



**MONTANA
DEPARTMENT OF
ADMINISTRATION**

Director's Office

Steve Bullock, Governor

John Lewis, Director

September 25, 2019

Representative Wendy McKamey, Chair
State Administration and Veterans'
Interim Committee
Room 137, State Capitol
Helena, MT 59601

Re: Montana Lottery and Sports Wagering

Dear Representative McKamey:

The Lottery Director, Ms. Wong, asked that I respond to the committee's inquiry since the bulk of this letter addresses legal issues, and the Department of Administration provides legal services to the Lottery.

The Director appreciated the recent opportunity to update the committee on how the Montana Lottery is implementing HB 725, which legalized sports wagering in Montana. This letter responds to several questions raised during the committee session about the contracting process.

The Lottery takes the legislature's direction to implement sports wagering in Montana seriously. On its current course, the Lottery anticipates that it can begin to implement sports wagering as early as the end of this year. This timeline is consistent with the fiscal note for HB 725, which anticipated revenue collection from sports betting in fiscal year 2020. Were the Lottery to seek a different contractor and initiate a new request for proposal (RFP) process, it would delay the implementation of sports wagering in Montana by up to a year or more. Such a hiatus would in turn also delay the collection of gaming revenues for the state.

By way of background, the Lottery does not use separate contracts for each of the games it offers. Rather, the Lottery uses a single contractor to provide a range of games. This contractor must also be able to integrate new games that were not available previously. For this reason, when the Lottery conducts competitive bid processes for its game contracts, it requires all contractors to demonstrate that they can integrate new games—either in response to consumer demand, new innovations, or regulatory changes.

The Lottery currently uses the contractor Intralot to provide its games.

Intralot became the Lottery's primary games provider following an open, competitive RFP process that began in 2014.

The Lottery's 2014 RFP required vendors to demonstrate that they could implement entirely new lottery games. This was because the Lottery understood that new games would be developed that were not then part of the portfolio of games on offer in Montana when the RFP was issued. Sports wagering was not a lottery game in Montana at the time. But the gaming industry generally believed that it would soon be legalized across the United States. Both firms that responded to the 2014 RFP addressed their ability to integrate new games and both specifically detailed their capacity to offer sports wagering.

In 2019, the legislature made sports wagering a lottery game in Montana. Because this is a new game, and because all the bidders in the 2014 RFP anticipated that sports wagering could become a lottery game in Montana, the current contract covers the addition of this new game—just like any other new lottery game.

The key issue is whether sports wagering is within the scope of the original procurement and resulting agreement documents, which include the (i) RFP, (ii) agreement between the Lottery and the contractor and statements of work, and (iii) the contractor's proposal. If a service is within the original scope, then a new RFP is not required. If not, a new RFP must be issued.

Several factors affect the issue of scope: (i) the extent of any changes in the type of work; (ii) the performance period; (iii) the costs between the modification and the original contract; (iv) whether the modification was the type of change that could have been reasonably anticipated; and (v) whether the modification materially changed the field of competition for the requirement.

Extent of Changes

The contract between the Lottery and Intralot broadly requires Intralot to provide the Lottery with an operating system and related services. As part of those related services, when the Lottery introduces a new game, Intralot provides the technology to integrate and administer the game. This type of work has occurred since the agreement with Intralot was signed, including the introduction of many new scratch, lotto, and treasure play games. New fantasy sports games were also introduced under the previous Intralot agreement without a specific mention in the agreement of these fantasy games.

The 2014 RFP advised bidders that the "Lottery plans to introduce new games and features during the contract.... The offeror should describe any other games and/or feature that it could provide." *RFP, Section 3.2.3.10 Future Games and Features*. The statement of work ("SOW") provides that Intralot will provide "retailer terminals to provide sales of scratch tickets, lotto tickets and other terminal generated tickets ... that cover every aspect of Lottery operations." *SOW, Project/Task Objectives and Requirements, p. 5*.

The legislature's 2019 changes place sports wagering within the definition of "lottery game." The legislature did not place sports wagering in its own category outside other lottery games and did not direct the Lottery to follow a different procedure than it has in introducing other new games since the Intralot contract was signed. And, as noted, the RFP and agreement were drafted anticipating the introduction of new games and requiring Intralot to provide the services to implement the games. To provide sports wagering, Intralot will utilize its existing Montana infrastructure and add terminals as needed to locations.

A comment was also made at the last meeting of the State Administration and Veterans Affairs Interim Committee that because of the potential revenue that sports wagering may generate, sports wagering should be treated differently from other lottery games. This statement is not reflected anywhere in the language of HB 725. In fact, the definition of “lottery game” provided in the bill does not draw a distinction between or among games based on revenue potential. Since the new Intralot contract, 153 new scratch games and two new Lotto games have yielded over \$57 million and \$12 million in gross revenue, respectively.

Performance Period

Implementing sports wagering under the existing Intralot contract does not change the performance period. The contract term with Intralot may not exceed 10 years.

Costs

The costs associated with the contract between the Lottery and Intralot are based on a fixed percentage of net lottery sales. There is not a specific price that the Lottery pays for the services provided to Intralot. If the Lottery adds a new game that increases sales, Intralot and the Lottery will both increase their revenue; however, the cost associated with the contract does not increase. Outside the minimal operating/personal services costs, sports wagering will not have a material change on the costs between the modification and the original contract.

Anticipation of New Service/Field of Competition

The RFP and resulting contract clearly advised bidders that future lottery games would be added during the contract period. The RFP specifically alerted bidders that the Lottery planned to introduce new games and features during the contract and requested bidders to describe any other games and/or features it could provide. *RFP, Sections 3.2.1, 3.2.10.* Additionally, in response to a question from a vendor, the Lottery explained “Our expectation is that our vendor partner fully participates in our business planning and supports our decisions to implement new games. The future is unknown; however, we believe game changes and other system changes will enhance revenues for the State of Montana and for our vendor.” *RFP Addendum NO. 1: Question Number 8.* The Lottery provided consistent language in the RFP and resulting agreement alerting bidders that future lottery games would be introduced with no distinction between scratch, lotto, or other games.

Bidders in this market understood that sports wagering was a potential new game that the Lottery might be able to offer if the legal landscape changed. In response to the RFP, both bidders submitted proposals describing their experience with all kinds of games, including sports wagering, as well as their ability to offer sports wagering as a future game. That these bidders understood the potential for sports wagering indicates that other market participants in the field of competition also had this same knowledge but chose not to bid on the Lottery contract.

Based on the foregoing, the Lottery has concluded that implementing sports wagering is within the scope of the RFP and the resulting agreement documents. Intralot’s contract requires it to implement new games for the Lottery. The legislature voted to establish sports wagering as a new lottery game, and the Montana Lottery’s plan for implementation is consistent with the intent of the legislature and is covered by the existing contract.

Implementation of sports wagering under the current contract carries significant benefits. The public and the prospective wagering locations are anxiously awaiting this new game, and the Lottery wants to meet these expectations within a reasonable timeframe to generate revenue for the STEM scholarships and the general fund.

Thank you for the opportunity to provide additional information on sports wagering.

Sincerely,

A handwritten signature in black ink that reads "Mike Manion". The signature is written in a cursive, slightly slanted style.

Mike Manion
Chief Legal Counsel, Department of Administration

cc: John Harrington, Legislative Audit Division