Form (Attachment 8) – (if applicable)**

Instructions: Complete and sign the Participation Form if applying for Small Business or Micro Business incentive (see RFP Section IV.H).

1. **Disabled Veteran Business Enterprise (DVBE) Participation (Attachment 9) – (if applicable)**

Instructions: Complete and sign the Participation Form if applying for Disabled Veteran Business Enterprise incentive (see RFP Section IV.H).

1. **Non-Disclosure Agreement (Attachment 10)**

Instructions: Complete and sign the Non-Disclosure Agreement Form.

1. **Liquid Files Instructions (Attachment 11)**

Proposer must submit all requested documents via Liquid Files as stated in Section IV. Delivery of Proposal. Instructions are provided as Attachment 11 and are available on the California State Contracts Register.

**12. GenAI Language (Attachment 12)**

Proposers must complete and sign the GenAI Impact Assessment Form if: 1) the Proposer intends to provide Generative Artificial Intelligence (GenAI) as a Contract deliverable; or (2) the Proposer intends to utilize GenAI, including GenAI from third parties, to complete any portion of the Contract deliverables or services.

# Evaluation Process & Criteria

The Lottery will conduct a fair and impartial evaluation of proposals received in response to this RFP. Proposals submitted in response to this RFP may be evaluated in comparison with other submitted proposals. Participating Proposers may request clarification via email during any phase of the evaluation process.

Materials and requirements for Phase I, Phase II, and Phase III, as outlined within this document, will be evaluated using the rating chart shown below:

|  |  |
| --- | --- |
| **Rating** | **Definition** |
| Superior | Proposal exceptionally exceeds performance or capability requirements; proposal demonstrates extraordinary strengths that will more than significantly benefit the Lottery. |
| Significantly Exceeds | Proposal significantly exceeds performance or capability requirements; proposal demonstrates exceptional strengths that will significantly benefit the Lottery. |
| Exceeds | Proposal exceeds performance or capability requirements; proposal has one or more strengths that will benefit the Lottery. |
| Meets | Proposal meets specified minimum performance or capability requirements necessary for acceptable contract performance. |
| Meets with Exceptions | Proposal demonstrates weak performance or capability standards necessary for minimum contract performance; proposal has one or more weaknesses that offset any strengths. |
| Does Not Meet | Proposal fails to meet specified minimum performance or capability requirements. Proposals with a Does Not Meet rating are not awardable. |

Each Proposer will be given a rating of Superior, Significantly Exceeds, Exceeds, Meets, Meets with Exceptions, or Does not Meet using the Rating Chart.

The complete RFP evaluation process is comprised of three phases:

* Phase I – Submittals: Eligibility and Capabilities Requirements
* Phase II – Semi-Finalists: On-site Visits
* Phase III – Finalist Submittals: Work Assignment and Staff Plan and Compensation Proposal

## Phase I – Submittals: Eligibility and Capabilities Requirements

* + 1. The documents listed below will be pass/fail in Phase I and must be completed and submitted by the deadline:
1. Mandatory Submittal Checklist
2. Form STD 204 – Payee Data Record
3. Proposer Certification Form
4. Schedule of Subcontractors (if applicable)
5. SB Form (if applicable)
6. DVBE Participation (if applicable)
7. Non-Disclosure Agreement
	* 1. The documents listed below will be evaluated using evaluation criteria and the rating and definition chart:
8. Proposal Cover Pages
	* Table of Contents
	* Introduction Letter
9. Agency Profile
	* Agency Strengths, Capabilities, and Experience
	* Advertising Approach
	* Two Case Histories
	* Two Media Case Histories
10. Agency Fact Sheet

|  |
| --- |
| ***Evaluation Criteria for Phase I Submittals above:*** |
| High priority criteria:* Agency’s positioning, vision, and philosophy and its alignment with Lottery values
* Depth and breadth of agency’s organizational qualifications and experience to deliver service requirements listed in Scope of Work
* Caliber of strategic thinking
* Creativity and innovation
* Media planning and buying experience and capabilities
* Integrated marketing experience and capabilities
* Expertise and capabilities in social media (strategy, media, creative.) and influencer/content creator marketing
 |
| Other important criteria:* Relevant experience in California market with gaming, entertainment, and/or fast-moving consumer goods sold at retail
* Quality of client list
* Additional Services
 |

**Scoring - Phase I:** After review and evaluation of the Phase I submittals, those agencies receiving an overall rating of “Superior” or “Significantly Exceeds” will advance to Phase II as Semi-Finalists. Agencies receiving an overall score of “Exceeds” or “Meets” may, at the sole discretion of the Lottery Evaluation Team, advance to the Semi-Finalist phase.

## Phase II – Semi-Finalist: On-Site Visits

1. On-site visits allow the Lottery Evaluation Team to meet agency leadership and the agency team that would service the Lottery account. It is an opportunity for the agency to present their capabilities beyond the agency profile and credentials provided in Phase I. Site visits will be scheduled on dates specified in section N. Key Action Dates. Proposed day-to-day account management team, creative personnel, and media staff that would service the California Lottery account must play a major role in the Site Visit presentation.

Each Proposer that advances to Phase II will be contacted to schedule a date and time when the Lottery evaluation team can visit the Proposer’s office that would service the account and to receive more details about the site visit. Each site visit is approximately three to four hours, including introductions, agency tour, and presentation.

|  |
| --- |
| **Evaluation Criteria**: Phase II – On-Site Visits |
| High priority criteria:* Agency team assigned to the Lottery, its philosophy, and culture
* Caliber of strategic thinking
* Creativity and innovation
* Media planning and buying experience and capabilities
* Integrated marketing experience and capabilities
* Expertise and capabilities in social media (strategy, media, creative, etc.) and influencer/content creator marketing
* Ability to work collaboratively with clients
 |
| Other important criteria:* Experience supporting California-based brands
* Additional services
 |

**Scoring- Phase II**: After review and evaluation of the Phase II meetings, those agencies receiving an overall rating of “Exceeds” and above will advance to Phase III as Finalists. Agencies receiving an overall score of “Meets” may, at the sole discretion of the Lottery Evaluation Team, advance to the Finalist phase.

## Phase III – Finalist Submittals

1. **Work Assignment.** Finalist agencies will be asked to complete and present an integrated strategy, creative, and media work assignment for marketing and advertising services. Details will be shared with the proposers who advance to Phase III.

| **Evaluation Criteria**: Phase III – Work Assignment  |
| --- |
| * Understands Lottery business and the application of insights to the work assignment
* Knowledge of consumer research and insights as it applies to the Lottery
* Strategic recommendation
* Creative work
* Integrated marketing communications plan
* Team assigned to the Lottery account
* Responsiveness to input and ability to collaborate
 |

1. **Staff Plan & Compensation Proposal Assessment:**

Each Finalist will receive a packet outlining a sample description of Deliverables (for bidding purposes only) for the Lottery account. The packet will include instructions for organizing the proposed staff plan and corresponding cost information. The objective of this portion of the Finalist Phase is to evaluate Finalists’ anticipated staffing and compensation proposal on both a stand-alone and comparative basis to facilitate an agency-to-agency evaluation.

| **Evaluation Criteria**: Phase III – Staff Plan & Compensation Proposal |
| --- |
| High priority criteria:* Agency team assigned to Lottery account
* Expertise and experience levels of staff
* Amount and distribution of staff hours
* Direct labor costs
* Operating overhead costs
* Profit markup
* Blended hourly agency rate

Other important criteria:* Additional services and costs
* Agency readiness
 |

The Lottery will evaluate each Finalist’s Staff Plan and Compensation Proposal to determine its responsiveness to the RFP’s requirements and its overall value to the Lottery. As part of this assessment, the Lottery will also compare each Finalist’s Staff Plan and Compensation against that of the other Finalist(s).

a. DVBE and SB Assessment

Where applicable, the DVBE and/or SB preferences will be applied to a Finalist’s Staff Plan and Compensation Proposal.

* Small & Micro Business Participation (if applicable). A preference of up to 5% bonus in points or a $50,000 reduction in the annual staff compensation proposal, whichever is less, will be applied for evaluation purposes only, based on the level of SB participation proposed.

* DVBE Incentive Program (if applicable). A preference of up to 5% bonus in points or a $50,000 reduction in the annual staff compensation proposal, whichever is less, will be applied for evaluation purposes only based on the level of DVBE participation proposed.
1. **Scoring- Phase III Best Value Evaluation**

If the Lottery elects to award a contract, such contract will be awarded to the agency that submits the best value proposal. The best value proposal will be the proposal that provides maximum benefits to the Lottery in the areas of security, competence, experience, qualifications, performance, and price. The proposal with the lowest price may not be selected if a higher-priced proposal provides greater overall benefits to the Lottery.

As part of the best value evaluation process, the Lottery may award a contract based on the proposals submitted or establish a competitive range and hold discussions with each agency in the competitive range. The competitive range will be comprised of the most highly rated proposals consistent with the need for an efficient competition. If discussions are conducted, each agency will be given the opportunity to revise its proposal only in those specific areas identified by the Lottery. Discussions may include bargaining. Bargaining includes persuasion, alteration of assumptions and positions, and give-and-take, and may apply to price, technical requirements, type of contract, or other terms of a proposed contract.

The Lottery may discuss with each agency in the competitive range, weaknesses, deficiencies, and other areas of concern in its proposal such as price, technical approach, and other terms that, if altered, may materially-enhance the proposal’s potential for award. The scope and extent of discussions are matters solely within the Lottery’s discretion.

1. **Competitive Range**
2. As part of the best value proposal evaluation process, the Lottery may select a Finalist based on the proposals submitted or establish a competitive range and hold discussions with each Finalist in the range. A competitive range process would include the highest-rated Finalists, consistent with the need for an efficient competition. If the process is conducted, discussions will be undertaken with the intent of allowing each Finalist the opportunity to revise its proposal only in those specific areas identified by the Lottery. Finalists will not be permitted to withdraw their proposals or to modify them in any other way.
3. If the Lottery elects to enter into discussions with Proposers in the competitive range, it will initiate oral or written discussions with all selected Agencies regarding their Staff Plan and Compensation Proposals with respect to their Phase III submissions (Proposals).
4. These discussions can include inquiries as to deficiencies, ambiguities, omissions, and weaknesses that would adversely affect the Proposal’s rating. The Lottery will ensure that all issues are resolved or are understood by each Proposer prior to requesting a best and final proposal.
5. In addition, the Lottery may conduct discussions with each eligible Proposer necessary to further the evaluative process but need not conduct the same number of discussions with each eligible Proposer. The Lottery may terminate discussions with any eligible Proposer at any time. However, the Lottery will offer all eligible Proposers the same opportunity to discuss their Proposals with the Lottery before the Lottery notifies eligible Proposers of the date and time pursuant to which best and final Proposals will be due.
6. The Lottery may adjust the evaluation of a Proposal as a result of a discussion under this process. The conditions, terms, or price of the Proposal may not be altered or otherwise changed during the course of the discussions provided the changes are within the scope of the RFP.
7. The Lottery will not:
8. Provide an agency with suggested ways to correct its proposal or “right answers.”
9. Disclose information concerning other agencies’ proposals or the evaluation process.
10. Advise an agency of its cost standing relative to other agencies or furnish information about another agency’s cost.
11. Reveal technical information from another agency during the course of discussions.
12. Coach, through successive rounds of discussion, an agency with an inferior Proposal to prepare a superior proposal i.e., technical leveling.
13. Withhold pertinent information from any agencies.
14. Record presentations (audio, video, or other media) as they may reveal confidential information relevant to the evaluation process.
15. Thereafter, the Lottery will establish a common date and time by which agencies must submit best and final proposals. Best and final proposals will be submitted only once, provided, however, the Lottery may make a written determination that it is in the Lottery's best interest to conduct additional discussions, negotiations, or change the Lottery’s requirements and require another submission of best and final proposals. The Lottery will evaluate proposals as modified. The Lottery is not required to solicit best and final proposals if, after the preliminary negotiation process, it has concluded that one agency will provide the best value to the Lottery.

# Submission Requirements

## Delivery of Proposal

1. **Delivery**

All proposals will be submitted through the Lottery Secure File Transfer site. The Liquid Files Instruction Guide is available on the California State Contracts Register.

Liquid Files transfers are to be addressed to tkopbayev@calottery.com and ijen@calottery.com. **Do not send to solicitations@calottery.com.**

The Lottery encourages all qualified Proposers to participate in this RFP by submitting Phase I written submittals by the deadline due date of **3 p.m.** on **September 24, 2025**. The written “Intent to Bid” is optional and not required to participate in this RFP process.

Proposers will submit video files using .MP4 format. Files with the following extensions will not be accepted: exe, vbs, pif, scr, bat, cmd, com, and cpl. **Additionally, Proposers must submit six hard copies of their proposals as labeled binders in accordance with Section IV Submission Requirements, A.2.b.** Agencies’ proposals should be structured in the same format as the RFP, with the same heading, numbering, and bullet format for all sections and subsections. Proposals submitted in response to this RFP must comply with the requirements listed in Section IV, Submission Requirements, A.2 Narrative Format. Failure to complete and submit the information as specified in the narrative format may result in rejection of the agency’s proposals.

Proposers are solely responsible for ensuring timely receipt of their proposals.

1. **Narrative Format**
2. Narrative portions of proposal responses should be prepared in such a way as to provide a straightforward, concise delineation of capabilities to satisfy the requirements of this RFP. Emphasis should be on conformance to the RFP instructions, responsiveness to the RFP requirements, completeness, and clarity of content. Expensive bindings, colored displays, promotional materials, etc., are not necessary or desired. However, it is requested that responses are bound.
3. Proposers must follow the format requirements listed below for all narrative portions of the RFP. Failure to do so may result in an entire proposal or affected section not being read or evaluated at the Lottery’s sole discretion.
4. Use Arial or similar font of at least 12-point size throughout. Exception: if a form is required by the State that contains a smaller font.
5. Print pages single-sided on letter size (8.5 by 11 inches) white paper with 1.5 line spacing, unless otherwise noted.
6. Use one-inch margins at the top, bottom, and both sides.
7. Sequentially number the pages in each section and clearly identify each section in the order requested. When a page limit is noted, pages exceeding the limit will not be scored. It is not necessary to paginate the required forms.
8. Place the Proposer’s name in a header or footer on every page. If the Proposer’s name is not already entered elsewhere on a completed certification or form, add it to a header, footer, or signature block.
9. RFP Attachments and/or forms that require a signature must be signed by a person who is authorized and identified on the Certification, to contractually bind the Agency. A PDF signed copy of those documents will be accepted, however, the originally signed document may be requested at a later date.

## Submission of RFP Materials

“RFP materials” means anything submitted by a Proposer to the Lottery in response to this RFP, including, but not limited to, written questions about this RFP, and responses to any phase.

|  |  |
| --- | --- |
| **Email** | **Mail** |
| Email: solicitations@calottery.com Subject line **must** include:RFP #R002925 Lead Marketing & Advertising Agency | ATTN: Timur KopbayevRFP #002925 Lead Marketing & Advertising Agency700 North 10th StreetSacramento, CA 95811 |

Proposals not submitted under sealed cover may be rejected at the sole discretion of the Lottery.

## Importance of Meeting Deadlines

Proposers are responsible and assume all risks for the delivery and receipt by the Lottery of all submissions prior to the submission deadline. If a Proposer mails or otherwise ships the submission via a generally recognized approved transportation entity such as the U.S. Postal Service, Federal Express, United Parcel Service, etc. and provides the Lottery with the entity’s package tracking information and the tracking information indicates its delivery at the Lottery by the submission deadline, the package will be considered to have arrived on time. U.S. Postal Service postmarks or other indicia of mailing of shipment, however, will not be accepted as proof of timely delivery. Electronic submissions without the five hard copies may not be accepted. The stated deadlines for submitting and receipt of all materials to the Lottery will be strictly enforced. Submissions that are incomplete or received after the stated deadline will not be accepted.

## Communication Between the Lottery and Proposers

The Lottery reserves the right to contact Proposers at any phase of the proposal process to collect additional clarifying information, if deemed necessary.

1. **Proposer Questions**

Proposers must submit any questions regarding this RFP by the due date and time specified in the Key Action Dates table in Section I General Information, N. Key Action Dates. Only email questions addressed to the contact person listed in Section I, General Information, B. Contact will be accepted. Proposers must provide sufficient specific information to enable the Lottery to identify and respond to their questions. When submitting questions, please reference RFP #002925 Lead Advertising Agency.

Responses to questions received during the Proposer Question time period will be posted on the Lottery’s [website](https://www.calottery.com/vendor-opportunities) and the [California State Contracts Register](https://caleprocure.ca.gov/pages/Events-BS3/event-search.aspx).

In its sole discretion, the Lottery may contact a Proposer to seek clarification or additional information regarding any question received.

