



STATE OF MICHIGAN  
BUREAU OF STATE LOTTERY  
LANSING

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August 21, 2024

Scott R. Eldridge  
Miller, Canfield, Paddock and Stone, P.L.C.  
120 N. Washington Square, Suite 900  
One Michigan Avenue Building  
Lansing, Michigan 48933

RE: Bid Protest — RFP No. MSL 2023-001, Internet Sales Platform and Related Services

Dear Mr. Eldridge:

The Michigan Bureau of State Lottery is in receipt of the protest dated August 8, 2024, submitted on behalf of Allwyn North America, Inc. and regarding RFP No. MSL 2023-001, Internet Sales Platform and Related Services. The protest alleges that the unequal application of the bid process affected or was highly likely to affect the outcome.

To review, the Bureau's bid evaluation process was two-tiered. A bidder had to meet a minimum number of points in the technical evaluation to move forward to a best value evaluation. The best value evaluation considered several factors, including price. In this case, the minimum point threshold was 477 out of 530, and four bidders moved forward to the evaluation of best value after technical evaluation.

Paragraph 51 of the RFP instructions states, "[t]he sole purpose of scoring is to remove proposals that do not reach the Eligible Score from consideration. Scoring does not establish best value and will not be used for any purpose beyond determining if further review of a proposal is warranted." Thus, the best value determination is made after technical scoring is completed, by reviewing the proposals of only those bidders that met the minimum points during the technical evaluation. Importantly, total technical score and number of deficiencies is not a determinative factor in making an award recommendation and does not establish best value.

Nor does lowest price. The evaluation of best value is a consideration of several factors. Paragraph 53 of the RFP instructions states:

All proposals that reach the Eligible Score will be reviewed for best value to MSL and the State of Michigan. Best value does not simply

mean lowest price. Best value is a combination of factors including but not limited to price of goods and services offered, total cost of operation, breadth and flexibility of the proposal, local economic benefits, ease of administration, bidder experience and expertise, risks of disruption or delay, and any other factors the Evaluation Committee determines relevant to identifying what it believes to be the best overall proposal for MSL and the State of Michigan at the time.

The RFP instructions make clear that price is a consideration, but it is not the driver of an award. Price is only one factor among many, and no single factor is determinative. Instead, based on a combination of factors, the Bureau made the Award Recommendation to the bidder offering the best value. And as provided in paragraph 64 of the RFP instructions and confirmed by Allwyn's signed acknowledgment, "[d]isagreement with scoring or best value"... "do[es] not form a proper basis for a protest."

There are three assertions made to support the protest: (1) the bid process improperly favored the incumbent despite assurances in the RFP Q&A; (2) the RFP process did not consider Allwyn's investment in economically distressed areas; and (3) NeoGames US LLP is not a responsive bidder.

As for the first assertion, the process did not improperly consider NeoGames' prior experience with the Bureau and did not establish requirements that only NeoGames could satisfy. There were, however, several instances in the best value evaluation where Allwyn's proposal indicated a present inability to meet the requirements of the RFP but promised to meet the RFP requirements at a later time. The Award Recommendation appropriately determined that NeoGames present ability to meet the RFP requirements provided better value than Allwyn's promises to meet the requirements in the future. Prior experience with NeoGames was not the driving factor in those parts of the best value analysis.

This is true regarding the Award Recommendation's evaluation of "Games." On page 45 of the RFP, under "System Overview," the RFP warns that "ease of integration with third parties [is] critical." Page 18 of the Award Recommendation further explained:

A game studio integration can be lengthy for any iLottery platform. Thorough testing is needed from lottery staff for all game functionality (UI, backend, account functions, canceled sales, etc.) and reporting. Many players have games that are their favorites and are often older games. Not having those games available would cause a disruption and a shift for players. With the Michigan Lottery competing with internet gaming and internet sports betting, not providing players with their favorite games could mean permanently losing them.

While Allwyn committed to integrating with third party game providers in the future, the Award Recommendation appropriately noted the many risks associated with the yet-to-occur integrations and properly considered NeoGames current game integrations with third parties. This analysis was not a reliance on NeoGames past

performance with the Bureau. Instead, the analysis is a recognition of the “critical” nature of game integration and an evaluation that NeoGames ability to meet the requirements of the RFP now provides better value than Allwyn’s promise to meet the requirements of the RFP later.

