

PRESS RELEASE

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NY Lottery Disqualifies Two Bidders for Non-Conforming Proposals to Develop Aqueduct

July 06, 2010 - New York Lottery Director Gordon Medenica today announced the disqualification of two of the three proposals the Lottery received on June 29, 2010, for the development and operation of a video lottery casino at Aqueduct racetrack in New York City. The proposals did not conform with the requirements of the competition and, instead, attempted to negotiate for terms more favorable to the bidders.

The two disqualified proposals were submitted by a consortium consisting of SL Green, Hard Rock International and Clairvest Group and by Penn National Gaming. The third proposal submitted by Genting New York appears to conform with all requirements of the bid submission process and will continue to be evaluated.

The proposals were submitted in response to a Request for Proposals (RFP) the Lottery issued on May 11, 2010, which required bidders to submit with their proposals a signed Memorandum of Understanding (MOU) and other documents. Only Genting complied with those requirements.

SL Green and Penn National both failed to submit signed copies of the MOU. Instead, their proposals offered altered versions of the MOU containing numerous "material deviations." In addition, the disqualified proposals failed to satisfy other mandatory requirements of the RFP.

The Lottery found SL Green's proposal non-responsive to the RFP on a number of substantive issues, including the following:

- SL Green did not agree to provide interim funding to support New York Racing Association (NYRA) operations until the opening of the video lottery casino. NYRA, which operates thoroughbred racing and pari-mutuel wagering at Aqueduct, Belmont and Saratoga, is entitled by law to a share of the Aqueduct video lottery revenues.
- SL Green wanted the minimum \$300 million licensing fee be held in escrow and released to the State only after the satisfaction of conditions defined by SL Green.
- SL Green wanted the right to terminate the MOU if all of SL Green's conditions are not satisfied by December 31, 2010.
- SL Green wanted compensation for any video lottery facility granted "more favorable tax treatment" within

50 miles of Aqueduct.

- SL Green wanted to make ownership changes without the State's consent, which violates the Lottery's video lottery regulations.
- SL Green wanted the right to sublease any portion of the Aqueduct video lottery casino to any affiliate without the State's consent, on terms defined by SL Green.
- SL Green wanted the right to award operation or management contracts to third parties without the State's approval.
- SL Green wanted the right to submit all disputes to binding arbitration, which violates the Attorney General's longstanding position that such provisions are not allowed in State contracts.
- SL Green wanted the right to enter into material debt transactions with unidentified lenders without the State's approval, a violation of the Lottery's video lottery regulations.
- SL Green wanted the State to provide the \$250 million Capital Construction Grant promised in the MOU even if SL Green changes the construction budget without the State's consent.
- SL Green wanted to be able to make alterations to Aqueduct valued at less than \$10 million without the Lottery's approval, which would violate a statutory requirement.
- SL Green wanted to be able to make repairs or alterations to Aqueduct without the consent of the State or NYRA and then to bill the State or NYRA for the cost of the repairs or alterations.
- SL Green wanted any increase in local property taxes to be limited to no more than three percent a year, which would deprive the City of New York of revenues attributable to the increase in the value of the Aqueduct property.
- SL Green wanted a complete exemption from State and local sales taxes in connection with the construction of the video lottery casino.
- SL Green wanted to increase the required insurance coverage to be provided by NYRA.
- SL Green wanted NYRA to indemnify SL Green for any and all claims except those caused by SL Green's gross negligence or willful misconduct.
- SL Green wanted a limitation of the State's right to litigation expenses if it is necessary for the State to sue to enforce SL Green's obligations under the Construction Grant Disbursement Agreement.
- SL Green wanted a promise that the State would never discuss the Aqueduct video lottery casino with any other party as long as SL Green continues as the Aqueduct video lottery agent.

- SL Green also modified other provisions dealing with various approvals and indemnifications.

The Lottery found the Penn National proposal non-responsive to the RFP for the following reasons:

- Penn National would not agree to advance funds to NYRA if construction of the Aqueduct casino is delayed by more than 30 days; Penn National also wanted a six-month acceleration of NYRA's loan repayment obligations by eliminating the waiting period already agreed to by the State and NYRA.
- Penn National wanted to be able to terminate the Aqueduct video lottery license at anytime Penn National decides, in its sole discretion, that the casino has not been profitable to Penn National for four consecutive calendar quarters.
- Penn National wanted to be able to change the MOU to protect Penn National's profits "in light of tax rates and other material factors."
- Penn National wanted the State to guarantee that no other gaming facility would ever be opened within 50 miles of Aqueduct unless the Aqueduct video lottery license agreement is revised to include terms more favorable to Penn National or the State refunds the minimum \$300 million licensing fee to Penn National.
- Penn National wanted the minimum \$300 million licensing fee to be held in escrow and released to the State only if conditions defined by Penn National are satisfied.
- Penn National wanted a refund of a portion of the minimum \$300 million licensing fee if there is any "material and adverse change in New York State law."
- Penn National wanted a special tax concession to cap local property taxes payable to the City of New York at no more than one percent of "gaming revenue," which Penn National did not define.
- Penn National wanted the State to waive any right to seek consequential or punitive damages on account of Penn National's conduct and to indemnify Penn National against claims related to operation of the Aqueduct casino.

Most of SL Green's and Penn National's proposed changes were raised during the course of the Lottery's three rounds of questions and answers (published at nylottery.org) for the bidders over a period of six weeks. It was made clear to all bidders that non-conforming bids would be disqualified.

If Genting is not approved, neither SL Green nor Penn National will be eligible for reconsideration because of their failure to conform to the RFP's requirements. Reconsidering SL Green or Penn National would be unfair to other potential bidders who did not attempt to renegotiate the RFP's requirements, including Delaware North and Empire City/Yonkers Raceway, both of which paid the \$1 million entry fee to participate in the

competition but then declined to submit proposals because of their unwillingness to comply with the RFP requirements.

The Lottery is refunding the \$1 million entry fees paid by SL Green and Penn National, in addition to the earlier refunds to Delaware North and Empire City. Genting's entry fee will be retained by the Lottery, which will continue and complete the evaluation of Genting's proposal. If the Lottery determines that the Genting proposal satisfies all of the requirements and that all of the entities and individuals associated with Genting's proposal are eligible for a New York video lottery license, the Lottery expects to make a recommendation on or before August 3, 2010, for approval of Genting's proposal by the Governor, the Temporary President of the Senate, and the Speaker of the Assembly. The Lottery is committed to completing its evaluation process as soon as possible, in order to allow the State to receive the minimum \$300 million initial license fee sooner than expected.