

## **Questions/Responses pursuant to Section 4.D. of the Phase I - RFP/Q**

The following are the City's responses to questions received by the City which the City has determined to be of general interest in helping to clarify the Phase I-RFP/Q:

### **Question #1**

In accordance with Section 4(D) of the City of Springfield Phase I-RFP/Q that was distributed to potential gaming license bidders last week, we submit the following request for clarification related to Section 2.A(9) of the Phase I-RFP/Q questions (set forth below).

Request for Clarification:

May Proposers define "committed" for purposes of responding to this question as those projects that proposer (directly, or through its affiliates) is pursuing or seeking to develop only in those jurisdictions in which (a) gaming has been legalized for the opportunity in question and (b) for which the jurisdiction in question has issued a Request for Proposal or other similar invitation to bid.

Rationale:

Our company and many others that may be responding to the City of Springfield, Phase I-RFP/Q, often pursue gaming opportunities in jurisdictions over different periods of time and with varying degrees of focus and expenditure of resources and money. The level of activity and interest depends upon many factors, varying from the nature of the legislation being passed or considered for passage, the level of existing competition in and around the market, and the level of local support.

To the extent that the jurisdiction in question has not:

- (a) met all of the legal requirements (often dictated by laws or the constitution of the jurisdiction in question) to permit the jurisdiction to invite bidders to participate; or
- (b) has not established an RFP process to bid the project (the terms of which can dictate a company's ultimate interest in seeking a gaming license in the market); or
- (c) has not established the regulatory environment or governing body that would manage the bidding process or regulate the development or operation of such project,

We do not view our company as being in a position to "commit" ourselves to the opportunity or potential project in question. That is regardless of the amount of time or money the company may spend in pursuit of the opportunity prior to those threshold items being satisfied.

We also believe it is too subjective to attempt to determine a bidder's ultimate chances of success in the market in question as a way to determine its level of commitment. Before an RFP is issued, whether the jurisdiction in question would want to award a bidder a project is less

important than whether the bidder will want to proceed with the opportunity after understanding the terms under which it will have to apply for and operate the potential opportunity.

### Response

The City recognizes that the world class casino companies it hopes to attract are presented with numerous opportunities to deploy their capital. Accordingly, the City needs a level of comfort that the proposer or proposers it selects to negotiate a host community agreement will, to the extent reasonably foreseeable, be in a position to finance their proposed project in the City. At the same time, the City is mindful of the fact that a proposer responding to Section 2.A(9) of the Phase I-RFP/Q may need to better understand how the City views the point in time when a proposer has “committed” to a project.

The City defines “committed” as: a jurisdiction in which no licenses have yet been issued, or a jurisdiction in which additional licenses currently are available or in which additional licenses may reasonably be expected to become available: (a) gaming is legal; (b) an RFP has been issued, or the process for issuing the RFP is in place or a license may be applied for without an RFP; (c) the regulatory/approval process is in place or is being put in place; and (d) management has decided to pursue the opportunity.

The City recognizes that even if this definition is met, not all projects being pursued by a proposer will be consummated. The City expects to discuss with proposer any projects listed in response to this question in order to better understand whether and how such projects may impact the project being proposed for the City. In addition, the City expects to discuss with a proposer any other commitments of material capital that management reasonably believes are foreseeable over the next 24 months.

### **Question #2**

Who will be making the decision on behalf of the City as to whether a Phase I – RFP/Q proposer is qualified? Is this person or group a "public body" under the Massachusetts Open Meeting Law?

### Response

The City’s Mayor will be making the decision. The Mayor is not a “public body” under the Massachusetts Open Meeting Law.

### **Question #3**

Is it intended that the Webpage will be the official source for all notices and information regarding this process for all legal purposes?

### Response

See Section 4. B. of the Phase I-RFP/Q which states, in relevant part:

“The City will post all information concerning the RFP/Q process on the Webpage including, without limitation, an addenda, the City’s written responses to any proposer questions, or other documents or information relevant to the RFP/Q process.” The City has no more to add to this statement.

**Question #4**

The request asks for detailed information on the entity that will be managing the project including organizational charts, etc. How is a proposer to respond if the project operating or project managing entity has not yet been created? Who would then execute the Consent and Release form in Exhibit B? What is the effect on the submission, the process and the determination if there are any changes in the project operating or managing entity at any time during the process?

**Response**

The proposer should respond with whatever current information the proposer has as of the due date for responding to the Phase I-RFP/Q. The Consent and Release must be executed by the proposer and its parent company. Assuming that the proposer to the Phase I-RFP/Q is selected to participate in the Phase II-RFP/Q process, any changes in the project operating or managing entity would need to be indicated in the proposer’s response to the Phase II-RFP/Q.

**Question #5**

How long does the continuing duty to disclose changes in information included in a response continue? Is there any materiality threshold for this duty?

**Response**

Such duty to disclose would continue until (i) the host community agreement is executed, approved by City Council and voted upon by City residents, assuming the proposer was selected to enter into a host community agreement, or (ii) the announcement of the proposer or proposers selected to negotiate a host community agreement for all other proposers.

**Question #6**

The City reserves the right to obtain and consider information from other sources. Will that information be made part of the public record including an identification of the source? Will any proposer affected by that information be given an opportunity to respond to that information?

### Response

The City does not currently expect to obtain information from other sources. Should the City obtain any such information, how it will be treated has not yet been determined and will likely depend on the source and type of information obtained. For example, it is possible that the City may become aware of reports concerning a proposer. Depending on the information reported, the City may choose to discuss the accuracy of such information with the proposer and how such information might impact the project.

### **Question #7**

The city reserves the right to contact credit history and other background investigation of any proposer, its officers, directors, owners, shareholders or partners and managerial or supervisory personnel. Will that background information be shared with the persons affected and will they be given an opportunity to review and contest or correct errors in that information? Will this information be made part of the public record? What is the effect of any change in the identity of any of those persons either through the addition of additional personnel in any category or the removal of personnel in any category?

### Response

The City does not currently expect to conduct any background investigations. Should it determine a need to do so, it will share the information with the person affected, and will give such person the opportunity to review and contest or correct errors in the information provided the person affected acts in a timely manner. Issues regarding whether information will be made part of the public record are covered under Section 4.G. of the Phase I-RFP/Q. Issues regarding a change in the identity of personnel are covered under the duty to report changes under Section 4. O. of the Phase I-RFP/Q.

### **Question #8**

Will the information provided pursuant to the "Clarifications" provision be considered to be public records? If so, will transcripts be made of any communications that are other than in writing and how will all of that information be made publicly available.

### Response

Information received pursuant to "Clarifications" will be treated the same as information received pursuant to all other responses to the Phase I-RFP/Q.

### **Question #9**

Are communications with Cezar M. Froelich, Michael J. Schaller or Kimberly M. Copp and the contents thereof considered to be public records under Massachusetts law and, if so, how will those public records be publicly available? Are any of these individuals part of the "public body" making the decision such that serial communications with them may trigger

the meeting notice requirements of the Massachusetts Open Meeting Law?  
Will the process of making the determination as to which proposer or proposers is/are qualified to be conducted in accordance with the Massachusetts Open Meeting Law?  
Will the meetings at which the determination as to which proposer or proposers is qualified to be conducted in an "executive session" under the Massachusetts Open Meeting Law? If so, when will minutes of those meetings be released?

Response

Issues regarding whether information will be part of the public record are covered under Section 4.G. of the Phase I-RFP/Q. As indicated in the response to Question #2 above, the Mayor will be the sole decision maker concerning the proposers selected to participate in the Phase II-RFP/Q process. Accordingly, the Massachusetts Open Meeting Law will not apply to this selection process.

**Question #10**

Will there be any hearings or other opportunity for input by proposers or the public in the process of deciding whether a Phase I – RFP/Q proposer is qualified?

Response

As indicated in the time table in Section 1.F. of the Phase I-RFP/Q, participants in the Phase II-RFP/Q will have an opportunity to make public presentation(s) of their proposals.

**Question #11**

Will a determination that a Phase I – RFP/Q proposer is not qualified specify which of the criteria were not met by that proposer and how each of the unmet criteria failed to be met? What will be the appeal process, if any, for the determination that a Phase I – RFP/Q proposer is not qualified? What accommodation will the City make in its Phase II process should an appeal of an adverse qualification decision be made in order to preserve a realistic opportunity for a wrongfully rejected proposer to participate in Phase II?

Response

The City will not specify which criteria were not met by a proposer. There is no appeal process of the City's decision as to whether a proposer will be selected to participate in the Phase II-RFP/Q selection process.

**Question #12**

Section 3 of the Consent and Release form appears to contradict the proposer's right of confidentiality afforded it in Section 4.G of the Phase I - RFP/Q. Could you please comment as to how the proposer's rights to confidentiality are preserved upon execution of the Consent and Release agreement?

Response

Should the proposer request confidential treatment for information in accordance with Section 4.G of the Phase I-RFP/Q and the City agree with the proposer's request, the City will waive its rights under the Consent and Release as to such information.

**Question #13**

How will a proposer be notified that it has qualified or not qualified to proceed to Phase II - RFP/Q?

Response

The City currently intends to make a public announcement of those proposers selected to participate in the Phase II selection process.

**Question #14**

Will a proposer be allowed to "cure" a non-qualifying response or will its proposal automatically be rejected?

Response

This question is answered in Section 3.A.3 of the Phase I-RFP/Q.

**Question #15**

Page 12 states that these questions are limited to Phase I. Are responders correct in assuming that there will be another opportunity to ask questions with regard to Phase II?

Response

Yes.