Proposers who fail to report a known or suspected problem with the RFP or who fail to seek clarification or correction of the RFP do so at their own risk.

1. **Errors**

If a Proposer discovers any ambiguity, conflict, discrepancy, omission, or other error in this RFP, the Proposer must immediately notify the Lottery of such error by email to the contact in Section I, General Information, B. Contact, to request modification or clarification of the RFP. Modifications or clarifications will be given by written notice posted on the Lottery’s [website](https://www.calottery.com/vendor-opportunities) and the [California State Contracts Register](https://caleprocure.ca.gov/pages/Events-BS3/event-search.aspx) without divulging the source of the request for modification or clarification. The Lottery will not be responsible for a Proposer’s failure to correct errors or any Proposer’s failure to regularly and timely check the website for changes.

## Submission of Final Proposal

1. **Deviations and Modifications**

All submissions should be complete when received at the Lottery. No changes, modifications, corrections, or additions may be made once they are submitted to the Lottery. A Proposer will be allowed to withdraw its proposal provided that the written request for such withdrawal is received prior to the deadline for final submission. After withdrawing a proposal, Proposers may resubmit a new proposal according to the proposal submission instructions. Replacement proposals must be received at the stated place of delivery by the proposal due date and time.

The Lottery may, at its sole discretion, waive any immaterial deviation or defect in a submission. However, the waiver of an immaterial deviation or defect in a submission will in no way modify the document or excuse the Proposer from full compliance with the RFP requirements if awarded the contract. Items may be considered “immaterial” by the Lottery if, for example, they do not affect the amount of the Staff Plan and Compensation Proposal, or if allowing the deviation does not give a Proposer an advantage or benefit that would not be granted to all other Proposers.

1. If the Proposer's intent, as determined by the Lottery, is clearly established based on review of the complete final proposal submittal, the Lottery may at its sole option correct an error based on that established intent.
2. The Lottery may at its sole option correct obvious clerical errors.
3. A Proposer may modify a proposal or submit a new proposal after submission by withdrawing its original proposal and resubmitting a new proposal prior to the proposal submission deadline. Proposer modifications offered in any other manner, oral or written, will not be considered.
4. The Lottery reserves the right to reject any proposal that does not satisfy the requirements set forth in this RFP. The Lottery is not required to award a contract. Before submitting a response to this RFP, Proposers should review, correct all errors, and confirm compliance with the RFP requirements.
5. No oral understanding or contract will be binding on either party.

## Property of California State Lottery

Submission materials will not be returned to the Proposer. All proposed ideas or adaptations of the ideas contained in any submission become the property of the Lottery and the Lottery reserves the right to use them. Acceptance or rejection of the submission will not affect this right in any way.

## Cost of Submissions

Costs for developing and submitting proposals are entirely the responsibility of the Proposer and will not be chargeable to the Lottery.

## Preference Programs

The Lottery will determine which Proposers, if any, are eligible to receive a bidding preference (i.e., Small Business and Disabled Veteran Business Enterprise).

SB and DVBE preference incentives will be offered in this RFP.

1. **Small Business (SB)**

Agencies who meet the Small and Microbusiness (SB) goal are eligible for a SB Preference. Based upon the nature of the goods and services to be utilized under this solicitation (as outlined in the Scope of Work, Exhibit A), the Lottery has set a SB goal of 25% for utilization of small or microbusinesses as subcontractors. The Lottery encourages small business participation, and participation is voluntary. An agency who qualifies as a small or microbusiness has met this participation goal by virtue of their small business status.

For proposal evaluation purposes, an SB preference is applied to Phase III Finalists by adjusting down the Agency’s “Total Agency Fee” in their Staff Plan & Compensation Proposal by $50,000.

During the Contract term, the Agency’s SB preference compliance will be calculated based on the Agency’s completed work as verified by an audit of Agency’s invoices and Agency’s payments to designated subcontractors. If applicable, Proposer must complete Attachment 8, Small and Microbusiness Participation.

1. **Disabled Veteran Business Enterprise (DVBE)**

The Lottery recognizes disabled veterans for their service by establishing a Disabled Veteran Business Enterprise (DVBE) Participation Program. The program is intended to further veterans’ participation in Lottery contracting, promote competition and encourage greater economic opportunity.

The Lottery has established participation goals for DVBEs, as defined in Military and Veterans Code, of at least 3% of overall dollars expended for Lottery contracts annually. The Lottery determines whether to include DVBE participation requirements in specific solicitations based on the availability of contracting or subcontracting opportunities within the scope of work of the particular contract.

DVBE participation in this solicitation is voluntary. While the Lottery has not established a DVBE participation requirement for this solicitation, in order to encourage DVBE participation, the Lottery has applied a DVBE incentive. If applicable, Proposer must complete Attachment 9, Disabled Veteran Business Enterprise Participation.

Agencies who meet the DVBE goal are eligible for a DVBE Incentive. For proposal evaluation purposes, a DVBE Incentive is applied to Phase III Finalists by adjusting down the Agency’s “Total Agency Fee” in their Staff Plan & Compensation Proposal by $50,000. The combined SB preferences and DVBE incentives will not exceed $100,000.

# Contract Award

## Notice of Intent to Award

If the Lottery awards a contract, it will be awarded to the most responsive and qualified Proposer, based on scoring criteria and evaluations detailed in Section III Evaluation Process & Criteria.

A notice of Intent to Award identifying the selected Agency will be posted on the Lottery’s [website](https://www.calottery.com/vendor-opportunities) and the [California State Contracts Register](https://caleprocure.ca.gov/pages/Events-BS3/event-search.aspx). All finalists that participated in the final phase held will be notified by email regarding the contract award decision.

## Confidentiality of Financial Records

Financial records received by the Lottery may be kept confidential and will be retained per the Lottery procedures. The Public Records Act may prevent the Lottery from keeping submitted information confidential.

## California State Lottery Rights

1. **Assessment of Proposals**

All proposals will be assessed based on determining the “Best Value” to the Lottery, in the Lottery’s sole discretion, and the award, if any, will be made to a single Proposer. The SOW, proposal, and the Staff Plan and Compensation Proposal may, at the Lottery’s sole discretion, be made a part of the resulting Contract.

1. **Rejection of Proposals**

Deviations may cause a proposal to be deemed non-responsive and not to be considered for award. The Lottery may reject any or all proposals and/or may waive any immaterial deviation or defect in a proposal. The Lottery’s waiver of any immaterial deviation or defect will in no way modify the RFP documents or requirements and will not excuse the Proposer from full compliance with the RFP specifications if awarded a contract.

FINAL PROPOSALS NOT RECEIVED BY THE DATE AND TIME SPECIFIED IN SECTION 1, GENERAL INFORMATION, L. KEY ACTION DATES will remain unopened, and the Proposer will receive notification regarding the late submission. Proposals received after the expiration of the deadline will not be considered or submitted to the Evaluation Team for review.

Issuance of this RFP in no way constitutes a commitment by the Lottery to award a contract. The Lottery reserves the right to reject any or all proposals or portions of proposals received in response to this RFP, or to amend or cancel this RFP at any time if it is in the best interest of the Lottery to do so. In the event of such cancellation, the Lottery may reissue the RFP at a later date.

Any documentation submitted in response to this RFP which has been marked “Proprietary” or “Trade Secrets” may be rejected.

The Lottery reserves the right to reject a proposal based on the Proposer’s failure to comply with a requirement in a prior contract or cooperative agreement with the State of California. The Lottery reserves the right to consider the Proposer’s past performance with government organizations and/or past clients in its selection pursuant to this RFP.

The Lottery reserves the right to reject any proposal that does not satisfy the requirements set forth in the RFP. Before submitting a response to this RFP, Proposers should review, correct all errors, and confirm compliance with all the RFP’s requirements.

1. **Verification of Proposer Information**

By submitting a proposal, Proposers agree to authorize the Lottery to:

1. Verify any and all claims made by the Proposer including, but not limited to verification of prior experience and the possession of other required qualifications.
2. Check any and all references identified by a Proposer, or other resources known or identified by the Lottery to confirm the Proposer’s business integrity and history of providing effective, efficient, competent, and timely services, including prior work with any proposer or references provided by past or current clients.
3. **False or Misleading Statements**

Proposals that contain false or misleading statements, or which provide references that do not support an attribute or condition claimed by the Proposer, may be rejected. A proposal will be rejected if, in the Lottery’s sole discretion, such information was intended to mislead the Lottery in its evaluation of the proposal, and the attribute, condition, or capability is a requirement of this RFP.

1. **Nonresponsive Proposals**

A proposal may be deemed nonresponsive and subsequently rejected if any of the following occurs:

1. A submission is received after the exact time and date set forth in Section I, General Information, N. Key Action Dates, for receipt of each submission.
2. The Proposer fails to meet any of the eligibility requirements as specified in Section I, General Information, E. Minimum Qualifications and Section III, Evaluation Process & Criteria, A. Phase 1: Eligibility and Capabilities Requirements.
3. The Proposer fails to submit or fails to complete, and sign required Attachments as instructed in this RFP.
4. The submission contains false, inaccurate, or misleading statements or references.
5. The Proposer is unwilling or unable to fully comply with the proposed contract provisions.
6. The Proposer supplies conditional cost information, incomplete cost information, or cost information containing unsigned/uninitialed alterations or irregularities.
7. **Business in Good Standing**

The Proposer acknowledges that when agreements are to be performed in the State of California by corporations or vendors, the Lottery will verify, prior to awarding any State contract, the following information in order to ensure that all obligations due to the State are fulfilled:

Corporation in Good Standing

The Lottery will verify with the California Secretary of State (SOS) that the Proposer is an entity currently qualified to do business in California. The proposal will be considered non-responsive if the Proposer is listed with the SOS but is not in good standing.

“Doing business” is defined in California Revenue and Taxation Code section 23101 as actively engaging in any transaction for the purpose of financial or pecuniary gain or profit. Although there are some statutory exceptions to taxation, rarely will a corporate agency performing within the State not be subject to the franchise tax.

Both domestic and foreign (those incorporated outside of California) corporations must be in good standing in order to be qualified to do business in California.

State Tax Delinquency

The Lottery will verify with the California Franchise Tax Board (FTB) and California Department of Tax and Fee Administration (CDTFA) that the Proposer is not on a prohibited list due to tax delinquencies. The proposal will be considered non-responsive if the Proposer is on any of these lists.

The list established by FTB can be found at:

https:[//w](http://www.ftb.ca.gov/about-ftb/newsroom/top-500-past-due-balances/corporate-)ww[.ftb.ca.gov/about-ftb/newsroom/top-500-past-due-balances/corporate-](http://www.ftb.ca.gov/about-ftb/newsroom/top-500-past-due-balances/corporate-) income-tax-list.html

The list established by CDTFA can be found at:

[https://www.cdtfa.ca.gov/taxes-and-fees/top500.htm](https://gcc01.safelinks.protection.outlook.com/?url=https%3A%2F%2Fwww.cdtfa.ca.gov%2Ftaxes-and-fees%2Ftop500.htm&data=02%7C01%7CKarissa.Kanenaga%40covered.ca.gov%7C0f88a0612ac04bbaaee108d6abb5b3d8%7C466d2f7db1424b9c8cddeba5537a0f27%7C0%7C0%7C636885194219192128&sdata=C0K6OFHk3QNV%2FHxWO986SbP86mKtDmqtyxrpV5JsCIk%3D&reserved=0)

## Protests

Bid Protests:

Only an actual Proposer may protest a contract award, and only on the following grounds:

1. The Lottery did not follow its own written procedures in selecting the apparent successful Proposer, and
2. The protestor can demonstrate that had the Lottery followed its procedures, the protesting Proposer would have been the successful Proposer.

A notice of intent to protest must be received by the Lottery within seven business days after the Lottery posts a notice of intent to award on its website. A timely notice of intent to protest is a prerequisite to any protest.

Provided that a timely notice of intent to protest has been filed with the Lottery, a protest must be filed within 12 business days after the Lottery posts its notice of intent to award on its website. A protest must include a complete and detailed explanation of how the facts support the protest.

All protest documents must be received by the Lottery at its Sacramento headquarters no later than 3:00 p.m. Pacific Time on the last day of the applicable protest period. The envelope containing protest documents or the cover page to a protest must be addressed to the attention of the Director and must be clearly labeled: “Protest to the RFP #002925 Lead Advertising Agency, DO NOT OPEN IN MAILROOM.” Untimely protests will not be considered.

It is the protestor’s responsibility to ensure that the Director has all information and arguments that the protestor deems relevant and necessary to resolve the protest. The Director may request additional information in writing from the protestor or from other sources, including the apparent successful Proposer and Lottery staff, as he/she deems appropriate for resolution of the protest.

The Director will issue a written decision within 15 days of completion of his/her review of the record.

In his/her sole discretion, the Director may determine that it is in the best interests of the Lottery to proceed with contract award and performance, while a protest is pending, and may direct an Agency to commence work.

## Contract Execution and Performance

The Lottery will confirm the contract award to the winning Proposer after the protest deadline, if no protests are filed, or following the resolution of all protests. The selected Proposer will provide marketing services to the Lottery and will be required to execute a contract that details the legal and programmatic obligations of each party.

The successful Proposer must enter into a formal contract with the Lottery in order to receive payment for services rendered. The contract may incorporate, as an exhibit or by reference, portions of this RFP and responses to this RFP that directly identify the work to be performed, performance timelines, methods and approaches, budget or cost details, or other mandatory contract and performance requirements.

If, at any time during negotiation of an agreement with the successful Proposer, the Lottery determines it is not able to reach an agreement with the successful Proposer, the Lottery may, at its sole discretion, terminate the negotiations and engage the next-highest-ranked bid without performing a subsequent solicitation.

All duties, tasks, and deliverables as outlined in the contract must be completed before the termination date of the contract, unless an earlier date is specified in the contract.

## Addition or Subtraction of Services

Notwithstanding that bids have been submitted, at the Lottery’s sole discretion, the SOW may be modified prior to contract award to add or remove services through an addendum. If the date and time for submission of Final Proposals have passed as of the time the addendum is posted, and bids have been received, the Lottery, at its sole discretion, may restrict responses to the modified SOW so that only entities that submitted timely bids in response to the initial RFP may respond to the addendum.

## Agency’s Roles and Responsibilities

1. The Agency will designate a person to whom all contract communications may be addressed and who has the authority to act on all aspects of the contract. This person will be responsible for the overall contract and the contact for all invoicing and Agency staffing issues.
2. The Agency will perform the duties as outlined within the SOW.
3. The Agency will execute the marketing initiatives as outlined within the Key Marketing Initiatives list.

## The Lottery’s Roles and Responsibilities

1. The Lottery will designate a Lottery Representative to whom all Agency contract communications may be addressed and who has the authority to act on all aspects of the contract.
2. The Lottery will provide access to business and technical information as necessary for the Agency to complete the deliverables identified in the SOW.
3. The Lottery will ensure appropriate resources are available to perform assigned tasks, attend meetings, and answer questions.
4. The Lottery will ensure that decisions are made in a timely manner.

## Payment and Invoicing

1. The Agency will be paid in accordance with its final negotiated contract. Billings will require the submission of an approved estimate prior to the start of any work. The estimate number to be used to track each project will be issued by the Lottery.
2. The Agency may invoice the Lottery only after the successful completion and acceptance of the required work, according to the schedule detailed in the Contract.
3. Revised Estimates

A revised estimate reflecting all services or charges which may amount to more than 10 percent of the original estimate must be approved by the Lottery prior to additional performance and must be accompanied by a written justification stating why the increase in cost was necessary. The requirement for a written justification will apply to multiple revised estimates where each revised estimate is less than 10 percent of the original estimate, but the combined total exceeds 10 percent of the original estimate. Revised estimates should also include previous approved amounts and/or history of amounts. Total fiscal year expenditures cannot exceed the designated total fiscal year budget without prior approval from the Lottery Contract Manager or designee.

## Contract Amendment

The Lottery may unilaterally extend the Contract Term under the same terms and conditions, including pricing terms, for up to two one-year terms. If mutually agreed upon by the Lottery and the Agency, this Agreement may be amended to include additional services and funding.

## Contract Forms and Exhibits

State contract forms and exhibits are available on the California Lottery [website](https://www.calottery.com/vendor-opportunities) and the [California State Contracts Register](https://caleprocure.ca.gov/pages/Events-BS3/event-search.aspx) .

Proposers should consider the Model Contract provided within the Exhibits section of this solicitation in preparing its response and ensure they will be able to comply with State contract terms. The contract resulting from this solicitation will be prepared on a Lottery Standard Agreement.

The Lottery reserves the right to adjust the language within the SOW and contract awarded from this solicitation. Therefore, final contract language may deviate from the provisions provided.

If an inconsistency or conflict arises between the terms and conditions appearing in the final contract and the proposed terms and conditions appearing in this solicitation, any inconsistency or conflict will be resolved by giving precedence to the final contract.

# ATTACHMENT 1Proposal Cover Page & Introduction Letter

Agencies must submit a cover page and introduction letter as required by RFP Section II.C.1, as identified in RFP pages 14 through 15.

# ATTACHMENT 2AGENCY PROFILE

Instructions: Complete a narrative response to RFP Section II.C.2, subsections 2a, 2b, 2c, 2d, as identified on RFP pages 15 through 18.

# ATTACHMENT 3MANDATORY SUBMITTALS CHECKLIST

A complete proposal or proposal package will consist of the items identified below.

Complete this checklist to confirm the items in your proposal. Place a check mark or “X” next to each item that you are submitting to the Lottery. For your proposal to be responsive, all required attachments will be returned. This checklist will be returned with your proposal package.

 **Attachment Attachment Name/Description**

\_\_\_\_\_ Attachment 1 Proposal Cover Page & Introduction Letter

\_\_\_\_\_ Attachment 2 Agency Profile

\_\_\_\_\_ Attachment 3 Mandatory Submittals Checklist

\_\_\_\_\_ Attachment 4 Agency Fact Sheet

\_\_\_\_\_ Attachment 5 Form Std. 204\*

\_\_\_\_\_ Attachment 6 Proposer Certification Form

\_\_\_\_\_ Attachment 7 Schedule of Subcontractors – if applicable

\_\_\_\_\_ Attachment 8 Small and Microbusiness Participation – if applicable

\_\_\_\_\_ Attachment 9 Disabled Veteran Business Enterprise Participation Forms – if applicable

\_\_\_\_\_ Attachment 10 Non-Disclosure Agreement

\_\_\_\_\_ Attachment 11 Liquid Files Instruction\*

\_\_\_\_\_ Attachment 12 GenAI Impact Assessment Form\*

\_\_\_\_\_ Attachment 13 Proposed Contract Terms and Conditions (do not return)

\*Form is to be downloaded separately

Required but not attached:

1. Certificate of Liability Insurance demonstrating General Liability coverage equal to or greater than $2,000,000
2. Proof of Workers’ Compensation Liability Insurance

# ATTACHMENT 4AGENCY FACT SHEET

|  |  |
| --- | --- |
| Company |  |
| Address |  |
| Phone |  |
| Email |  |
| Names and Titles of Principals |  |
| Key Business Contact |  |
| Phone |  |

* + - 1. **Agency History, Ownership and Key Employees**
	1. Founding Date: When was your business established? Do you have a California office and when was it established?
	2. Mergers and Acquisitions: List any subsequent or pending mergers, acquisitions, or name changes.
	3. Current Ownership: Who are the current owners of your Agency?

* 1. Principals: Provide names and titles of principals and a short biography for each.
	2. Key Executives: Provide a short biography of your key executives and describe their current roles.
	3. Parent Company/Affiliation: Provide a listing of all companies/agencies that are owned or affiliated with your parent company.
		+ 1. **Current Clients, Account Gains and Losses**
1. Current Clients:

Provide a list of accounts for the three years prior to due date of responses to this RFP. The accounts should be in order of dollar value, high to low. Provide the following information for each contract in a table format:

1. Company name, and the name, address, title, phone number, and email of the contact person. Indicate the brand or product worked on under parent company if applicable.
2. Approximate annual billing size for each account.
3. Start and end dates of each account. Indicate role (AOR, retainer, project, subcontractor, etc.)
4. Identify regional and/or national account.
5. Identify the industry: for example: entertainment, consumer packaged goods, or other segments
6. Description of brand and type of work for each account.
7. Account Gains: Of the accounts acquired within the past two years, please comment on why your Agency was chosen to service these new accounts.
8. Account Losses: Of the accounts lost in the past two years, explain why these accounts left or were resigned.
	* + 1. **Current Size**
		1. Current Size: Summarize the total billings for calendar years 2022 to 2024, number of employees and number of accounts currently being handled directly by your office.

|  |  |  |  |
| --- | --- | --- | --- |
| Calendar Year | Total Billings Per Year | Number of Employees | Number of Accounts |
| 2022 |  |  |  |
| 2023 |  |  |  |
| 2024 |  |  |  |

* + - 1. **Scope and Nature of Agency Services:**

A. Agency Services: List the various services offered by your agency and the number of full-time employees dedicated to each department. Please include account management, creative services, digital/interactive, media planning/buying, production, data/analytics, strategic planning, production/operations services, experiential, financial services, and any other unique expertise as a lead marketing and advertising agency (“Lead Agency”).

1. Strategic Planning: Detail the agency’s strategic planning capabilities. List any research and planning tools used to provide insights into the development of general market marketing and advertising as Lead Agency.
2. Creative Services: List the types of creative services offered and any in-house production services and capabilities related to the development of general market marketing and advertising as Lead Agency.
3. Promotional Marketing Services: Describe the agency’s strengths and capabilities in creating and implementing promotions. Include the various types of promotions that the agency specializes in and has successfully delivered for clients.
4. Digital Services: In addition to any digital services listed above, please describe established strengths and capabilities in the digital realm.
5. Media: Describe your capabilities and strengths in media (e.g., research, analytics, planning, buying, monitoring, overall stewardship of your clients’ funds) highlighting the development of general market marketing and advertising as Lead Agency and California expertise. Additionally, chart your agency’s current spending by media— television, radio, outdoor, digital, social, etc. Provide rough figures and percentages using the grid below
6. Public Relations (Optional Service): Describe your integrated PR capabilities that includes developing earned media strategies as well as media relations, crisis communications, event management, and cross-cultural outreach.
7. Other Specialized Services: List any other specialized services your agency offers to its clients, either directly or indirectly through parent or sister companies, subsidiaries, or network of affiliations.
	* + 1. **References**
8. Client references: List five client references (name, title, company, address, telephone, email) the Lottery can contact.
	* + 1. **Percentage Breakdown by Service**:

List the percentage of media billings placed by your agency using the chart below. For additional information, descriptions, and details refer to Exhibit A – Scope of Work

|  |  |  |  |
| --- | --- | --- | --- |
| Television/Video | Radio/Audio | Digital | Other |
| Linear National TV | Terrestrial National radio | X% | Display/Interactive | X% | Out of Home | X% |
| Broadcast  | X% | Terrestrial Spot radio  | X% | Video (OLV) | X% | Digital Out of Home | X% |
| Cable/Satellite | X% | Satellite radio | X% | Social  | X% | Experiential | X% |
| Linear Spot TV | Digital/Streaming/Podcast | X% | Search | X% | Print | X% |
| Broadcast Spot  | X% |  |  | Other (list each one) | X% | Retail Media | X% |
| Cable/Satellite Spot  | X% |  |  |  |  |  |  |
| Streaming/Digital TV |  |  |  |  |  |  |
| OTT/CTV/VOD | X% |  |  |  |  |  |  |

# ATTACHMENT 5STD 204 – PAYEE DATA RECORD

Proposers may download the Payee Data Record (STD 204) through the following link:

<https://www.documents.dgs.ca.gov/dgs/fmc/pdf/std204.pdf>

If you are unable to download this file, please contact the Procurement Specialist.

# ATTACHMENT 6CERTIFICATION

1. **PROPOSER INFORMATION**

Proposer’s Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Street Address: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

City/State/Zip Code: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Contact Person: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Telephone: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Email: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

List person(s) legally authorized to contractually bind the Proposer.

1. Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Title:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Address: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

1. Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Title:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Address: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

(Attach additional pages if needed)

1. **PROPOSER CERTIFICATION**

By executing this Certification, the Proposer acknowledges that failure to comply with any of this Certification’s terms may result in disqualification from participation in the solicitation process. The Proposer has reviewed, agrees to, and certifies the following:

1. The Proposer meets all minimum qualifications specified in the section entitled “Minimum Proposer Qualifications.”
2. The Proposer agrees the Lottery will not be liable for any of the costs incurred by Proposer in preparing, submitting, or otherwise participating in a response to this solicitation.
3. The Proposer’s response to the solicitation constitutes an irrevocable offer for 180 days following the date proposals are due to the Lottery.
4. The Proposer has made no attempt to induce any other person or entity to submit or not to submit a proposal.
5. The prices in the proposal have been developed and calculated independently, without consultation, communication or agreement on any matter relating to such prices with any other Proposer or competitor for the purpose of restricting competition or providing a competitive advantage.
6. The Proposer has read the solicitation, understands it, and agrees to comply with all terms and conditions.
7. The Proposer agrees to provide insurance/bond coverage as described in the Contract Terms and Conditions.
8. Recognizing that initial payments to the Contractor may be delayed approximately 45 days, the Proposer has sufficient resources to meet his/her obligations during this period.
9. **CONTRACTOR CERTIFICATION CLAUSES**

By executing this Certification, the prospective Contractor or its authorized representative certifies under penalty of perjury that the prospective Contractor has reviewed and agrees to be bound to the Contract Terms and Conditions and the following Contractor Certification Clauses.

* 1. **NONDISCRIMINATION CLAUSE**: During the performance of this Contract, Contractor and its subcontractors shall not unlawfully discriminate, harass or allow harassment, against any employee or applicant for employment because of sex, sexual orientation, race, color, ancestry, religious creed, national origin, disability (including HIV and AIDS), medical condition, age, marital status, and denial of family care leave. Contractor and subcontractors shall ensure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Contractor and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Government Code, Section 12990 et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285.0 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations are incorporated into the Contract by reference and made a part thereof as if set forth in full. Contractor and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement. The Contractor shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the Contract.
	2. **DRUG-FREE WORKPLACE REQUIREMENTS**: Contractor shall comply with the requirements of the Drug-Free Workplace Act of 1990 and shall provide a drug-free workplace by taking the following actions:
		1. Publish a statement notifying employees that unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations.
		2. Establish a Drug-Free Awareness Program to inform employees about:
			1. the dangers of drug abuse in the workplace;
			2. the Contractor’s policy of maintaining a drug-free workplace;
			3. any available counseling, rehabilitation, and employee assistance programs; and,
			4. penalties that may be imposed upon employees for drug abuse violations.
		3. Every employee who performs work under the Contract shall receive a copy of the Contractor’s drug-free workplace policy statement and agree to abide by the terms of the Contractor’s statement.
		4. Failure to comply with these requirements may result in suspension of payments under the Contract or termination of the Contract, and the Contractor may be ineligible for award of any future state contracts if the Contractor has made false certification or violated the certification by failing to carry out the requirements as noted above.
	3. **NATIONAL LABOR RELATIONS BOARD CERTIFICATION**: The Contractor certifies that no more than one final unappealable finding of contempt of court by a federal court has been issued against the Contractor within the immediately preceding two-year period because of the Contractor's failure to abide by a federal court order to comply with a directive of the National Labor Relations Board.
	4. **DOMESTIC PARTNERS**: For contracts executed or amended after July 1, 2004, the Contractor may elect to offer domestic partner benefits to the Contractor’s employees. The Contractor cannot require an employee, on the basis of marital or domestic partner status, to cover the costs of providing any benefits which have otherwise been provided to all employees.
1. **DOING BUSINESS WITH THE STATE OF CALIFORNIA**

The following laws apply to persons or entities doing business with the State of California.

1. **CONFLICT OF INTEREST:** The Contractor is aware of the following provisions regarding current or former state employees. If the Contractor has any questions about the status of any person rendering services or involved with the Contract, the Lottery shall be contacted immediately for clarification.

Current State Employees:

* 1. No state officer or employee may engage in any employment, activity or enterprise from which the officer or employee receives compensation or has a financial interest, and which is sponsored or funded by any state agency, unless the employment, activity, or enterprise is required as a condition of regular state employment.
	2. No state officer or employee may contract as an independent contractor with any state agency to provide goods or services.

Former State Employees:

1. For the two-year period from the date, he or she left state employment, no former state officer or employee may enter into a contract in which he or she engaged in any of the negotiations, transactions, planning, arrangements or any part of the decision-making process relevant to the Contract while employed in any capacity by any state agency.
2. For the 12-month period from the date he or she left state employment, no former state officer or employee may enter into a contract with any state agency if he or she was employed by that state agency in a policy-making position in the same general subject area as the proposed contract within the 12-month period prior to his or her leaving state service.
3. If the Contractor violates any of the above provisions, such action by Contractor shall render this Contract void.
4. Members of boards and commissions are exempt from this section if they do not receive payment other than payment for each meeting of the board or commission, payment for preparatory time, and payment for per diem.
	1. **LABOR CODE/WORKERS' COMPENSATION:** The Contractor isaware of the provisions which require every employer to be insured against liability for Worker's Compensation and the Contractor agrees to comply with such provisions before commencing work on this Contract.
	2. **AMERICANS WITH DISABILITIES ACT**: The Contractor assures the Lottery that it complies with the Americans with Disabilities Act (ADA) of 1990, which prohibits discrimination on the basis of disability, as well as all applicable regulations and guidelines issued pursuant to the ADA and all California accessibility statutes and regulations.
	3. **CORPORATE QUALIFICATIONS TO DO BUSINESS IN CALIFORNIA:**
5. The Contractor certifies it is currently qualified to do business in California.
6. The Contractor certifies that it is in good standing with the California Secretary of State’s Office.
	1. **AIR OR WATER POLLUTION VIOLATION**: The Contractor shallnot be*:* (1) in violation of any order or resolution not subject to review promulgated by the State Air Resources Board or an air pollution control district; (2) subject to cease and desist order not subject to review issued pursuant to Section 13301 of the Water Code for violation of waste discharge requirements or discharge prohibitions; or (3) finally determined to be in violation of provisions of federal law relating to air or water pollution.
	2. **PAYEE DATA RECORD FORM STD. 204**: This form shall be completed by all Contractors except state agencies or other governmental entities.
7. **CONFIDENTIALITY STATEMENT**
8. I warrant that neither the Contractor nor its employees will disclose any document, diagram, or information made available to it by the Lottery. I warrant that only those employees who are authorized and required to use such information will have access to it.
9. I further warrant that all materials provided by the Lottery will be returned promptly after use and all copies or derivations of the materials will be physically and/or electronically destroyed. I will include with the returned materials a letter attesting to the complete return of materials and documenting the destruction of copies and derivations. Failure to comply may subject the Contractor to criminal and civil liability. I authorize the Lottery to inspect and verify the above.
10. I further warrant that if awarded the Contract, the Contractor will not disclose to any third-party information pertaining to the Contract prior to receiving the written consent of the Lottery.

I, the official named below, CERTIFY UNDER PENALTY OF PERJURY that I am duly authorized to legally bind the Proposer and prospective Contractor to the clause(s) above and that the signature affixed below and dated constitutes a certification that all information provided by the Proposer and prospective Contractor is true and correct.

Contractor/Proposer Firm Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

By (*Authorized Signature*): \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name of Person Signing: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Title of Person Signing: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Date Executed: \_\_\_\_\_\_\_­­­­\_\_\_\_\_\_\_\_\_\_­­­­\_\_\_

# ATTACHMENT 7SCHEDULE OF SUBCONTRACTORS

|  |  |  |  |
| --- | --- | --- | --- |
| Subcontractor Name, Contact Person,Phone Number | Subcontractor Address& Email Address | CA Certification (MB, SB, DVBE or None)IncludeCertificate # | Work performed or goods provided for this contract |
|  |  |  |  |
|  |  |  |  |
|  |  |  |  |
|  |  |  |  |
|  |  |  |  |
|  |  |  |  |
|  |  |  |  |

# ATTACHMENT 8SMALL AND MICROBUSINESS PARTICIPATION (SB)

*Continued on Next Page*

**Small Business Preferences/Definition**

The Small Business Procurement and Contract Act (Gov. Code section 14835 et seq.) requires that a fair share of the state's purchases and contracts for goods, information technology, services and construction be placed with small businesses or micro businesses. In order to facilitate the participation of these businesses, the Act requires state agencies to: (1) establish small business participation goals, (2) provide a 5% small business preference; and (3) provide a non-small business preference of up to a maximum of 5% for agencies utilizing small businesses or micro businesses as subcontractors.

**SB Goal and Preference**

**Based upon the nature of the goods/services to be utilized under this solicitation (as outlined in the Scope of Services), the Lottery has set a SB Goal of 25%.** Proposers that qualify as a small or micro business have met this participation goal by virtue of their small business status.

For bid evaluation purposes, where there is at least one non-small business Proposer subcontracting at least 25% of its bid amount to one or more small businesses, the Lottery shall calculate the preference by computing an amount not to exceed 5% from the lowest, responsible bid of a non-small business Proposer that is not subcontracting to a small business. The preference amount shall be deducted from the bids of the non-small business Proposer’s subcontracting at least 25% of their bid amounts to small businesses, as referenced above. Agencies that subcontract less than 25% shall receive a prorated preference.

