

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

KG URBAN ENTERPRISES, LLC
Plaintiff,

v.

DEVAL L. PATRICK, in his official capacity as
Governor of the Commonwealth of Massachusetts,
and the CHAIRMAN AND COMMISSIONERS OF
THE MASSACHUSETTS GAMING COMMISSION,
in their official capacities,
Defendants.

Civil Action No. 1:11-CV-12070-NMG

AFFIDAVIT OF KENNETH W. SALINGER

I, Kenneth W. Salinger, hereby depose and state as follows:

1. I am an Assistant Attorney General for the Commonwealth of Massachusetts, and have served in that capacity since July 2006. I represent the defendants in this civil action. The statements in this affidavit are based on my personal knowledge and public records of the Commonwealth of Massachusetts and, to the best of my knowledge, are true and accurate.

2. The Attorney General and the Treasurer of the Commonwealth of Massachusetts announced on November 30, 2011, that they are accepting applications for appointment to the Massachusetts Gaming Commission until January 9, 2012. Exhibit A to this affidavit contains true and accurate copies of the press releases in which the Attorney General and the Treasurer informed the public of their application processes and deadlines.

3. The Governor, Attorney General, and Treasurer of the Commonwealth announced on November 30, 2011, that they plan to hire a search firm to identify candidates for the two positions on the Massachusetts Gaming Commission that the three of them will fill by majority vote. They issued a Request for Responses that indicates, at page 3, that they expect to select the search firm between December 21 and December 28, 2011. Exhibit B to this affidavit contains a true and accurate copy of this Request for Responses.

SIGNED UNDER THE PAINS AND PENALTIES OF PERJURY.

/s/ Kenneth W. Salinger

Kenneth W. Salinger (BBO # 556967)
Assistant Attorney General, Government Bureau
Office of the Attorney General
One Ashburton Place
Boston, MA 02108
617.963.2075
ken.salinger@state.ma.us

December 8, 2011

Certificate of Service

I hereby certify that this document was filed through the Electronic Case Filing (ECF) system and thus copies will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF); paper copies will be sent to those indicated on the NEF as non registered participants on or before December 20, 2011.

/s/ Kenneth W. Salinger

Exhibit A

The Official Website of the Attorney General of Massachusetts

Attorney General Martha Coakley



Home
News and Updates
Press Releases
2011

MARTHA COAKLEY
ATTORNEY GENERAL

Contact

Press Office
(617) 727-2543

For Immediate release - November 30, 2011

Application Process Begins for Selection of Coakley's Gaming Commission Appointment

Appointment by AG's Office Requires Experience in Criminal Investigations and Law Enforcement

BOSTON – Today, Attorney General Martha Coakley announced that the application process for her individual appointment to the Massachusetts Gaming Commission has begun.

"Our office is dedicated to appointing a highly qualified individual with extensive experience in criminal investigations and law enforcement to be an integral part of the Gaming Commission," said AG Coakley. "Throughout this selection process, we will remain committed to identifying the best potential candidates to serve with integrity on the Commission and help properly regulate this new industry in the Commonwealth."

Under the Commonwealth's new gaming law, an appointment to the Massachusetts Gaming Commission must be made by the Massachusetts Attorney General. This appointment requires experience in criminal investigations and law enforcement.

The Attorney General plans to engage individuals outside the AG's Office to help recommend experienced and qualified applicants for the position.

To apply for the Attorney General's individual appointment requiring experience in criminal investigations and law enforcement, candidates should complete an application. Applications are due no later than 5:00 p.m. EST on January 9, 2012.

On November 21, 2011, Governor Patrick signed into law "An Act Establishing Expanded Gaming in The Commonwealth." This law establishes expanding gaming in the Commonwealth, and includes a five-member Gaming Commission, which will be responsible for implementing and overseeing the gaming licensing process and regulation of the industry. The Governor, Attorney General, and Treasurer are each designated one appointment to this Commission. The remaining two members will be chosen by the three appointing authorities—the Governor, the Attorney General, and the Treasurer—who are hiring an Executive Search Firm to assist and advise in their joint appointments.

The Commission must be bipartisan, with no more than three members representing the same party, and members must be appointed within 120 days of November 22, 2011, the day Governor Patrick signed the bill into law. A common application for these positions is now available at www.mass.gov/governor, www.mass.gov/treasury, or www.mass.gov/ago.

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The Official Website of the Treasurer and Receiver General of Massachusetts

Treasurer
Steven Grossman



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Press Releases
2011

STEVEN GROSSMAN
TREASURER

Contact

Jon Carlisle or
Alethea Harney
(617) 367-6900

For Immediate release - November 30, 2011

Grossman Details Public Process for His Gaming Commission Selection

Finalists will be Chosen by Five-Member Advisory Panel and will be Publicly Disclosed

Characterizing the selection of a Gaming Commission member as one of the most important appointments during his term in office, Treasurer Steven Grossman today detailed the open and transparent process he will use to guide his decision.

"We only have one chance to get this right," said Grossman. "The process through which our appointment is made should be comprehensive and transparent. The right candidate will have the appropriate vision, wisdom, managerial experience, and ethics to effectively execute the duties of this critical position."

Candidates will be required to complete an extensive application for the Gaming Commission position, which has been posted on the Treasury website. All applications will be rigorously reviewed by a five-member Advisory Panel established by Grossman. The Panel has been charged with recommending a short list of finalists for the position, a list that will be made available to the public.

The members of the Advisory Panel charged with selecting the finalists are:

- Jonathan Chiel – Executive Vice President & General Counsel, John Hancock Financial
- Christopher Gabrieli – Co-Founder and Chairman, Massachusetts 2020
- Cathy Judd-Stein – Special Counsel and Director of Policy, Massachusetts Lottery
- Dennis Kanin – Co-Founder and Principal, New Boston Ventures, LLC
- Malcolm Salter – Professor Emeritus, Harvard Business School

The finalists will be individually interviewed by the Treasurer to determine the best candidate for the position, one that will have significant influence over the enforcement of laws and regulations governing casino gambling in the Commonwealth. Consistent with existing hiring policy in Grossman's office, any outside recommendations of

candidates for the position must be submitted in writing and will be subject to full disclosure.

Grossman is solely responsible for the selection of one member of the five-member Gaming Commission. That member is required to have experience in corporate finance and securities. The Treasurer shares responsibility for the selection of two others with the Governor and the Attorney General. A search firm will be retained to help identify the two shared appointments, and the three offices will work in close consultation to make a final determination on these Commission members.

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Advisory Panel Bios

Jonathan Chiel is Executive Vice President and General Counsel for John Hancock Financial Services, the U.S. division of Toronto-based Manulife Financial Corporation. In this position, Mr. Chiel is responsible for John Hancock's legal and compliance operations. Prior to joining John Hancock, Mr. Chiel was a Partner at the Boston law firm of Choate, Hall & Stewart, where he headed up the firm's Government Enforcement and Corporate Compliance practice. He was also an Assistant U.S. Attorney and served as Chief of the Criminal Division of the Boston U.S. Attorney's Office from 1993 to 1995. Mr. Chiel is an Executive Board Member of the Boston Municipal Research Bureau and serves on the Executive Committee of the Boston Bar Association Council.

Christopher Gabrieli is the Co-Founder and Chairman of Mass2020, an organization that works to expand educational and economic opportunities for children and families across the Commonwealth. He is also a Partner of Bessemer Venture Partners where for 25 years he has helped lead investments in start-up life sciences and healthcare companies. Mr. Gabrieli graduated from Harvard University with a B.A. in history and science and completed two years at the Columbia College of Physicians & Surgeons M.D. program and is a founder and Chairman of the National Center on Time & Learning and a lecturer at the Harvard Graduate School of Education. He is the co-author of Time to Learn: How a New School Schedule is Making Smarter Kids, Happier Parents, and Safer Neighborhoods.

Cathy Judd-Stein serves as the Director of Policy and Special Counsel to the Massachusetts State Lottery Commission. A Dartmouth College and Harvard Law School graduate, she has spent much of her career dedicated to public service, advising primarily on public conflicts of interest and health and human services. In 2000, Governor Cellucci appointed her to serve as Deputy Legal Counsel, a position she also held under Governors Swift, Romney and Patrick. Under Governor Patrick, she also served as the Executive Director of the Judicial Nominating Commission. Ms. Judd-Stein began her legal career in 1985 as a law clerk to Massachusetts Appeals Court Justice R. Ammi Cutter and an associate at the Boston Law Firm of Palmer & Dodge. She is an instructor for UMass Boston's John W. McCormack Graduate School of Policy and Global Studies and a member of the Board of Advocates for the Brigham and Women's Hospital, Mary Horrigan Connors Center for Women's Health and Gender

Biology.

Dennis Kanin is Co-Founder and Principal of New Boston Ventures, LLC, a Boston-based residential real estate development firm. From 1975 to 1985, he served as Chief of Staff in the U.S. House of Representatives and the U.S. Senate for Paul Tsongas.

Between 1985 and 2009, Mr. Kanin was a partner and later counsel in the Boston law firm, Foley Hoag, where he focused on the government and legislative practice area and public-private strategies. Presently a member of the Board of Directors of the Massachusetts Development Finance Agency and President of the Board of Trustees of the Roxbury Latin School, Mr. Kanin has also served as New England Chair and National Washington Affairs Chair of the Anti-Defamation League, and Co-Chair of the Children's Hospital's Advocacy Campaign Advisory Group.

Malcolm Salter has been a member of the Harvard Business School faculty since 1967.

His teaching and research focuses on issues of corporate strategy, organization, and governance. In addition to his scholarly activities, Professor Salter served as Senior Associate Dean for External Relations from 2003 to 2006. From 1986 to 2006, he was also president of Mars & Co., a strategy consulting firm with offices in Greenwich, Connecticut, London, Paris, San Francisco, Tokyo, and Shanghai. Professor Salter serves as a Governing Trustee and Director of the Dana-Farber Cancer Institute and as an Overseer of the Boston Symphony Orchestra.

Exhibit B

**Commonwealth of Massachusetts
Office of the Governor**

**Request for Responses (RFR)
For
Executive Search Firm for Massachusetts Gaming Commissioners**

RFR # GOV-2011-001

November 30, 2011

TABLE OF CONTENTS

SECTION 1: Introduction/Procurement Requirements	1
SECTION 2: Scope of Services	3
SECTION 3: Response Requirements.....	3
SECTION 4: Response Evaluation Process	9
SECTION 5: Additional Terms and Conditions	10

Section 1. Introduction/Procurement Requirements

A. Overview

Through this Request for Responses (RFR), the offices of the Governor (GOV), Attorney General, and Treasurer and Receiver-General (Treasurer) seek an executive search firm (Consultant) to recruit, screen and recommend qualified candidates to serve as Commissioners to the Massachusetts Gaming Commission (Commission), pursuant to H3807, "An Act Establishing Expanded Gaming in the Commonwealth" (Act).

B. GOV Background

The Office of the Governor is responsible for assisting the Governor of the Commonwealth of Massachusetts in fulfilling the duties of the Executive Office pursuant to Part II, c. 2, § 1, of the Massachusetts Constitution.

C. Purpose of Procurement

GOV seeks an executive search firm to assist and advise the Governor, Attorney General, and the Treasurer in their joint appointments of two members to the Commission.

Pursuant to the Act, there are five Commissioners, two of whom shall be appointed by a majority vote of the Governor, Attorney General, and Treasurer. One of these two Commissioners must have experience in legal and policy issues related to gaming, and the other Commissioner may have professional experience in gaming regulatory administration or gaming industry management. Of the five Commissioners, no more than three Commissioners may be of the same political party. All Commissioners must be appointed within 120 calendar days of the effective date of the Act.

Through this RFR, GOV seeks to qualify one bidder to perform an executive search to recruit, screen, and recommend qualified candidates for each of these two joint appointments to the Governor, Attorney General and Treasurer.

D. Vendor Qualifications

The preferred vendor will have expertise and experience in performing executive recruitment and hiring searches, ideally in both the public and private sectors, and in the regulatory and gaming fields. The preferred vendor will also have experience in advising governmental entities in Massachusetts and/or other states. The preferred vendor will have the capacity to commit personnel and resources necessary to provide high quality services in a timely and responsive manner.

E. General Procurement Requirements

GOV is exempt from state procurement requirements as a constitutional officer under 801 CMR 21.01(2) and, in this situation, is also exempt under the emergency exemption contained in 801 CMR 21.05(3) due to the statutory requirement that all Commissioners be appointed within 120 calendar days of the effective date of the Act. Nevertheless, this RFR is being issued in accordance with 801 CMR 21.00, which governs the procurement of services by state agencies. GOV reserves the right to alter the procurement process at any time and without notice.

801 CMR 21.00 requires a competitive procurement process, including the issuance of a RFR, for acquisitions of all commodities and services. Words used in this RFR shall have the meanings defined in 801 CMR 21.00. Unless otherwise specified in this RFR, all communications, responses, and documentation must be in English, all measurements must be provided in feet, inches, and pounds and all cost proposals or figures in U.S. currency. All responses must be submitted in accordance with the specific terms of this RFR.

GOV makes no guarantee that a contract, or any obligation to purchase any commodities or services, will result from this RFR.

GOV reserves the right to amend this RFR at any time prior to the date the responses are due. Any such amendment will be posted to the Commonwealth's procurement web site, Comm-PASS (see **Section 5.B** for information on Comm-PASS). Bidders are cautioned to check this site regularly, as this will be the sole method used for notification of changes. (See also **Section 5.G.**)

All responses must be submitted in accordance with specifications in **Section 3: Response Requirements.**

1. Acquisition method: Fee for service
2. Single or multiple vendor(s): Single
3. Use of Procurement by single or multiple agencies: Multiple
4. Anticipated Duration of Contract: The initial duration of the contract that results from this RFR will be from the date on which it is awarded until March 21, 2012, or until the Commissioners are appointed, whichever is sooner. The contract may be extended in any increment at the discretion of GOV up to a maximum term, including all contract extensions, of six months.
5. Anticipated Payment Structure: The contractor will be paid for services rendered, after submission and approval of invoices. The contract under this RFR will also contain a maximum obligation provision. The anticipated maximum obligation shall be approximately \$56,250.

F. Procurement Timetable

Unless otherwise specified, the time of day for the following events shall be between 9:00 a.m. and 5:00 p.m., Eastern Standard Time. All other times specified in this RFR are Eastern Standard Time.

GOV may adjust this schedule as it deems necessary. Notification of any adjustment to the RFR Timetable shall be posted on Comm-PASS.