This is also the case with the evaluation of “Platform Functionality and Integration.” The Award Recommendation concluded that Allwyn is currently able to meet the RFP requirements regarding functionality, but the many third-party integrations required by the RFP do not currently exist in Allwyn’s system. If Allwyn’s proposed system currently had the required third-party integrations in place, such would have been factored into the best value assessment. But because Allwyn does not currently have the required integrations, the risk is higher for player disruptions. iLottery sales have grown year over year due to player satisfaction. As a result, the impact of possible disruptions associated with platform functionality and integration must be considered for both reputational and financial risk to the Bureau. Again, NeoGames present ability to meet the functionality and integration requirements of the RFP provides better value than Allwyn’s promise to meet the requirements of the RFP in the future.

A similar analysis applies to the evaluation of “Payment Options Experience.” As noted by the Award Recommendation on page 19, “[a]t present, Allwyn’s platform in North America only accepts deposits into player accounts through credit or debit and only issues withdrawals through ACH or paper check.” Allwyn did promise to provide all the payment functionality required by the RFP in the future. Conversely, NeoGames can provide the payment functionality required by the RFP now. Again, iLottery players have high expectations and disruptions must be kept to a minimum. As with third party integrations for games and platform functionality, NeoGames ability to meet the payment options requirements of the RFP now provides better value than Allwyn’s promises to meet the requirements of the RFP later. In sum, Allwyn was not unequally evaluated on these factors and the RFP did not establish requirements that only NeoGames could satisfy based in its prior performance with the Bureau.

Regarding the evaluation of “System Reliability,” it is important to differentiate the purposes of the technical scoring versus the best value determination. As indicated by paragraph 51 of the RFP instructions, “Scoring does not establish best value and will not be used for any purpose beyond determining if further review of a proposal is warranted.” Thus, it is clear that technical scoring is distinct from the best value determination. In any event, even if technically deficient from a scoring perspective, the 99.9% uptime proposed by NeoGames provides a sufficient alternative to meet the operational needs of the Bureau.

The Bureau appropriately relied upon its first-hand knowledge of NeoGames’ “prior performance with MSL [...] in making its determination of best value.” See RFP Instructions, paragraph 56. The Bureau would have accepted data that provided an objective assessment of Allwyn’s uptime metrics if Allwyn had provided that data in its proposal. But Allwyn did not provide such data, and the Bureau was under no obligation to request the data from Allwyn. As provided by paragraph 44 of the RFP Instructions, the Bureau “is under no obligation to make a request for

clarification. Bidders are solely responsible for ensuring their proposals are as clear and complete as possible.” There was no unequal application of the process on this factor.

As for the evaluation of “Processes and Training” and “Migration and Conversion,” the risks and costs associated with developing new processes and making changes to the user experience were appropriately considered by the Bureau as part of the best value evaluation. Paragraph 58 of the RFP instructions permitted the consideration of “total-cost-of-operation factors [...] when evaluating best value.” NeoGames has the processes and interfaces that external users and internal staff are familiar with and there is less risk of player confusion, sales disruptions, and loss of players. Additionally, the costs and risks associated with converting from one platform to another and maintaining player experience expectations were appropriately considered in making the Award Recommendation. The risk to finances and reputation presented by a system conversion were appropriately considered in the best value evaluation and was not an unequal application of the process.

To the extent that the Award Recommendation did consider NeoGames’ prior experience with the Bureau, doing so was not an unequal application of the bid process and was not contrary to the RFP instructions or Q&A Responses. Paragraph 56 of the RFP instructions unambiguously provides that “[t]he Evaluation Committee may consider prior performance with MSL or the State of Michigan in making its determination of best value.” Further, paragraph 54 of the RFP instructions permits the Bureau to “conduct any research it deems necessary and use any information at its disposal to review and assess proposals.”

Paragraph 58 of the RFP instructions also permits the consideration of “total-cost-of-operation factors (e.g., transition and training costs) when evaluating best value.” The iLottery contract is of great significance to the Bureau, and there is no ability to objectively price the many unknown facts, risks and costs of transitioning to a new system. In light of this, the RFP process properly allowed the Bureau to evaluate “total-cost-of-operation factors” in weighing known facts and experiences with the current system against the many unknown facts, risks and costs of conversion to a new system.

