

The Process of Applying for a License in a New Gaming Jurisdiction: Do's and Don'ts

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Editors' Note:

Each fall, we host an Executive Development Program (EDP) in Lake Tahoe, Nevada, where roughly 50 eager attendees learn from the brightest minds in the global gaming world. EDP was founded by the late Dr. Bill Eadington, who left us with a beautiful legacy of a learning environment where lessons are shared, bonds are formed, and a team competition brings the entire event together. Typically, this competition focuses on a response to a (fictitious) government-issued Request for Proposals, and teams then form a community plan and a business plan to address the RFP's requirements.

Of course, this is hardly a meaningless exercise. Often, when a new gaming jurisdiction passes a gaming bill, the next step is an RFP-type process whereby bidders compete for one of the gaming licenses. These competitions are often fierce, frequently controversial, and almost always exceedingly challenging for the applicants.

This fall, two of the advisors to the body that will be evaluating the State of New York's proposals for casino resort development, Eugene Christiansen of Christiansen Capital Advisors and Kimberly Copp, of the law firm, Taft Stettinius & Hollister, LLP, put together a truly remarkable document for our EDP attendees as the latter participated in a team competition (to win the hearts and minds of the Japanese government). As soon as we got this document in our hands, we realized that we were reading something special – something that to our knowledge had never been done before, authored by two of the world's leading experts in this increasingly important field.

This document contained a series of "Do's" and "Don'ts" for potential applicants in these settings, laid out in an easy-to-understand format. Almost immediately, we asked if we could publish it in *Gaming Research and Review Journal*, as we recognized its tremendous value to the field.

Here, in virtually unedited fashion, is that document. It is our belief that this constitutes a major contribution to an often-chaotic field, and it is our hope that this quickly becomes a vital and dog-eared addition to our readers' libraries.

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When responding to government-issued Requests for Information (RFIs), Requests for Proposals (RFPs), Requests for Proposals and Qualifications (RFP/Qs), Requests for Concepts (RFCs), or Requests for Information (RFIs), there are a number of things that applicants need to do – and things that they need to not do – to develop a successful response:

DOs	DON'Ts
<p>Assemble your bid response team early.</p> <ul style="list-style-type: none"> • Internal – designate individual(s) with responsibility for preparing the bid response (or portions of the bid response and overall completion of the response). • External – engage necessary consultants: <ul style="list-style-type: none"> ○ Attorneys – gaming experience, real estate experience and familiarity with the local politics, laws (zoning, environmental, etc.) and the law and regulations of all forms of gambling in the jurisdiction including taxation ○ Market consultant – independent estimate of gaming projections ○ Economic impact consultant – independent estimate of the positive and negative economic impacts of the proposed casino (includes looking at capacity of public services and infrastructure – fire, police, EMS, schools, hospitals, etc.) ○ Casino consultant (if applicant is not an experienced casino company) – independent expert with experience in building, opening and operating casinos ○ Construction/Design team ○ Environmental consultant – impacts on wetlands, species, noise, etc. ○ Traffic engineer – egress/ingress, 	<p>Don't underestimate the power of first impressions.</p> <ul style="list-style-type: none"> • In a new jurisdiction, first impressions are important. • Impressions begin with delivery of the bid response. A well-organized and assembled response is viewed more favorably (before any word of the response is read). <ul style="list-style-type: none"> ○ Example: In recent bid solicitation, one bidder – delivered one complete set of its response in a single crate, clearly labeled “ABC Casino Company, Set 1 of X” while another bidder in the same solicitation delivered a response in over 20 unmarked boxes containing several mis-marked or un-marked binders/folders. ○ Quality of responses often varies greatly. • If delivering multiple copies of one response – consider the box or package used to deliver a single set. For example, if response includes five 3-ring binders and the team must deliver 10 sets of this response – it is best to use one box to deliver a single set of each response (for a total of 10 boxes) with each box clearly labeled set 1 of 10, 2 of 10, etc. If multiple boxes for a single set are needed, clearly label, on the outside of

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<p>traffic counts, etc.</p> <ul style="list-style-type: none"> ○ Water/Sewer engineer – infrastructure and capacity ○ Problem gambling – independent, adequately credentialed expert in problem gambling prevalence and amelioration <ul style="list-style-type: none"> • Examine reputation of all consultants (both nationally and in the local jurisdiction). Has consultant had any “issues” with country, state, city, county or other relevant jurisdictions (e.g., failure of consultant to pay taxes, consultant was removed or dismissed from a project, etc.)? • Does the consultant have a good reputation for quality work? Has the consultant ever been asked to refund a fee due to substandard work? • Does consultant have any conflicts of interest? • Consider lead time – consultant studies (feasibility, environmental, traffic, etc.) require long lead time (generally 4-6 weeks). 	<p>each box, its contents.</p> <ul style="list-style-type: none"> • If responses are provided in binders, make sure each binder is labeled with the company name and binder contents (i.e., ABC Casino Company, binder X of Y, responding to questions X-Y). Also, each page of the response should clearly state the company’s name (perhaps as a header or footer on each page). • If the response consists of reports or documents prepared by different consulting firms, clearly label each report as to author, date and item(s) of the bid solicitation for which the report is intended to be responsive. If delivering CDs or disk drives, make sure they are clearly labeled. Also, because disk drives are “small” and can be misplaced, place them in a separate envelope or box and clearly label the envelope or box. • Consider the “type” of boxes/binders to be used. <ul style="list-style-type: none"> ○ “Typical” 3-ring binders often “break open” during shipping. ○ A binder greater than 3 inches becomes unwieldy and difficult to work with. ○ Make sure cardboard shipping boxes are strong enough for shipping the proposal. In recent solicitations, boxes arrived torn or disfigured and, as a result, some contents of response were missing or lost. • Consider alternatives to common cardboard boxes – plastic crates, suitcases, etc.
<p>Read directions <u>carefully</u> and respond accordingly.</p> <p>Pay attention to delivery deadline, delivery format, time period for asking questions, etc. Particular items of interest include:</p> <ul style="list-style-type: none"> • Deadline (establish timeline for completion accordingly; provide time to proofread, assemble, and deliver response). • Method of delivery (how do you timely deliver your bid response – a late response is the quickest way to be disqualified from the solicitation). • Permissible points of contact (second 	<p>Once the bid solicitation is issued, don't talk to any officials other than those specifically permitted by the bid solicitation.</p> <p>Once the bid solicitation is issued, in most cases, Applicants are not permitted to meet with officials of the issuing jurisdiction (i.e., gaming board staff, employees, or other government officials). Therefore, to obtain an understanding of what the jurisdiction wants/desires with respect to its casino expansion project, meet with appropriate government officials as <u>early as possible</u> PRIOR to the issuance of the bid solicitation.</p>

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<p>quickest way to be disqualified from solicitation).</p> <ul style="list-style-type: none"> • Period of time within which you can ask questions (often it's on a "rolling basis" but sometimes a particular deadline is set). • Mandatory conferences/meetings to attend or presentations to be made. • Required format of your response (3-ring binders vs. bound package, tabs, paper size, electronic copies, etc.) <p>Very importantly, do not respond to specific bid requests with rhetoric; respond with facts. For example, if the bid asks for the Applicant's opening plan, provide a detailed day-by-day, task-by-task pre-opening, opening day, and post-opening executable operational plan including staffing and budgets. If the bid asks for a three or five year marketing plan, provide a detailed week-by-week or month-by-month executable marketing plan, with budgets and specific indications of who will execute the plan and how. Bid requests are intended to elicit specific, factual answers, not vague or meaningless rhetoric.</p> <ul style="list-style-type: none"> • If you do not understand a question or direction, determine how to seek clarification. If no clarification can be obtained, explain in your response how you interpreted the bid question. 	
<p>Pay attention to what portions of your bid package contain confidential information.</p> <p>Before submitting a bid response, fully understand the laws of the jurisdiction concerning confidentiality of your bid response. Many U.S. jurisdictions are subject to "freedom of information" laws.</p> <ul style="list-style-type: none"> • Understand the steps that must be taken in order to keep proprietary information confidential (e.g., mark pages as "confidential," provide redacted copies of response, provide letter stating why information must be maintained confidential, etc.) • Be genuine and credible in any request for confidentiality. Make genuine efforts to only protect information that, if disclosed, would put the company or its bid at a competitive disadvantage or 	<p>Don't over complicate the bid process.</p> <p>Answer the question asked as clearly and as concisely as possible. Responses to a bid question do not become "better" by making them longer.</p> <ul style="list-style-type: none"> • Edit unnecessary verbiage out of the bid response. • Present the facts requested in the bid solicitation in a concise and clear manner and instruct your consultants to do the same.

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<p>would disclose a trade secret or that is an unwarranted invasion of personal (not corporate) privacy.</p> <ul style="list-style-type: none"> • Determine from your lender(s) and other third parties (i.e., vendors) whether they will permit disclosure of their names and details of their involvement with the Applicant and its proposal. • Response items to be kept confidential may differ depending upon the bid process – e.g., is the process a one-step or two-step process? (Example: Massachusetts was one of the most transparent bid/license processes; this may become a benchmark for new jurisdictions). 	
<p>Understand the jurisdiction's licensing regime and the scope of licensing/suitability requirements.</p> <ul style="list-style-type: none"> • Who from your organization will be required to be licensed? • Are background investigation/licensing forms to be completed as part of the bid response (e.g., in Maryland and New York, these must be submitted with the bid response; Massachusetts did suitability first; Michigan did suitability afterwards)? • Often the issue is how far up the ownership/management chain the jurisdiction will require licensure. Generally, bodies can investigate any owner, but focus on 5%+ owners and those that can influence/control casino operations. • Suitability forms (business entity disclosure forms, multi-jurisdictional personal history forms, etc.) are time consuming to complete. Identify persons subject to suitability ASAP. • Licensing requirements may affect how you legally structure the Applicant (most often teams form a "new" entity and use a holding company structure). • If there are any issues affecting the suitability of anyone affiliated with the Applicant, it is very important to find out about these issues <u>before</u> submitting the bid response. It is best to confront these issues head on. If any candidate has issues, resolve them quickly, probably by eliminating the candidate, before the bid response is submitted. 	<p>Don't "gloss over" negative items.</p> <p>If you have had regulatory issues in the past, provide more rather than less information about these issues. This will establish credibility and trust. Understand that not everything will be "perfect." If you have an issue, address it head on and describe what you have done or will do to fix it. As a rule, disclose everything – the cover-up is worse than the crime.</p>

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<p>Obtain control of the land upon which your project will be located ASAP.</p> <ul style="list-style-type: none"> • Where will project be located? <ul style="list-style-type: none"> ○ Review title, land use restrictions, zoning, environmental matters, etc. • Can project, as designed, be built on the proposed site? <ul style="list-style-type: none"> ○ Need zoning changes or variances? If so, determine process ASAP and begin process. Bids are improved if approval is obtained <u>prior</u> to submission of response (or, at least, if process has been commenced). ○ Are there any environmental issues (e.g., Milford, Massachusetts – wetlands found on site required re-configuration of the project)? • Understand permitting process and time period necessary to obtain permits (e.g., MA – must have commenced MEPA process; in NY, must complete SEQR process). Begin application process ASAP. • Locate project away from customary casino opponents (e.g., do not locate proximate to residential areas, schools, day care facilities, churches, etc. and determine potential mitigation of impacts) 	<p>Don't submit an application for a project site that has significant "issues."</p> <ul style="list-style-type: none"> • Be sure you absolutely own or control the project site. • Understand and eliminate (or mitigate) any zoning, environmental or community issues concerning the project site. • In particular, address community opposition issues or find another site. • Do not improperly influence local communities or local governments in an effort to secure zoning/community approval. • Do not make improper or illegal financial contributions to officials, local or otherwise. • Do not hire "consultants" who are "friends" of officials, local or otherwise.
<p>Secure committed financing for the project and provide evidence of such commitment.</p> <ul style="list-style-type: none"> • A significant concern of the jurisdiction is Applicant's ability to build, open and maintain what it proposed. Provide in bid response evidence of sufficient, available funding. <ul style="list-style-type: none"> ○ Equity – The quality of equity matters. Sufficient cash on hand to build and open the casino proposed is better than commitment letters or promises of other kinds. If financing includes commitment letters, the commitment letters should be from credible issuers, should include minimal "fine print" qualifications, and clearly state in simple language the commitment being made. If not "committed," provide evidence of likelihood to raise equity. Bid is 	<p>Don't over-leverage your project.</p> <p>Provide a reasonably leveraged capital structure. Particularly in the U.S., there is enough recent experience with casino bankruptcies, restructurings, and closures to make highly leveraged capital structures suspect.</p> <ul style="list-style-type: none"> • Reasonable leverage ratio 4x – 5.5x. • Even if not requested to do so in the bid solicitation, consider providing a sensitivity analysis (a sort of "stress test") in the form of 10-year financial projections that allows the persons evaluating the bid response to assess the proposed casino's financial stability under worst-case conditions, "worst case" being the worst observed experience in the last ten years.

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<p>improved with cash on hand or fully “committed” equity.</p> <ul style="list-style-type: none"> o Debt – provide commitment letters. If not “committed” provide other evidence such as highly confident letters or advisory letters. Again, bid is improved by more “committed” debt. • Describe your “plan” for dealing with future cash shortfalls (i.e., construction overruns). • Consider ownership by “locals.” This is a hot button issue in some jurisdictions (e.g., City of Detroit – local, minority ownership and participation; IL – with the 10th license, local/minority ownership required by statute). 	
<p>Prepare realistic market projections.</p> <p>Engage a qualified independent advisor to prepare gaming/market projections.</p> <ul style="list-style-type: none"> • Because most bids ask for projections over a period of time (5 to 10 years), be sure the advisor takes into account various competitive scenarios: <ul style="list-style-type: none"> o Current competitive landscape o Potential/likely future landscape (in New York, for instance: potential for casino in Northern New Jersey/ NYC) • Credibility is lent to the project if Applicant fully “accepts” the projections of its advisor (that is, the Applicant, in the financial projections included in its bid response, uses the advisor’s GGR projections as the basis for its financial projections). If pro forma financial statements are NOT based on the projected GGR determined by the advisor, Applicant should CLEARLY explain why it believes it will perform better (or worse) than the advisor’s GGR projections. • This is a long lead item; 4-6 weeks. Often the issue is that the casino program/design is not fully developed when the advisor is engaged so what the advisor <i>assumes</i> to be the project and the actual project are <i>close</i> but not exactly the same as the project that is ultimately proposed. • Instruct the advisor to include in his/her report, a clear/concise list of all assumptions used in developing the GGR 	<p>Do not submit clearly one-sided or biased market studies.</p> <ul style="list-style-type: none"> • Market studies should not be based on unrealistic scenarios (e.g., ten-year projections showing steady uninterrupted percentage increases in GGR). • Market studies should consider likely or publicly debated future changes in market economics (additional casinos in any jurisdiction that would impact the casino you propose to build or other changes in supply). <ul style="list-style-type: none"> o Market studies should be clear and concise. o Assumptions should be clearly defined. o “Longer” is not “better” - do not pad the studies with irrelevant material. <p>In creating financial pro formas, include realistic capital expenditure projects. Successful casinos are heavily “used” facilities and consumer expectations for casino experiences continually change. Casinos need periodic capital refreshment if they are not to become shabby and obsolete. Don’t forget to make provision for refreshment capital expenditures in financial proformas.</p>

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<p>projections (assumptions should include a statement as to whether the advisor assumed Applicant would have access to an established player database).</p> <ul style="list-style-type: none"> Also, the advisor's report should include a discussion of whether the project will cannibalize other casinos in the jurisdiction (if this is an issue) and, if so, to what extent. (This is important to the jurisdiction as it is interested in "new" GGR, taxes, etc.). If Applicant is not an established gaming company, engage a qualified third party to serve as the casino manager. Preferable to select a management company that has an established player database and loyalty program. 	
<p>Study the existing infrastructure (roads, sewers, water supply, etc.) available to your project site and describe the need for new or improved infrastructure.</p> <ul style="list-style-type: none"> Can the project site be readily accessed? What roadway improvements are necessary for efficient ingress/egress (e.g., in MA and NY –an Applicant proposed construction of a new highway interchange)? <ul style="list-style-type: none"> Bid can be improved if cost of improvements can be "confirmed" with appropriate federal/state/local departments responsible for the infrastructure improvement – Federal Highway Administration, Department of Transportation, etc.). What approvals are needed for construction of infrastructure improvements? What is the lead time for approvals? How long does it take to construct improvements (e.g., can a public-private partnership be established to expedite construction)? Meet with as many necessary agencies prior to submitting bid response as possible (if permitted). The jurisdiction is interested in a "quick" permitting and construction process. Note that siting a casino in a densely populated urban area may raise heightened 	<p>Don't neglect the legal environment of the jurisdiction in which you propose to build a casino.</p> <ul style="list-style-type: none"> Very importantly, understand the gambling law and regulation of each form of gambling permitted in the jurisdiction (i.e., lotteries, pari-mutuel betting, gambling on Internet platforms, charitable gaming, and so forth), the tax regime applied to each form of gambling, and the government revenues each form of gambling generates. If this is not done your application cannot accurately state the impact the proposed casino will have on the licensing jurisdiction's existing gambling revenue. The bid solicitation will likely ask for independent estimates of the <i>positive</i> contribution of an Applicant's proposed casino to government finances; it will also likely ask for independent estimates of the <i>negative</i> impact of an Applicant's proposed casino to government finances including the adverse impact on tax receipts generated from other forms of gambling in the jurisdiction. Do not allow independent consultants providing such estimates to "gloss over" or minimize the proposed casino's negative impacts on existing gambling tax receipts.

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<p>environmental, quality of life, problem gambling, negative economic impact, and similar concerns. Applications for a casino in a densely populated area should demonstrate extraordinary efforts by the Applicant to identify and address whatever concerns the proposed casino raises. In this case, the approach taken in applications for casinos in rural or sparsely populated resort areas is neither adequate nor sufficient.</p>	
<p>Clearly define and state commitments concerning employment (construction and operational).</p> <p>Jurisdictions are interested in employment for their residents including the underemployed, unemployed, women, minorities and veterans.</p> <ul style="list-style-type: none"> • Clearly describe number of construction jobs/hours (direct) by trade and average salary, estimated number of operational jobs (direct) and average salary for each job classification. To this end: <ul style="list-style-type: none"> ○ Specify employment numbers by # of full time jobs, # of part time jobs and # of FTEs. ○ Specify whether estimated salaries/earnings include benefits (and types of benefits) and whether based on tips or other gratuities. <p>Bid is improved if:</p> <ul style="list-style-type: none"> • Applicant makes a firm commitment to hire a minimum number of employees rather than just an <i>expectation</i> of hiring (note: if making a commitment, be clear if commitment is for # of jobs, # of full time jobs or # of FTEs). Remember, jurisdictions are interested in “sustainable” jobs. • Applicant commits to a certain number/percentage of employees from the local community (i.e., at least 70% of employees, at opening, will be from within X miles of casino). Of course, any commitment must be <i>realistic</i>. • Applicant commits to use reasonable efforts to hire X number/percentage of minorities, females, veterans, etc. Again, your commitment must be realistic. • Applicant can demonstrate a prior track record of affirmative action in hiring, training programs, mentoring, etc. 	<p>Don't comment on other proposed projects.</p> <ul style="list-style-type: none"> • Focus on your own bid proposal. • Do not compare/contrast your proposal to others being proposed.

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<p>Obtain local support for the project. To assist in this process, conduct a study of the projected impacts of the casino on the local community (e.g., impact on police, fire, EMS, schools, governmental services, etc.) and specify plans for mitigation of adverse impacts.</p> <ul style="list-style-type: none"> • Provide clear evidence of local support – resolution from the local governmental body, letters of support from public officials, chambers of commerce, tourism boards, school districts, police/fire departments, business organizations, labor unions, trade councils, vendors, etc. o Some jurisdictions require passage of voter referendum (e.g., MA). Bid can be improved if entered into a host community agreement with host jurisdiction (this was required in MA and MI; not required but seems to have been done by many Applicants in NY). • Bid can be improved if Applicant commits to purchasing a set percentage or dollar amount of goods and services from local, regional or jurisdictional businesses. • Bid can be improved if Applicant enters into project labor agreements (this is required in some jurisdictions – MA, NY). <p>With respect to local impacts, engage consultant to study impact of the casino on the following:</p> <ul style="list-style-type: none"> • Police, fire, and emergency services • Local businesses (e.g., restaurants – fear is casino will “wipe out” local restaurants) • Water supply/sewer capacity (significant issue in MA) • Schools • Housing (significant issue in most jurisdictions) • Public health (problem gambling) <p>Once the impacts are identified, Applicant should seek mitigation measures and document such mitigation in a host community agreement that will assist Applicant in garnering local support.</p> <p>Also, consider studying impacts on nearby or surrounding communities and agreements with these communities.</p>	<p>Don't attempt to improperly influence local government in an effort to obtain support or approvals.</p> <ul style="list-style-type: none"> • Do not do anything in respect of securing local support for your application that would not look good on the evening television news. Do not try to buy local approval with promises of any kind if there is vocal and visible local opposition. If there is, find another site.