1. RFR issued	Nov. 29, 2011
2. Written inquiries from interested bidders concerning RFR due	Dec. 9, 2011
3. Written responses from GOV to inquiries posted on Com-PASS	Dec. 13, 2011
4. Bidders' responses due	Dec. 16, 2011 by 3:00 p.m.
5. Evaluation Committee reviews responses and selects finalists	Dec. 19, 2011-Dec. 21, 2011
6. Evaluation Committee interviews finalists, if necessary	Dec. 19, 2011-Dec. 21, 2011
7. Anticipated contract awards	Dec. 28, 2011

Section 2. Scope of Services

1. The purpose of the contract awarded under this RFR is to engage a Consultant to recruit, screen and recommend qualified candidates for the Commission to the Governor, Attorney General, and the Treasurer in their joint appointments of two members of the Commission. Pursuant to the Act, there are five Commissioners, two of whom shall be appointed by a majority vote of the Governor, Attorney General, and Treasurer. By statute, one of these two Commissioners must have experience in legal and policy issues related to gaming, and the other Commissioner may have professional experience in gaming regulatory administration or gaming industry management. By statute, of the five Commissioners, no more than three Commissioners may be of the same political party. By statute, the Commissioners must be appointed within 120 calendar days of the effective date of the Act. The Governor, Attorney General, and Treasurer may request from the Consultant additional qualified candidates if the first (or subsequent) round(s) of candidates provided to them fails to meet their needs.

2. Consultant must develop a project plan associated with recruiting a wide range of eligible candidates for the two Commissioner positions. Said project plan shall be provided to and approved by the Office of the Governor, the Office of the Attorney General, and the Office of the Treasurer and Receiver-General within 14 calendar days following the execution of a contract for services associated with this request for response, and shall

include details of: how the recruitment will be managed; what media will be used to solicit candidates; and specific details on the firm's resources to post the position, advertise, produce recruitment brochure/material, vet eligible candidates for selection, coordinate full background checks, and participate in final interviews and negotiations.

3. Consultant must develop a recruitment strategy within 14 calendar days following the acceptance of the project plan. Said strategy shall include the dissemination of the approved Job Description by the selected vendor to applicable and appropriate professional markets. This strategy may include contacting other states, universities and professional organizations connected to the gaming industry to learn how similar public officials were recruited, and adopting those methods that are appropriate to the Massachusetts search effort. In addition, the recruitment strategy should include a position profile that describes the short and long-term objectives of the Commission and the salary for the position as provided by statute, as well as a description of desired professional experience and other characteristics of a successful candidate.
4. Said recruitment strategy shall identify a field of candidates whose career experiences, interests, and availability closely match the position requirements and employment conditions. This identification process should include an evaluation tool(s) to assist in compiling the results of in-depth personal interviews with each potential candidate, verification of credentials, in-depth appraisal of relevant work experiences, and the Consultant's assessment of each candidate's strengths and weaknesses with respect to the position.
5. Consultant must provide a list of appropriate candidates for each Commissioner appointment for interviews with a panel to be named by the Governor, Attorney General, and Treasurer within 35 calendar days following the acceptance of the recruitment strategy by GOV. Once said list of candidates is approved, the Consultant will facilitate personal interviews of each of the candidates on this list.
6. Consultant will be available during the final negotiation process to ensure a successful placement.
7. The goal of the search process is to secure two qualified candidates for each Commissioner appointment with an offer of employment within 120 calendar days of the enactment of the Act, or March 21, 2012.
8. Consultant will provide status reports of the Consultant's progress throughout the search process. These status reports should occur at reasonable intervals throughout the project and should be clearly identified in the project plan to be submitted in response to this RFR.
9. Certain expenses associated with this contract may be allowable costs for reimbursement consistent with the intent of this contract. Said costs may include travel and accommodation expenses of qualified candidates. Any expenses shall require prior approval of GOV.

Section 3. Response Requirements

A. General Submission Instructions

Complete responses must be submitted by the date listed in the Procurement Timetable, **Section 1.F**, no later than **3:00 p.m.**, Eastern Standard Time. Responses must be submitted by mail or hand-delivered to:

Chris Williams
Office of the Governor
State House, Room 280
Boston, MA 02133

The bidder must submit:

1. **one original** (clearly labeled as **“original”**) and **seven hard copies** of its complete response in the following format:
 - Proposal must not be in excess of 10 pages (excluding required forms, tables listing client references and resumes, which may be attached as exhibits).
 - Each copy should be labeled with the name of the response document it contains.
 - The sections of the response documents should be labeled to correspond with the section heads (**“Business”**; **“Programmatic”**; and **“Cost”**) and section numbering in the RFR.
2. **one electronic copy** of its complete response on CD or flash drive;
3. **a cover letter** that clearly states the name of the bidder organization, principal address, local (greater Boston) address (if applicable, and if different from principal address), and the name, address, e-mail, fax and telephone number of the bidder’s contact person. The letter must:
 - be signed by an individual authorized to bind the contractor;
 - clearly commit the key personnel named in the response to being available to GOV for a minimum of six months from the response due date;
 - clearly identify any significant subcontractors, their roles, and responsibilities; and
 - include a statement that the bidder’s proposal will remain in effect until the bidder withdraws its proposal or a contract resulting from this RFR is executed, whichever is later.

Unnecessary samples, attachments or other documents not specifically asked for should not be submitted.

B. Business Response

1. Required Forms

Bidders must submit as part of their Business Response the following Commonwealth-required forms. All of the referenced forms are available on the forms and terms tab for this solicitation on Comm-PASS (www.comm-pass.com).

