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## Weakness Found in Monitoring Lottery Contract CBEs

*Audit also raises “significant concerns” about mandated CBE participation*

**WASHINGTON, July 7, 2021**— An audit of the DC Lottery’s contracting with “certified business enterprises or CBEs” — small and District-based businesses given preferences in District procurement—finds multiple instances of questionable practices, payments made by an entity that is not the principal contractor, and failure to document whether businesses meet CBE requirements.

The Office of the D.C. Auditor (ODCA) found that during the first year of the DC Lottery’s 5-year contract with Intralot, the CBE Intralot hired to manage lottery operations—Veterans Services Corp. (VSC) — had only two employees, raising questions about who actually performed the duties expected of VSC.

Further, the audit found that Intralot used a firm that is not a CBE to pay subcontracting CBEs on the Lottery contract rather than paid by Intralot, which is a violation of the law. The subcontractor that made the payments—DC09—is jointly owned by Intralot and VSC. CBE is a designation given to certain small District-based firms that meet certification requirements and most District contracts above \$250,000 require that at least 35% of contract expenditures go to CBEs.

ODCA sought documentation on who had actually performed the managerial duties and how the funds moved from Intralot to DC09 and then to the subcontractors, but Intralot refused to provide that information. “We wanted to know who did the work for which VSC was paid,” said D.C. Auditor Kathy Patterson. “We were denied that information by the DC Lottery’s contractor, Intralot.”

The Department of Small and Local Business Development (DSLBD) which oversees the CBE program requested the information on behalf of ODCA. District contracting provisions require government contractors to provide information on request but Intralot cited confidentiality and declined to provide documentation.

The audit found that one year into the 5-year contract Intralot, had spent less than 1% of the required expenditures with CBEs. It also found that neither the DC Lottery nor DSLBD could document that work for which CBE subcontractors were paid had actually been performed by the CBEs and cites a lack of clarity in current law on where responsibility resides. DSLBD also awarded credit toward the 35% CBE participation for work not performed by two CBEs, VSC and Octane. The amount of credit awarded was reduced by DSLBD once ODCA identified this issue.

“We have a situation here where no one looks good and all of the players can point elsewhere for where the faults lie,” Patterson said.

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The audit recommends that policymakers more clearly define legal requirements for CBEs and also clarify the respective oversight responsibilities of the two District agencies, DSLBD which certifies CBEs and the DC Lottery, which contracts for the services. Today's D.C. CBE law primarily focuses on payment to CBEs.

D.C. Councilmember Elissa Silverman requested the audit of the Lottery and Intralot's compliance with District CBE law on a contract between the two to provide sports wagering and lottery gaming services and that ODCA review whether the CBEs associated with the Lottery contract meet the definition of small, local businesses as defined by CBE law.

### **Who's doing what?**

The audit found a gap between DSLBD and the Lottery that has led to weaknesses in monitoring compliance with the Lottery contract. Both agencies contend that it is the other's responsibility to ensure that CBEs are performing the work of reviewing CBE invoices when approving invoices for payment.

Failure to review supporting documentation for work performed by CBEs on the Lottery contract has led to approved CBEs receiving credit for work they did not perform. The Lottery's compliance with the 35% CBE requirement is at risk if unapproved subcontractors are completing tasks on behalf of approved CBEs. Without documentation to support tasks completed by CBEs, the Lottery simply approves payments without validation.

### **CBE certifications**

ODCA found that DSLBD followed D.C. law in processing and approving same-day self-recertifications by companies declaring there was no material change to their business in the past three years.

The report found that DSLBD did not provide evidence it complied with D.C. law in certifying six of the seven CBEs listed on the Lottery contract. Specifically, DSLBD did not have an appropriate, effectively designed process to validate three CBE certification requirements in the D.C. Code, including how they evaluate a CBE's managerial functions performed in the principal office; whether the business is independently owned, operated and controlled; or whether one or more veterans controlled the management and daily operations.

### **What ODCA recommends**

Among the report's other recommendations are that:

- The D.C. Council should amend the law to clearly define "managerial functions" and "independently controlled owned and operated" with language that is measurable and verifiable.
- The D.C. Council should amend the law to delineate the respective responsibility of the contracting agency and the responsibility of DSLBD to ensure CBEs are performing work.
- The Lottery should comply with the contract terms and not approve invoices without supporting documentation for all work performed, including work performed by CBEs.

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