

TESTIMONY OF CHARLES J. WILLOUGHBY, INSPECTOR GENERAL

**BEFORE THE
COUNCIL OF THE DISTRICT OF COLUMBIA
COMMITTEE ON FINANCE AND REVENUE**

PUBLIC OVERSIGHT HEARING ON THE MATTER OF i-GAMING

AND

**PUBLIC HEARING ON BILL 19-474, THE “LOTTERY AMENDMENT
REPEAL ACT OF 2011”**

JANUARY 26, 2012

GOOD MORNING CHAIRPERSON EVANS AND MEMBERS OF THE COMMITTEE. I WELCOME THIS OPPORTUNITY TO SHARE WITH YOU THE RESULTS OF THE OFFICE OF THE INSPECTOR GENERAL’S (OIG) INVESTIGATION INTO THE LOTTERY CONTRACT AWARD AND THE MATTER OF i-GAMING. MY TESTIMONY WILL FOCUS ON THE ISSUES THAT AROSE REGARDING THE CIRCUMSTANCES AND PROPRIETY SURROUNDING THE ADOPTION AND IMPLEMENTATION OF i-GAMING, BUT I WILL BE HAPPY TO ANSWER ANY QUESTIONS ABOUT OTHER PORTIONS OF OUR INVESTIGATION AS WELL.

THE ALLEGATIONS

ON JULY 21, 2010, THE OIG RECEIVED A LETTER FROM THE THEN ATTORNEY GENERAL FOR THE DISTRICT OF COLUMBIA AND THE THEN CHIEF PROCUREMENT OFFICER, REQUESTING AN INVESTIGATION INTO: THE AWARD

OF THE CONTRACT FOR A NEW GAMING SYSTEM; THE APPROVAL OF THE CONTRACT BY THE COUNCIL OF THE DISTRICT OF COLUMBIA (COUNCIL); AND THE CAPABILITY OF THE CONTRACTOR THAT SECURED THE BID.

SUBSEQUENTLY, ON SEPTEMBER 6, 2011, A D.C. COUNCILMEMBER REQUESTED THAT THE OIG INCLUDE IN ITS INVESTIGATION OF THE LOTTERY CONTRACT AN EXAMINATION OF THE CIRCUMSTANCES AND PROPRIETY SURROUNDING THE ADOPTION AND/OR IMPLEMENTATION OF GAMES OF CHANCE AND GAMES OF SKILL PLAYED VIA THE INTERNET (i-GAMING) IN THE DISTRICT.

IN ADDITION, DURING THE INVESTIGATION OIG INVESTIGATORS RECEIVED ADDITIONAL INFORMATION AND/OR ALLEGATIONS OF SUPPOSED IMPROPRIETY, SUCH AS WHETHER THE DEPARTMENT OF SMALL AND LOCAL BUSINESS DEVELOPMENT (DSLBD) IMPROPERLY DENIED A BIDDER'S APPLICATION TO BECOME A CERTIFIED BUSINESS ENTERPRISE (CBE).

THE OIG INVESTIGATION, AMONG OTHER THINGS, REVIEWED OCFO'S CONTRACTING AND PROCUREMENT AUTHORITY, REVIEWED THE COUNCIL'S CONTRACT APPROVAL AUTHORITY, INTERVIEWED DISTRICT EMPLOYEES FROM THE OFFICE OF THE CHIEF FINANCIAL OFFICER (OCFO), THE OFFICE OF CONTRACTING AND PROCUREMENT (OCP), THE OFFICE OF THE ATTORNEY GENERAL FOR THE DISTRICT OF COLUMBIA (OAG), THE COUNCIL, AS WELL AS REPRESENTATIVES OF INTRALOT, VSC, AND W2 TECH. OIG INVESTIGATORS ALSO REVIEWED PERTINENT PROCUREMENT AND CBE RECORDS AND EMAILS, JOINT VENTURE AND SUBCONTRACTING AGREEMENTS, AND RECORDINGS OF

COUNCIL AND SMALL AND LOCAL BUSINESS OPPORTUNITY COMMISSION
(SLBOC) HEARINGS.