- Standard Contract Form and Instructions
- Commonwealth Terms and Conditions
- Massachusetts Substitute W-9 form – Request for Taxpayer Identification Number and Certification
- Contractor Authorized Signatory Listing
- Executive Order 504 Contractor Certification
- Consultant Contractor Mandatory Submission Form
- Small Business Purchasing Program (SBPP) Plan
- Authorization for Electronic Funds Payment (EFT)
- Prompt Payment Discount Form (PPD)

2. Vendor History

The bidder shall provide a brief description of the firm, including its organizational structure, its scope of business, its internal organization and number of personnel dedicated to major practice areas, its corporate and ownership structure, and whether any merger or acquisition plans are pending.

Each bidder shall provide a description of its relevant experience in executive search and recruitment, particularly in the areas of public and private sector employment, as well as within the gaming and regulatory sectors, including: (a) a general description of the relevant services the firm provides to other clients, and (b) the staff at the firm dedicated to providing these services.

Each bidder shall also describe any previous assignments undertaken for any entities which might pose a potential conflict of interest.

3. Corporate References

The bidder shall provide references from at least **five** entities, at least one of which should be governmental, for which the bidder has provided services similar to the work contemplated by this RFR. The limit on each such reference is **one page**.

These references must include the following information:

- The client organization's name and address;
- The name and title, address, telephone number, and e-mail address for a contact person;
- A brief description of the services provided; and
- The start and end dates for the project.

4. Bidder's Organization and Project Staff

a. Organizational Chart with Key Personnel

The Business Response must include an organization chart for this project, incorporating any and all subcontractor relationships anticipated.

The chart must include:

- The Project Lead and any additional key personnel whom the bidder anticipates will be involved in the project; their titles and placement within the bidder's organizational hierarchy and their functional titles/responsibilities relative to this project;
- The bidder's management structure for project oversight; and
- Any parts of the project for which the bidder intends to use a subcontractor.

The chart may include a narrative describing the assumptions, limitations and constraints on which the organizational chart is based.

b. Personnel Résumés

The bidder must provide résumés for each individual proposed as key personnel for this project. The résumés should include a brief narrative describing the relevant experience of each named key personnel and how his/her particular experience relates to the proposed role on this project.

c. Attorney Status with the Massachusetts Board of Bar Overseers

The bidder must provide a printout from the Massachusetts Board of Bar Overseers (BBO) showing the status of each Massachusetts attorney proposed as key personnel for this project, if applicable. Bidders may access the BBO Attorney Look Up webpage at: <http://massbbo.org/bbolookup.php>. Then simply enter the first and last name of each attorney included in the proposal on this webpage, print out the status page and include it in the proposal.

d. Subcontracting

If the bidder plans to use a partner or subcontractor for any element of the project, the bidder must:

- Identify each such partner(s) or subcontractor(s) by corporate name, address, telephone number, and status as minority and/or woman business enterprise, if applicable;
- Briefly describe the corporation, including years in business, its organization, experience in the Commonwealth, and a synopsis of any previous experience similar to that proposed for their role in this effort; and

- State the element(s) of the project and the percentage of the total project effort for which the partner(s) or subcontractor(s) will be used, and how the bidder's and the partner's or subcontractor's performance will be coordinated with the primary vendor's over the term of the project.

5. Bidder's Financial Stability

GOV reserves the right to require the bidder or contractor, at any time during the procurement or contract term, to submit any documentation requested by GOV to demonstrate to its satisfaction that the bidder's organization is in sound financial condition. GOV may disqualify a bidder if the bidder fails upon GOV's request to submit the documents required by this section, or if the documents indicate to GOV, in its reasonable discretion, that the bidder's financial condition is unsatisfactory for the purposes of this project.

C. Programmatic Response

It is anticipated that appropriate elements of the bidder's Programmatic Response, informed by any negotiated modifications, will be incorporated into the Scope of Services for this project.

1. Time Estimate

Each financing agreement shall be produced as promptly as possible. Each bidder should provide an estimate of the amount of time it believes it would take for it to perform the general services identified in the RFR, assuming that all required information is available.

2. Description of Proposed Staffing

Each bidder should provide a description of how it proposes to staff this engagement. This proposed staffing plan, as identified in **Section 3.B.4**, should specifically address how the bidder intends to handle the likely scenario of being requested to provide resource-intensive services in a high quality and timely manner.

D. Cost Response

The bidder must include with its response an estimate of the total fee for the project, which shall not be greater than \$56,250.

Section 4. Response Evaluation Process

A. Response Review and Evaluation

1. Compliance with Submission Instructions

All responses will be reviewed by GOV to determine compliance with the response submission instructions described in **Section 3.A**. For those responses that comply with the response submission instructions, an Evaluation Committee (Committee; also referred to as the "Procurement Management Team" or "PMT") designated by GOV, the Attorney General, and the Treasurer will review the Business, Programmatic and Cost Responses.