For bid evaluation purposes, where there is at least one small business Proposer, the Lottery shall calculate the preference by computing an amount of up to 5% of the lowest, responsible bid of a non-small business Proposer that is not subcontracting to a small business. The preference amount shall not exceed $50,000 and shall be deducted from the small business’ bid amount as referenced above.

During the Contract term, the Proposer’s SB compliance shall be calculated based on the Proposer’s completed work as verified by an audit of Proposer’s invoices and Proposer’s payments to designated subcontractors.

**Definition**

To be eligible for the SB Preference as a "small business,” a company shall be an independently owned and operated business, not dominant in its field of operation, with its principal place of business located in California and officers domiciled in California, and which together with affiliates is:

* A business with 100 or fewer employees and average annual gross receipts of $14,000,000 or less over the previous three years, **or**
* A manufacturer with 100 or fewer employees. A manufacturer is a business that is both:
1. Primarily engaged in the chemical or mechanical transformation of raw materials or processed substances into new products; and
2. Classified between Codes 31 to 339999, inclusive, of the North American Industrial Classification System (NAICS) Manual, published by the United States Census Bureau, 2007 edition.

To be eligible for the SB Preference as a "micro business,” a company shall be a small business that, together with affiliates, has average annual gross receipts of $3,500,000 or less over the previous three years, or is a manufacturer, as defined above, with 25 or fewer employees.

If a proposing Proposer is currently certified as a small or micro business by the Department of General Services, Office of Small Business and DVBE Services, or any city, county, federal, etc. certifying office, only a copy of that certification is required (to be certified small or micro business, visit the DGS website at www.pd.dgs.ca.gove/pd/Programs/OSDS.aspx). The successful Proposer shall be required to provide this information for the small or micro business enterprises to be utilized as subcontractors.

The successful Proposer's SB Goal shall become part of the Contract resulting from this solicitation with the Lottery. The Lottery shall monitor Proposer’s compliance by requiring annual reports.

Agencies requesting either of the SB Preferences are required to complete and submit the required forms.

(Revised 11/19)

**INSTRUCTIONS/FORMS**

All agencies shall complete this page and the “Declaration of Compliance for Small and Micro Business Subcontractor Participation” form. Non-small agencies that are subcontracting with small or micro businesses shall also complete the “Small and Micro Business Subcontractor” form, and agencies that are small businesses or micro businesses shall complete the “Small and Micro Business Program” form. All forms are included in this package.

**General Information**

**Proposer’s Name**: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Street Address**: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**City/State/Zip Code:** \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Contact Person:** \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Telephone**: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ **Fax**: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Email**: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**SB Program Form CSL 1180**

Complete and sign this form if your company is a certified small or micro business.

**SB Declaration of Compliance Form CSL 1178**

Complete and sign this form certifying all the information is true and correct. This form shall be signed by the person legally authorized to contractually bind the Proposer as stated in the Certification.

**SB Subcontractor Form CSL 1177**

Complete and sign this form for all small and micro business subcontractor(s) that you plan to utilize as part of your small business participation goal. Please duplicate this page for additional companies*.*

**Small and Micro Business & DVBE Program Form CSL 0718**

Complete and sign this form if your business is participating in this program.

CSL 1180 (11/19)

**DECLARATION OF COMPLIANCE**

***Complete and sign this form certifying all the information is true and correct. This form shall be signed by the person legally authorized to contractually bind the Proposer as stated in the Certification.***

**Proposer’s Name**: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Street Address:** \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**City/State/Zip Code:** \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Contact Person:** \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Telephone**: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ **Fax**: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Email**: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Declaration

I declare under penalty of perjury that the information provided in this Attachment is true and correct. (Please check one)

\_\_\_ Our firm is a small business or micro business. **Certification #**: \_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_ Our firm is not a small business or micro business, but guarantees that a minimum of

\_\_% of the total cost shall be paid to small business and micro business

subcontractors for work performed under the Contract.

 \_\_\_ Our firm shall not participate in the SB Participation Program.

**Executed on (Month/Date/Year):** \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

In the city of\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ State of\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Proposer’s Authorized Signature:** \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Name of Person Signing:** \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Title:** \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Telephone:** \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ **Fax:** \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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**SUBCONTRACTOR FORM**

**Complete and sign this form for all small and micro business subcontractor(s) that you plan to utilize as part of your small business participation goal.**

Please duplicate this page for additional companies.

**Name of Subcontractor**: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Street Address:** \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**City/State/Zip Code:** \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Contact Person:** \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Telephone:** \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ **Fax:** \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Email**: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Goods/Services to be provided:** \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Business Category** \_\_\_\_\_\_ **Percentage of Contract**\_\_\_\_%

**Certifying Proposer:** \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ **Certification #**: \_\_\_\_\_\_\_\_\_\_\_\_\_

By signing below, the Proposer indicates its intent to utilize the small business or micro business identified above as part of the Contract associated with this solicitation, as applicable; and also certifies that all information contained herein is true and correct.

**Proposer’s Authorized Signature:** \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ **Date:** \_\_\_\_\_\_\_\_\_\_

**Name of Person Signing:** \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Company Name:** \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

By signing below, the small business or micro business certifies it has been contacted and has expressed interest in participating in the Contract in the work area identified; and also certifies that all information contained herein is true and correct.

**Subcontractor’s Authorized Signature:** \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Date:** \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Name of Person Signing:** \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Company Name**: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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**Business Name**: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Street Address**: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**City**:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ **State**:\_\_\_\_ **Zip Code:** \_\_\_\_\_\_\_\_\_\_

**Name of Owner:** \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Telephone**: \_\_\_\_\_\_\_\_\_\_\_\_\_\_ **Email:** \_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Name of Contact Person: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**Telephone: \_\_\_\_\_\_\_\_\_\_\_\_\_\_ Email: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**Business Category: \_\_\_\_\_**

**Business Certified with (Agency Name): \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**Certification #: \_\_\_\_\_\_\_\_\_\_\_\_\_**

**Select one that applies: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**Goods/Services, etc. to be provided: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

*By signing below, the Proposer certifies that the company above is a small business or microbusiness, as defined in this attachment.*

**Signature of Authorized Representative:** \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Date:** \_\_\_\_\_\_\_\_\_

Title:\_\_\_\_\_\_\_\_\_\_\_

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# ATTACHMENT 9DISABLED VETERAN BUSINESS ENTERPRISE PARTICIPATION

The Lottery recognizes disabled veterans for their service by establishing a Disabled Veteran Business Enterprise (DVBE) Participation Program. The program is intended to further veterans’ participation in Lottery contracting, promote competition and encourage greater economic opportunity.

The Lottery has established participation goals for DVBEs, as defined in the California Military and Veterans Code, of at least 3% of overall dollars expended for Lottery contracts annually. The Lottery determines whether to include DVBE participation requirements in specific solicitations based on the availability of contracting or subcontracting opportunities within the scope of services of the particular contract.

While the Lottery has not established a DVBE participation requirement for this solicitation, in order to encourage DVBE participation, the Lottery has applied a DVBE incentive as follows:

Confirmed DVBE Participation DVBE Incentive

5% or Over 5%

4% to 4.99% 4%

3% to 3.99% 3%

2% to 2.99% 2%

1% to 1.99% 1%

A Proposer may achieve participation by qualifying as a DVBE and/or by contracting with DVBE subcontractors. DVBEs shall perform a commercially useful function, excluding media placement costs, related to the bid specifications as required by Military and Veterans Code section 999 (b)(5)(B). The Lottery shall determine whether Proposers have achieved qualifying levels of participation by comparing each Proposer’s verified DVBE percentage to the Proposer’s Price Sheet.

The incentive is applied in determining the lowest monetary bid or best value by reducing the qualified Proposer’s price by the amount of the incentive as computed based on the lowest price submitted by a responsive Proposer. This reduction is applied solely for evaluation purposes. However, where the Proposer with the lowest monetary bid or best value, prior to application of the incentive, is a California certified small business, only other certified small businesses shall be eligible to receive the incentive bonus. If after application of incentives, two or more responsive bids tie for lowest monetary bid or best value, the contract shall be awarded to the Proposer with the highest level of DVBE participation.

A DVBE may also qualify as a small business if it independently meets the Small and Micro Business Participation Program requirements. (See Attachment: “Small and Micro Business Participation”)

For certification purposes, a “disabled veteran” shall be a veteran of the U.S. military, naval, or air service, have a service-connected disability of 10% or more, and reside in California.

To be eligible for certification as a Disabled Veteran Business Enterprise:

* At least 51% of the business shall be owned by one or more disabled veterans;
* Daily business operations shall be managed and controlled by one or more disabled veterans; and
* The home office shall be located in the United States. (The home office cannot be a branch or subsidiary of a foreign corporation, foreign firm, or other foreign-based business.)

In order to count toward DVBE participation, DVBEs shall be certified as such by the Department of General Services at the time the bid is submitted to the Lottery. Proposers shall submit with their bids (1) a copy of the DVBE certification for each DVBE and (2) the attached DVBE forms, completed and signed as indicated. Contact the Department of General Services, Office of Small Business and DVBE Services with certification questions or visit DGS’s Website at [www.dgs.ca.gov](http://www.dgs.ca.gov).

During the term of the Contract, the successful Proposer shall provide annual DVBE reports to the Lottery’s Procurement Services & Support Section showing DVBE participation at the levels committed to in the bid documents. In addition, the successful Proposer shall provide a final report at the end of the Contract.

**Instructions:**

Proposers shall complete “Subcontractors to be Utilized” section for each DVBE subcontractor to be counted toward DVBE participation and include the form as part of their bids. [Please duplicate the page for additional DVBE businesses.] Any Proposer that is a certified DVBE and wishes to be counted toward DVBE participation shall complete “DVBE Proposer” section and submit it as part of its bid.

For questions regarding these instructions or attachments, please contact the Lottery’s Small and DVBE Program Specialist at (916) 822-8069.

SUBCONTRACTORS TO BE UTILIZED

This form shall be completed and signed by the Proposer and the DVBE subcontractor to be utilized. Please duplicate this page for additional DVBE businesses.

**Name of DVBE:** \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**DVBE Certification: #** \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**DVBE Contact Person:** \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**DVBE Street Address:** \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**City/State/Zip:** \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Email:** \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Telephone:** \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ **Fax:** \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Goods/Services to be provided:** \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Percentage Participation:** \_\_\_\_\_\_\_\_\_\_\_\_\_\_% (percent of the total contract price to be paid to the DVBE subcontractor for goods and/or services identified above)

By signing below, the Proposer indicates its intent to utilize the DVBE identified above as a supplier/subcontractor of the goods and/or services indicated, for the dollar amount represented by the percentage set forth above. The Proposer also certifies that all information contained herein is true and correct. This form shall be signed by a person legally authorized to contractually bind the Proposer.

**Proposer’s Authorized Signature:** \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ **Date:** \_\_\_\_\_\_\_\_\_

**Name of Person Signing:** \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Company Name**: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

By signing below, the DVBE certifies it has submitted a bid to the above-referenced Proposer and is ready, willing, and able to provide the goods and/or services identified above. This form shall be signed by a person legally authorized to contractually bind the DVBE.

**DVBE’s Authorized Signature:** \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ **Date:** \_\_\_\_\_\_\_\_\_

**Name of Person Signing:** \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Company Name**: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**DVBE PROPOSER**

Proposer shall complete and sign this form if Proposer is a DVBE and intends to count goods and/or services it provides towards DVBE participation on this contract.

**Proposer’s Name:** \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**DVBE Certification: #** \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Contact Person**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Goods/Services to be provided:** \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Percentage Participation:** \_\_\_\_\_% (percent of the total contract price represented by the goods/services to be provided by the DVBE Proposer (pass-through goods and/or services do not count))

By signing below, the Proposer indicates that it shall provide the goods and/or services indicated for the dollar amount represented by the percentage set forth above. The Proposer also certifies that all information contained herein is true and correct. This form shall be signed by a person legally authorized to contractually bind the Proposer.

**Proposer’s Authorized Signature:** \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Date:** \_\_\_\_\_\_\_\_\_\_\_\_\_

**Name of Person Signing:** \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Company Name**: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

# ATTACHMENT 10NON-DISCLOSURE AGREEMENT

This Nondisclosure Agreement (“Agreement”) is made and entered into as of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 2025 between the California State Lottery (“Company”) and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“Recipient”).

1. Purpose. Recipient has submitted a proposal and is competing for a contract to provide Lead Marketing and Advertising Agency services pursuant to Request for Proposal R002925 (RFP). In connection with the RFP and subject to this Agreement, Company may disclose to Recipient certain confidential and proprietary technical and business information that Company desires Recipient to treat as confidential.
2. “Confidential Information” means any information disclosed to Recipient by Company, directly or indirectly, in writing, orally, or by inspection of tangible objects (including documents, prototypes, samples, and Company’s plant and equipment). Confidential Information will include the items set forth in any Appendix attached to this Agreement. Confidential Information may also include information disclosed to Company by third parties. Confidential Information will not, however, include any information that Recipient can demonstrate (a) was publicly known and made generally available in the public domain prior to the time of disclosure to Recipient by Company; (b) became publicly known and made generally available after disclosure to Recipient by Company through no action or inaction of Recipient; or (c) was in the possession of Recipient, without confidentiality restrictions, at the time of disclosure by Company, as shown by Recipient’s files and records.
3. Non-use and Nondisclosure. Recipient will not use any Confidential Information for any purpose except to prepare its Finalist Submittals pursuant to the RFP. Recipient will not disclose any Confidential Information to third parties or to employees of Recipient, except to those employees who are required to have the Confidential Information in order to prepare the Finalist Submittals pursuant to the RFP. Recipient will not reverse engineer, disassemble, or decompile any prototypes, software, or other tangible objects that embody Company’s Confidential Information and that are provided to Recipient in accordance with this Agreement.
4. Maintenance of Confidentiality. Recipient will use its best efforts to protect the secrecy of and avoid disclosure and unauthorized use of the Confidential Information. Without limiting the foregoing, Recipient will take at least those measures that Recipient takes to protect its own most highly confidential information and, prior to any disclosure of Confidential Information to its employees, will have such employees sign a non-use and nondisclosure agreement that is substantially similar in content to this Agreement. Recipient will not make any copies of Confidential Information unless approved in writing by the Company. Recipient will reproduce Company’s proprietary rights notices on all approved copies. Recipient will immediately notify Company in the event of any unauthorized use or disclosure of the Confidential Information. discussions contemplated by this Agreement concerning the business opportunity.
5. No Obligation. Nothing in this Agreement will obligate Company or Recipient to proceed with any transaction between them, and each party reserves the right, in its sole discretion, to terminate the discussions contemplated by this Agreement concerning the business opportunity.
6. No Warranty. ALL CONFIDENTIAL INFORMATION IS PROVIDED “AS IS.” COMPANY MAKES NO WARRANTIES, EXPRESS, IMPLIED, OR OTHERWISE, REGARDING THE ACCURACY, COMPLETENESS, OR PERFORMANCE OF THE CONFIDENTIAL INFORMATION.
7. Return of Materials. All documents and other tangible objects containing or representing Confidential Information and all copies of them will be and remain the property of Company. Upon Company’s request, Recipient will (a) promptly deliver to Company all Confidential Information, without retaining any copies, and (b) promptly destroy analyses, studies, and other documents prepared based on the Confidential Information, without retaining copies.
8. No License. Nothing in this Agreement is intended to grant any rights to Recipient under any patent, copyright, or other intellectual property right of Company, nor will this Agreement grant Recipient any rights in or to the Confidential Information, except as expressly set forth in this Agreement.
9. Term. This Agreement will survive until all Confidential Information becomes publicly known and made generally available through no action or inaction of Recipient.
10. Remedies. Recipient acknowledges that any breach or threatened breach of this Agreement would cause irreparable harm to Company, and in addition to any other remedies at law or in equity that Company may have, Company is entitled, without the requirement of posting a bond or other security, to equitable relief, including injunctive relief and specific performance.
11. Indemnification. Recipient agrees to indemnify and hold harmless Company from any damage, loss, cost, or liability (including reasonable attorney fees) arising or resulting from any unauthorized use or disclosure of the Confidential Information by Recipient or any of its employees.
12. Recipient Information. Company does not wish to receive any confidential or proprietary information from Recipient, and Company assumes no obligation, either express or implied, with respect to any information disclosed by Recipient.
13. Miscellaneous. This Agreement will bind and inure to the benefit of the parties and their successors and assigns. This Agreement will be governed by the laws of the state of California, without reference to conflict of laws principles. This document contains the entire agreement between the parties with respect to the subject matter of this Agreement. Any failure to enforce any provision of this Agreement will not constitute a waiver of that provision or of any other provision. This Agreement may not be amended, nor any obligation waived, except by a writing signed by both parties. This Agreement may be executed in two or more counterparts, each of which is deemed to be an original, but all of which constitute the same agreement.