THE INVESTIGATION

1. THE OCFO CONTRACT/PROCUREMENT PROCESS

IN 2007, THE D.C. LOTTERY AND CHARITABLE GAMES CONTROL BOARD (DCLB) DECIDED TO MODERNIZE THE DISTRICT'S LOTTERY. BECAUSE THE HOME RULE ACT TRANSFERRED THE FUNCTIONS AND PERSONNEL OF THE DCLB TO THE OCFO, OCFO HANDLED THE PROCUREMENT PROCESS FOR THE LOTTERY CONTRACT FOR DCLB. AFTER CONDUCTING A COMPETITIVE BID, IN JANUARY 2008, THE OCFO AWARDED THE LOTTERY CONTRACT TO W2I, A JOINT VENTURE BETWEEN INTRALOT AND W2 TECH (I WILL REFER TO THIS AS THE W2I LOTTERY CONTRACT). THIS PROPOSED CONTRACT WAS DISAPPROVED BY THE D.C. COUNCIL IN DECEMBER 2008.

DURING THE 12-MONTH PERIOD BETWEEN THE OCFO'S AWARD AND THE COUNCIL'S DISAPPROVAL OF THE CONTRACT TO W2I, W2I REPRESENTATIVES MET WITH INDIVIDUAL COUNCILMEMBERS, INCLUDING A COUNCILMEMBER WHO ALSO WAS A MEMBER OF THE BOARD OF A QUASI-PUBLIC ENTITY. AT ONE MEETING, THE COUNCILMEMBER TOLD W2I EXECUTIVES THAT HE WOULD SUPPORT W2I'S BID FOR THE LOTTERY CONTRACT IF ITS LOCAL PARTNER WITHDREW FROM A CONTRACT WITH THE QUASI-PUBLIC ENTITY BECAUSE HE COULD NOT GIVE THE LOCAL PARTNER EVERYTHING. THE OIG DID NOT FIND

THAT THE STATEMENT ATTRIBUTED TO THE COUNCILMEMBER, WITHOUT MORE, SUCH AS SOME SORT OF QUID PRO QUO, REFLECTS MISCONDUCT RISING TO THE LEVEL OF A VIOLATION OF A STANDARD OF CONDUCT.

ON FEBRUARY 6, 2009, LESS THAN 2 MONTHS AFTER THE COUNCIL DISAPPROVED THE PROPOSED W2I LOTTERY CONTRACT, OCFO ISSUED A NEW RFP SEEKING A NEW LOTTERY GAMING SYSTEM, WHICH INCLUDED, AMONG OTHER THINGS, LOTTERY SOFTWARE, AND A LOTTERY NETWORK. (I WILL REFER TO THIS AS THE INTRALOT LOTTERY CONTRACT). THE RFP FOR THE INTRALOT LOTTERY CONTRACT ALSO SOUGHT SUPPORT SERVICES FOR THE LOTTERY AND OPTIONS, WHICH WERE DESCRIBED AS A SYSTEM FEATURE OR CAPABILITY THAT DCLB, IN ITS SOLE DISCRETION, MAY HAVE INCLUDED IN OR ADDED TO THE BASE SYSTEM. INTRALOT, ALONG WITH TWO OTHER BIDDERS, RESPONDED TO THIS RFP. OCFO AWARDED THE SECOND LOTTERY CONTRACT TO INTRALOT.

2. CONTRACT EXECUTION – B-ON SYSTEM ADDED TO INTRALOT CONTRACT

IN DECEMBER 2009, THE COUNCIL APPROVED THE PROPOSED INTRALOT LOTTERY CONTRACT, BUT THE OCFO DID NOT EXECUTE IT UNTIL MARCH 2010 BECAUSE IT WAS NEGOTIATING WITH INTRALOT FOR INCLUSION OF INTRALOT'S INTERNET GAMING SYSTEM - THE B-ON SYSTEM. THE OIG INVESTIGATION DETERMINED THAT OCFO'S DECISION TO INCLUDE THE B-ON SYSTEM IN THE LOTTERY CONTRACT MATERIALLY CHANGED THE CONTRACT REQUIREMENTS BECAUSE THE RFP HAD NOT IDENTIFIED (AS A REQUIREMENT) A GAMING

PLATFORM FOR GAMES OF SKILL AND GAMES OF CHANCE PLAYED ON THE INTERNET.

UNDER DCLB PROCUREMENT REGULATIONS, IT APPEARS THAT THE CONTRACTING OFFICER MUST ISSUE A WRITTEN AMENDMENT TO THE RFP IF THE AGENCY INCREASES OR OTHERWISE CHANGES IT'S REQUIREMENTS AFTER RECEIPT OF THE PROPOSALS FROM THE BIDDERS. THUS, EVEN THOUGH THE LOTTERY CONTRACT HAD ALREADY BEEN APPROVED BY THE COUNCIL, OCFO SHOULD HAVE ISSUED AND TRANSMITTED TO BIDDERS A WRITTEN AMENDMENT TO THE RFP, REQUIRING A GAMING PLATFORM CAPABLE OF DELIVERING GAMES OF SKILL AND GAMES OF CHANCE PLAYED ON THE INTERNET, AND AFFORDING THE BIDDERS THE CHANCE TO SUBMIT A BEST AND FINAL OFFER.

IN ADDITION, INTRALOT'S B-ON SYSTEM WAS NOT LISTED IN THE PROPOSED LOTTERY CONTRACT OCFO SUBMITTED AND THE COUNCIL APPROVED. ACCORDINGLY, THE EXECUTION OF THE CONTRACT BY OCFO DID NOT CONFORM TO PROCUREMENT REGULATIONS, AND, CONSEQUENTLY, MAY HAVE RESULTED IN THE DISTRICT NOT RECEIVING THE BEST PRICE.

3. THE LOTTERY MODERNIZATION AMENDMENT ACT OF 2010 – IGAMING LEGALIZED

WITH RESPECT TO i-GAMING, OIG INVESTIGATORS WERE INFORMED THAT A COUNCILMEMBER AND HIS STAFF DECIDED THAT THE EASIEST AND SIMPLEST

WAY TO LEGALIZE i-GAMING IN THE DISTRICT WOULD BE TO DEFINE “LOTTERY” AND INCLUDE i-GAMING IN THE DEFINITION. THE COUNCILMEMBER’S STAFFER DRAFTED THE LOTTERY MODERNIZATION AMENDMENT ACT OF 2010, WHICH WAS ATTACHED TO THE FISCAL YEAR 2011 SUPPLEMENTAL BUDGET SUPPORT ACT OF 2010, AS AN ANTICIPATED REVENUE ENHANCER. WITHOUT ANY REVIEW BY THE COMMITTEE ON FINANCE AND REVENUE OR THE PUBLIC, ON DECEMBER 21, 2010, THE COUNCIL APPROVED THE FISCAL YEAR 2011 SUPPLEMENTAL BUDGET SUPPORT ACT OF 2010, ENACTING i-GAMING LEGISLATION, WHICH AUTHORIZED DCLB TO OFFER BOTH GAMES OF SKILL AND GAMES OF CHANCE VIA THE INTERNET.

THE OIG COULD NOT SUBSTANTIATE THAT THE METHOD IN WHICH THE COUNCIL APPROVED AND ENACTED THE i-GAMING LEGISLATION WAS PROHIBITED. IN ADDITION, THE OIG DETERMINED THAT WHEN THE COUNCILMEMBER SPONSORED AND VOTED FOR THIS LEGISLATION, HE WAS EMPLOYED BY A PRIVATE LAW FIRM THAT SERVICES THE ONLINE GAMING INDUSTRY. EVEN THOUGH THERE IS A SUGGESTION OF A POSSIBLE CONFLICT OF INTEREST THAT THE COUNCILMEMBER USED HIS PUBLIC OFFICE FOR PRIVATE GAIN, THE OIG FOUND NO EVIDENCE THAT THE COUNCILMEMBER LOBBIED OR RECEIVED ANYTHING ON BEHALF OF ANY GAMING ENTITY, OR DID ANYTHING IMPROPER WHICH RESULTED IN THE COUNCIL VOTING FOR THE LEGISLATION.

4. ISSUES REGARDING THE LOTTERY CONTRACT AWARD

A. THE CONDUCT OF DSLBD

WITH RESPECT TO THE LOTTERY CONTRACT ITSELF, THE OIG INVESTIGATION ALSO FOUND THAT DSLBD ERRED IN ITS DETERMINATION REGARDING A JOINT VENTURE AGREEMENT AND ITS ULTIMATE APPROVAL OF INTRALOT'S LOCAL BUSINESS PARTNER'S CBE CERTIFICATION. SPECIFICALLY, ONE OF THE COMPETING BIDDERS WAS D.C. LOTTERY PARTNERS, A JOINT VENTURE COMPRISED OF GTECH CORPORATION (GTECH), DIGIDOC INC (DIGIDOC), AND D.C. GAMING ADVISORS, LLC. DIGIDOC SUBMITTED A JOINT VENTURE APPLICATION TO DSLBD REQUESTING CBE CERTIFICATION FOR D.C. LOTTERY PARTNERS. DSLBD DENIED THE JOINT VENTURE CERTIFICATION. A REVIEW OF THE JOINT VENTURE AGREEMENT REVEALS THAT IT REQUIRED DIGIDOC TO EXERCISE 51% OR MORE OF THE CONTROL OVER CONTRACT PERFORMANCE, AND IT ALSO REQUIRED DIGIDOC TO SELECT AND APPOINT (FROM ITS EMPLOYEES) THE JOINT VENTURE'S KEY EXECUTIVES AND MANAGEMENT STAFF, WHO WOULD HAVE BEEN RESPONSIBLE FOR EXERCISING CONTROL OVER CONTRACT PERFORMANCE.

IN ADDITION, ACCORDING TO DIGIDOC, THE NATIONAL INSTITUTE OF GOVERNMENTAL PURCHASING (NIGP) CODES FOR WHICH DIGIDOC WAS CERTIFIED AND THE EXPERIENCE IT HAD GAINED FROM SERVICING THE DISTRICT AND FEDERAL GOVERNMENTS, (WHILE NOT LOTTERY SPECIFIC) EVIDENCED THAT ITS CAPABILITIES WERE BOTH RELEVANT AND

TRANSFERABLE TO THE PERFORMANCE OF THE WORK FOR WHICH IT WAS TO BE RESPONSIBLE UNDER THE LOTTERY CONTRACT. FURTHER, DIGIDOC'S APPLICATION SHOWED THAT IT LACKED THE TECHNICAL RESOURCES SPECIFIC TO THE LOTTERY INDUSTRY, DICTATING THE NEED FOR A JOINT VENTURE BECAUSE DIGIDOC DID NOT HAVE THE NECESSARY CAPACITY TO PERFORM THE CONTRACT INDEPENDENTLY, WHICH WAS PART OF THE STATUTORY REQUIREMENT. THEREFORE, DSLBD IMPROPERLY DENIED DIGIDOC'S APPLICATION FOR A JOINT VENTURE CERTIFICATION.