2. Evaluation Criteria

The following identifies the criteria by which GOV will evaluate the bidder's response, overall organization and proposed staff for the engagement:

- Expertise and experience with executive search and recruitment, including experience in the public and private sectors, and in fields related to gaming and regulation.
- References and past performance.
- Expertise and experience with Massachusetts, other state, or federal law relating to gaming.
- Capacity to commit personnel and resources necessary to provide high quality services in a timely and responsive manner.
- Proposed fee arrangement.
- Completion, presentation and responsiveness of bidder's response.

In addition, GOV may consider any and all relevant information about the bidder known to GOV.

3. Response Rating

The Committee will:

- (1) Evaluate Business and Programmatic Responses in accordance with the criteria described in **Section 4.A.2**;
- (2) Give a composite rating of "Excellent," "Very Good," "Good," "Fair," or "Poor/Non-Responsive" for each section evaluated;
- (3) Assign an overall rating to each bidder's proposal;
- (4) Compare the responses to one another; and
- (5) Rank the responses in order of preference.

4. Non-Qualifying Proposals

GOV reserves the right to reject a bidder's response at any time during the evaluation process if the bidder:

- Fails to demonstrate to GOV's satisfaction that it meets all RFR requirements;
- Fails to submit all required information or otherwise satisfy all response requirements in **Section 3**;
- Has any interest that may, in GOV's sole determination, conflict with performance of services for the Commonwealth or be anti-competitive; or
- Rejects or qualifies its agreement to any of the mandatory provisions of the RFR or the Commonwealth's Standard Contract Form and Commonwealth Terms and Conditions.

The Evaluation Committee may determine non-compliance with an RFR requirement is insubstantial. In such cases, the Committee may seek clarification, allow the bidder to make minor corrections, apply appropriate penalties in evaluating the response, or apply a combination of all three remedies.

5. Clarifications

The Evaluation Committee may determine some element of a bidder's response requires clarification to verify its responsiveness to the RFR or facilitate a fair comparison with competing proposals. In such cases, the Committee may seek clarification from the bidder. All bidders will be accorded fair and equal treatment with respect to any opportunity for clarification.

6. Best Value Selection and Negotiation

The Committee may recommend for selection the response that demonstrates the best value overall, including proposed alternatives, which will achieve the procurement goals of GOV. The Committee and a selected bidder may negotiate a change in any element of contract performance, cost identified in the original RFR, or the selected bidder's response, which results in lower costs, or a more cost-effective, or better value than was presented in the selected bidder's original response.

GOV reserves the right to request a best and final offer (BAFO) from any bidder.

7. Small Business Purchasing Program (SBPP) Plan

This is a small procurement targeted to small businesses participating in the Commonwealth's Small Business Purchasing Program (SBPP). The Committee intends to evaluate bid responses from and to award a contract to a SBPP-participating business(es) who submit a bid that meets or exceeds the solicitation criteria only. If determined that there is inadequate SBPP capacity, or no SBPP-participating vendors provide a responsive bid, the Committee will evaluate and award bid responses received from non-SBPP businesses. To determine eligibility and to participate in the SBPP, please review the requirements and general program information at www.mass.gov/sbpp.

B. Recommendation for Award

After the Committee completes its evaluation, comparison and ranking of all proposals, and, if applicable, oral presentation(s) and BAFO, the Committee may recommend to the Secretary of Administration and Finance a bidder with which to enter into contract negotiations. The Secretary's decision shall be based on the Committee's recommendation and on the best interests of the Commonwealth. GOV is under no obligation to award a contract pursuant to this RFR.

Section 5. Additional Terms and Conditions

A. Issuing Office

Executive Office for Administration and Finance
State House, Room 373
Boston, MA 02133

B. Comm-PASS

Comm-PASS is the official system of record for all procurement information which is publicly accessible at no charge at www.comm-pass.com. Information contained in this document and in each tab of the Solicitation, including file attachments, and information contained in the related Bidders' Forum(s), are all components of the Solicitation.

Bidders are solely responsible for obtaining all information distributed for this Solicitation via Comm-PASS, by using the free Browse and Search tools offered on each record-related tab on the main navigation bar (Solicitations and Forums). Forums support bidder submission of written questions associated with a Solicitation and publication of official answers. All records on Comm-PASS are comprised of multiple tabs, or pages. For example, Solicitation records contain Summary, Rules, Issuer(s), Intent or Forms & Terms and Specifications, and Other Information tabs. Each tab contains data and/or file attachments provided by the Procurement Management Team. All are incorporated into the Solicitation.

It is each bidder's responsibility to check Comm-PASS for:

- Any addenda or modifications to this Solicitation, by monitoring the "Last Change" field on the Solicitation's Summary tab; and
- Any Bidders' Forum records related to this Solicitation (see Locating an Online Bidders' Forum for information on locating these records).

The Commonwealth accepts no responsibility and will provide no accommodation to bidders who submit a response based on an out-of-date Solicitation or on information received from a source other than Comm-PASS.