**CALIFORNIA STATE LOTTERY RECIPIENT** \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**ATTACHMENT 11 – LIQUID FILES INSTRUCTIONS**

A copy of Attachment 11 – Liquid Files Instructions is available on Caleprocure as a separate attachment.

All proposals must be submitted to a Lottery Secure File Share site (Liquid Files) with required attachments, except for Attachment 11, Procedural Non-Compliance Waiver. The Liquid Files Instruction Guide is available on the California State Contracts Register.

Liquid Files transfers are to be addressed to tkopbayev@calottery.com and ijen@calottery.com. **Do not send to** **solicitations@calottery.com** **as it will not be received.** Hard copies of proposals are still required to be delivered per Section IV.A.1.

If you are unable to download the instructions, please contact the Procurement Specialist.

**ATTACHMENT 12 – GenAI Impact Assessment Form**

A copy of Attachment 12 – GenAI Impact Assessment Form (CSL1499) is available on caleprocure as a separate attachment.

Instructions: Proposers must complete and sign the GenAI Impact Assessment Form if: 1) the Proposer intends to provide Generative Artificial Intelligence (GenAI) as a Contract deliverable; or (2) the Proposer intends to utilize GenAI, including GenAI from third parties, to complete any portion of the Contract deliverables or services.

“Generative Artificial Intelligence” or “GenAI” means an artificial intelligence system that can generate derived synthetic content, including text, images, video, and audio that emulates the structure and characteristics of the system’s training data.

While the Lottery is interested in realizing the potential benefits of GenAI, assessment of these technologies is necessary to balance out the potential risks and ensure that the Lottery is contractually protected.

Failure to report GenAI use in connection with this RFP may result in disqualification. The Lottery reserves its right to seek any and all relief it may be entitled to as a result of such non-disclosure.

If notified by a Proposer that GenAI will be provided or utilized in connection with the Contract, the Lottery may require, at its sole discretion, that the Lottery’s Level 2 or Level 3 Generative Artificial Intelligence provisions be incorporated into the final Contract, at no additional cost to the Lottery. (Copies of those terms will be provided to Proposers upon request.) The Lottery also reserves the right to reject any Proposals that present an unacceptable level of risk to the Lottery.

# ATTACHMENT 13PROPOSED CONTRACT TERMS AND CONDITIONS

**EXHIBIT A**
**SCOPE OF WORK**

1. **INTRODUCTION**

[Name of Agency] (Agency) will provide the California State Lottery (Lottery) lead agency advertising services.

1. **SUMMARY**

This agency plays a critical role in the statewide marketing of the Lottery and its products and is expected to collaboratively work with Lottery staff, retailers and other partner agencies and contractors to provide best-in-class lead agency advertising services. The Lottery values ideas and collaboration in our agency partners as well as with the Lottery Team.

1. **CONTRACT MANAGERS**
	1. The Contract Managers for this Agreement are as follows:

|  |  |  |
| --- | --- | --- |
|  | **Lottery** | **Contractor** |
| **Name:** | To be Entered | To be Determined |
| **Street Address:** | 700 North 10th Street |  |
| **City, State Zip Code:** | Sacramento, CA 95811 |  |
| **Phone:**  |  |  |
| **Fax:**  |  |  |
| **Email:**  |  |  |

* 1. The Lottery may change its Contract Manager at any time, without amending the Agreement, by providing written notice to the Contractor.
1. **WORK TO BE PERFORMED**

Agency is responsible for the following:

1. Share responsibility for planning, coordinating, integrating, and executing the Lottery’s overall marketing plan and specific portions of the Lottery’s annual advertising plan.
2. Assist in overall marketing analysis, strategy development, and positioning of the Lottery and its products.
3. At the Lottery’s direction, facilitate collaboration among Lottery staff, the Lottery’s other agencies, and other marketing contractors to provide integration of advertising and marketing plans.
4. Create and produce marketing and advertising supporting the Lottery’s new and existing products and programs.
5. All aspects of media strategy, plan development, and implementation, encompassing negotiation and buying of media such as television, radio, print, outdoor, digital, social, and any new media vehicle. This should include a robust social media and search engine strategy.
6. Assist with long-range marketing plans and specialized programs.
7. Develop, manage, and work with econometric models and other tools to optimize campaign results for maximum media return on investment.
8. Provide a post-buy analysis of all media buys.
9. Develop, manage, and facilitate Lottery market research studies.

Agency may be required to:

1. Directly contract with television stations in California designated market areas and for the airing of Lottery programs.
2. Assist with syndication activities.
3. Develop, design, and provide in-store communications.
4. Provide public relations programs integrating media relations, crisis communications, and cross-cultural outreach.

**EXHIBIT B
BUDGET DETAIL AND PAYMENT PROVISIONS**

1. Annual Agency Deliverables and Staff Plan and Compensation Proposal

The Lottery will compensate Agency in the form of an all-inclusive, labor based annual agency fee (Annual Agency Fee) arrangement. The Annual Agency Fee will be determined for each fiscal year based on the agreed-upon key marketing deliverables. Prior to the end of each fiscal year, or thereabouts, the key marketing deliverables will be provided to the Agency. The deliverables list provides a plan for the Lottery’s marketing initiatives and their planned deliverables for the upcoming fiscal year. The Agency will base its Staff Plan and Compensation Proposal to the Lottery on the key deliverables list. Both parties agree to discuss in good faith and agree in writing to revise the Staff Plan and Compensation Proposal for the next year including negotiation of the Annual Agency Fee, based on the Lottery’s key marketing deliverables.

The Agency’s staff requirements are dependent upon the mutually agreed upon deliverables list or Key Marketing Initiatives (KMI). The deliverables list or KMI may increase and/or decrease annually, which may affect the existing staff plan and compensation model. The Agency should submit an updated staff plan based on the mutually agreed upon deliverables list each fiscal year. If the Agency’s deliverables list or KMI remains the same or decreases each fiscal year, then the Agency’s staff compensation plan may also remain the same and/or decrease annually. There is no guarantee of an Annual Agency Fee increase. If an annual increase is granted, at the Lottery’s discretion, the percentage amount negotiated may vary, but should not exceed 5%.

There may be a circumstance where an Annual Agency Fee increase of more than 5% is required to meet substantive changes within the deliverables list or KMI. In this instance, both contracted parties will discuss in good faith the necessary staffing requirements and a possible compensation fee increase above 5% to accomplish the additional KMI.

In no event may the Agency’s overhead mark-up and profit mark-up percentages increase during the duration of this contract. It is at the Lottery’s sole discretion to increase and/or decrease the Annual Agency Fee each year.

When agreed upon by the parties and formalized in writing, the updated Staff Plan Compensation Proposal Worksheet and Key Marketing Initiative Deliverables Worksheet will be added to the Contract as Attachments 1 and 2 for each successive fiscal year. For each fiscal year, the Staff Plan and Compensation Proposal Worksheet then in effect will remain in full force and effect until such time as a revised Staff Plan and Compensation Proposal Worksheet is agreed upon by the parties in writing. The revised annual Plan and Key Marketing Initiative Deliverables Worksheet can be approved in writing by the Lottery Contract Manager or his/her designee.

1. The Annual Agency Fee will be set forth annually using the following method of calculation:
2. Grand Total of Estimated Direct Labor Cost + Overhead Mark-Up (percentage of direct labor cost) = Total Cost
3. Total Cost + Profit Mark-Up (percentage of total cost) = Annual Agency Fee
4. Annual Agency Fee (including overhead mark-up and profit mark-up) divided by the total annual hours set forth in the Staff Plan and Compensation Proposal = Agency Blended Hourly Rate
5. Key Marketing Deliverables

Prior to the end of each fiscal year or thereabouts during the term of this Contract, a Key Marketing Deliverables list will be provided to the Agency. The Key Marketing Deliverables list provides the Agency with a plan of the Lottery’s marketing initiatives for the upcoming fiscal year. Specialized programs may be included in the plan. The Agency bases its annual Staff Plan and Compensation Proposal to the Lottery on the agreed upon Key Marketing Deliverables list.

1. Specialized Programs

At the Contract Manager's discretion, Agency may be required to provide as-needed services in support of specialized programs that are within the Contract's scope of services but are not addressed in the current Staff Plan and Compensation Proposal Worksheet. Compensation for specialized program services will be in addition to the Annual Agency Fee and will be paid using an agreed-upon billing rate for each proposed specialized program service. With prior approval by the Contract Manager or designee, a portion of a project may be "pre-billed." Documentation must verify that no more than 50% of the specialized service estimate with "pre-bill" backup, must be billed prior to service. Documentation must verify that the remaining amount of the estimate was invoiced after service was completed and must include backup for the entire specialized program. All specialized program services will require submission of an estimate prior to the start of any work and must be approved in writing by the Lottery Contract Manager or designee.

1. Assumption of Existing Subcontracted Services

The proposer may be required, at the request of the Lottery, to assume responsibility of subcontracted commitments previously established by the prior Lead Agency contractor.

1. As-Needed Changes

With respect to any additional yearly deliverables not contemplated in Key Marketing Deliverables list further compensation will be negotiated and agreed upon by the parties on an as-needed basis. Any agreement for additional or replacement of yearly deliverables will be acknowledged in writing signed by the parties. Such writing will identify each revised yearly deliverable and the amount of compensation to be paid. The current fiscal year Staff Plan and Compensation Proposal will remain in full force and effect until such time as a revised Staff Plan and Compensation Proposal is agreed upon by the parties in writing.

1. COST AUDIT GUIDELINES
	1. Estimate Requirements: An approved and signed estimate must be on file at the Lottery for all invoices received. All estimates must include the following information either on the estimate, or on an attachment to the estimate. If the information is provided on an attachment, the attachment must be referenced on the estimate.
2. Estimate/Job Number
3. Product/Project Name
4. Purchase Order Number (provided by Lottery)
5. Deliverable Description
6. Estimated Deliverable Cost including freight and applicable taxes
7. Deliverable Due Dates (if applicable)
	1. Subcontracted Work: All estimates for subcontracted work must be submitted from the Agency, specifying the Agency’s job number and product/project. The Agency is solely responsible for processing of all subcontractor estimates. The Agency must retain and make available upon request documentation verifying cost breakdowns. All subcontractor documentation is subject to the same guidelines set for Agency invoicing.
	2. Production: All production estimates of $100,000 or more must be submitted with copies of competitive bids obtained and, if not using the lowest bid, a justification of why the lowest bid is not being used must be attached. Line-item descriptions will reflect only those line items included in the job estimate. Line-item documentation that includes line items not on original or revised estimate will not be reimbursed.
	3. TV/Video Production -Pre-bill:

Up to 50% advanced payment is permitted for TV/Video production jobs. Documentation must verify that no more than 50% of a TV/Video production estimate will be billed prior to service. Documentation must verify that the remaining balance was invoiced after service was performed and must include backup for the entire job.

"Pre-bill" refers to the TV advertising production subcontractor's invoice which states the estimated cost for production and requires 50% advance payment. Agency is obligated to pay the 50% of the production estimate upon presentation of a pre-bill by the subcontractor. Agency will retain the pre-bill as backup to its own invoice without Commission for payment under this Exhibit.

Production invoices must be submitted within 90 days from date service was completed. After the final invoice is submitted, the Agency must provide a Closeout Report/Closeout Estimate, signed by both parties, detailing billing history and actual dollars spent. Once a Closeout Report/Closeout Estimate is received and signed by both parties, no further billing can be submitted to the Lottery for payment.

* 1. Media

The Agency must maintain documentation that supports invoices, and which includes an industry standard summary report. The Agency must submit such documentation to the Lottery upon request. Media invoices will only be paid upon completion of broadcast months. All media credits must be submitted to the Lottery as soon as possible. Media invoices must be submitted within 90 days from the last day of the flight. After the final invoice is submitted, the Agency must provide a closeout report, signed by both parties, detailing billing history and actual dollars spent.

Individuals designated by the Lottery must, with reasonable notice, have access to review verification documentation required by the Exhibit, as well as selected Agency media purchase invoices and other related documents (i.e., station affidavits, video verification) to confirm media purchase costs. These reviews may take place at the Agency’s office during regular business hours or may be conducted by submission of written material to the Lottery.

Rebates and Incentive:

* 1. Full Disclosure: Agency and Holding Company Members (defined as any company created to buy, possess, and control shares of other companies, and all of its affiliates, as well as any person who has a financial interest or investment in any of the foregoing) must be transparent and fully disclose to the Lottery the flow of the Lottery’s funds entrusted to Agency, and any rebates and incentives (defined as any and all third party payments including cash rebates or other incentives) received or owned by Agency and Holding Company Members: Agency volume discounts or compensation from media buys, discounted or unpaid media space or inventory; volume, early payment, or other discounts; commissions; compensation; refunds or bonuses; bonus inventory, free or discounted media, sponsorship, promotional space, principal media arrangements; consulting or research agreements; service level agreements or any other source of financial or other benefit receivable directly or indirectly by Agency and Holding Company Members from third parties that are either directly or indirectly related to: the Lottery’s media placements (which means all advertising, sponsorships, or promotional media purchased by Agency, either directly or indirectly from third parties or Holding Company Members, in connection with the provision of services under this Contract payments for media placements may take any form, including cash, credits, or the transfer of funds by digital means).
	2. No Direct or Indirect Benefits: Agency and Holding Company Members must at no time, without disclosure to and written approval by the Lottery, receive or retain any rebates, incentives, or other benefits of any value from third parties, as a direct or indirect result of the Lottery’s spending under this Contract.
	3. Reporting: The Agency must provide to the Lottery, upon request throughout the Contract Term and any extension thereof a full and accurate report of:
1. Each rate card and terms of payment offered to Agency or Holding Company Members between the Agency or Holding Company Members (before any rebates and/or incentives have been applied) and any third party for any media placements made by Agency or Holding Company Members on behalf of the Lottery.
2. The gross amounts of rebates and/or incentives Agency or any Holding Company Member directly or indirectly receives or is entitled to receive in sufficient detail to permit an accurate assessment by the Lottery of the rebates and incentives due to the Lottery.
3. Any actions by the Lottery, Agency, or Holding Company Members that are required in order for the rebates and/or incentives to accrue.
4. Any early payment discounts received by or eligible to be received by Agency or Holding Company Members from a third party. The Lottery is entitled to receive any early payment discounts received by Agency or Holding Company Members on account of the Lottery’s media placement unless the Lottery expressly chooses not to receive such discounts or Agency notifies the Lottery with reasonable advanced notice of the deadline to qualify for such early payment discounts and the Lottery fails to pay Agency for such media placement within the qualification period to receive such discounts.

* 1. Return of Rebates and Incentives to the Lottery
1. After the Lottery determines that rebates and/or incentives are to be refunded to the Lottery, the Lottery will notify the Agency of the amount that must be refunded to the Lottery (assessment). The Lottery will send the assessment notice to the Agency by certified mail return receipt requested, or by any other method that provides evidence of receipt. At the Lottery’s discretion, the assessment notice may direct payment of the assessment by the Agency. If payment is so directed, the Agency must pay the assessment within 30 days from receipt of the assessment notice.

Any assessments may also be collected, at the Lottery’s discretion, by withholding the funds from any payment(s) due the Agency after the date the assessment is determined.

* 1. Available Discounted Media Placements: Agency must keep the Lottery fully informed of any relevant media placements available to the Lottery on account of Agency’s dealings with third parties, together with any dates by which such discounted media space must be used by the Lottery in order to take advantage of the discount.
	2. Shipping/Freight Charges: Agency is expected to utilize lowest cost modes and carriers to safely transport their shipment. Estimates and invoices must include shipping/freight charges. The Agency is expected to utilize lowest cost modes and carriers to safely transport their shipment. All shipping/freight charges over $25 must have supporting pre-paid freight bills available upon request.
	3. Travel: Agency must receive prior approval from the Lottery Contract Manager for all travel. Agency staff will be held to the same guidelines and standards for business travel as California state employees. Pre-approved travel and expenses (including air travel and car rental) will be reimbursed at the current Department of Human Resources Approved Travel Rates for Excluded Employees ([www.calhr.ca.gov](http://www.calhr.ca.gov)).
	4. Miscellaneous Costs: Must be itemized with backup receipts.
	5. Revised Estimates: A revised estimate reflecting all services or charges which may amount to more than 10% of the original estimate must be approved by the Lottery prior to additional performance and must be accompanied by a written justification stating why the increase in cost was necessary. The requirement for a written justification will apply to multiple revised estimates where each amounts to less than a 10% increase over the original estimate, but the combined total exceeds 10%. Revised estimates should also include previous approved amounts and/or history of amounts. Total fiscal year expenditures cannot exceed the designated total fiscal year budget without prior written approval from Lottery Contract Manager or designee.