WITH RESPECT TO INTRALOT'S LOCAL BUSINESS PARTNER, VSC, THE OIG INVESTIGATION REVEALED THAT 2 MONTHS AFTER DIGIDOC SUBMITTED ITS JOINT VENTURE APPLICATION TO DSLBD, VSC APPLIED TO DSLBD FOR CBE CERTIFICATION, WHICH ULTIMATELY WAS GRANTED. BASED ON A SITE VISIT TO VSC, THE DSLBD COMPLIANCE SPECIALISTS FOUND THAT VSC'S CHIEF OPERATIONS OFFICER, DID NOT MAINTAIN HIS OFFICE AT THE BUSINESS' DISTRICT OFFICE AS REQUIRED. THEREFORE, THE COMPLIANCE SPECIALISTS CONCLUDED THAT THEY WERE NOT ABLE TO DETERMINE VSC'S ELIGIBILITY FOR CBE CERTIFICATION IN ACCORDANCE WITH THE DEFINITION OF A LOCAL BUSINESS ENTERPRISE.

NOTWITHSTANDING THE DSLBD COMPLIANCE SPECIALISTS' DETERMINATIONS, A DSLBD'S FORMER COMPLIANCE MANAGER APPROVED VSC'S CBE CERTIFICATION ON AUGUST 28, 2009. THROUGH INVESTIGATION IT WAS DETERMINED THAT THE VSC'S CHIEF OPERATIONS OFFICER MAINTAINED HIS

OFFICE AT HIS HOME IN MARYLAND. ACCORDINGLY, DSLBD'S OVERRIDING OF THE DETERMINATIONS OF ITS COMPLIANCE SPECIALISTS WAS IN ERROR BECAUSE THE REGULATIONS REQUIRE THAT VSC'S CHIEF OPERATIONS OFFICER NOT ONLY PERFORM HIS FUNCTIONS IN THE DISTRICT, BUT ALSO MAINTAIN HIS OFFICE IN THE DISTRICT.

B. VSC'S ALLEGED MISREPRESENTATIONS

AFTER INTRALOT ANNOUNCED ITS INTENTION TO SUBCONTRACT TO DC09, THE OCFO CONTRACTING OFFICER CONDUCTED A RESPONSIBILITY DETERMINATION OF DC09 AND VSC (THE LOCAL PARTNER FOR THE JOINT VENTURE). WITH RESPECT TO ALLEGATIONS THAT VSC HAD MISREPRESENTED ITS PREVIOUS WORK EXPERIENCE ON ITS WEBSITE, ITS CHIEF OPERATIONS OFFICER ACKNOWLEDGED THAT VSC HAD NOT WORKED ON THE FEDERAL GOVERNMENT CONSTRUCTION PROJECTS LISTED ON ITS WEBSITE DURING VSC'S VETTING PROCESS. HE ACKNOWLEDGED THAT VSC DID NOT EXIST AT THAT TIME AND SAID THAT THESE CONSTRUCTION PROJECTS WERE LISTED TO SHOWCASE THE CONSTRUCTION INDUSTRY EXPERIENCE OF VSC PERSONNEL WHO HAD WORKED ON THESE PROJECTS IN CONNECTION WITH PREVIOUS EMPLOYMENT. A REVIEW OF THE MATERIALS SUBMITTED TO OCFO AND DCLB DURING VSC'S VETTING PROCESS REVEALED THAT THEY DID NOT INCLUDE INFORMATION REGARDING THESE CONSTRUCTION PROJECTS. THEREFORE, THERE WAS INSUFFICIENT EVIDENCE FOR THE OIG TO CONCLUDE AND/OR SUGGEST THAT OCFO HAD CONSIDERED THE CONSTRUCTION PROJECTS WHEN VETTING VSC OR THAT THE

CONTRACTING OFFICER SHOULD HAVE CONDUCTED A FURTHER INQUIRY INTO VSC.

