

STATE OF OHIO
DEPARTMENT OF ADMINISTRATIVE SERVICES
GENERAL SERVICES DIVISION
OFFICE OF PROCUREMENT SERVICES
4200 SURFACE ROAD, COLUMBUS, OH 43228-1395

AMENDMENT FOR CHANGE
AMENDMENT NO. 1

TO: OHIO STATE LOTTERY COMMISSION
FROM: HUGH QUILL, DIRECTOR, DEPARTMENT OF ADMINISTRATIVE SERVICES
SUBJECT: TERM CONTRACT - MEDIA PLACEMENT AND SPONSORSHIP MANAGEMENT SERVICES

Attached are pages 31 and 32 of the RFP and 5 to this contract. Remove these pages from the existing contract and replace with the attached pages on the effective and/or revision date.

This amendment is issued to change the wording for the performance/payment bond requirement.

All other prices, terms and conditions remain unchanged.

Questions regarding this Amendment and/or the Requirements Contract may be directed to:

Ross Leider, CPPB
ross.leider@das.state.oh.us

This amendment, the main Requirements Contract and any additional amendments thereto are available from the DAS website at the following address:



<http://www.ohio.gov/procure>

Affected Contractor(s):

0000067488
Marcus Thomas LLC
Highlands Business Park
24865 Emery Road
Cleveland, OH 44128
jnash@marcusthomasllc.com

**ATTACHMENT THREE: GENERAL TERMS AND CONDITIONS
PART TWO: WORK & CONTRACT ADMINISTRATION**

Subcontractors. All work to be done by subcontractors utilized by the Contractor is subject to pre-approval by the OL. All subcontractors selected by the Contractor and approved by the OL must comply with all the terms and conditions contained in the Contract. Unless otherwise agreed to by the OL, the OL's legal department will provide the successful Offeror with a boilerplate subcontract to use for subcontractors.

Records Retention and Inspection. The Contractor shall maintain all pertinent financial and accounting records, and evidence pertaining to the Contract in accordance with generally accepted accounting principles and other procedures specified by the state of Ohio. Financial and accounting records shall be made available upon request by the OL Director, his representative, or the Ohio Auditor of State's office at any time during the Contract period or for three (3) years from the expiration date and final payment on the Contract, whichever is later.

Audits. During the term of this Contract and for three (3) years after the payment of the Contractor's Fee, on reasonable notice and during customary business hours, the State may audit the Contractor's records and other materials that relate to the Project. This audit right will also apply to the State's duly authorized representatives and any person or organization providing financial support for the Project, including, but not limited to the OL.

Unless it is impracticable to do so, all records related to this Contract must be kept in a single location, either at the Contractor's principle place of business or its place of business where the work was done. If this is not practical, the Contractor will assume the cost of collecting, organizing, and relocating the records and any technology needed to access the records to the Contractor's office nearest Columbus whenever the State or anyone else with audit rights requests access to the Contractor's Project records. The Contractor will do so with all due speed, not to exceed five (5) business days.

If any audit reveals any material deviation from the Project's specifications, any misrepresentation, or any overcharge to the State, the State will be entitled to recover damages, as well as the cost of the audit.

For each subcontract in excess of \$25,000.00, the Contractor will require its subcontractors to agree to the requirements of this section and of the record-keeping section. Subcontracts with smaller amounts involved need not meet this requirement. The Contractor may not artificially break up contracts with its subcontractors to take advantage of this exclusion.

Insurance. The Contractor shall maintain, or cause to be maintained, insurance against such hazards and in such amounts as are set forth below. The insurance shall be with insurers satisfactory to the State and the Contractor and shall list the state of Ohio, the OL and the Contractor as co-insureds or loss payees, as their respective interests may appear. All required bonds and insurance must be issued by companies which are financially rated "A-," size 6 or better by A.M. Best Company, and duly licensed, admitted, and authorized to do business in the State of Ohio. Required coverage must remain in effect throughout the term of the Contract, and costs of such bonding and insurance are to be borne by the Contractor. The Contractor shall supply evidence of insurance to the OL upon execution of the Contract, and will notify the OL at least thirty (30) days prior to the cancellation, non-renewal or material change to any policy. In the event of a cancellation or non-renewal, the Contractor shall immediately replace said policy as per the terms of the Contract. The Contractor shall furnish the OL evidence of insurance with the commencement of each Contract year. All insurance must provide coverage for all claims arising from activities during the Contract term regardless of the date of the claim. Copies of all bonds and policies must be available on demand to the OL. The Contractor shall procure the following insurances, and such insurances shall remain in full force and effect until 180 days after the expiration of this Contract:

Insurance requirements for Media Placement Services:

- A. * Performance/Payment Bond. The Contractor must, upon request by the OL, submit a performance/payment bond in the amount of \$5,000,000.00. The Contractor shall maintain a bond or other security acceptable to the OL. The bond must be maintained in full force and effect until the completion of this Contract and any renewals thereof. This may be maintained with an annual term bond from a surety company (the "Surety") authorized to conduct business within the state of Ohio. The bond must be coordinated and is the responsibility of the Contractor. Neither: (a) the Surety's decision not to issue a continuation certificate for such bond, nor (b) the failure or inability of Contractor to file a replacement bond or other security in the event the Surety exercises its right to not renew an annual bond shall itself create a loss recoverable from the Surety under such bond. It is the Contractor's full responsibility to maintain a current bond during the term of this Contract. A performance/payment bond form from an insurance company authorized to conduct business within the state of Ohio, and on a bond form that is specific to the Contract, will be acceptable. The performance/payment bond shall be made payable to and be issued for the benefit of the state of Ohio and the OL and shall specifically reference the Contract. The bond shall indemnify the state of Ohio and the OL against all direct damages suffered by failure of the Contractor to perform according to the provisions of the Contract (including payments to any third party subcontractors for services rendered under the Contract). In the event that any of the work performed on the OL Contract was subcontracted by the Contractor, the bond shall protect and be payable to said subcontractor(s) in the event of default by the Contractor and/or its assignees.
- B. General and Premises Liability. General Liability Insurance with limits of not less than \$1,000,000.00 per occurrence/\$2,000,000.00 in annual aggregate for bodily injury and property damage liability, personal injury and

*Language change in paragraph A.

advertising liability, or completed operations shall be maintained by the Contractor throughout the term of the Agreement and any renewals or extensions thereof..