Next, the protest asserts that the RFP process did not consider bidders’ investment in economically distressed areas. The Award Recommendation contains an evaluation of Allwyn’s proposed investments in Lansing as an economically distressed area. On page 23 of the Award Recommendation, under “Other Value,” the Award Recommendation states that, “Allwyn offered to employ ninety individuals in a Lansing-based office. Thirty of those employees are employees for the subcontracted customer service center. Allwyn committed to a \$500,000 one-time donation to the Lansing Arts Center.” Indeed, the Award Recommendation indicates that Allwyn was a leader in this consideration along with NeoGames.

The protest also claims Allwyn would create more local jobs than the awarded bidder. Local economic benefit is among the considerations in determining best

value – see paragraph 53 of the RFP instructions. Additionally, paragraph 57 of the RFP instructions states:

The Evaluation Committee may consider overall economic impact to the State of Michigan when evaluating best value, including but not limited to principal place of performance, number of Michigan citizens employed or potentially employed, capital investments, job creation, tax revenue implications, and economically disadvantaged businesses.

As with pricing, local economic benefit was considered (among other factors) as part of the best value evaluation, but local economic benefit alone was not a determinative factor in the Award Recommendation. Further, the award document explicitly states that “[a]s part of the best value determination, overall economic impact to the State of Michigan was considered and is not a determinative factor in making this award.” Thus, the committee did in fact consider Allwyn’s proposed investments in Lansing when determining best value.

To reiterate, the Bureau made an award recommendation to the bidder offering the best value. Best value is a combination of factors, including but not limited to: price of goods and services offered, total cost of operation, breadth and flexibility of the proposal, local economic benefits, ease of administration, bidder experience and expertise, risks of disruption or delay, and any other factors the Evaluation Committee determines relevant to identifying what it believes to be the best overall proposal for MSL and the State of Michigan at the time.

Finally, the contention that NeoGames is not a responsive bidder because it is not registered to do business in the State of Michigan has no merit. Registration of the selected bidder’s binding entity with the Department of Licensing and Regulatory Affairs is not a requirement of the RFP.

The protest has been considered in its entirety and there are no grounds to determine that the bid process was unequally applied. We thank Allwyn for submitting its proposal and encourage Allwyn to participate in any future solicitations.

Respectfully,

*s/ Joseph T. Froehlich*

Joseph T. Froehlich

Chief Operating Officer

Michigan Bureau of State Lottery

*The Michigan Lottery supports K-12 public education.*

Founded in 1852  
by Sidney Davy Miller



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August 8, 2024

## VIA ELECTRONIC MAIL

Ms. Dana Worrall  
Solicitation Manager  
Michigan State Lottery  
101 East Hillsdale Street  
Lansing, MI 48933

Re: Bid Protest — RFP No. MSL 2023-001 Internet Sales Platform and Related Services

Dear Ms. Worrall:

The undersigned counsel represents Allwyn North America, Inc. (“Allwyn”) in the above referenced matter. Pursuant to the Michigan Bureau of State Lottery’s (“MSL”) bid protest procedure, Allwyn respectfully submits this written bid protest of MSL’s August 2, 2024, contract award recommendation to NeoGames US LLP (“NeoGames”). For the reasons set forth in further detail below, the award was based off of a bid process that was unequally applied, thereby affecting the outcome and awarding the contract to a bidder who is not responsive.

### I. BACKGROUND

On June 16, 2023, MSL issued a Request for Proposals (“RFP”), seeking bids to provide an internet sales platform and related services. MSL claimed the RFP was intended to balance MSL’s interest in new and innovative approaches with a manageable bid process. Based on Allwyn’s success delivering such approaches in North America and representations made by MSL during the pre-bid process, Allwyn timely submitted its proposal to MSL on November 29, 2023. Allwyn specifically relied on MSL’s claims that “Bidders having no past performance with MSL will not be penalized or disadvantaged.”

After deliberating for more than eight months, MSL issued an award recommendation that tacitly confirms what Allwyn already believes: Allwyn’s proposal best positions MSL and the State of Michigan for the next chapter in their digital evolution based on multiple measures, including price, technology, and technical capabilities. Further, Allwyn’s offer to headquarter its North American iLottery and online instant gaming hub in the City of Lansing would result in

greater local economic benefits, more jobs, and greater benefits to Michigan's economically distressed areas than any competing proposal.