Comm-PASS SmartBid Subscription. Bidders may elect to obtain an optional SmartBid subscription which provides value-added features, including automated email notification

associated with postings and modifications to Comm-PASS records. When properly configured and managed, SmartBid provides a subscriber with:

- A secure desktop within Comm-PASS for efficient record management;
- A customizable profile reflecting the subscriber's product/service areas of interest;
- A customizable listing in the publicly accessible Business Directory, an online "yellow-pages" advertisement;
- Full-cycle, automated email alert whenever any record of interest is posted or updated;
- Access to Online Response Submission, when allowed by the Issuer, to support:
 - paperless bid drafting and submission to an encrypted lock-box prior to close date;
 - electronic signature of OSD forms and terms; agreement to defer wet-ink signature until contract award, if any;
 - withdrawal of submitted bids prior to close date; and
 - online storage of submitted bids.

Every public purchasing entity within the borders of Massachusetts may post records on Comm-PASS at no charge. Comm-PASS has the potential to become the sole site for all public entities in Massachusetts. SmartBid fees are only based on and expended for costs to operate, maintain and develop the Comm-PASS system.

C. Bidder Communications

Bidders are prohibited from communicating directly with any employee of GOV regarding this RFR, except as specified in this RFR, and no other individual Commonwealth employee or representative is authorized to provide any information or respond to any question or inquiry concerning this RFR. Bidders may contact the contact person for this RFR in the event this RFR is incomplete or the bidder is having trouble obtaining any required attachments electronically through Comm-PASS.

D. Reasonable Accommodation

Bidders with disabilities or hardships that seek reasonable accommodation, which may include the receipt of RFR information in an alternative format, must communicate such requests in writing to the contact person. Requests for accommodation will be addressed on a case-by-case basis. A bidder requesting accommodation must submit a written statement which describes the bidder's disability and the requested accommodation to the contact person for the RFR. GOV reserves the right to reject unreasonable requests.

E. RFR Copies

Bidders may request a copy of the RFR, or any of its components, by going to www.comm-pass.com and searching for the solicitation number as noted on the front page of this document.

F. RFR Inquiries

Bidders may make written inquiries concerning this RFR until no later than the date and time specified in **Section 1.F** of this RFR. Written inquiries must be sent to the address listed in **Section 5.A**, above, by fax to (617) 727-8290 or by e-mail to legal.intern@state.ma.us.

GOV will review inquiries received before the deadline and at its discretion prepare written responses to questions which GOV determines to be of general interest and that help to clarify the RFR. Any written response will be posted on Comm-PASS. Only written responses will be binding on GOV.

G. Amendment or Withdrawal of RFR

If GOV decides to amend or clarify any part of this RFR, any written amendment will be posted on Comm-PASS. Bidders are cautioned to check this site regularly, as this will be the sole method used for notification of changes. GOV reserves the right to amend the RFR at any time prior to the deadline for submission of responses and to terminate this procurement in whole or in part at any time before or after submission of responses.

H. Costs

Costs which are not specifically identified in the bidder's response, and accepted by GOV as part of a contract, will not be compensated under any contract awarded pursuant to this RFR. The Commonwealth will not be responsible for any costs or expenses incurred by bidders responding to this RFR.

I. Closing Date

Responses received after the response due date and time specified in **Section 1.F** of this RFR will be rejected. Individual requests for extension of the time for submitting responses will be denied. All responses become the property of the Commonwealth of Massachusetts.

J. Acceptance of Response Content

The entire contents of the bidder's response shall be binding on the bidder. The specifications and contents of a successful bidder's response may be incorporated into the contract.

K. Public Records

Upon conclusion of this process, all responses and related documents submitted in response to this RFR may be considered public records and as such be subject to the Massachusetts Public Records Law, G.L. c. 66, § 10 and G.L. c. 4, § 7 subsection 26. Any statements in submitted responses that are inconsistent with these statutes will be disregarded.

L. Response Duration

The bidder's response shall remain in effect until any contract with the bidder is executed or the bidder withdraws its proposal.

M. Confidentiality

Bidders shall demonstrate that they can comply with all state and federal laws and regulations relating to confidentiality and privacy, and security of personal information, including but not limited to G.L. c. 93H, G.L. c. 66A, and associated regulations.

N. Incorporation of RFR

This RFR and the selected bidder's response may be incorporated into any contract awarded as a result of this RFR to that bidder.

O. Option to Modify Scope of Work

GOV reserves the right, at its sole discretion and at any time after release of the RFR and during the contract term, to modify, increase, reduce or terminate any requirements under the contract, whenever GOV deems necessary or reasonable to reflect any change in policy or program goals. GOV additionally reserves the right, at its sole discretion and at any time after release of the RFR and during the contract term, to amend the contract to implement state or federal statutory or regulatory requirements, judicial orders, settlement agreements, or any state or federal initiatives or changes affecting GOV agencies. In the event of a change in the scope of work for any contract tasks or portions thereof, GOV will provide written notice to the contractor and will initiate negotiations with the contractor. GOV reserves the right to amend the contract accordingly, including payments under, or maximum obligation of the contract.

P. Debriefing

Upon notification of GOV's award decision, any non-selected bidder may make a written request for debriefing. A debriefing meeting would provide the bidder an opportunity to discuss the evaluation of its response. A request for debriefing must be received by GOV at the Issuing Office specified under **Section 5.A**, within 14 calendar days after the postmark of GOV's award decision notification to the bidder. Debriefing meetings shall be held at the discretion of GOV.