All mutually agreed to changes relating to any of the following areas must be followed by a revised estimate reflecting the changes:

1. Deliverable Description
2. Estimated Cost of each Deliverable including freight and applicable taxes (when applicable)
3. Deliverable Due Dates (when applicable)
4. Deliverable Acceptance Criteria/Mandatory Requirements

All canceled jobs must be followed by a revised closed estimate reflecting all canceled portions of the job and any expenses actually incurred prior to cancellation.

All closed jobs must be followed by a closeout report signed by both parties reflecting the actual closing amount. Once a Closeout Report/Closeout Estimate is received and signed by both parties, no further billing can be submitted to the Lottery for payment.

Agency may not change Lottery-assigned purchase order numbers and/or the estimate or invoice numbers after Lottery approval without prior approval by the Lottery Contract Manager.

1. FISCAL PROVISIONS
	1. Reduction of Funds

The obligations of the parties under this Contract are subject to the availability of funds appropriated by the Commission.

* 1. Frequency of Payment

Agency will be paid upon submission of an invoice, monthly in arrears, upon approval by the Lottery Contract Manager.

* 1. Payment and Invoicing

A. Payment

Agency will be paid in accordance with Exhibit B, Section 1 under Annual Agency Deliverables and Staff Plan and Compensation Proposal. In accordance with Government Code Section 927.6, payments will be made within 45 calendar days from date the Lottery receives an invoice, unless the invoice is disputed. All invoices will be paid minus any applicable offsets, taxes or withholds.

If the Lottery determines that an invoice was improperly executed, or that additional evidence of the validity of the invoice is required, the Lottery will notify Agency of a disputed invoice within 15 calendar days from receipt of the invoice.  Once the disputed invoice is corrected and Lottery approved, payments will be made within 45 days from receipt of the corrected invoice.

Where payment has not been issued within 45 calendar days from the Lottery’s receipt of an undisputed invoice, interest penalties will accrue as set forth in the California Prompt Payment Act. If Agency is a nonprofit organization and the value of the contract is less than $500,000, or if Agency is certified with the California Department of General Services as a small business, interest will accrue at a rate of 10% above the U.S. Prime Rate on June 30th of the prior fiscal year. However, if the amount of the penalty is ten dollars or less, the penalty is waived. Nonprofit organizations are ineligible to receive penalty payments if the value of the Contract is $500,000 or more.

For all other businesses, interest penalties will accrue at a rate of 1% above the daily rate for the Pooled Money Investment Account on June 30th of the prior fiscal year but will not exceed a total rate of 15%. Penalties of $100.00 or less are waived, as set forth in the California Prompt Payment Act.

B. Invoicing

Agency will submit invoices for each installment of the fee on or about the 1st and 15th day of the month noting the Lottery Contract purchase order number and listing the services rendered. Agency will submit invoices for the expenses incurred by the Agency on the Lottery’s behalf (including, but not limited to, production) in arrears on or about the 1st & 15th day of the month, noting the PO number provided by the Lottery and listing the services rendered, goods provided, and reimbursement claimed.

Invoices, including supporting documentation, may be emailed as an attachment to AccountingOps@calottery.com. Agency must include Agency’s name, date, and Contract number in the email subject line.

If Agency elects not to submit invoices by email, invoices must be mailed to:

**California State Lottery**

**Accounting Operations**

**700 North 10th Street, MS: 4-3**

**Sacramento, CA 95811**

The Lottery will review each invoice for completeness and accuracy. Unless disputed, payment will be made as approved by the Lottery Contract Manager within 45 days of receipt of the invoice. Agency must maintain documentation that supports invoices. Agency must submit such documentation to the Lottery upon request. All credits must be submitted to the Lottery as soon as possible. All invoices must be submitted within 90 days from the completed date of service. The Lottery Contract Manager may, at his/her discretion and with written approval, allow invoices to be submitted after 90 days.

After the final invoice is submitted, Agency must provide a Closeout Report/Closeout Estimate, signed by both parties, detailing billing history and actual dollars spent. Once a Closeout Report/Closeout Estimate is received and signed by both parties, no further billing can be submitted to the Lottery for payment.

Agency waives the right to receive any further payments under the Contract if no final invoice is received by the Lottery within 180 calendar days after the Contract is terminated or expires by its own terms.

* 1. Full Compensation

The compensation to be paid to Agency, except as otherwise provided herein, is in consideration for all of Agency’s services and administrative expenses and all applicable taxes, known or unknown.

* 1. Notice of Monies Due

The Lottery will notify Agency in writing when and if any monies are due the Lottery. Any monies Agency owes the Lottery must be paid to the Lottery within 30 days after the postmark of the notice of the amount due or the amount due will be deducted from compensation otherwise due to Agency by the Lottery.

* 1. Tax Reporting

Agency is notified that Internal Revenue Code section 6041 and California Revenue and Taxation Code section 18646 require the Lottery to report certain payments. No claims for payment will be processed by the Lottery without the necessary information specified therein. Agency agrees to abide by these reporting requirements and to provide that information to the Lottery.

* 1. Withholds
1. The Lottery has the right to withhold or delay payments to Agency, in whole or in part, if Agency fails to perform its material obligations under the Contract.
2. Should Agency cure the performance failure giving rise to the withheld or delayed payment, the Lottery will review the matter with Agency and determine, within its discretion, whether the Lottery will continue to withhold payment or otherwise offset money due Agency.

**EXHIBIT C
GENERAL TERMS AND CONDITIONS**

1. GENERAL PROVISIONS
2. Parties and Authorization

The parties to this contract are the California State Lottery (Lottery) and \_\_\_\_\_\_\_\_\_\_ (Agency). Each party acknowledges that it has read the Contract, understands it, and agrees to be bound by its terms. The person signing this Contract on behalf of Agency further warrants that he/she is an agent of Agency and is duly authorized to enter into this Contract on its behalf.

1. Initial Term of Contract

The initial Contract term is five years.

1. Option to Extend

The Lottery may unilaterally extend the Contract term under the same terms and conditions, including pricing, for up to two one-year extensions.

1. Emergency Extended Service

At the Lottery’s request, Agency will provide up to 12 months of additional emergency extended services, under the same terms and conditions, including pricing, upon expiration of the Contract term and any extensions.

1. Transitional Service for Agency Change

The Lottery may require continuation of the Contract under the same terms and conditions, upon 30 days’ notice, for multiple 60- to 90-day periods to facilitate transition to a new agency. Agency agrees to maintain the service in a state of readiness for any such periods after the completion of the Contract.

1. Full Force and Effect

This Contract is of no force or effect until it is signed by all parties and all approvals are secured ("execution"). Agency operates at its own risk if it commences performance before execution. Each party’s signature hereon constitutes a representation that all necessary approvals have been obtained by that party.

1. Amendment

The parties may amend this Contract by mutual written consent. No alteration or variation of the terms of this Contract will be valid or binding unless amended pursuant to this section, and no oral understanding or agreement not incorporated into the Contract is binding on the parties.

1. Agency Consideration

As consideration for the compensation paid to Agency under this Contract, Agency agrees to perform all services and to fulfill all responsibilities as duly authorized by the Lottery and as detailed in Exhibit A, Scope of Work.

1. RELATIONSHIP AND AUTHORITY
	1. Governing Law

This Contract is governed by and will be interpreted in accordance with California law. Agency acknowledges that the California State Lottery Commission (Commission) has the sole authority to exercise all powers necessary to effectuate the Lottery’s purpose, and that the Commission retains all such authority under the Contract, but only to the extent such audits and oversight, in the auditor’s opinion, do not violate applicable professional standards or undermine the integrity of the audit. Agency understands and agrees that its performance is subject to Lottery audit and oversight. Subject to these limitations, Agency has the power, authority, and discretion to act as may be necessary or desirable to perform the Contract properly, efficiently, fully, and completely.

* 1. Jurisdiction and Venue

The proposal process, the award procedure, and any contract resulting from this solicitation will be governed by and interpreted in accordance with this section. By signing the Contract, Agency acknowledges and specifically agrees that the jurisdiction for any action hereunder will be the Superior Court, State of California, and the venue for any action hereunder will be Sacramento County. As consideration for entering into the Contract, Agency waives access to any other court that may have concurrent jurisdiction inside or outside of California and also agrees to exhaust all contractual and administrative remedies before instituting litigation relating to the Contract.

1. OBLIGATIONS OF THE PARTIES
	1. Contract Managers

The parties’ Contract Managers are responsible for ensuring compliance with the terms and conditions of the Contract and, unless otherwise specified in the Contract, will have the authority to act for and bind their respective parties in connection with the Contract. Any change in Agency’s Contract Manager is subject to Lottery approval.

* 1. Key Personnel – Agency
1. The personnel specifically identified in the Agency Staff Plan and Compensation Proposal are considered essential to the work being performed under the Contract. Before removing, replacing, or diverting any identified personnel, the Contractor must, (1) request approval from the Lottery’s Contract Manager in writing and (2) submit justification (including proposed substitutions) in sufficient detail to permit evaluation of the impact on the Contract.
2. Agency may not remove, replace, or divert personnel listed in its Staff Plan and Compensation Proposal without the Lottery Contract Manager’s prior written consent.
	1. Prior Lottery Approval

The Lottery has no liability for payment for any work that Agency commences without prior (written and/or verbal) approval from the Lottery’s management.

* 1. Licenses and Permits

Agency must be licensed to do business in California and must obtain, at Agency’s expense, all licenses and permits required by law for accomplishing any work required in connection with this Contract. Agency must, upon request, provide the Lottery with copies of all required licenses/permits. In the event any licenses or permits expire at any time during the term of this Contract, Agency agrees to renew and provide the Lottery, upon request, with copies of the renewed licenses or permits.

* 1. Office in California

Agency must maintain an office in California for the entirety of the Contract Term.

* 1. News Releases/Social Media

Agency must not issue news releases or make any statement to the media pertaining to this Contract without the prior written approval of the Lottery, and then only in cooperation with the Lottery.

* 1. Confidentiality of Parties
1. Agency must keep confidential all information and materials related to the Contract and/or obtained through the course of work and must not disclose any such information or materials to third parties unless such disclosure is approved in writing by the Lottery, specifically required by court subpoena or order, or applicable professional standards, or otherwise specifically permitted by the Contract.
2. The California Public Records Act requires public disclosure, upon request, of documents that pertain to state business. Exceptions to this requirement are limited. The Lottery may, in its discretion, withhold Agency material specifically and conspicuously identified by Agency as confidential if Agency has provided sufficient legal justification for doing so. The Lottery is under no obligation to inform Agency that a request for information has been made or that documents are being released. However, the Lottery may, in its discretion, allow Agency the opportunity to provide the Lottery with further legal justification for withholding specific information. Unless it receives a court order to the contrary, the Lottery retains the right to determine whether an exemption to the Public Records Act applies to Agency information being sought. Under no circumstance will the Lottery be liable to Agency or to any other person or entity for disclosing any Agency material, regardless of its designation by Agency as trade secret or confidential information.
	1. Fiduciary Duty

Unless otherwise expressly agreed in writing, Agency will always act as a fiduciary and in the best interest of the Lottery.

1. GENERAL WARRANTIES AND REPRESENTATIONS

Agency warrants and represents the following:

1. Authority

Agency is authorized and prepared to enter into and fully perform the terms and conditions of the Contract. Agency has secured, or will have secured, at its own expense, and will maintain throughout the Contract term, all necessary rights, clearances, permits, governmental approvals, and licenses with respect to all material and elements embodied in, or used in connection with, the performance of the Contract.

1. Compliance with Law

Agency will comply with all federal, state, and local laws, ordinances, rules, and regulations applicable to its activities and obligations under the Contract.

1. No Infringement

The goods and services provided do not and will not, to the best of Agency’s knowledge, infringe any copyright, trademark, or other third-party owned intellectual property.

1. Performance Standards

All services that Agency provides under the Contract will be performed in a prompt, competent manner by properly trained individuals in accordance with applicable professional standards of Agency’s industry.

1. Minimum Staffing Levels

Agency will maintain the minimum staffing levels set forth in its Staff Plan and Compensation Proposal.

1. LOSS PREVENTION
2. Agency must acquire and maintain insurance policies, bonds, and securities (Coverage) and indemnify the Lottery as set forth herein. The required Coverage must remain in force throughout the term of the Contract and any extensions thereto, and copies certificates of insurance, must be provided to the Lottery upon request. Proof of Coverage, including certificates of insurance for each required policy, must be provided to the Lottery within 10 calendar days after execution of the Contract. In addition, proof of Coverage for renewals must be forwarded to the Lottery within 10 calendar days of Coverage expiration. Each insurance policy must be issued by companies that are rated A-minus or better by the AM Best Company or meet the approval of the Lottery. If Agency’s Coverage provider cancels any required policy or other Coverage, Agency must immediately notify the Lottery and obtain replacement Coverage. Failure to provide and maintain any required Coverage may result in termination of the Contract.
3. Agency may not perform services or incur expenses until proof of Coverage, including certificates of insurance for the required policies, are received by the Lottery.
4. Agency may request adjustment to Coverage requirements by submitting a request in writing to the Lottery Contract Manager. Agency may not adjust Coverage amounts or insurance liability limits below the amounts listed in this Contract without prior written approval of the Lottery.
	1. Workers’ Compensation

Agency must maintain Workers’ Compensation insurance for all of its employees who will be engaged in the performance of the Contract pursuant to the requirements of the California Labor Code.

* 1. Commercial General Liability Insurance

Agency must maintain Commercial General Liability insurance with limits of at least $1,000,000 for any one person and $2,000,000 for any one occurrence for death or bodily injury, and $1,000,000 for any one occurrence for property damage. The insurance policy must also include coverage for liabilities for premises, operations, products, advertising injury, and subcontractor operations. The policy must include the Lottery, Commission members, and Lottery officers and employees as additional insured, insofar as operations under the Contract are concerned.

* 1. Professional Liability/Errors & Omissions

Agency will maintain professional liability or errors & omissions insurance covering any damages caused in connection with the Contract by Agency’s error, omission, or negligent act. Limits of not less than $1,000,000 must be provided.

* 1. Indemnification
1. Agency will defend, indemnify, and hold harmless, at Agency’s expense, the State of California, the Lottery, the Commission, and all Lottery officers and employees and their respective successors, heirs, representatives, administrators and assigns, from and against any and all responsibilities, suits, judgments, awards, costs, damages, claims, demands, actions, losses, settlements, costs, expenses (including attorneys’ fees and expenses), and/or liabilities of every nature threatened or brought against, sustained or incurred by any of them, whether joint, several, or individual (hereafter referred to as “claims”) resulting or arising from or in any way connected with (1) any act or omission of Agency or any of its officers, employees, subcontractors, or agents, whether negligent, unauthorized, intentional, or otherwise; (2) any infringing use of third-party intellectual property; (3) the inaccuracy or breach of any covenants, representations and warranties made by Agency as they occur; and (4) the breach of a term or condition of the Contract by Agency. The provisions of this section will survive the termination or expiration of the Contract.
2. Agency will provide the Lottery Contract Manager with written notice of any action or suit threatened or filed against Agency that is related in any way to the Contract, within 48 hours of discovery.
3. The indemnities set forth herein are in addition to, and not in lieu of, any other indemnities provided hereunder or by law.
4. If the use of any element of advertising or other creative works developed, provided, used, or prepared by Agency is enjoined as a result of an infringement or other action or proceeding, the Agency must, at its own expense and at the Lottery’s option:
5. Procure for the Lottery the right to continue to use said element.
6. Replace said element with a comparable element that is non-infringing.
7. Modify said element so it becomes non-infringing; or
8. Remove said element and compensate the Lottery for any damages incurred as a result of the infringement.
	1. Clearances, Releases, Waivers, Contracts, and Licenses

Agency is solely responsible at its own expense for securing, during the preparation of advertising and marketing materials and prior to the execution, printing and/or airing of any advertising or marketing materials, any necessary searches, rights, clearances, releases, waivers, contracts, and/or licenses with respect to any and all elements used in the materials, including but not limited to third party intellectual property, names, likenesses, testimonials, scripts, musical compositions, creative and/or similar materials, elements, or rights embodied or to be embodied in materials developed, provided, used, or prepared by Agency under this Contract. Agency is solely responsible at its own expense for obtaining trademark, trade name, service mark, house mark, copyright, slogan, and/or logo (collectively referred as “mark”) searches on materials which are to be used as an element in a campaign theme, slogan, logo, or other advertising or promotional purpose by the Lottery. These responsibilities continue throughout the Contract term and any extensions. Agency must provide the Lottery with a written assessment of all searches upon request. Agency must also deliver to the Lottery, immediately upon request, written documentation evidencing (a) Agency’s exclusive ownership rights, or (b) its licensed rights as set forth above.

* 1. Media Liability

Agency must include a provision in its media purchase contracts providing that Agency is solely responsible for payment of all media invoices.