#### **A. Allwyn's Pricing Is Least Expensive**

Importantly, the Evaluation Committee ranked Allwyn's pricing model as the best, noting that "Allwyn comes out as least expensive." Indeed, Allwyn is the lowest priced bidder by about \$10 million a year. This would result in savings to Michiganders up to \$120 million over the potential duration of the contract.

#### **B. Allwyn Has Superior Technology and Technical Capabilities**

Allwyn's proposal also establishes the company's superior category management, innovative game development, and ability to optimize the e-instant portfolio. With respect to the Technical Requirements category of the RFP, Allwyn's proposal contained the fewest number of deficiencies: 3. In stark contrast, NeoGames had over three times the number of deficiencies at 10. The Evaluation Committee scored Allwyn's proposal so highly that Allwyn was the first bidder to reach the 477 Eligible Score required for further consideration. As the Evaluation Committee later found when evaluating the best value, "Allwyn leads in this category" with respect to the number of technology development hours provided.

#### **C. Allwyn's Proposal Would Create More Local Jobs Than the Competing Bids**

Regarding job creation and other value offered to the State of Michigan, the Evaluation Committee acknowledged Allwyn as a "leader" in this consideration. In fact, Allwyn offered to employ 90 full-time individuals in Michigan—47 percent more Lansing employees than the Evaluation Committee's recommended bidder.

In sum, Allwyn provided exactly what the MSL sought: the best overall proposal with the best value for MSL and the State of Michigan.

## **II. LEGAL STANDARD**

Pursuant to the state lottery statute, "[t]he commissioner shall solicit bids from financially responsible vendors of data processing equipment and services for the operation of the lottery and may contract with the approval of the state administrative board." M.C.L. 432.9(1). Further, "[t]he lottery shall produce the maximum amount of net revenues for the state consonant with the general welfare of the people." *Id.* In addition, as set forth in Paragraph 65 of the RFP, a proper basis for a protest is an unequal application of the bid process that did affect or was highly likely to affect the outcome.

## **III. REASON FOR PROTEST: UNEQUAL APPLICATION OF THE BID PROCESS AFFECTED THE OUTCOME**

The bidders who met the Eligible Score requirement underwent a "best value" determination that was arbitrary and capricious because the criteria used for this stage of the

evaluation were not provided in the RFP, thereby preventing an open and transparent procurement process. Unfortunately, flaws in the bid process undermined the hard work of the evaluators, resulting in an award recommendation to NeoGames in the amount of \$250,000,000 that deprives MSL, the State of Michigan, and taxpayers of a contract that represents the best value.

Examples of the shortcomings in the bid process are far-ranging, including penalizing bidders for having no past performance with MSL, omitting evaluation criteria relating to economically distressed areas, and failing to adequately consider whether a bidder that is not registered to do business in the State of Michigan is responsive.

In short, unequal application of the bid process affected or was highly likely to affect the outcome.

#### **A. The Bid Process Improperly Favored the Incumbent Despite Assurances in the Q&A.**

MSL's findings heavily favored an incumbent, despite MSL's claims to the contrary. In response to a question regarding whether proposals from bidders with no past performance would be penalized or disadvantaged when compared to bidders with an existing or prior experience with MSL, MSL stated, "*Bidders having no past performance with MSL will not be penalized or disadvantaged.*" However, on six separate occasions, the Evaluation Committee ignored this guidance and (1) applied the criteria in a manner that only the bidder with existing experience with MSL (i.e., NeoGames) could satisfy and/or (2) used information about NeoGames within its possession because of NeoGames' status as the current provider, without affording Allwyn the opportunity to provide similar information for evaluation purposes.

First, when evaluating the Games for best value, the Evaluation Committee concluded that "NeoGames leads" because "NeoGames is already integrated with third party game providers and will support every current game in the Michigan iLottery portfolio at the time of conversion." MSL effectively sought a bidder who would not require any third-party integration with game providers but did not disclose this criterion in the RFP or the Questions and Answers document. As a result, no bidder could satisfy this requirement other than the current provider, leaving Allwyn's integration capabilities unequally evaluated.