Q. Authorizations and Appropriations

Any contract awarded under this RFR is subject to all necessary federal and state approvals, as applicable, including the Office of the Comptroller, and is subject to appropriation of sufficient funding, as determined by GOV.

R. Byrd Anti-Lobbying Amendment

If a contractor receives \$100,000 or more of federal funds through a contract, by signing that contract it certifies it has not and will not use federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress or an employee of a Member of Congress in connection with obtaining any federal contract, grant or any other award covered by 31 U.S.C. 1352. A contractor shall disclose any lobbying with non-federal funds that takes place in connection with obtaining any federal award.

S. Electronic Funds Transfer (EFT)

All bidders must agree to participate in the Commonwealth Electronic Funds Transfer (EFT) program for receiving payments. A link to the EFT application can be found on the OSD Forms page (www.mass.gov/osd). Additional information about EFT is available on the Comptroller's VendorWeb site located at:
<https://massfinance.state.ma.us/VendorWeb/vendor.asp>.

Upon notification of award, contractors are required to enroll in EFT by completing and submitting the "Authorization for Electronic Funds Payment Form" to the SSST for review, approval and forwarding to the Office of the Comptroller, unless already enrolled in EFT. A link to the EFT application can be found on the Comptroller's VendorWeb site (see above link). This form, and all information contained on this form, shall not be considered a public record and shall not be subject to public disclosure through a public records request.

T. Prompt Payment Discounts (PPD)

All bidders responding to this procurement must agree to offer discounts through participation in the Commonwealth Prompt Payment Discount (PPD) initiative for receiving early and/or on-time payments, unless the bidder can provide compelling proof that it would be unduly burdensome. PPD benefits both contractors and the Commonwealth. Contractors benefit by increased, usable cash flow as a result of fast and efficient payments for commodities or services rendered. Participation in the Electronic Funds Transfer initiative further maximizes the benefits with payments directed to designated accounts, thus eliminating the impact of check clearance policies and traditional mail lead time or delays. The Commonwealth benefits because contractors reduce the cost of products and services through the applied discount. Payments that are processed electronically can be tracked and verified through the Comptroller's Vendor Web system. The PPD form can be found under the Forms and Terms tab of this solicitation.

Bidders must submit agreeable terms for Prompt Payment Discount using the PPD form within their proposal, unless otherwise specified by the PMT. The PMT will review, negotiate or reject the offering as deemed in the best interest of the Commonwealth.

The requirement to use PPD offerings may be waived by the PMT on a case-by-case basis if participation in the program would be unduly burdensome on the bidder. If a bidder is

claiming that this requirement is a hardship or unduly burdensome, the specific reason must be documented in or attached to the PPD form.

U. Electronic Communication/Update of Bidder's/Contractor's Contact Information

It is the responsibility of the prospective bidder and awarded contractor to keep current the email address of the bidder's contact person and prospective contract manager, if awarded a contract, and to monitor that email inbox for communications from the PMT, including requests for clarification. The PMT and the Commonwealth assume no responsibility if a prospective bidder's/awarded contractor's designated email address is not current, or if technical problems, including those with the prospective bidder's/awarded contractor's computer, network or internet service provider (ISP) cause email communications sent to/from the prospective bidder/awarded contractor and the PMT to be lost or rejected by any means including e-mail or spam filtering.

V. HIPAA: Business Associate Contractual Obligations

Bidders are notified that any department meeting the definition of a Covered Entity under the Health Insurance Portability and Accountability Act of 1996 (HIPAA) will include in the RFR and resulting contract sufficient language establishing the successful bidder's contractual obligations, if any, that the department will require in order for the department to comply with HIPAA and the privacy and security regulations promulgated thereunder (45 CFR Parts 160, 162, and 164) (the Privacy and Security Rules). For example, if the department determines that the successful bidder is a business associate performing functions or activities involving protected health information, as such terms are used in the Privacy and Security Rules, then the department will include in the RFR and resulting contract a sufficient description of business associate's contractual obligations regarding the privacy and security of the protected health information, as listed in 45 CFR 164.314 and 164.504(e), including, but not limited to, the bidder's obligation to: implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the protected health information (in whatever form it is maintained or used, including verbal communications); provide individuals access to their records; and strictly limit use and disclosure of the protected health information for only those purposes approved by the department. Further, the department reserves the right to add any requirement during the course of the contract that it determines it must include in the contract in order for the department to comply with the Privacy and Security Rules. Please see other sections of the RFR for any further HIPAA details, if applicable.

W. Restriction on the Use of the Commonwealth Seal

Bidders and contractors are not allowed to display the Commonwealth of Massachusetts Seal in their bid package or subsequent marketing materials if they are awarded a contract because use of the coat of arms and the Great Seal of the Commonwealth for advertising or commercial purposes is prohibited by law.

X. Subcontracting Policies

Prior approval of the department is required for any subcontracted service of the contract. Contractors are responsible for the satisfactory performance and adequate oversight of its subcontractors. Human and social service subcontractors are also required to meet the same state and federal financial and program reporting requirements and are held to the same reimbursable cost standards as contractors.