

# MISSISSIPPI LOTTERY CORPORATION

## REQUEST FOR QUALIFICATIONS

**RFQ No. 3140001672**

To Provide General Legal Counsel Services  
for the Mississippi Lottery Corporation

Issue Date: December 18, 2018

**CONTACT:**

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**DUE DATE AND TIME:**

Statements of Qualifications must be received at the address above  
by January 17, 2019 at 2:00 p.m. CST

## **BACKGROUND**

Pursuant to the Alyce G. Clarke Mississippi Lottery Law, Senate Bill 2001 (First Extraordinary Session 2018)(hereinafter “the Act”), the Mississippi Lottery Corporation was formed to administer the State of Mississippi’s first state lottery. The Corporation is administered by the Board of Directors (hereinafter “the Board”). The Board is comprised of five (5) members appointed by the Governor, with the advice and consent of the Senate, and the Commissioner of the Mississippi Department of Revenue and the Mississippi State Treasurer as ex officio members. The Board is currently comprised of Dr. Mike McGrevey, Dr. Cass Pennington, Kimberly LaRosa, Gerard Gibert, Philip Chamblee, Commissioner Herb Frierson, and Treasurer Lynn Fitch.

Section 13 of the Act authorizes the Board to contract with outside counsel when the Board determines the need for such counsel. Accordingly, the Board is seeking to receive Statements of Qualifications (hereinafter “SOQ”) from legal firms to provide general legal counsel services related to the formation, start-up, and operation of the Mississippi State Lottery.

### **SECTION 1**

#### **1. Qualifications and Proposal Acceptance Period**

The SOQ shall be signed and submitted in a sealed envelope(s) or package(s) as described in this Request for Qualifications (hereinafter “the RFQ”) no later than the time and date specified for receipt on the title page of this RFQ. Timely submission is the responsibility of the respondent. SOQs received after the specified time shall be rejected and returned to the respondent unopened. The envelope(s) or package(s) shall be marked with the name of the respondent, and the services to be provided (as listed on the title page of this RFQ). Each page of the SOQ and all attachments shall be identified with the name of the respondent. The Board reserves the right to decide, on a case-by-case basis, whether to reject an SOQ with modifications or additions as nonresponsive. As a precondition to SOQ acceptance, the Board may request the respondent to withdraw or modify those portions of the SOQ deemed nonresponsive that do not affect quality, quantity, price, or delivery of the service. The Board is under no obligation to enter into a contract or otherwise engage any legal counsel as a result of this RFQ process and may cancel this RFQ process when it is determined to be in the best interest of the Board.

### 1.1. Timeline\*

<u>December 18, 2018</u>	RFQ posted to the Mississippi Procurement Portal
<u>January 4, 2019</u>	Deadline for questions related to RFQ No. 3140001672 (2:00 PM CST)
<u>January 10, 2019</u>	Deadline for responses to all questions related to RFQ to be posted to the Mississippi Procurement Portal (2:00 PM CST)
<u>January 17, 2019</u>	Closing date for RFQ. All SOQ responses due (2:00 PM CST).
<u>January 17-28, 2019</u>	SOQ responses evaluated and Oral Presentations held (if requested)
<u>January 29, 2019</u>	Evaluation Committee makes recommendation to Board for selection of counsel
<u>January 31, 2019</u>	Notification of Board action

(\*) – Dates are estimated and are subject to change.

### 1.2. Late Submissions

An SOQ received at the place designated in the RFQ for receipt of SOQs after the exact time specified for receipt will not be considered.

### 2. Expenses Incurred in Preparing Statement of Qualifications

The Board accepts no responsibility for any expense incurred by the respondent(s) in the preparation and presentation of an SOQ. Such expenses shall be borne exclusively by the respondent(s).

### 3. Registration with Mississippi Secretary of State

By submitting an SOQ, the respondent certifies that it is registered to do business in the State of Mississippi as prescribed by the Mississippi Secretary of State or, if not already registered, that it will do so within seven (7) business days of being offered an award. Sole proprietors are not required to register with the Mississippi Secretary of State.

