

MEMORANDUM

October 6, 2008

TO: Angell Jacobs
Director of Operations OCFO

THROUGH: Jeanette A. Michael
Executive Director DCLB

FROM: Jay Young, Esq. *JAY*
COO, DCLB

RE: Contract Failure and Rebid

I. Introduction

The DCLB has been asked to scenario plan and provide summary information to the Executive Office of the OCFO related to the potential rejection of the Gaming System contract ("Contract") by the District of Columbia Council. If the Council rejects the Contract as currently submitted, I suspect that it will do so on grounds not related to the substance of the offers, the soundness of the proposed solution, or the administration of the procurement process, but rather on the discretionary latitude provided to Council by legislative fiat. Since that discretion is not bounded by any factual predicate, I imagine that the request to rebid the contract will be generic and non-specific. As a result, the DCLB will be free to use exactly the same concepts, materials, background information, architecture, and timelines used in developing the current Contract proposal. Accordingly, the previous Request for Proposal package can be modified by the DCLB to include any new twists available in the marketplace (e.g. ITVMs, wireless delivery, 3rd party games) and the Procurement Department can clarify and validate the previous administrative flaws, inconsistencies and omissions that plagued the previous bid package.

II. Concerns with Rebidding

There are several concerns associated with a mandated rebidding process. First, the previous RFP package only drew interest from two bidders and the information contained in the winning bid has practically been made a matter of public record. The reasons that companies chose not to bid include (1) the perceived flaws in the political environment; (2) the lack of the size and scale of the DC lottery market; and (3) operational constraints including mandated LSDBE participation. Since none of these elements has been eradicated, there is a high probability that fewer than two companies will submit new bids to the same requirements (i.e., the DCLB will only receive one bid). Also, given the

financial disclosure that has taken place, it is unlikely that the bids will be as competitively priced as the previous submissions. In fact the possibility exists that given the political imbroglio and media coverage that future offered pricing will be substantially higher than the previous submissions. Further, given that the most senior, experienced, and committed team available was already paneled to serve on the Source Selection Board for the rejected Contract submission, it is unlikely that a similarly situated group can be convened, will be willing to serve, or is available to evaluate a new round of proposals. This is especially true since efforts to reward previous panel members for their extraordinary work were denied. This is not the kind of work that you want to force professionals to participate in. As a result, garnering the necessary skills will be a challenge and may require securing resources outside of the normal channels.

Another issue is that because the previously proposed implementation scheduled has imploded, it is clear that either a contract extension needs to be negotiated, or some other extreme remedy needs to be adopted in order to preserve the option of uninterrupted lottery operations. The current vendor agreement expires in November of 2009 and as presently constituted it is highly unlikely that a system conversion will take place before the existing contract expires. That means a contract extension will have to be negotiated starting early in 2009. Since the incumbent is facing the risk of business loss, it is potentially likely that the cost of the extension will exceed the cost of the current agreement (e.g., 5% vs. 4.2%). Alternatives to this scenario would have to include options not currently in evidence, a new third party agreement, or novel solution not currently being discussed. In either event, a termination remedy of the current contract is not likely to have the desired impact of allowing the DCLB to obtain better technology at a lower cost, while maintaining the level of existing sales.

Furthermore, during the pendency of the delay of a new gaming system, the DCLB will likely suffer a steep drop in operational effectiveness. Indeed, the DCLB is currently experiencing an increase in service outages, software malfunctions, and performance delays. Given the age of the system, the current level of support, and the continual decline of professional expertise familiar with the outdated technology, it is foreseeable that the network will operate within parameters far below those experienced over the past 5 years. In the near future the agency will likely face a major system breakdown, service outage, or malfunction that could take weeks to repair and destroy the public's trust in the operation. The current technology also limits the release of new games and play styles. The combined impact of these elements indicates that DCLB's future financial performance is likely to suffer and underperform its stated transfer objectives.

III. Revised Timelines

Because of the elements referenced above it is like that the revised timeline would look something like the following:

