

October 5, 2012

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**Via Hand Delivery, E-mail and Certified U.S. Mail**

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**Re: Protest of Award of the Hoosier Lottery's Integrated Services Agreement to GTECH Corporation**

As you are aware, our office represents Scientific Games International, Inc. ("Scientific Games") in connection with its bid for the Hoosier Lottery's Integrated Services Agreement ("Agreement"). This letter serves as Scientific Games' formal protest ("Protest") of the State Lottery Commission of Indiana's ("Commission") award of the Agreement to GTECH Corporation ("GTECH") on October 3, 2012 (hereinafter "Award").

Scientific Games disagrees with the Commission's Award on a number of grounds, including that the Commission's evaluation of the competing offers was improper, as it was contrary to and inconsistent with the criteria in the "Request for Information Solicitation for Hoosier Lottery Integrated Services" ("RFI"), as described in greater detail below. Additionally, but not by way of limitation, the Commission's decision violates: (1) the procedures required by Indiana's Administrative Code, specifically 65 IAC 2 *et. seq.*; (2) the procedure required by Indiana Code 4-30 *et. seq.*; (3) the Indiana Antitrust Act (Indiana Code § 24-1 *et seq.*); and, (4) the equal protection and due process clauses of the Constitution of the State of Indiana. Furthermore, it appears, given the improper award, that the bid specifications may have been inadequate, unduly restrictive, ambiguous, and the contract award was arbitrary and capricious. We further protest on the basis that the Commission has not specified the protest due process procedure.

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Our comprehensive search for the procedures for protesting the award of the Agreement revealed that 65 IAC 2-5 *et seq.*, of the Indiana Administrative Code, which once provided a detailed means by which such a protest was to occur, was repealed in February 2011 and was not replaced thereafter. On October 4, 2012, our firm contacted counsel for the Commission, Bryan Collins, Esq., to inquire as to the proper procedure for filing a Protest and the deadline to do so. Mr. Collins informed us that such procedure could be found in the RFI and instructed us to look therein. The RFI, however, does not include any information regarding the procedure and/or deadline for filing a protest of the Commission's contract award. Nonetheless, we are not aware of any statutory, administrative or other authority that precludes an unsuccessful bidder, such as Scientific Games, from filing a protest. Accordingly, and out of an abundance of caution in light of the deadline to file a protest of the Commission's contract award provided in the repealed statute, which mirrors that of the Administrative Orders and Procedures Statute (Indiana Code § 4-21.5 *et seq.*), we are submitting this Protest within the 72 hour deadline provided therein. However, in doing so, we reserve all rights to assert that the RFI is not subject to any protest rules or procedures. In the event the Lottery Commission or other governing authority has created or is subject to procedures for protests of the procurement of the Agreement, please contact us immediately so that we may modify or supplement our Protest if required.

Substantively, as noted at the outset of this letter, it appears that Commission did not, and could not have, evaluated Scientific Games' proposal correctly, fairly, or in accordance with the RFI. In particular:

- Despite the published Timeline & Milestones table providing for a potential BAFO and despite the winning bidder having offered a cumulative initial five-year bid net income only 1.7% higher than the second highest offer, there was no best and final offer (BAFO) opportunity for the bidders to improve their offers;
- The RFI process discriminated between and among bidders (by way of example, all bidders were not privy to all questions and answers submitted during the RFI process);
- The evaluation criteria were vague and ambiguous;
- The Commission has not provided for a protest procedure related to the RFI;
- The Commission did not properly evaluate Scientific Games' Business Plan, given that Scientific Games is the incumbent and, thus, an award to Scientific Games would pose substantially reduced transition costs and risks;
- Conversely, the Commission could not have properly evaluated GTECH's Business Plan, given the significant transition costs and risks posed by GTECH;
- The Commission did not properly evaluate the bidders' roles, experience and relative contributions in connection with other lottery outsourcing projects;

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- The Commission did not accord comparable weight to the three evaluation factors of the RFI, but rather made the award based improperly on GTECH's Bid Net Income Proposal; and
- The Commission did not disclose to the other bidders the termination costs (or otherwise facilitate clarity regarding such termination costs) related to the Contract for On-Line Gaming System and Related Services dated October 22, 2009 between the Commission and Scientific Games.

We believe that the records relating to the procurement of the Agreement will further support our client's position and thus we requested those records from your office on October 4, 2012. We fail to understand why these records have still not been made available more than 24 hours after our request and in light of the Lottery's own public commitment to make the records available on the Lottery's website at the conclusion of the RFI process. Thus, in addition to any issues that may be raised herein or as part of a supplemental Protest, we reserve the right to raise additional issues that may come to light during the course of these proceedings based upon information learned during our review of the requested records or in response to further positions taken by the Commission.

This letter is also intended to serve as a request for a Stay of Effectiveness with respect to the Commission's contract award and thus a request that the Agreement with GTECH not be executed. We are also requesting an immediate appointment of an Administrative Law Judge and a prompt evidentiary hearing concerning the issues surrounding the award of the Agreement. We look forward to the appointment of an Administrative Law Judge and the initiation of these proceedings.

Sincerely,



Scott S. Morrisson



Laura E. Gorman

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cc: Michael J. Messaglia, Esq.

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