### 4. Debarment

By submitting an SOQ, the respondent certifies that it is not currently debarred from submitting SOQs for contracts issued by any political subdivision or agency of the State of Mississippi or Federal government, and that it is not an agent of a person or entity that is currently debarred from submitting SOQs for contracts issued by any political subdivision or agency of the State of Mississippi.

**5. Additional Information**

Questions about this RFQ must be submitted in writing and directed to the contact first identified on the cover page of this RFQ. Respondents are cautioned that any statements made by contact persons that cause a material change to any portion of the RFQ shall not be relied upon unless subsequently ratified by a formal written amendment. All questions and answers shall be published to respondents by the deadline first mentioned herein on the Mississippi Procurement Portal.

**6. Type of Contract**

Compensation for services will be in the form of an indefinite quantity agreement.

**7. Written Statement of Qualifications**

All SOQs shall be in writing.

**8. Release of Information**

The Board will not release information submitted in response to this RFQ during the evaluation process or prior to an engagement award. After all respondents have been notified of the engagement award, respondents' SOQs will be available for public review, subject to the limitations of the Mississippi Public Records Act of 1983, as amended.

**9. Non-Discrimination**

There shall be no discrimination as to race, sex, color, creed, national origin or disability in the operations proposed to be conducted under any engagement arising out of the responses to this RFQ.

**10. Joint Proposals and Joint Selections**

The Board may entertain joint proposals for legal counsel services. The Board may also make a joint selection of two or more respondents to provide general legal counsel services.

**11. Supplementation**

Each respondent must supplement its response to this RFQ within seven (7) days of any material change to the information contained in its response.

**12. Contract Administrator**

The contracts resulting from the RFQ process will be administered by the Board.

**13. Terms and Conditions of Contract**

The terms and conditions of any contract resulting from a response to this RFQ will contain, by reference, the terms of this RFQ and the respondent's response thereto.

**14. Obligation to Employ Outside Counsel**

By this RFQ, the Board has not committed itself to employ outside counsel for any or all of the matters described in this RFQ, nor does the suggested scope of services or term of agreement require that outside counsel be employed for any of those purposes.

## SECTION 2

### 1. Compensation for Services

The compensation for services will be negotiated by the Evaluation Committee Chair with the respondent(s) that is/are determined to be the most qualified.

### 2. Scope of Services

The respondent selected by the Board will be required to provide General Legal Counsel services where the need for legal advice is required. The Board reserves the right to select more than one firm to provide these legal services.

The Board makes no representation or warranty of any nature that any firm selected pursuant to this RFQ will participate in any minimum or maximum number of engagements.

### 3. Period of Performance

The term of the engagement shall be indefinite. Any counsel selected pursuant to this RFQ shall serve at the pleasure of the Board, and the professional services of any firm selected may be terminated, at the sole discretion of the Board upon delivery of written notice of such termination to the selected firm.

## SECTION 3

### 1. Insurance

The successful firm(s) must carry malpractice insurance. The Board reserves the right to request from carriers, certificates of insurance regarding the required coverage. Insurance carriers must be licensed or hold a Certificate of Authority from the Mississippi Department of Insurance. The successful firm(s) shall be prepared to provide evidence of required insurance upon request by the Board at any point during the engagement period and should consult with legal counsel regarding its obligations.

## SECTION 4

### 1. Minimum Qualifications

To be eligible to respond to this RFQ, a certification by the respondent is required to each of the following requirements:

- a. A current business operation in the State;
- b. Experience with procurement processes and expertise in the drafting, reviewing, editing, and advising of clients with respect to solicitations and contracting for goods and services;
- c. Experience and technical competence of the firm with respect to the type of legal services required for a lottery, i.e., prior experience with general counsel services

to entities, formation of Mississippi companies, debt financings, advising public bodies (including regulatory boards), state and federal law, corporate law, administrative law, general contract and procurement law, and employment law;

- d. In instances for which specialized lottery law services are required, must have attorneys who have experience with lottery/gaming law or must be able to identify a sufficient alternative in order to provide competent specialized legal advice;
- e. Must have no conflict of interest in representing the Board;
- f. Must carry a level of malpractice insurance, including deductible, to cover errors and omissions, improper judgment, or negligence appropriate for the magnitude of the engagement; and
- g. The attorney(s) who will be primarily responsible for providing the legal services necessary (i) must be licensed or admitted to practice law in Mississippi, (ii) must satisfy the requirements of (a) above, and (iii) must agree to primarily perform the legal service requested in Mississippi.