1. CONTRACT OVERSIGHT
	1. Background Investigations and Approval of Agency Staffing
2. The Lottery may conduct background investigations of Agency, its officers, directors, principals, investors, owners, employees, or other associates, and the officers, directors, principals, investors, owners, employees, and other associates of Agency’s parent entity, affiliates, subsidiaries, and subcontractors at any time during the life of the Contract, at the discretion of the Lottery Director. Agency understands and agrees that, in furtherance of the Lottery’s full disclosure requirements, any person associated with the performance of the Contract may be fingerprinted and may be required to complete a Personal History Statement and an Authorization to Release Personal Background Information form.
3. Agency may be required to reimburse the Lottery for necessary and reasonable costs incurred by the Lottery in conducting background investigations, including travel, lodging, per diem, document procurement, site inspections, and fingerprinting.
4. The Lottery may disapprove any Agency or subcontractor personnel to be assigned to the Lottery Contract for any reason, and all subcontracts must include a provision implementing this right.
5. Agency or subcontractor personnel must not be assigned to work on the Lottery Contract if they have ever been convicted of a felony, gambling-related offense, or a crime involving dishonesty.
6. Pursuant to California law, the Lottery may terminate the Contract based on the results of its investigations.
	1. Agency Evaluation

The parties’ Contract Managers may meet as often as necessary, upon the Lottery’s request, to review and evaluate progress and performance. Review and evaluation criteria will be established by the Lottery Contract Manager and may include a review of problem areas, future performance, and any other subject relating to completion of tasks under the Contract.

* 1. Disabled Veteran Business Enterprise/Small Business Participation Monitoring

Where applicable, the Lottery will monitor Agency’s disabled veteran business enterprise and small business participation. Documentation may be requested from Agency at any time.

* 1. Access to Financial and Accounting Records

Agency and its subcontractors must maintain and make available for Lottery inspection all Contract-related financial and accounting records and other documentation pertaining to the fulfillment of Contract obligations in accordance with generally accepted accounting principles and other procedures that may be specified by the Lottery. Agency must make these records and documents available to the Lottery upon request during the Contract term and for four years after the Contract expires.

* 1. Audit Provisions
1. Records Audit

During the Contract term and for four years thereafter Agency must provide all duly authorized representatives of the Lottery with full access to all records related to performance of the Contract and will allow authorized representatives to interview Agency employees with knowledge of the Contract and Contract-related records for auditing purposes. All duly authorized representatives of the Lottery may examine and copy all Contract-related records. Prior to any such audit, the Lottery will provide reasonable advance notice to Agency, and all audit activities that occur on Contractor’s premises will be conducted during normal business hours.

1. Right to Audit Agency’s Operations

The Lottery may audit Agency’s records, procedures, and operations as they relate to the Lottery. Audits may include both announced and unannounced inspections and on-site audits. Audits may include the inspection of place(s) where duties under the Contract are being performed, review of physical or logistical security controls, and review of information concerning any software provided under this Contract. The Lottery's auditors or authorized representatives may conduct the audits.

Agency must ensure that any subcontractors providing services under the Contract fully comply with the Lottery’s inspections and on-site audits.

* 1. Dispute Resolution
1. If a dispute arises out of the Contract remains unresolved after good faith negotiations between the Lottery and Agency, the parties will submit the dispute to binding arbitration unless the parties mutually agree to another form of alternative dispute resolution. Notwithstanding any dispute, Agency will proceed diligently with performance of the Contract.
2. Arbitration will be conducted under the Commercial Arbitration Rules of the American Arbitration Association. The parties to the arbitration will share equally in the costs of arbitration. Each party will be responsible for its own attorney’s fees and costs. The arbitration must be held in Sacramento County before an arbitrator who is acceptable to both parties. In the event that the parties cannot agree on an arbitrator, one will be appointed after either party petitions the court pursuant to California law. The arbitrator’s decision will be final and binding and will be provided in the proper form to be entered as a judgment in a court of competent jurisdiction in Sacramento County.
3. In the event that the parties agree on another form of alternative dispute resolution to address a particular dispute, this section will not be construed to limit the parties’ ability to utilize such a process. Any alternative dispute resolution process that is mutually agreed upon by the parties will be considered final and binding on both parties, and no further process will be permitted.
	1. Notice of Delay

Whenever Agency has knowledge that any actual or potential situation, including but not limited to labor disputes, delays or threatens to delay timely performance of the work under this Contract, Agency must immediately provide the Lottery Manager written notice including any relevant information.

1. EXPIRATION OR TERMINATION OF CONTRACT
	1. Expiration of the Contract

Absent early termination of the Contract as provided in this subsection, the Contract will expire at the end of its term and any applicable extension(s).

* 1. Termination for Default
1. The Lottery may, by written notice of default to Agency, terminate the Contract in whole or in part, at the Lottery’s sole discretion, if any of the following occur:
2. Agency fails to deliver material products within the time specified in the Contract or any extension.
3. Agency fails to make progress, such that it endangers performance of the Contract.
4. Agency fails to perform any material provision of the Contract.
5. Agency fails to sustain a level of economic viability in its overall operations such that the Lottery can reasonably be assured of Agency’s ability to continue to comply with all operational requirements of the Contract, including those provisions relating to loss prevention.
6. A court of competent jurisdiction finds that Agency, its principals, or its assigned personnel has failed to adhere to any law, ordinance, rule, regulation or order, where such failure may call into question the security, integrity or competence of Agency to serve as a Lottery agency.
7. Agency fails to communicate with the Lottery on material matters such that performance of the Contract is endangered.
8. Agency breaches the Contract’s standard of confidentiality.
9. Agency engages in conduct that is likely to create a negative public impression or that creates the appearance of impropriety with respect to the Lottery, Agency, or the State of California.
10. Agency has knowingly or with reckless disregard for the truth furnished any material statement, representation, warranty, or certification to the Lottery that is false, deceptive, or incomplete.
11. The Lottery may exercise its right to terminate the Contract under this subsection if the Lottery Contract Manager notifies Agency of the breach and Agency does not cure it within the timeline stated by the Lottery, which will not be less than 30 days. In that event, the Lottery may obtain a replacement contractor on an emergency or interim basis to provide the services and/or goods which Agency agreed to provide under this Contract. The Lottery will collect from Agency the difference between the compensation stated in this Contract and the actual cost to the Lottery of obtaining and utilizing an interim replacement agency. The Lottery will also collect actual costs, including administrative expenses and re-procurement costs, incurred to process and procure a permanent replacement agency. The Lottery may collect monies it is due by offsetting the amount from any payments due Agency, by perfecting and executing on any security interest provided under the Contract, or by any other available means.
12. If the Lottery terminates the Contract for default, the Lottery may require Agency to transfer title and deliver to the Lottery any 1) completed or partially completed goods and materials; and 2) license rights to any intellectual property that Agency has produced or acquired for the Contract, in addition to any other property in Agency’s control in which the Lottery has an ownership interest. The Agency must protect and preserve property in its possession in which the Lottery has an interest. Where specified, the Lottery will pay the Contract price for any completed goods, materials, and license rights that are delivered and accepted pursuant to this section. Where payment amount is not specified in the Contract, Agency and the Lottery will agree on a reasonable amount of payment for goods, materials, and license rights delivered to, and accepted by, the Lottery. Failure to agree will be a dispute subject to the section herein entitled Dispute Resolution. The Lottery may withhold from any amounts due the Agency any sum the Lottery determines is necessary to protect the Lottery against loss because of outstanding liens or claims of lien holders.
13. The rights and remedies of the Lottery set forth in this subsection are in addition to any other rights and remedies provided by law or under the Contract.
	1. Termination Based on Determination of Illegality

The Lottery may terminate the Contract, in whole or in part, and reduce Agency’s future compensation under the Contract immediately upon its determination that an activity or operation supported by the Contract is no longer lawful for reasons including, but not limited to, court decision, legislative action, administrative decision, or advice of counsel. Upon receipt of notice of termination or reduction based on a finding of illegality, Agency will immediately cease performance of such activity or operation and mitigate its damages. Agency will submit, within 90 calendar days of the receipt of a notice of termination or reduction pursuant to this subsection, a compensation reduction proposal. If Agency and the Lottery fail to agree on the amount of compensation reduction, the Lottery will reduce the compensation as reasonably determined by its calculations.

* 1. Termination for Convenience

The Lottery retains the option to immediately terminate the Contract for the Lottery’s convenience upon advance written notice (Notice of Termination) to Agency of no fewer than 30 days. The Notice of Termination will contain the effective date of termination. On the date of termination set forth in the Notice of Termination, Agency will cease performance and mitigate damages. Agency will be entitled to compensation, upon submission of invoices and proper proof of claim, for the portion of the Contract that was satisfactorily rendered or provided before the effective date of termination. The Lottery may also compensate Agency for expenses incurred as a result of binding commitments made in connection with Agency’s performance of the Contract, provided that the commitments were incurred prior to receipt of Notice of Termination and only with the written approval of the Lottery Contract Manager. Compensation for such expenses lies within the sole discretion of the Lottery. Agency must submit proof of such expenses incurred to the Lottery’s satisfaction. In the event of termination for convenience, Agency must furnish copies of all materials related to performance hereunder at the time of termination.

* 1. Parties' Responsibilities upon Termination and Transfer to New Agency

Upon termination or other expiration of the Contract, each party will assist the other party in the orderly termination and transfer of all Contract-related assets, tangible, and intangible, as may facilitate the orderly, non-disrupted business operations of each party. Agency will continue to provide goods and services pursuant to the Contract until migration to a replacement contract with a new agency is complete. If it is necessary for the migration effort to continue beyond the term of the Contract, Agency agrees to extend the Contract as provided herein for the time necessary to complete the migration and orderly transfer.

1. MISCELLANEOUS PROVISIONS
	1. Force Majeure

Neither Agency nor the Lottery will be liable for any delay in or performance failure under the Contract due to a Force Majeure occurrence, provided that Agency uses reasonably diligent efforts to avoid or otherwise minimize the impact of an event of Force Majeure on Agency’s performance. Any such delay in or performance failure will not constitute default or give rise to any liability for damages. The existence of a delay or failure will extend the period for performance to the extent determined by the Lottery Contract Manager.

For purposes of this Contract, “Force Majeure” means an act of God or public enemy, earthquake, fire, flood, explosion, epidemic, quarantine restriction, strike, freight embargo or closure of all major access roads to geographic area, action of the elements, governmental interference, rationing or any other cause which is beyond the control of the party affected and which, by the exercise of reasonable diligence, a party is unable to control.

* 1. Waiver of Provisions

No term or provision of this Contract will be deemed waived, and no breach excused unless such waiver or consent to the breach is in writing and signed by the signatory to this Contract, or his or her successor, on behalf of the party against whom such waiver or consent is sought to be enforced. No consent by either party to a waiver or a breach by the other, whether express or implied, constitutes consent to, waiver of, or excuse for any other breach or subsequent breach except as expressly provided in the written waiver or consent.

* 1. Order of Precedence

The Contract consists of the following documents. If there are inconsistencies or ambiguities in the Contract, the following documents will be used to interpret the Contract in this order of precedence:

1. This Contract, with all exhibits, attachments, addenda, and other incorporated documents, and all amendments thereto.
2. The Lottery’s RFP #002925, with all exhibits, attachments, addenda, and other incorporated documents, and all amendments thereto.
3. Agency’s response to RFP #002925 and any clarifications submitted in response to requests made by the Lottery.
	1. Notices in General

Any notice, request, demand, consent, waiver, or other item required or permitted under the Contract or under applicable law must be in writing and will be deemed duly given or made only if: (a) it is personally served upon the party intended to receive it, in which case it is effective when delivered; (b) it is sent by certified mail, return receipt requested, postage prepaid, addressed to the receiving party at the address set forth below, in which case it is effective upon receipt at that address by any agent or employee of the receiving party; or (c) it is transmitted by email to the party’s Contract Manager, in which case it is effective either (1) as of the date the email is sent, if sent before 5:00 p.m. Pacific Time on a Lottery business day or (2) on the next Lottery business day, if transmitted after 5:00 p.m. Pacific Time or on a non-Lottery business day. A party may change its contact information for purposes of receiving notice only by giving written notice to the other party in the manner set forth herein.

**Lottery** **Contractor**

California State Lottery

Attn:

700 North Tenth Street

Sacramento, CA 95811

Phone:

Email:

* 1. Invalidity in Whole or in Part/Severability

If any provision of this Contract is found to be illegal, invalid, or unenforceable under any applicable rule or law, such invalidity will not affect other provisions which can be given effect without the invalid provision, and the invalid provision will be deemed severable.

* 1. Execution of Counterparts

The parties agree that an executed copy of this Contract has the same force and effect as the original.

* 1. Sections and Subsection Headings

The section and subsection headings contained herein are for convenience of reference only. They will not be used to interpret or define the scope of any provision of the Contract.

* 1. Assignment
1. Agency may not assign any performance of or payment for the Contract or any portion of the Contract without the prior written consent of the Lottery, which may be withheld at the Lottery’s sole discretion. Any attempt by Agency to make such assignment without the prior written consent of the Lottery will be void and will constitute a material breach of the Contract.
2. All assignment requests must be submitted in writing to the Lottery Contract Manager.
3. In addition to obtaining the prior written consent of Lottery, any attempt to assign performance of the Contract, or any portion of the Contract, is void unless all of the following conditions have been met: (1) the terms of the Contract are included in the assignment and agreed to by the assignee; (2) the Lottery has reviewed and approved all pertinent disclosure information; and (3) the Lottery has reviewed and approved the final written assignment.
	1. Subcontracting
4. Agency may subcontract part of its work upon Lottery approval. However, nothing contained in this Contract creates any contractual relationship, third party or otherwise, between the Lottery and any subcontractors. Furthermore, Agency agrees to be as fully responsible to the Lottery for the acts and omissions of its subcontractors and of persons either directly or indirectly employed by them as it is for the acts and omissions of persons directly employed by Agency.
5. Agency must follow the Lottery’s requirements for procuring goods and services if the estimated subcontracted amount is over $100,000. The requirements are set forth in California Lottery Regulations, which can be located [here](https://static.www.calottery.com/-/media/project/calottery/pws/pdfs/ada---approved-regulations_04-05-25_ada.pdf?la=en&rev=e42569cf051a44ada2c977bc5dea3c96&hash=DCF2471399869632FD8BAFDE7A05D573).
6. Upon request, Agency must provide (1) verification that each subcontractor agrees to be bound to Agency in the same manner and in all respects as Agency is bound to the Lottery, (2) a detailed description of the work to be subcontracted, and (3) a copy of each proposed written subcontractor. The Lottery Contract Manager may approve or disapprove a subcontractor at any time.
7. Agency's obligation to pay its subcontractors is independent from the Lottery's obligation to make payment to Agency. The Lottery will not make direct payment to subcontractors, nor will it be responsible for monies owed by Agency to subcontractors.
	1. Independent Contractor

Agency will be an independent contractor of the Lottery. Agency will have sole, absolute, and exclusive control of the manner and means of its performance under the terms of this Contract except as expressly set forth herein.

* 1. Joint Ventures and Partnership – Joint and Several Liability

Each participant in a joint venture, proposal, or partnership is jointly and severally liable for the performance of the entire Contract, and each participant must designate, in writing, one individual having authority to represent the Agency in all matters relating to the Contract. The Lottery assumes no responsibility or obligation for the division or orders, purchases, or payments among participants.

* 1. Travel and Expenses

Reimbursement for travel expenses is subject to pre-approval by the Lottery Contract Manager. If approved, travel and expenses (including air travel and car rental) will be reimbursed at the current California Department of Human Resources, approved travel rates for excluded employees (available at [www.calhr.ca.gov](http://www.calhr.ca.gov)). All travel reimbursements incurred by the Agency will count against the maximum amount obligated under the Contract.

* 1. Standards of Conduct

Agency is responsible for maintaining satisfactory standards of employee competency, conduct, appearance, and integrity. Agency is responsible for ensuring that, while on Lottery premises, Agency employees do not disturb papers on desks, open desk drawers or cabinets, or use Lottery equipment except as authorized.

* 1. Audit Requirements for Media Purchases

The Lottery Internal Audits Office or its designee may, with reasonable notice, audit selected promotional media, sponsorships, and/or media purchases invoices and other related documents to confirm media purchase costs. Agency must, upon request, provide copies of documentation to the Lottery Internal Audits Office or its designee.

Agency must obtain vendor billings log or other documentation to verify invoice/affidavits accuracy and maintain the documentation for four years after Contract expiration and upon 15 days’ notice, the Lottery Internal Audits Office or designee may require access to the verification documents/paperwork to verify billing.

