To: Bennett Liebman

From: Elizabeth Wolf

Date: June 23, 2006

Subject: Student Assignment/Racing and Wagering

Review of RFP for the New York State Racing Franchise

I. DESCRIPTION OF RFP:

The Ad Hoc Committee on the Future of Racing (the “Committee”) is seeking formal written proposals from entities interested in obtaining a twenty year franchise to secure the rights to operate, manage, and conduct race meetings and pari-mutuel betting on races held at Aqueduct, Belmont, and Saratoga, as well as the maintenance of a video lottery gaming facility at Aqueduct. The Committee will consider responses to the RFP and any other information it deems relevant and weigh it against the standard of which bidder can be reasonably expected to best provide those services. The Committee will make a recommendation to the State Legislature, the Governor, and the New York State Racing and Wagering Board (the “Board”) as to which proposal best ensures the franchise will be operated in a sound and economical manner consistent with the traditions of New York thoroughbred racing while ensuring racing’s long-term viability. The State will not be precluded from awarding the franchise to an entity other than a bidder recommended by the Committee. The present franchise term is set to expire December 31, 2007.

Part I of the RFP is the introduction, containing the background, objective, schedule, administrative information, formatting requirements, disclosure rules, definitions, etc.

Part II of the RFP contains the general terms and conditions, including the governing law, information regarding proper incorporation, background investigation and licensing, corporate merger/acquisition/takeover/restructure, change of financial condition, termination, indemnification, bonds and insurance, taxes, fees, and assessments, contract and subcontract approval, use of copyrighted or trademarked materials, ownership of improvements and right of use, and early award due to exigent circumstances.

Part III of the RFP contains the requirements for the proposal described below.

Part IV of the RFP describes the evaluation process that will be used. The Committee will evaluate bids based on six (6) criteria: proposal detail, integrity measurement, financial viability, approach and managerial theory, experience and qualification, and lease payment. Each section will receive a score, and the bid with the highest score will be recommended by the Committee to be awarded the franchise.

Assumptions:

The realty of the franchise consists of the Aqueduct, Belmont, and Saratoga racing facilities and includes the racetrack proper, ancillary and satellite properties and all appurtenances thereto.

The State has a proprietary interest in all names, copyrights, trademarks, crests, or logos that have been established for the franchise and the continued use of these interests will be included in the franchise. All names, copyrights, trademarks, crests, or logos that are developed by and through the franchise shall be owned by the State.
Bidders should assume that the following three statutory changes have or will be made to the Racing law:

1. At the expiration of the current franchise, the title to the racetrack facilities will be held by the State, and a state entity (the “contracting authority”) should be charged with negotiating the terms of a lease for the racetrack facilities to the franchisee. The lease would govern the conduct and operation of the racetrack facilities, consistent with the Racing Law and the selected RFP response and would include certain standard clauses contained in Appendix D: Standard Clauses for New York State Contracts.

2. The Racing Law should clearly reflect that any properly incorporated entity, including any association, individual, off-track betting corporation, entity, or combination should be eligible to be awarded the franchise.

3. The Racing Law should be amended to remove all references specifically applicable to the present “non profit racing association” not relevant to any new incarnation of a generic “non profit racing association.”

Options:
Submitted proposals will be evaluated not only to recommend a bidder to be awarded the franchise, but also to make recommendations of changes to the Racing Laws in accordance with the proposed options. *Bidder may submit a proposal for a single option or any combination of the six options.*

1. **Option 1(a): Existing Structure:** No statutory changes will be made other than necessary statutory changes.

2. **Option 1(b): Existing Structure and Video Lottery at Belmont Park.**

3. **Option 2(a): Moderate Racing Law Changes:** Assumes the following statutory changes were made prior to or at the time of issuance of the new franchise.
   a. Extension of exclusive dates for Saratoga Race Course from 24 racing days in August to 36 days.
   b. Account wagering: in addition to telephonic communication, account wagering should be extended to include access “via telephone or other electronic media” including but not limited to wireless and internet communications services.
   c. In-home simulcasting: present law shall be amended to allow for unrestricted televising of horseracing.
   d. Rebates: present law shall be amended to allow New York tracks and other pari-mutuel operators to offer customer loyalty programs and cash rebates on a permanent basis.
   e. Permissive joinder of operations: present law shall be amended to permit each of the Off-Track Betting Corporations at its option to engage in a merger, joint venture or otherwise align its business interests with the franchisee’s in order to increase efficiency, customer convenience, and private investment in the OTB Corporation facilities.
   f. Taxation change: present law shall be amended to alter application of the pari-mutuel tax, imposing it on sums retained and not upon the handle.