**2. Responsive Respondent**

Respondent must submit an SOQ which conforms in all material respects to this RFQ, as determined by the Board.

**3. Responsible Respondent**

Respondent must have capability in all respects to perform fully the contract requirements and the integrity and reliability which will assure good faith performance, as determined by the Board.

**4. Nonconforming Terms and Conditions**

An SOQ that includes terms and conditions that do not conform to the terms and conditions in the RFQ is subject to rejection as nonresponsive. The Board reserves the right to permit the respondent to withdraw nonconforming terms and conditions from its SOQ response prior to a determination by the Board of nonresponsiveness based on the submission of nonconforming terms and conditions.

**5. Evaluation Procedure**

The Board has designated an Evaluation Committee which will evaluate all SOQs that are received on or before the stated due date and time. Those responses that satisfy the Minimum Qualifications will be further evaluated and assigned a score in accordance with the Evaluation Criteria for this RFQ.

During the evaluation process, the Board and/or Evaluation Committee may request certain of the respondents reasonably susceptible of being selected for award to make oral presentations to the Evaluation Committee and/or Board for the purpose of clarification to assure full understanding of, and responsiveness to, the RFQ requirements. If the Evaluation Committee and/or Board determines that further SOQ clarifications are needed or desirable, it may solicit Best and Final Offers (“BAFO”) from respondents, whether oral presentations are held or not.

The respondents’ SOQ, oral presentations (if applicable), and BAFO (if requested) will be the basis for the respondents’ score. The respondents with the highest total scores will be considered the most qualified respondents. The Evaluation Committee Chair will negotiate the compensation related to the services requested in this RFQ with the most qualified respondent(s). The authority to make the final selection of a respondent(s) under this RFQ and approve the compensation resides solely with the Board. The Board reserves the right to reject any and all responses to this RFQ, with or without cause.

## 6. Evaluation Criteria

The Evaluation Committee will use the following criteria to evaluate all acceptable proposals and to develop recommendations to be presented to the Board;

- Experience and technical competence of the firm with respect to the type of legal services required for a lottery, including, but not limited to prior experience with general counsel services to entities, formation of Mississippi companies, debt financings, advising public bodies (including regulatory boards), state and federal law, corporate law, administrative law, general contract and procurement law, and employment law; and specifically any lottery/gaming law experience; and **50 Points**
- Conformance with RFQ instructions. **5 Points**
- Mississippi business operation, i.e., the extent and duration of the firm’s presence in the State, as well as proximity to the Jackson, Mississippi, Metro Area to facilitate provision of the services requested. Firm need not be domiciled in Mississippi, nor have its primary operations in the State; however, an established presence and the ability to respond in person quickly will be considered. **10 Points**
- The capacity and capability of the firm to provide the services requested, including specialized services, i.e., specialized lottery/gaming legal services, and/or the manner in which they will be provided where firm does not have direct experience with such representation. **15 Points**
- Qualifications of attorneys to be assigned to represent the Board, i.e., team members’ demonstrated abilities, years, and types of experience. **20 Points**

Total **100 Points**

**7. Procedures for Delivery of Qualifications**

The respondent shall submit seven (7) copies of its SOQ in an envelope(s) or package(s) marked "Statement of Qualifications Package." The envelope or package shall also be clearly labeled with the name of the respondent, the services to be provided, the RFQ No. 3140001672, and directed at the attention of the named contact person.

The SOQs are due by the time and date listed on the title page of this RFQ. Any responses received after the due time and date set for receipt will be considered late and shall not be considered for award.

