

REQUEST FOR RESPONSE
 INDEPENDENT MONITOR FOR WYNN LICENSE CONDITIONS RFR
 RFR #MGC-2019-Wynn/ COMMBUYS bid# BD-19-1068-1068C-1068L-39534

ISSUE DATE:

Purchasing Department	Massachusetts Gaming Commission
Address	101 Federal Street, 12th Floor
City, State Zip Code	Boston, MA
Procurement Contact Person	Agnes Beaulieu
Telephone Number	617-979-8462
Fax Number	
E-Mail Address	Agnes.beaulieu@state.ma.us
RFR Name/Title	Independent Monitor for Wynn License Conditions
RFR Number	MGC-2019-Wynn
COMMBUYS bid Number	BD-19-1068-1068C-1068L-39534

1. Description or Purpose of Procurement:

The Massachusetts Gaming Commission (“MGC”) seeks to procure the services of an independent monitor consistent with condition B. 2 of the MGC’s [Decision and Order](#) (pp. 50-51) pertaining to Wynn Resorts, Limited, (the “Company”) and its affiliate Wynn MA, LLC (the “Licensee”) dated April 30, 2019. Details as to the scope of services sought are set forth in Section 7 below.

2. Applicable Procurement Law

Check Appropriate Box (“X”):	Type of Purchase	Applicable Laws
	Executive Branch Goods and Services	
<input checked="" type="checkbox"/>	Goods and Services	MGL c. 7, § 22; c. 30, § 51, § 52; 801 CMR 21.00
<input type="checkbox"/>	Human and Social Services	MGL c. 7, § 22, § 22N; c. 30, § 51, § 52; 801 CMR 21.00; 808 CMR 1.00
<input type="checkbox"/>	Legal Services	MGL c. 30, § 51, § 52 and § 65; c. 7, § 22; and 801 CMR 21.01(2) (b)
<input type="checkbox"/>	Grants	MGL c. 7A, § 7; St. 1986 c. 206, § 17; 815 CMR 2.00

3. Acquisition Method:

Check All Applicable (“X”):	Category
<input type="checkbox"/>	Fee-For-Service
<input type="checkbox"/>	Outright Purchase
<input type="checkbox"/>	Rental (not to exceed 6 months)
<input type="checkbox"/>	Term Lease
<input type="checkbox"/>	License

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<input checked="" type="checkbox"/>	Other: The Commission is seeking creative funding proposals that could include maximum obligation, tranche, time and materials, and/or any combination.
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4. Whether Single or Multiple Contractors are Required for Contract:

Check One ("X"):	
<input checked="" type="checkbox"/>	Single contractor
<input type="checkbox"/>	Multiple contractors

a. Estimated Number of Awards

One contract will be awarded pursuant to this procurement. However, bidders may compose their teams in any fashion necessary to ensure successful performance of the full scope of required services whether this entails joint ventures or partnerships, and/or the use of subcontractors, or otherwise.

b. Adding Contractors after Initial Contract Award

If, over the life of the contract, the MGC determines that the contractor is unable to perform the requirements under the contract, the MGC may, but is not required to, select a successor contractor by drawing from qualified companies which responded to this Solicitation but were not awarded the contract. If necessary to meet the requirements of the Commonwealth, the Solicitation may be reopened to obtain additional bids.

5. Entities Eligible to Use the Resulting Contract

Check One ("X"):	Eligible Entities
<input type="checkbox"/>	<p>Limited User Contract – Restricted to Use by Defined Entities Only. Any contract(s) resulting from this bid will be open for use by the issuing Purchasing Department and the following other entities:</p> <p>The Purchasing Department reserves the right to add or remove additional authorized users during the contract term.</p>
<input checked="" type="checkbox"/>	<p>Limited User Contract – Restricted to Use by Issuing Entity Only.</p>

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6. Expected Duration of Contract (Initial Duration and any Options to Renew):

Contract Duration	Number of Options	Number of Years/Months	Instructions
Initial Duration		<u>5</u>	Pursuant to the terms of the MGC Decision dated April 30, 2019, the Company may petition the MGC after 3 years to discontinue the monitoring that is the subject of this procurement. The discontinuation of such monitoring is at the sole discretion of the MGC. In the event that the MGC allows such petition, or determines on its own initiative that the monitoring shall be ceased, at any time after the initial 3 year period, the contract awarded pursuant to this procurement may be terminated at the sole discretion of the Commission. The monitor will be compensated solely for services performed, and expenses accrued, through the termination date.
Renewal Options	<u>0</u>	<u>0</u>	
Total Maximum Contract Duration		<u>5</u>	

7. Contract Performance and Business Specifications:

Scope of Services:

The MGC seeks to retain an independent monitor to perform the following listed services in connection with Wynn MA, LLC (the “licensee”) as the holder of the Category 1, Region A gaming license under G.L. c. 23K in order to mitigate the risk of a recurrence of the violations identified by the MGC in its [Decision](#) and Order dated April 30, 2019. The primary focus of the independent monitor’s review and evaluation is the Massachusetts licensee. In order to thoroughly evaluate the Massachusetts operation, such focus may necessarily overlap or intersect with the operations of the Company and its other subsidiaries or properties in certain areas. For example, to the extent HR policies, procedures and practices are generally applicable to all Company employees, including those in Massachusetts, they are subject to the review of the independent monitor under this RFR and related contract. The independent monitor shall not review, evaluate or otherwise assess gaming-related operations of the licensee, the Company or its subsidiaries or properties.

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- A. The independent monitor shall conduct a baseline assessment that will involve a full review and evaluation of:
- (i) The policies and organizational changes adopted by Wynn Resorts, Limited (the Company) as described by the Company in all written submissions to the Commission in connection with the three-day adjudicatory hearing held from April 2-4, 2019, including any relevant post-hearing submission, and in testimony given by representatives of the Company during that hearing (collectively the “Adjudicatory Hearing.”). The MGC decision and the Company’s “Whitepaper” are available on the MGC website (www.massgaming.com) for review by bidders in preparing their submissions. The full set of reports, submissions, and transcripts of the hearing will be made available to the winning bidder upon execution of the contract.
 - (ii) The following four specific business practices:
 - a) The implementation of and compliance with all human resource or “HR” policies applicable to the employees of the licensee to ensure that they reflect current best practices;
 - b) Use of retractions, mandatory arbitration provisions, gag orders, confidentiality clauses, and non-disparagement provisions of all employees, with particular attention to the use of such measures and their impact on non-executive employees;
 - c) Adequacy of internal reporting and communication channels throughout the Company, and with regulators, and their alignment with up-to-date organizational charts and reporting structures; and
 - d) Use of outside counsel and maintenance of and adherence to de-conflicting policies and procedures.
- B. The independent monitor shall assess and report on the structure and effectiveness of the Compliance Committee (and related Compliance Program and Plan), the Audit Committee, and the substance and effectiveness of the Company’s training programs for new and current members of the Board of Directors.
- C. The independent monitor shall recommend to the Company such measures and other changes necessary to correct any deficiencies identified through such baseline assessment; such recommendations of the monitor may be adopted as license conditions at the Commission’s discretion. The Company has been directed to comply with the recommendations of the independent monitor, unless relief is otherwise petitioned for by the Company and granted by the Commission. The Commission does not expect the monitor to substitute its judgment for that of the Company in these matters. Instead, the Commission is attempting to gain an understanding as to whether the approaches put in place by the Company are consistent with recognized best practices and are in fact effective. As stated in the Commission’s Decision and Order dated April 30, 2019 on page 50, “[o]ne of the key metrics by which we will measure that success will be the overall well-being, safety, and welfare of the employees. A second but equally important metric is the importance of compliance and communication with the regulator.” It is expected

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that the monitor will actively communicate with the Company in order to understand the Company's position and approach to the subject matter. The Commission will address requests for clarification in open meeting consistent with the requirements of the Commonwealth's open meeting law.

D. The independent monitor shall present the baseline assessment and any initial recommendations to the Commission within six months of the commencement of its engagement. The independent monitor shall continue to meet the requirements set forth in this Section 7 and make such additional recommendations to the Company that the monitor deems appropriate on an on-going basis over the course of its engagement. After its initial presentation of the baseline assessment, the independent monitor shall report to the Commission no less than annually in accord with a mutually agreed upon schedule between the independent monitor and the Commission.

Companies seeking to respond to this RFR must have a proven track record of being able to accomplish the deliverables listed above. In order to demonstrate the track record, the Commission requires resumes for all team leads proposed to be dedicated to the awarded contract as well as relevant examples of previous work that falls under one or all of the baseline categories above. Knowledge and understanding of corporate governance, non-disclosure agreements, trade secrets, SEC disclosure considerations, privileged communications, and any other protective covenants are essential for a successful response. Demonstrated experience working with Massachusetts public agencies subject to the public records law and open meeting law will be given additional weight. Demonstrated experience working as an independent monitor will also be given additional weight. The successful bidder will be required to demonstrate how it will identify and securely store protected and sensitive materials, and will enter into any non-disclosure or confidentiality agreement with the Commission that it deems necessary to ensure compliance with its legal obligations and appropriate treatment of the sensitive corporate materials the monitor will be required to review and take into its possession over the course of the contract.