4. **Option 2(b): Moderate Racing Law Changes with Video Lottery at Belmont Park:** same as Option 2(a), except that the statutory prohibition against the licensure
of operation of video lottery gaming at Belmont, in Tax Law §1617-a, would be eliminated.

5. **Option 3(a): Moderate Racing Law Changes and Off-Track Betting Restructure**: assume all changes are made pursuant to Option 2(b) except for permissive joinder as well as the following:
   a. Mandatory joinder of operations: present law shall be amended to restructure off-track wagering.
      - All existing OTB Corporations shall be merged into a single public benefit corporation, with a Board of Directors consisting of one seat from each of the geographic regions of the present corporations and one seat from each racing facility licensed or enfranchised by the Board under Articles II, III, and IV of the Racing Law.
      - The voting rights for each seat on the Board of Directors will be weighted, calculated annually based on the previous 5 years’ handle on New York state racing product within each region or by each licensed or franchised racing facility.
      - Revenues shall be distributed to the existing regions on a basis reflective of an average from calendar years 1996 through 2005, recalculated annually to reflect the previous ten years regional collection. These sums shall be distributed on a countywide basis reflective of the same averages, recalculated annually to reflect the previous ten years regional collection.
      - The statutory purpose for off-track betting shall be changed to reflect goals of considering and promoting the health of the NY racing industry in addition to raising revenue for local government.

6. **Option 3(a): Moderate Racing Law Changes and Off-Track Betting Restructure and Video Lottery at Belmont Park**: Same as Option 3(a), except that the statutory prohibition against the licensure of operation of video lottery gaming at Belmont (in Tax Law §1617-a) would be eliminated.

**Proposal Detail:**

Each submitted proposal should address each element of each option bid upon, and if the bid contains proposals for more than one option, each option shall be submitted in a separate document.

If a bidder has practical racing experience and expertise, bidder should detail its actual history with the items discussed *infra*.

With regard to detailing the bidders’ intent to manage, operate, and conduct racing at the Aqueduct, Belmont, and Saratoga racetracks and the actions, projects and tasks the bidder agrees to undertake to ensure the franchise will be managed in a manner that is in the best interests of the State and will ensure the long-term success of the State’s racing industry, bidders should provide the following information:

1. The minimum number of racing days and number of races to be conducted per day to be applied for at each racing facility for each race meeting. The type (restricted, open, allowance, claiming, optional claiming, maiden, stakes) of races proposed, subject to horse availability. For Saratoga, the number of steeplechase races and steeplechase stakes races to be conducted per meeting.
2. Capital improvements recommended by bidder for both the operational front and backside of each racetrack facility specifically as it relates to the actual racing operations at each racetrack.
   a. Distinguish between those capital improvements which the bidder guarantees it will perform if granted the franchise and those which the bidder merely recommends.
   b. Provide a time line for the implementation of each proposed and guaranteed capital improvement.
   c. Identify the method of funding bidder intends to use to pay for each proposed capital improvement.

3. Capital improvements proposed to other portions of the racetrack facilities, ancillary, and satellite properties.
   a. Distinguish between those capital improvements which the bidder guarantees it will perform if granted the franchise and those which the bidder merely recommends.
   b. Provide a time line for the implementation of each proposed and guaranteed capital improvement.
   c. Identify the method of funding bidder intends to use to pay for each proposed capital improvement.
   d. Identify the ancillary or satellite parcels, if any, which bidder recommends be separated from the franchise and retained by the State or operated and maintained by another entity for community purposes, and identify those purposes.

4. Identify the bidder’s recommended uses and terms of uses for the racing facilities, ancillary and satellite properties when race meetings are not being conducted on or near those properties.

5. Identify the dollar amounts or percentages of facility net revenue (including on-track retention, simulcasting fee revenue and video lottery gaming vendor fees) and other types and manner of support to be allocated, and the means of such allocation, to:
   a. Racing integrity programs, e.g., drug testing and research, medication rules enforcement, and racetrack security
   b. Wagering integrity programs such as electronic wagering technology upgrades
   c. Equine health and safety programs, including track-related factors (e.g., surfaces, gates, rails, etc.)
   d. Rider health and safety programs and workers compensation supplementation
   e. Improvements to backstretch living conditions, including health care, child care, dormitory conditions, insurance, etc.
   f. Thoroughbred retirement program
   g. Customer service and amenities
   h. Problem gambling programs (awareness, prevention and treatment)

Each bidder shall detail specific programs, ventures, grants, etc. they would support, enact, commence, etc. concerning items listed above.

6. Bidder shall detail its proposed concept for revenue generation from the sale of the franchise simulcast signal to third parties. Those bidders who currently own
or operate existing racetracks shall detail their proposal relative to generating revenue through the provision of the franchise simulcast signal to such racetracks while ensuring it obtains a fair market price for the signal.

7. Each bidder shall detail the retention rates it anticipates requesting from the Board and shall articulate its general corporate philosophy regarding take-out policy. (Present law allows the State’s racetracks to set its retention rates within statutorily imposed ranges.)

8. Identify, with particularity, the percentages of pari-mutuel and video gaming revenue that the bidder proposes be allocated beyond statutory thresholds to a) purses and prizes, and b) awards to New York bred horses.

9. Describe bidder’s proposed efforts to support, engender, and enhance the State’s commitment to the New York-bred racing product. This may be shown through a proposed number of restricted races, restricted race purse levels, and the showcasing of the New York racing product at each of the racetracks. New and innovative ideas to support this commitment should be included in the proposal.

10. Identify, with particularity, racing-related or community charitable programs and endeavors bidder will support or subsidize. Bidder shall identify any presently supported or subsidized programs it would discontinue if awarded the franchise.

11. Describe in detail bidder’s proposed plan for maintaining the general upkeep and appearance at each racing facility during the term of the franchise. Bidders are encouraged to detail recommendations for improvements to the appearance of the racetracks.

12. Describe in detail bidder’s plan for admission charges, seating, box distribution, and overall management of visitors and owners for each racetrack.

13. Describe in detail bidder’s proposed plans for increasing on-track attendance at each of the three racetracks. Each bidder shall also describe the proposed plan to increase the pari-mutuel wagering activity and video lottery gaming revenue as applicable for each bid option.

14. Describe bidder’s concepts, anticipated revenues and expenditures for marketing, promotion, and advertising of a) horse racing in general, and b) the subject franchise and racetrack facilities specifically.

15. Detail the scope of integration, if any, it proposes relative to the horse race marketing, promotion, and advertising efforts in conjunction with the marketing, promotion, and advertising efforts for applicable video lottery gaming. Identify whether such efforts shall remain separate or will be merged. Provide the conceptual proposals for merging video lottery gaming with the horseracing while maintaining the State’s commitment to each industry.

16. Describe bidder’s proposed community outreach program, ombudsman, or other similar entity that will serve to ensure input and guidance from the community surrounding each relative racetrack.

17. Describe bidder’s human resources approach toward fulfillment of staffing required to operate the franchise. See Appendix G: List of Collective Bargaining Agreements (which lists all collective bargaining agreements between the present holder of the State racing franchise and various labor unions) to assist in detailing labor needs.
18. Identify public education programs bidder proposes regarding horse racing and pari-mutuel wagering and proposed programs which it offers in an effort to improve access and availability to the public of horseracing handicapping information.

19. For each proposal in response to Options 1(b), 2(b), and 3(b) relative to permitting video lottery gaming devices at Belmont Park, identify bidder’s proposed plan for such development and integration with the current racing facility. Describe efforts bidder will make to ensure horseman and fan input into the proposed development and integration.

**Integrity Measurement:**

The franchisee’s integrity and responsibility should be beyond reproach and will be determined based on bidder’s prior and current business performance history. Bidder must respond to an (apparently) standard five-page series of questions concerning whether the bidder, any principal, owner, officer, major stockholder, affiliate, senior management employee, or any person involved with the bidder in the development of a response to the RFP has been the subject of any litigation or proceeding relating to business conduct, labor practices, tax practices, etc. See RFP pp. 25 - 30.

**Financial Viability Measurement:**

The franchisee should be financially stable to eliminate or reduce any uncertainty regarding infrastructure improvements, facility maintenance, and conduct of racing in general. To evaluate bidder’s financial viability, certain financial information is required. If not provided, the reason for the omission must be fully detailed. Bidder must describe how any information that does not comply with the appropriate requirements or standards is otherwise comparable to such requirement or standard. If bidder has been in existence less than three years, it must provide sufficient financial data to substantiate its financial capability and viability. The following financial data must be submitted:

1. **Audited financial statements:** annual audited financial reports for the 5 most recent years prepared in accordance with Generally Accepted Accounting Principles (GAAP), all relevant notes, audit reports, and management letters. A parent company must provide a statement of its intent and financial assurance of performance. If bidder is a subsidiary or affiliate of another entity, bidder must submit financial statements for itself and for those of the parent company. If bidder is a parent entity, it must submit financials for the parent as well as the operating division that will perform the services. If the bidder is a joint venture or partnership, all parties to the joint venture or partnership must submit financials. Bidder must submit a statement from the CFO that there has been no material change in bidder’s entity since the last audited financial statements.

2. **Public filings:** Form 10-K and Form 10-Q filed within the last 5 years with the SEC, and if not regulated by the SEC, the 8 most recent quarterly reports.

3. **Tax returns:** all tax returns (federal and state/local) for last 5 years.

4. **Historical financial statements:** completed copy of Appendix D: Historical Financial Resource Data Form; both a paper copy and CD-ROM copy.
5. **Projected financial statements**: completed copy of Appendix E: Projected Financial Statement Form, both paper copy and CD-ROM copy. A summary of significant assumptions for each item presented must be attached.

6. **Credit ratings**: all credit reports, credit bulletins, or other published statements by recognized rating agencies (S&P, Moody’s, etc.) that have been issued or published within the past 5 years relative to the bidder.

7. **Performance bonds**: bidder history for the last 5 years related to obtaining performance bonds and/or payment bonds, including any instances when bidder was unable to obtain requested performance or payment bond and identifying all projects in which a performance or payment bond was called upon to complete a project on behalf of the bidder within the last 5 years.

8. **Capitalization**: an accounting for the initial capitalization of bidder and sources of such funds.

9. **Financial capability**: Bidder shall provide all information illustrating that it can access the capital to fund all recommended projects and operations described and identified within its proposal. Information may include letters of financial status from banking or other financial institutions. Lenders to the franchisee will be subjected to background investigations and possible licensing requirements.

10. **Other projects**: detail other commitments and contingencies that may compete with bidder’s financial and managerial resources as of the anticipated date of granting of the franchise, including all other responses to RFP’s bidder or any affiliate has submitted for which work may be awarded during the time period of the franchise.

11. **Additional materials**: additional information or supporting documents or letters of reference the bidder believes to be appropriate in fully reflecting its financial strength, e.g., the prospectus or offering statement for bidder’s latest debt or equity offering.

12. **Supplemental material**: any additional or supplemental financial information requested by the Committee.

**Approach and Managerial Theory**:

Bidder’s proposal must demonstrate bidder’s managerial and operational capacity to ensure that recommendation of the franchise to bidder would be in the best interests of the State. Bidder must detail the approach and plan for the operation and conduct of the franchise and management thereof during the proposed 20-year term, integrating as many factors, issues, and elements bidder feels are appropriate.

**Experience and Qualification**:

The franchisee should be experienced and competent to operate and conduct a business venture of the size and magnitude of the franchise or be able to employ individuals with experience to do so.

Bidder must describe relevant business experience to show bidder has experience and competence to meet the scope and magnitude of the franchise.

Bidder must attach resumes of senior staff that are proposed to be directly involved in the operation and conduct of the franchise and describe the specific function each would perform.
Bidder must include an organizational chart with names and the specific roles individuals would be assigned if the franchise were awarded, including title and responsibility, number of years in current capacity, examples of relevant experience, and specific qualification for the assigned franchise responsibilities.

Bidder must provide any information reflecting on suitability for entity and management licensure by the Board. Should the bidder, or any employee or affiliate thereof feel adverse licensing information will be discovered by the Board, it should be included with mitigating factors for consideration by the Committee in its evaluation process.

Bidder shall identify other businesses it currently operates, the number of locations for each such business, the number of days of operation per year and the number of employees for each such business.

**Lease Payment:**

The Committee believes the State should realize more value from the use of the three racetrack properties beyond the pari-mutuel tax and standard business-related taxes and fees, so it requires a lease payment in addition to those taxes. Bidder must detail the amount it will give to the State in the form of lease payments for the term of the franchise. Bidder may structure the payments in any manner it chooses, such as an increase over time, a general up-front payment, followed by a smaller monthly remittance, etc.

The Committee will reduce the cumulative total of the lease payments to a single sum for each bidder. The highest sum will be given a raw score of 100 points. All other bidders will have their cumulative lease payment set as a percentage of the initial high bid. Each raw score will be multiplied by the assigned weight factor (0.05) to set a weighted point total for the pricing element.

Any amount offered will require incremental adjustments for inflation to ensure that present dollars maintain value during the term of the franchise.

**Proposal Evaluation:** describes the evaluation process

Members of the Committee will personally evaluate each proposal and make a recommendation. The Committee reserves the right to request observers including technical experts and consultants to be present during any meeting, each of whom will be subject to a confidentiality agreement relative to the evaluation process. The Committee reserves the right to obtain information concerning a bidder from sources other than the proposals and to consider that information in its evaluation. The Committee will use a consensus method of scoring.

**Evaluation Steps:**
1. Review of each proposal to assess compliance with required elements of RFP
2. Detailed evaluation of proposed functions, features, services and solutions
3. Scoring of Proposal
4. Scoring of Integrity
5. Scoring of Financial Viability
6. Scoring of Approach and Managerial Theory
7. Scoring of Experience and Qualification
8. Scoring of Lease Payment
9. Preparation of Ad Hoc Committee report and recommendation
**Scoring:** the following areas will be scored on a 100 point system per category with a maximum score achievable of 600 points. Then each proposal will be weighted, multiplying the raw score by the assigned percentages.

1. Proposal Detail 50%
2. Integrity and Responsibility Measurement 20%
3. Financial Viability Measurement 10%
4. Approach and Managerial Theory 10%
5. Experience and Qualification 5%
6. Lease Payments 5%

Total 100%

**Recommendation:** Upon completion of the evaluation process for all proposals, the Committee will recommend to the Governor, the State Senate, the Assembly, and the New York State Racing and Wagering Board the preferred overall proposal selection based upon receiving the highest total score for each of the six areas. In addition, the Committee will recommend to the Legislature, Governor, and Board legislation which should be enacted governing grants of authority or franchises and the responsibilities related thereto which should be assigned to the Board and to such other state agencies or officers as it deems appropriate.

**Rejection or Selection of Proposals:** The State reserves the right to reject any or all proposals. Bidders will be held to the terms submitted in their proposals. Failure to meet obligations may result in cancellation or revocation of any grant of the franchise. Bidders who are not recommended for the franchise will be notified in writing, and the Committee will schedule one meeting with each bidder, if requested, to discuss the evaluation process. The acceptance of a proposal shall not diminish the State’s right to negotiate specific franchise terms with any bidder should they be granted the franchise. All proposals will be binding on the bidder through December 31, 2007. No bidder protests will be entertained.

**II. WHO MAY BID ON THE FRANCHISE:** any individual or other legal entity, (including but not limited to joint venture, partnership, firm, or corporation) which submits a proposal in response to the RFP. The bidder may be a subsidiary or affiliate of another entity. The bidder must be incorporated pursuant to N.Y. Racing, Pari-Mutuel Wagering and Breeding Law §§201 or 202-a. All bidders shall provide evidence that they are so incorporated or have taken affirmative steps towards such incorporation prior to the submission of a proposal. Bidders are not required to have practical racing experience and expertise to submit a proposal.

**III. EXACTLY WHAT THEY’RE BIDDING ON:** obtaining a franchise to secure the rights for a twenty year franchise to operate, manage, and conduct race meetings and pari-mutuel betting on races at Aqueduct, Belmont, and Saratoga commencing on January 1, 2008, as well as the right, subject to applicable licensure, to maintain a video lottery gaming facility at Aqueduct.

**IV. BID DEADLINE:** August 15, 2006, 5:00 p.m.
But note: mandatory Bidder Identification and Expression of Interest deadline: June 30, 2006)