



January 23, 2023

Kristi C. Whitfield, Director, DSLBD
441 4th Street, NW, Suite 850N
Washington, DC 20001

Dear Director Whitfield:

I am writing in response to your January 10, 2023 letter regarding Intralot's compliance with its Certified Business Enterprise (CBE) agreement for Contract No. CFOPD-19-C-041 (the "lottery contract"). Intralot's audited financials for the lottery contract through September 30, 2022 show **total revenue of \$31,506,439.**¹ Based on your January 10, 2023 letter, DSLBD recognizes \$16,902,786 of the total amount paid by Intralot to CBE firms, which represents 53.6% of the contract revenue according to our audited financials.

Lottery contract revenue through September 30, 2022

Year	Revenue
FY 2019	\$1,657,167.79
FY 2020	\$7,512,440.71
FY 2021	\$11,293,094.41
FY 2022	\$11,043,736.53
Total	\$31,506,439.44

Further, we wish to provide one important clarification. The lottery contract requires Intralot to subcontract 35% of the contract revenues to CBEs, not 55%.² Intralot voluntarily committed to subcontract a higher amount to CBEs in 2019, when the lottery contract was entered into, because we believed that the CBE attribution structure that had been in place for nearly a decade could continue in the current lottery contract.³ We acknowledge DSLBD's position, but respectfully disagree with the manner in which CBE credit is currently awarded.⁴ Notwithstanding this, Intralot has *significantly* exceeded the 35% CBE requirement included in its contract with the D.C. Lottery.

¹ Intralot is unclear where the \$40,106,258.01 revenue figure included in DSLBD's January 10, 2023 letter was obtained from. The revenue presented in this response has been audited by Intralot's outside auditing firm. Further, Intralot's actual payments to CBE firms significantly exceed \$16.9 million.

² Section H.3, Contract No. CFOPD-19-C-041

³ It was not until after the contract was signed that Intralot was informed that DSLBD would disallow CBE credit for all work that was not self-performed.

⁴ DSLBD contends that all work that is not self-performed by a CBE does not receive credit, even if the work is commercially relevant to the lottery contract and the CBE self-performs more than 35% of their subcontract. Intralot maintains that DSLBD's interpretation of D.C. Official Code § 2-218.46(b-1) and § 2-218.13(e) is at odds with the plain meaning of statute and its accompanying legislative history.

Next, Intralot would like to address the future of Intralot's CBE Agreement. Lottery operations require highly technical expertise and proprietary resources, which explains why every state lottery agency contracts with one of the handful of firms in the world, including Intralot, that can deliver these services. We are eager to support the District's CBE goals and requirements. However, it is commercially unsustainable to subcontract 55% of revenues while, at the same time, delivering the services required to the D.C. Lottery, unless CBEs are permitted to enter into second-tier contracts, for which the resulting work will be credited to the broader CBE targets.⁵ Unless this accommodation can be made, Intralot is requesting an amendment to its CBE Agreement to provide a more reasonable CBE target of 35% – what the contract and the law require. It is worth noting that Intralot has previously requested this adjustment.⁶

At present, Intralot is required to pay █████ of all lottery contract revenue to one firm – Vital Services Corporation (VSC) – notwithstanding the fact that VSC does not perform the totality of the Statement of Work adequately under the contract.⁷ Thus, the current situation is one where Intralot must perform that work. This cannot continue.

The inability to amend its CBE Agreement has further compounded the difficulty in administering the contract by effectively locking Intralot into subcontracts that require it to pay its vendors whether or not they provide adequate services. As such, Intralot's CBE vendors have no incentive to deliver the highest value to District residents and taxpayers since they cannot be replaced. This situation remains untenable. Surely, you can understand that no business can succeed with these unrealistic constraints. While we do not believe that DSLBD's intent is to reward any particular CBE (or individual) regardless of its performance (including paying them for doing nothing), that *is* the reality if DSLBD will not permit Intralot to either amend its CBE Agreements or to utilize vendors at their discretion.

As you know, we have requested a meeting with you to discuss amending Intralot's CBE Agreement to match the minimum CBE requirements of the lottery contract and District law (*i.e.*, 35% of the contract value), as well as the freedom to add and subtract CBEs from the subcontracting plan at Intralot's discretion in the future – always, however, meeting the minimum 35% CBE expenditure. This would have the added benefit of rendering the issue of how credit is awarded moot, since both Intralot and DSLBD agree that Intralot is significantly exceeding 35% spending on CBEs even when disputed amounts are subtracted.

⁵ In one instance, DSLBD disallowed credit for \$1.1 million of the amount that Intralot paid to Octane, LLC because Octane – unbeknownst to Intralot, and in violation of its contract with Intralot – subcontracted with a non-CBE for its scope-of-work. Yet, DSLBD insisted on penalizing Intralot for Octane's contract violation, by disallowing CBE credit for Intralot's good faith payment to Octane. Indeed, Intralot has virtually no redress against CBEs that violate the terms of their contracts with Intralot. Intralot is forbidden from terminating non-performing CBEs without the express written consent of the DLSBD Director. Thus, Intralot is held accountable for meeting targets that its CBEs fail to achieve and is unable to replace them with higher performing CBEs.

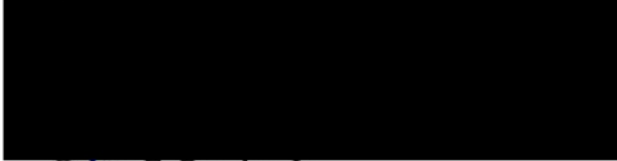
⁶ Intralot letter to DSLBD, November, 8, 2021. DSLBD denied this request by letter to Intralot on November 22, 2021.

⁷ To date, VSC has earned █████ under the current lottery contract alone.



Thank you for your attention to these matters. We genuinely look forward to discussing them with you in a frank but respectful manner soon.

Sincerely,
Intralot, Inc.



Byron E. Boothe, Jr.
CEO

cc: Tyrone L. Hankerson, Jr., Esq., Compliance Manager,
DSLBD Rosemary Suggs-Evans, Chief of Staff, DSLBD
Lorenzo McRae, General Counsel, DSLBD
Frank Suarez, Executive Director, D.C. Office of Lottery and Charitable Games
Ridgely Bennett, Chief Counsel, D.C. Office of Lottery and Charitable Games
Drakus Wiggins, Contracting Officer, D.C. Office of the Chief Financial
Jay M. Lapine, Esq., Chief Legal Officer
T.Reed Stephens, Winston & Strawn