ACTIONS TAKEN

BASED ON THIS INVESTIGATION, THE OIG RECOMMENDS:

1. THE COUNCIL CONSIDER CLEARLY DEFINING THE PURPOSE FOR ITS CONTRACT REVIEW AND APPROVAL PROCESS AND DEVELOPING SPECIFIC WRITTEN PROCEDURES GOVERNING SUCH REVIEW, AND THE APPLICABLE CRITERIA FOR SUCH, INCLUSIVE OF THE PROHIBITION, IF DEEMED APPROPRIATE, OF SUBSEQUENT CONTRACT MODIFICATIONS NOT SPECIFICALLY APPROVED BY THE COUNCIL.
2. THE COUNCIL SHOULD CONSIDER WHETHER LEGISLATION IS NEEDED TO ADDRESS CONCERNS THAT IT MAY HAVE WITH PARTICULAR CONTRACTING METHODS, PROCEDURES, AND THE LIKE WITH RESPECT TO THE PERFORMANCE OF ITS ROLE IN THE CONTRACT REVIEW AND/OR APPROVAL PROCESS, AND WHETHER SUCH REVIEWS AND/OR APPROVALS ARE BETTER CONDUCTED BY IT EXERCISING ITS LEGISLATIVE POWERS THROUGH THE PROMULGATION OF LAW AND POLICY, RATHER THAN NULLIFYING THE RESULTS OF THE COMPETITIVE BID PROCESS.
3. WITH THE CURRENT EMPHASIS ON ETHICS WITH RESPECT TO COUNCILMEMBERS, THE COUNCIL AND BOARD OF ELECTIONS AND ETHICS SHOULD ASSESS OR, AT A MINIMUM, MAY WANT TO CONSIDER,

WHETHER EXISTING CODES OF ETHICS FOR THE COUNCIL AND ITS EMPLOYEES PROVIDE ADEQUATE GUIDANCE TO COUNCILMEMBERS, INCLUDING A DELINEATION OF PROHIBITED CONDUCT, WHEN PERFORMING DUTIES CONCERNING REVIEW AND APPROVAL OF CONTRACTS, AND SPONSORSHIP AND/OR DRAFTING OF LEGISLATION, OR WHETHER A SEPARATE OR REVISED CODE OF ETHICS IS NEEDED.

4. WITH RESPECT TO OUTSIDE EMPLOYMENT, THE COUNCIL SHOULD CONSIDER REQUIRING COUNCILMEMBERS TO REPORT, WITH SPECIFICITY, THE AMOUNT AND SOURCE OF INCOME RECEIVED FROM OUTSIDE EMPLOYMENT IN THEIR FINANCIAL DISCLOSURE FILINGS WITH APPROPRIATE DISTRICT ENTITIES.

5. OCFO SHOULD DEVELOP CLEAR GUIDELINES AND REGULATIONS, AMONG OTHER THINGS, THAT REQUIRE SUBMISSION TO THE COUNCIL FOR REVIEW AND APPROVAL, ANY MODIFICATIONS OR ADJUSTMENTS TO CONTRACTS THAT THE OCFO IS PROCESSING AND THAT THE COUNCIL IS REQUIRED TO APPROVE, PRIOR TO EFFECTUATION OF THE CONTRACT. FURTHER, OCFO SHOULD REFRAIN FROM INCLUDING AN OFFERED OPTION IN A CONTRACT AWARD UNLESS THE REQUEST FOR PROPOSALS WAS AMENDED TO REFLECT THE CHANGE IN REQUIREMENTS PRODUCED BY THE INCLUSION OF SUCH AN OPTION AND DISTRIBUTED TO ALL BIDDERS IN ACCORDANCE WITH EXISTING REGULATIONS.

6. DSLBD SHOULD DEVELOP CLEAR GUIDELINES AND REGULATIONS THAT ENSURE UNIFORM CERTIFICATION FOR THE CBE PROGRAM AND NIGP INDUSTRY CODES. FURTHER, DSLBD DETERMINATIONS AS TO CBE STATUS SHOULD INCLUDE DETAILS REGARDING ITS COMPLIANCE REVIEW PROCESS AND THE BASIS FOR ITS FINAL DETERMINATIONS, ESPECIALLY WHERE THE FINAL DETERMINATION CONTRAVENES THE COMPLIANCE SPECIALISTS' FINDINGS.

THIS CONCLUDES MY PREPARED REMARKS, AND I WELCOME YOUR QUESTIONS OR COMMENTS. THANK YOU.