The Commission strongly supports and recognizes the importance of a diverse workforce that includes women, minorities, and veterans. This is important both in vendor spend and labor composition, and is demonstrated in our scoring criteria. A bidder may demonstrate its diversity either directly or, e.g., via its engagement in a partnership arrangement or with subcontractors.

The independence of the monitor is critical to the success of this process. The bidder's degree of objectivity and independence needed to ensure effective and impartial performance of the monitor's duties will be given considerable weight. Accordingly, the proposal must include a certification that the bidder, including any joint venturer, partner, and all subcontractors, is not currently engaged in any type of relationship, whether contractual or otherwise, with the licensee, the Company or any of the Company's subsidiaries or affiliates, has not been so engaged in the two years preceding the submission of the bid, and does not presently hold any financial interest in the Company whatsoever. Any past relationship between the bidder and the Company shall be identified and explained in the bid. Further, the bidder must certify that it will not enter into any business or employment relationships with the Company for a period of two years from the date of the expiration of the contract. The Commission also shall exclude from consideration proposals submitted by bidders that had any role in the adjudicatory hearing held on April 2-4, 2019.

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Submissions should clearly articulate a plan to achieve all of the aforementioned considerations, including a description of all resources, including personnel, that the bidder anticipates assigning to this venture, and should not exceed at total length of 75 pages, inclusive of any charts, resumes or addenda. Please make sure to submit the bid in two separate attachments; one for the overall response to the scope of services and a second attachment detailing the cost and/or budget for the response.

Fiscal Terms:

The Commission is seeking quotes that are creative in nature and will provide the best overall services for the cost of the contract. While cost is always a consideration, it is not the sole driver of this procurement. Therefore, we are seeking bids that maximize diverse inclusion (both on the vendor as well as the team composition), as well as flexible funding mechanisms which can include maximum obligation, time and materials, tranche proposals or any combination thereof. The Commonwealth is tax exempt, we prefer prompt payment discounts and bills are payable in accordance with the State Comptroller's bill payment policy.

Performance Measures:

For the purposes of complying with the requirement of the independent monitor presenting the baseline assessment and any initial recommendations to the Commission within six months of its selection, selection shall mean once a contract is duly negotiated and executed between the Commission and the independent monitor.

8. Small Business Purchasing Program

N/A

9. Supplier Diversity Plan (SDP) Plan

Bidders must submit a Supplier Diversity Plan.

10. Environmentally Preferable Products

Products and services purchased by state agencies must be in compliance with Executive Order 515, issued October 27, 2009. Under this Executive Order, Executive Departments are required to reduce their impact on the environment and enhance public health by procuring environmentally preferable products and services (EPPs) whenever such products and services perform to satisfactory standards and represent best value, consistent with 801 CMR 21.00. In line with this directive, all contracts, whether departmental or statewide, must comply with the specifications and guidelines established by OSD and the EPP Program. EPPs are considered to be products and services that help to conserve natural resources, reduce waste, protect public health and the environment, and promote the use of clean technologies, recycled materials, and less toxic products. Bid responses must identify how a contractor meets these goals.

11. Evaluation Criteria

Contractors must submit responses that meet all the submission requirements of the RFR. Only responsive proposals that meet the submission requirements will be evaluated, scored and ranked by the

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evaluation team according to the evaluation criteria. Additional information may be requested for evaluation purposes.

Scoring shall be based on the following:

- 40% Relevant Experience
- 10% Diversity (e.g. – team/company composition, use of vendors, partnerships, etc.)
- 10% Cost
- 40% Quality and Thoroughness of Response including a detailed, clear plan to achieve the goals.

12. Instructions for Submission of Responses:

Only electronic quotes submitted via COMMBUYS will be accepted in response to this RFR. Responses must be sent via the “Create Quote” functionality contained in COMMBUYS. For instructions concerning how to submit a Quote, please see Appendix B.

Please make sure to submit two separate attachments; one for the overall response to the scope of services and a second attachment detailing the cost and/or budget for the response.

Any submission which fails to meet the submission requirements of the RFR will be found non-responsive without further evaluation unless the evaluation team, at its discretion, determines that the non-compliance is insubstantial and can be corrected. In these cases, the evaluation team may allow the vendor to make minor corrections to the submission.

13. Estimated Procurement Calendar

Procurement Activity	Date	Time [Indicate: AM or PM; EST or EDT]
Announcement of Intent to Procure	<u>5/13/2019</u>	<u>3:00 pm</u>
Bid Release Date	<u>5/24/2019</u>	<u>3:00 pm</u>
Deadline for Submission of Questions through COMMBUYS “Bid Q&A”	6/7/2019	3:00 pm
Official Answers for Bid Q&A published (Estimated)	6/14/2019	3:00pm
Bid Amendment Deadline / Online Quote Submission Begins. Bid documents will not be amended after this date.	6/21/2019	3:00pm

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Deadline for Quotes/Bid Responses (“Bid Opening Date/Time” in COMMBUYS)	6/28/2019	3:00pm
Oral Presentations for Selected Bidder(s) (Estimated)	7/12/2019	
Notification of Apparent Successful Bidder(s) (Estimated)	7/19/2019	
Estimated Contract Start Date	8/09/2019	

Bidders are required to monitor COMMBUYS for changes to the procurement calendar for this bid.

a. **Online Questions (Bid Q&A)**

Written Questions must be entered by pressing the “Bid Q&A” tab for the bid in COMMBUYS no later than the “Online Questions Due” date and time indicated in the Estimated Procurement Calendar (above). The MGC reserves the right not to respond to questions submitted after this date. It is the bidder’s responsibility to verify receipt of questions.

It is the responsibility of the prospective bidder and awarded contractor to maintain an active registration in COMMBUYS and 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 MGC, including requests for clarification. The MGC 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 MGC to be lost or rejected by any means including email or spam filtering.

Written Responses to Questions will be released on or about the date indicated in the Estimated Procurement Calendar (above).

(Written questions and responses will be posted on the Bid Q&A Tab for this bid in COMMBUYS.)

b. **Bid Amendment Deadline**

The MGC reserves the right to make amendments to the bid after initial publication. It is each bidder’s responsibility to check COMMBUYS for any amendments, addenda or modifications to this bid, and any Bid Q&A records related to this bid. The MGC and the Commonwealth accept no responsibility and will provide no accommodation to bidders who submit a Quote based on an out-of-date bid or on information received from a source other than COMMBUYS.

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c. Quotes (Bid Responses) Deadline (Bid Opening Date/Time)

See the Quotes (Bid Responses) Deadline (Bid Opening) Date and Time indicated in the Estimated Procurement Calendar (above).

d. Oral Presentations

The MGC reserves the right to request the highest scoring bidders to make oral presentations either through on-site meetings or through a video conferencing platform the week of the Date and Time indicated in the Estimated Procurement Calendar (above).

e. Contract Negotiation

The MGC reserves the right to negotiate any portion of the response with a bidder to make sure the MGC attains the scope and best value for the Commonwealth.

f. Estimated Contract Start Date

This is the approximate start date. The actual start date will be the Contract Effective Date which is the date the contract is executed by the parties.

14. Required Forms

The bidder that is selected and negotiates a successful contract will be required to complete and fill out the forms indicated below. **DO NOT SUBMIT ANY OF THESE FORMS WITH YOUR RESPONSE.**

Check if applicable ("X")	Form/Document	Notes/Instructions (If any)
	[IDENTIFY ALL APPLICABLE DEPARTMENT BID DOCUMENTS AND ADD ADDITIONAL LINES AS NEEDED]	[IDENTIFY SUBMISSION INSTRUCTIONS]
<input checked="" type="checkbox"/>	Commonwealth Terms & Conditions	Wet Ink Signature Required
<input checked="" type="checkbox"/>	Request for Taxpayer Identification Number & Certification (Massachusetts Substitute W-9 Form)	Wet Ink Signature Required
<input checked="" type="checkbox"/>	Standard Contract Form and Instructions	Wet Ink Signature Required
<input checked="" type="checkbox"/>	Contractor Authorized Signatory Listing	Wet Ink Signature Required
<input checked="" type="checkbox"/>	Authorization for Electronic Funds Transfer	Electronic Submission
<input checked="" type="checkbox"/>	Additional Environmentally Preferable Products/Practices	Electronic Submission

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Check if applicable (“X”)	Form/Document	Notes/Instructions (If any)
<input checked="" type="checkbox"/>	Supplier Diversity Plan Form 1 (SDP Plan Commitment)	Electronic Submission
<input checked="" type="checkbox"/>	Prompt Payment Discount Form	Electronic Submission
<input checked="" type="checkbox"/>	Business Reference Form	Electronic Submission

The above attachments are available as part of the bid record on [COMMBUYS \(WWW.COMMBUYS.COM\)](http://www.commbuys.com).

15. RFR Attachments

Appendix A: Required Specifications [LOCATED ON OSD’S FORMS PAGE:
<http://www.mass.gov/anf/budget-taxes-and-procurement/oversight-agencies/osd/osd-forms.html>]

Appendix B: Electronic Quote Submission Instructions
<http://www.mass.gov/anf/docs/osd/forms/instructions-for-vendors-responding-to-bids.docx>