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<p>Be consistent!</p> <ul style="list-style-type: none"> • Consistent bid responses are deemed favorable! <ul style="list-style-type: none"> ○ For example, the capacity of the casino floor should be capable of producing projected GGR. ○ Also, summary of the master building plan should match the description of the casino complex components. <p>Inconsistencies occur because different disciplines work on different portions of the project at the same time (e.g., design/construction/finance team determines X hotel rooms, X restaurants, etc. Feasibility consultant says Y hotel rooms, Y restaurants, etc. Environmental consultant says project must be modified on a certain portion of the land, so design is re-configured and a component is changed or deleted, but this amenity change is not carried out throughout the entire bid response). Therefore, bidder must build into the timeline for delivery of the bid response time to carefully review response and allow consultant teams to interact and effectively communicate.</p>	<p>Don't expect to have future opportunities to "explain" your bid proposal.</p> <ul style="list-style-type: none"> • You should assume submission of your bid response is the sole interaction/presentation to the reviewers, unless otherwise provided in the bid solicitation. Therefore, be clear in what you are proposing. • Also, the process for issuing gaming licenses has generally become more transparent. Therefore, reviewers/evaluators will want to award licenses based on what is provided in writing in the bid response.
<p>Know that bid responses will become the basis for conditions imposed on gaming license.</p> <p>Reviewer/evaluator of bid response expects statements in the bid response to be "binding" on Applicant. To ensure the jurisdiction that Applicant will build what it proposed to build, jurisdiction will impose "conditions" on the gaming license (i.e., this will serve as a "contract" with the jurisdiction).</p>	<p>Don't over sell your project.</p> <p>You must "sell" your project, but don't over sell. Putting your best foot forward is necessary and appropriate. "Stretching the truth" is dangerous. Remember, as the proposals become more and more public, there will be more and more people scrutinizing the bid response – i.e., public, press and casino opponents. If the bid response includes statements that upon public scrutiny are found to be misleading or untrue you have probably disqualified yourself.</p>
<p>Use an Executive Summary to highlight the best portions of your proposal.</p> <p>Items to highlight in the summary include the following (order your summary to address the priorities of the jurisdiction):</p> <ul style="list-style-type: none"> • Financial wherewithal to build the 	<p>Don't forget to update the bid response if matters change after submission.</p> <ul style="list-style-type: none"> • Most, if not all, bid solicitations have a requirement to provide continuous updates to bid responses. • Do not confuse this as an opportunity to change a submitted bid as "changes"

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<p>project, open the project and maintain the project (even if GGR decreases in the future).</p> <ul style="list-style-type: none"> o Bids can be improved by providing construction and/or keepwell guaranties. With the recent casino closings, ability to complete, open and maintain the casino has become a jurisdiction's number 1 concern. o In evaluating this item, jurisdiction will look at debt/equity commitments, construction budget contingencies, any guaranties/keepwells, prior history of Applicant's developments, sensitivity analyses of projections, etc. <ul style="list-style-type: none"> • Number of <u>quality</u> jobs to be created by the project (again, the more "committed" the better). • Summary of taxes and benefits the project will provide to the jurisdiction (i.e., gaming taxes, real estate taxes, indirect and induced jobs/taxes, etc.) • Caliber of gaming facility and ancillary components. Does the facility satisfy the market and how does it integrate into the jurisdiction? • Access to project site. • Community support/mitigation (the stronger, the better). • Provision of workforce enhancements (describe commitments to hire minorities/women/veterans, programs for employees to advance within the company, agreements with organized labor, etc.) • Problem gambling programs. • Project sustainability (LEED certification, energy efficiency, use of renewable energies, etc.) <p>Highlight the above items in a succinct manner and provide a cross reference to where in the bid response more information on the topic can be found.</p>	<p>could cause disqualification. The duty to update is only an opportunity to provide "new" information – i.e., address new litigation or regulatory matters, not a new casino design.</p>