Qualifications shall be mailed or hand delivered to:

**Aubrey Leigh Goodwin, Deputy Executive Director  
Mississippi Department of Finance and Administration  
501 N. West Street, Suite 1301A  
Jackson, Mississippi 39201**

The parties submitting qualifications are responsible for ensuring that the sealed qualifications are delivered by the required time and to the required location. The submitting parties assume all risks of delivery. No facsimile or e-mailed responses will be accepted.

**8. Format of SOQ**

As previously stated, seven (7) copies of the respondent's SOQ shall be submitted in an envelope or package marked "Statement of Qualifications Package".

The Board requests that each page of the printed response that the respondent considers confidential be conspicuously marked in the upper right hand corner of each page with the word "CONFIDENTIAL." Confidential information may be identified by alternate font color and/or type on copies of the SOQ. Failure to clearly identify trade secrets or confidential commercial or financial information will result in that information being released subject to a public records request pursuant to the Public Records Act of 1983, Mississippi Code Annotated §25-61-1 et seq. and §79-23-1

The first page of the SOQ should be a title page which is clearly marked with the name of the respondent, the services to be provided (as stated on the Title Page of this RFQ), the RFQ number and the due date of the response. Thereafter, the SOQ must include the following information and should be labeled and tabbed as follows:

**TAB 1 – Signed Confirmations**

- a. A signed copy of this RFQ.
- b. A signed copy of any amendments to this RFQ, if applicable.

- c. Certification that the respondent meets each of the minimum qualifications that are required to respond to this RFQ.

**TAB 2 – Firm’s Attorneys Information**

- a. The name of the respondent, the location of the respondent’s principal place of business and, if different, the place of performance of the proposed engagement.
- b. The age of the respondent’s business, the average number of employees over the previous four (4) years, as well as the average number of employees in Mississippi over the previous four (4) years, and the current number of attorneys practicing in the area of gaming.
- c. The name, telephone number and email address of the person(s) responsible for the response to this RFQ who may be contacted in the event of questions or notifications.
- d. The name of the attorney(s) who will be primarily responsible for any engagement resulting from this RFQ. Please provide the qualifications, including the state(s) licensed to practice in, certifications, education, skills, and experience of the attorney(s) who will be primarily responsible for providing the required services.

**TAB 3 – Experience information as requested in Section 4**

- a. Experience with procurement processes and expertise in the drafting, reviewing, editing, and advising of clients with respect to solicitations and contracting for goods and services.
- b. Experience and technical competence of the firm with respect to the type of legal services required for a lottery, including, but not limited to prior experience with general counsel services to entities, formation of Mississippi companies, debt financing, advising public bodies (including regulatory boards), state and federal law, corporate law, administrative law, general contract and procurement law, and employment law.
- c. Experience of the firm in providing specialized lottery/gaming legal services or information regarding how the services will be provided where firm does not have direct experience with such representation.
- d. A listing of other engagements under which services similar in scope, size or discipline to the required services were performed or undertaken by the firm.

**TAB 4 – Insurance and Malpractice Litigation**

- a. The type of malpractice insurance the firm carries, the name of the carrier, and the limits of coverage.
- b. A list of all malpractice litigation or claims made against your firm, within the past five (5) years, and the disposition of same.

**TAB 5 – Firm Resources, Organization, Availability and Quality Control**

- a. Description of resources available within the firm.
  
- b. Description of how the firm is organized to facilitate coordination of the various specialists who will be performing the several aspects of the required legal services.
  
- c. Description of the availability of the assigned individuals to the staff of the Board or its representatives as needs and questions arise.

**TAB 6 – Conflicts of Interest**

- a. Information on relationships and/or activities that might present a conflict of interest for the firm’s representation of the Board.

**TAB 7 – Additional Information**

- a. Any additional information which you feel would be of assistance in evaluating your firm’s ability to serve as general counsel.

**SECTION 5**

**1. Award**

The Evaluation Committee will recommend engagement be awarded by written notice in accordance with the schedule in Section 1, to the highest ranked respondents whose SOQ meets the requirements and criteria set forth in this RFQ with successful negotiation of fees, subject to ratification and approval of the Board.

**2. Notification**

All participating vendors will be notified of the Board’s intent to award the engagement. In addition, the Board will identify the selected firms. Notice of award will also be made available to the public.