* 1. Internal Control Audit

Agency will, upon approval of the Lottery Contract Manager, retain an independent certified account firm(s) to conduct an independent Internal Control Audit of Agency’s control systems. The cost of the external certified accounting firm(s) will be reimbursed by the Lottery provided it results in the type of report specified by the Lottery’s Contract Manager and covers the control examined objectives and the time period he or she sets forth. Audits required pursuant to this section will occur no more frequently than one every two years.

* 1. Samples

Samples of items, work, goods, materials, products, deliverables, services, advertising, and similar products and efforts as outlined within the SOW may be required by the Lottery for inspection and must be furnished free of cost to the Lottery.

* 1. Nonexclusive Rights

Agency understands and agrees that the Lottery does not grant Agency exclusive rights to provide to Lottery those services listed in the Scope of Work for this Contract. The Lottery reserves the right to acquire any services through another agency at any time. The Lottery’s good faith exercise of this right will not constitute a breach of the Contract.

* 1. Nondiscrimination Clause

During the performance of this Contract, Agency and its subcontractor(s) must not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of race, religion, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, age, sexual orientation, or gender. Agency and its subcontractor(s) must ensure that the evaluation and treatment of their employees and applicants for employment are free of such discrimination and harassment. Agency and its subcontractors must comply with provisions of federal law and the Fair Employment and Housing Act and the applicable regulations promulgated thereunder. Violation of this provision is grounds for termination for breach, and any loss of revenue sustained by the Lottery by reason thereof will be borne and paid for by the Contractor.

Agency must include the nondiscrimination and compliance provisions of this clause in all subcontracts for work under the Contract. Agency and its subcontractor(s) must give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other contract. Agency and its subcontractor(s) must permit access to their records of employment, employment advertisement application forms, and other pertinent data and records by the Department of Fair Employment and Housing or any agent designated by the Lottery to investigate and ascertain compliance with this provision.

1. OWNERSHIP AND DEVELOPMENT
	1. Lottery Intellectual Property
		* 1. Intellectual property owned by the Lottery, including, but not limited to, trademarks, logos, trade secrets, and copyrights, is hereinafter collectively referred to as “Lottery Property.”
			2. Lottery Property is and will remain at all times the sole and exclusive property of the Lottery.
			3. Unless approved by the Lottery Contract Manager in writing, Lottery Property may not be revised or altered by Agency in any way and will be displayed as provided and approved by the Lottery.
			4. Lottery Property will be used by Agency in a professional manner and solely in connection with the activities authorized under the Contract. Agency will not permit any third party to use Lottery Property without the express prior written approval of the Lottery. Lottery Property may not be used by Agency in any manner that: diminishes the value of, or otherwise dilutes the Lottery’s trademarks; discredits the Lottery or tarnishes the Lottery’s reputation or goodwill; is false, misleading or likely to cause confusion; is fake or deceptive; violates the rights of others; violates any federal, state, or local law, regulation, or other public policy; or mischaracterizes the relationship between the parties, including but not limited to the fact that the Lottery is a separate and distinct legal entity from Agency.

* + - 1. The Lottery will have the right, from time to time, to request complete samples of use of Lottery Property by Agency from which the Lottery may determine compliance with these terms and conditions.
			2. Use of Lottery Property by Agency will create no rights for Agency in or to such Property or for its use beyond the terms and conditions of this Contract. All usage of Lottery Property by Agency will terminate immediately upon the termination or expiration of this Contract. Agency’s obligations to protect Lottery property will survive the termination or expiration of this Contract.
	1. Ownership of Work Product
1. The Lottery will own and retain all right, title. and interest in and to all goods, materials, products, deliverables, services, and advertising, including all tangible and intangible objects, things, and concepts, outcomes to be achieved, hardware, software, or design products, concepts, media, social media, or documents, and all other results and proceeds of the services hereunder, in all stages of completion, including without limitation any and all graphics, designs, artwork, images, reports, documents, materials, techniques, ideas, concepts, logos, slogans, specifications, user interfaces, data, data templates, database structures and fields, outlines, drafts, derivatives, scripts, know-how, algorithms, software, computer code, routines or subroutines, specifications, plans, notes, drawings, designs, text, audiovisual works, inventions, data, information, and other items, expressions, works of authorship, or work product of any kind that are authored, produced, created, conceived, collected, developed, discovered, or made by Agency in connection with the services or which relate in any manner to the services or the deliverables or which result from any work performed by Agency for Lottery, including without limitation any and all copyrights, database rights, and other intellectual property rights therein (collectively the “Work Product”). To the maximum extent permitted by law, the Lottery will be deemed to be the "author" of all copyrightable Work Product, and all such Work Product will constitute "works made for hire" under the U.S. Copyright Act (17 U.S.C. §§ 101 et seq.) and any other applicable copyright law. Agency hereby waives any and all moral rights or equivalent rights under the laws of any applicable jurisdiction (including without limitation rights of integrity and attribution) in and to the Work Product. To the extent that any Work Product does not constitute a work made for hire, Agency hereby irrevocably transfers and assigns to Lottery all right, title, and interest in and to the Work Product, including without limitation all copyrights, patent rights and patents, trademarks, and other intellectual property and proprietary rights therein throughout the world.
2. Agency acknowledges and agrees that without limiting any section herein, the rights vested in and transferred to Lottery in and to the Work Product include without limitation the following:
3. Copyright. The Lottery will be the sole owner of the undivided interest in all copyrights and all similar or equivalent rights throughout the world in the Work Product, whether vested, contingent, or future, including without limitation all economic rights and the exclusive rights to reproduce, fix, adapt, modify, translate, create derivative works from, manufacture, market, introduce in circulation, publish, make available, distribute, sell, license, sublicense, transfer, rent, lease, transmit or provide access electronically, broadcast, display, perform, enter into computer memory, and use the Work Product, all modified and derivative works thereof, and all portions and copies thereof in any form.
4. Moral Rights. Agency and all employees, persons, agents and subcontractors, and other entities who may have claims of moral rights (or similar or equivalent rights under the laws of any jurisdiction) in any part of the Work Product, have agreed or Agency will obtain their agreement that (a) they will have no objection to publication, use, and exploitation of the Work Product as contemplated by this Contract; (b) they will remain anonymous authors without attribution or credit, acknowledging that the Lottery or its designees may be designated as author; (c) the Lottery or its successors, assigns, or licensees may make future modifications and adaptations to the Work Product, and may make disclosure and disposal of the Work Product, and any modifications thereof, in the manner that the Lottery or its successors, assigns, or licensees see fit, without any right of approval, withdrawal, or public renunciation by such persons; and (d) their remuneration for the Work Product is complete, adequate, and reasonable. For any and all such rights in the nature of moral rights or otherwise that are not capable of vesting in or transfer to the Lottery under applicable law, Agency waives and agrees never to assert such rights against the Lottery or its successors, assigns, or licensees, and to cause its employees and subcontractors to agree to the foregoing covenants.
5. Patent, Design, Trademark Rights. The Lottery will be the sole owner of all rights in and to any inventions, designs, database rights, and marks conceived, created or developed in the course of creation of the Work Product, including without limitation, all utility and design patent rights and equivalent rights in and to such inventions and designs, and all trade and service mark rights, throughout the world.
6. Exclusive Worldwide License. In the event that by operation of law, notwithstanding the provisions of this Contract and/or Agency’s execution of any further documents to effectuate the transfer of rights to the Lottery hereunder, Agency is deemed to have retained rights in any portion of the Work Product, Agency grants to the Lottery, its successors, assigns, and licensees, an exclusive, irrevocable, worldwide, fully-paid, royalty-free license to reproduce, fix, adapt, modify, translate, create derivative works from, manufacture, have manufactured, introduce into circulation, publish, distribute, make available, sell, license, sublicense, transfer, rent, lease, transmit or provide access electronically, broadcast, display, perform, enter into computer memory and use and otherwise exploit the Work Product, all modified and derivative works thereof, all portions and copies thereof in any form, and all inventions, designs and marks embodied therein, throughout the world in all media whether now known or hereafter devised.
7. Rights in Tangible Media. The Lottery will be the sole owner of all tangible and intangible copies, documents, magnetic, or optical media, or other materials, chattel, or personal property created by or for Agency in connection with this Contract. Upon written notice from the Lottery, Agency will deliver to the Lottery all embodiments of the Work Product in electronic and tangible formats as specified by the Lottery, and/or destroy and certify destruction of all copies of the Work Product in Agency’s possession or control. Agency will maintain the Work Product and other materials of the Lottery in accordance with the Lottery’s information security requirements and will certify in writing compliance with such requirements upon request.
8. Applications, Renewals, Further Assignments and Transfers. The rights vested in, assigned to, transferred, and/or licensed to the Lottery hereunder include without limitation: (a) the exclusive right to make and secure applications and registrations of copyright and other intellectual property rights; (b) the exclusive exercise of such intellectual property rights for the unlimited, entire period of such rights throughout the world; (c) the exclusive right to renewals, reversions, and extensions of such intellectual property rights; (d) the exclusive right to authorize, transfer, license, sublicense, deal in, dispose of and assign others to own or exercise such rights, title, and interests; and (e) the exclusive right to initiate, pursue, prosecute, and settle past, present and future claims of infringements relating to such intellectual property rights. Without limitation, Agency acknowledges that all rights of every kind and nature whatsoever in the Work Product may be exploited, assigned, and licensed by the Lottery to such third parties as it sees fit, and the Work Product is expressly acknowledged to be specially ordered and commissioned by the Lottery.
	1. Acknowledgments

Agency acknowledges and agrees that the Lottery is the exclusive holder of all copyright, trademark, patent, and other intellectual property and proprietary rights in the Work Product worldwide and that Agency has no right to and will not directly or indirectly reproduce, fix, adapt, modify, translate, create derivative works from, manufacture, market, introduce into circulation, publish, distribute, sell, license, sublicense, transfer, rent, lease, transmit or provide access electronically, broadcast, perform, display, enter into computer memory, or use or exploit the Work Product, or any portion or copy thereof in any form, or any such rights, or authorize or assign others to do so, or derive any other work from concepts, information, or elements of the Work Product, or permit any third party to do any of the foregoing, except as permitted by this Contract. In the event that the Lottery provides Agency with technology, software, resource files, tools, and other materials with which to prepare the Work Product, Agency will safeguard and use such materials only for the purpose of preparing the Work Product and return such materials and all copies thereof at any time upon request of the Lottery.

* 1. Further Assurances

At the Lottery’s expense, but without payment of additional compensation, Agency will execute all documents and take all actions necessary or reasonably requested by the Lottery to document, obtain, maintain, perfect, or assign its rights to the Work Product. Agency will also cause its employees, agents, and subcontractors to execute such documents and take such actions as described above. If Agency fails or refuses to execute any such instruments within 10 business days after the Lottery’s request, Agency hereby appoints the Lottery as Agency's attorney-in-fact (this appointment to be irrevocable and a power coupled with an interest) to act on Agency's behalf and to execute such documents. Agency will not contest the validity of the Lottery's rights in the Work Product and will cause its employees, agents, and subcontractors to comply with the foregoing. All such Work Product will be deemed to be the confidential, proprietary, and trade secret information of the Lottery.

* 1. Third-Party Materials

Agency will not disclose to the Lottery or use in its work any trade secrets or confidential information of a third party which Agency is not lawfully entitled to disclose or use in such manner. Agency will not use any equipment, supplies, facilities, computer code, work product, inventions, materials, or intellectual property of any other party (the "Third-Party Materials") in any Work Product or in Agency's performance under this Contract unless: (a) Agency has the full right and authority to do so without violating any rights of any third party; (b) Agency has obtained all necessary rights to enable Agency to perform its obligations under the Contract and grant the rights granted herein and to permit the Lottery to utilize the Third-Party Materials as contemplated under this Contract at no additional cost to the Lottery; (c) the Lottery's use of such Third-Party Materials will not restrict or impair in any manner its use, in perpetuity, of any deliverables or Work Product or subject the Lottery to any obligation or liability; and (d) such Third-Party Materials are specifically identified to the Lottery in writing in advance of any use and the Lottery has agreed in writing to such use.

* 1. Transfers and Consents

Agency will secure in writing in form satisfactory to the Lottery all transfers of rights and other consents necessary for Agency to make the assignments, licenses and other transfers set forth in this section. Without limitation, Agency will secure written agreements and consents from its employees and subcontractors that all works created pursuant to this Contract (including the Work Product) fall within the scope of their employment duties or engagement, as applicable, and that all economic rights in such works vest in Agency as the employer and are fully transferable, and Agency will secure such written transfers of rights and all other required consents from all other persons or entities whose services were, are or will be rendered in connection with the Work Product. Upon request, Agency will provide the Lottery with copies of all such contractual documentation and will include the Lottery as a third-party beneficiary of such agreements or cause such parties to execute a further acknowledgment and assignment for the benefit of the Lottery if requested.

1. CALIFORNIA LOTTERY INFORMATION SECURITY STANDARDS
	1. Information Security

 Agency acknowledges and agrees that it may, in its performance of the Contract, collect, generate, and/or have access to information and data pertaining to or provided by the Lottery and/or its customers (collectively, “Lottery Data”). Agency also acknowledges and agrees that proper information security requires protecting the integrity, availability, and confidentiality of confidential, sensitive, and personal information and the resources used to enter, store, process and communicate such information.

 To this end, in performing the Contract, Agency must establish and maintain adequate security controls, policies, standards, and procedures to prevent unauthorized access to, and protect the confidentiality, integrity, and availability of, Lottery Data, assets and services.

 Agency must operate in accordance with California state and federal laws, and all other applicable laws, regulations, and rules, as well as best industry practices, related to the protection of information assets and the timely and efficient management of security incidents, including corrective action.

* 1. Data Confidentiality, Integrity, Availability and Management

Lottery Data will be collected and retained by Agency only for legitimate business purposes associated with the Contract. All electronic Lottery Data, whether at rest or in transit, must comply with Lottery’s Encryption Policy. Agency’s data handling processes must, throughout the term of the Contract, comply with the Lottery’s Information Security policies and Information Security Program Manual and meet or exceed the required level of protection. Copies of the applicable policies will be provided by the Lottery.

Upon Contract expiration or termination, or as directed by the Lottery during the term of the Contract, all Lottery Data in Agency’s possession must be returned to Lottery or destroyed beyond recovery, at the Lottery’s option. Such data destruction or return must be completed, at Agency’s cost and expense, within a mutually agreed upon timeframe, but in no case later than 90 days after Contract expiration/termination.

* 1. Agency Responsibilities

Information security must be ensured by Agency, as Agency may have physical or electronic access to the Lottery’s confidential, sensitive, or personal information. This information may be contained in systems that directly support the Lottery’s business operations. This includes IT hardware and software, and the services associated with the management, operations, maintenance, programming and system administration of computer systems, networks, telecommunications systems, and social media. This also includes access to printed materials and other paper records.

Agency and all Agency personnel must not use or redistribute any Lottery Data processed, stored, or transmitted by Agency, except as specified in the Contract or upon written Lottery approval.

* 1. Information Security Incident

Agency must disclose to the Lottery any Information Security Incident. An Information Security Incident is an occurrence that actually or potentially jeopardizes the confidentiality, integrity, or availability of an information system or the information the system processes, stores, or transmits associated with the Lottery Contract.

Agency must notify the Lottery Contract Manager, the Lottery Deputy Director of Security and Law Enforcement (SLED), and the Lottery Information Security Office within two hours after discovery of the incident.

To the extent that the Information Security Incident includes or is reasonably believed to include the acquisition of personal information, as defined in California Civil Code section 1798.29, by an unauthorized person, Agency must notify the Lottery Contract Manager, the Lottery Deputy Director of SLED, and the Lottery Information Security and Privacy Office immediately following discovery.

If the Lottery determines that disclosure of an information security breach is required under section 1798.29, or any other applicable law or regulation, Agency will diligently assist the Lottery in gathering all necessary information for the Lottery to comply with the disclosure requirements set forth therein. In addition, if the information security breach arises from the negligence or willful misconduct of the Agency, or its agents, employees, or subcontractors, Agency will reimburse the Lottery for any costs incurred in connection with the breach; such costs may include, but will not be limited to, the cost of preparing and delivering required notifications and up to 12 months of identity theft prevention and mitigation services for any California residents whose personal information may have been compromised, if the Lottery determines that such notifications and/or services are required by applicable law, consistent with industry standards or otherwise reasonably necessary to safeguard the Lottery’s business standing or reputation.

**Information Security Incident Contact Information:**

Lottery Contract Manager

Name:

Email:

Phone:

Lottery Deputy Director, Security and Law Enforcement Division (SLED)

Name:

Email:

Phone:

Lottery Information Security and Privacy Office

Email:

Phone:

* 1. Information Security Audit

Agency must keep audit logs of any access or other activities associated with Lottery information. Refer to the Information Security Program Manual, Security Audit Log (Event Log) Section for specific requirements.

The Lottery has the right to audit Agency’s information security controls and associated plans and processes to verify compliance with the Contract.