- C. Worker's Compensation. The Contractor shall provide a certificate indicating that is has a standard Ohio Worker's Compensation Policy that is currently in force.
- D. Fidelity Bond. The State requires a Fidelity Bond in the amount of \$1,000,000.00 covering any loss to the OL due to any fraudulent or dishonest act(s) on the part of the Contractor or any subcontractor, or any officer, employee or agent thereof, to be submitted upon the awarding of the Contract. A fidelity bond from an insurance company authorized to conduct business within the State of Ohio that is rated "A-/VI" or better, and on a bond form that is specific to the Contract, is acceptable. The bond shall be made payable to the State of Ohio and the Ohio Lottery, and shall specifically reference the Contract. The bond shall be in effect for the duration of the Contract and/or any approved extension periods as listed in this Contract
- E. Automobile Liability Insurance. The Selected Offeror shall provide automobile liability insurance with a combined single limit of not less than \$1,000,000.00 per occurrence/\$1,000,000.00 in annual aggregate for bodily injury and property damage shall be maintained by the Selected Offeror throughout the term of the Contract and any renewals or extensions thereof.
- F. Errors and Omissions Insurance. The Selected Offeror shall provide errors and omissions insurance with limits of not less than the Contract award amount shall be maintained in force during the term of the Contract, and any renewals or extensions thereof, against the losses, damages or expenses that are incurred as a result of the wrongful acts and/or errors or omissions of the Selected Offeror, or any subcontractor or any officers, employees or agents thereof.

Insurance required for Sponsorship Management Services:

- A. * Performance/Payment Bond. The Contractor must, upon request by the OL, submit a performance/payment bond in the amount of \$800,000.00. The Contractor shall maintain a bond or other security acceptable to the OL. The bond must be maintained in full force and effect until the completion of this Contract and any renewals thereof. This may be maintained with an annual term bond from a surety company (the "Surety") authorized to conduct business within the state of Ohio. The bond must be coordinated and is the responsibility of the Contractor. Neither: (a) the Surety's decision not to issue a continuation certificate for such bond, nor (b) the failure or inability of Contractor to file a replacement bond or other security in the event the Surety exercises its right to not renew an annual bond shall itself create a loss recoverable from the Surety under such bond. It is the Contractor's full responsibility to maintain a current bond during the term of this Contract. A performance/payment bond form from an insurance company authorized to conduct business within the state of Ohio, and on a bond form that is specific to the Contract, will be acceptable. The performance/payment bond shall be made payable to and be issued for the benefit of the state of Ohio and the OL and shall specifically reference the Contract. The bond shall indemnify the state of Ohio and the OL against all direct damages suffered by failure of the Contractor to perform according to the provisions of the Contract (including payments to any third party subcontractors for services rendered under the Contract). In the event that any of the work performed on the OL Contract was subcontracted by the Contractor, the bond shall protect and be payable to said subcontractor(s) in the event of default by the Contractor and/or its assignees.
- B. General and Premises Liability. General Liability Insurance with limits of not less than \$1,000,000.00 per occurrence/\$2,000,000.00 in annual aggregate for bodily injury and property damage liability, personal injury and advertising liability, or completed operations shall be maintained by the Contractor throughout the term of the Agreement and any renewals or extensions thereof..
- C. Worker's Compensation. The Contractor shall provide a certificate indicating that is has a standard Ohio Worker's Compensation Policy that is currently in force.
- D. Fidelity Bond. The State requires a Fidelity Bond in the amount of \$500,000.00 covering any loss to the OL due to any fraudulent or dishonest act(s) on the part of the Contractor or any subcontractor, or any officer, employee or agent thereof, to be submitted upon the awarding of the Contract. A fidelity bond from an insurance company authorized to conduct business within the State of Ohio that is rated "A-/VI" or better, and on a bond form that is specific to the Contract, is acceptable. The bond shall be made payable to the State of Ohio and the Ohio Lottery, and shall specifically reference the Contract. The bond shall be in effect for the duration of the Contract and/or any approved extension periods as listed in this Contract
- E. Automobile Liability Insurance. The Selected Offeror shall provide automobile liability insurance with a combined single limit of not less than \$1,000,000.00 per occurrence/\$1,000,000.00 in annual aggregate for bodily injury and property damage shall be maintained by the Selected Offeror throughout the term of the Contract and any renewals or extensions thereof.
- F. Errors and Omissions Insurance. The Selected Offeror shall provide errors and omissions insurance with limits of not less than the contract amount shall be maintained in force during the term of the Contract, and any renewals or extensions thereof, against the losses, damages or expenses that are incurred as a result of the wrongful acts and/or errors or omissions of the Selected Offeror, or any subcontractor or any officers, employees or agents thereof.

*Language change in paragraph A.

SUMMARY OF AMENDMENTS

| Amendment Number | Revision Date | Description |
|-----------------------------|--------------------------|---|
| 1 | 06/27/08 | Change the wording for the performance/payment bond requirement |