Second, the Evaluation Committee found that NeoGames led in Platform Functionality and Integrations because "NeoGames will be providing nearly identical functionality with required third party integrations, which will lead to fewer disruptions for Michigan Lottery and players." Although the Evaluation Committee admitted that Allwyn "currently meet[s] nearly all required functionalities," it favored incumbent NeoGames because it would continue to offer the same functionality to MSL without material changes. Once again, no bidder could satisfy this requirement other than the current provider, leaving Allwyn's platform functionality and integration capabilities unequally evaluated.

Third, the Payment Options Experience analysis centers around NeoGames' "experience offering [MSL] a variety of deposit and withdrawal methods." In its proposal, Allwyn stated it would provide all required payment processing functionality. Nonetheless, MSL unequally



applied this criterion and favored NeoGames based on its past performance with MSL, without identifying any supposed shortcoming by Allwyn.

Fourth, when evaluating the bidders' System Reliability, MSL claimed that "[a]ll bidders who met the Eligible Score on the technical evaluation committed to systems with sufficient uptime," yet NeoGames was found deficient for failing to agree to 100% uptime. Nonetheless, MSL found that "NeoGames leads in this consideration" based on MSL's experience with NeoGames as the incumbent. Allwyn was therefore disadvantaged because the Evaluation Committee (1) used knowledge of NeoGames' uptime without requesting the same system reliability statistics from Allwyn, and (2) improperly classified NeoGames as a leader in this area of the bid despite finding NeoGames' proposal deficient.

Fifth and sixth, the Evaluation Committee's discussion of "Processes and Training" and "Migration and Conversion" makes it fairly evident that MSL had no desire to switch iLottery vendors. The Evaluation Committee stated that "[t]he platform currently running in Michigan uses the NeoGames code. With NeoGames as the chosen bidder, the technological systems and processes already in place would be mostly unchanged." It went on to assert that "[e]very attempt must be made to ensure the migration and conversion is seamless." While remaining with the current vendor eliminates the need for additional training or a conversion, these are requirements that no other bidder could satisfy, leaving Allwyn's "Processes and Training" and "Migration and Conversion" capabilities unequally evaluated.

In conclusion, of the seven areas in which NeoGames solely led the consideration for best value, six of them were based on its incumbency. The Evaluation Committee's consideration of NeoGames' incumbency, in direct contradiction to its public statements during the bid process that it would not take incumbency into account, warrants reconsideration of the Evaluation Committee's recommendation, as well as further review by the Office of the Attorney General. *See Groves v Dept of Corrections*, 295 Mich App 1, 7; 811 NW2d 563 (2011).

#### **B. The RFP Process Did Not Consider Bidders' Investment in Economically Distressed Areas.**

Executive Directive 2019-15 ("Directive") and Michigan's Procurement Policy Manual ("MPPM") encourage agencies exercising procurement authority to consider Michigan economic impact when making purchasing decisions. The Directive provides that "[p]utting Michigan first also requires that the state's purchasing decisions consider suppliers' ... investment in Michigan's economically distressed areas," and the MPPM indicates that "investment in Michigan's economically distressed areas must be considered in the best value evaluation of competitive bids." Allwyn offered numerous contributions to positively impact Michigan's economically distressed areas, including opening an iLottery and e-instant gaming hub in Lansing. Yet, the Award Recommendation does not score or otherwise mention any evaluation of bidders' proposed investments in economically distressed areas when determining the best value. As a result, the bid process was flawed.

#### **C. NeoGames US LLP Is Not a Responsive Bidder.**

As of the date of the award, a question exists regarding whether the recommended awardee, NeoGames US LLP, is registered to do business in the State of Michigan (see enclosure). The only NeoGames entity listed on the Department of Licensing and Regulatory Affairs' website is NeoGames Solutions LLC, a company that is not listed as a bidder in the Award Notice. Absent such registration, NeoGames US LLP is not a responsive bidder.

#### IV. CONCLUSION AND RELIEF REQUESTED

Based on the Evaluation Committee's unequal application of the bid process, which affected or was highly likely to affect the outcome, Allwyn requests MSL:

1. Rescind the award recommendation for NeoGames; and
2. Provide one or more of the following relief:
  - a. Disqualify NeoGames as a non-responsive bidder;
  - b. Reissue a recommendation awarding the contract to Allwyn, pending State Administrative Board approval, if applicable;
  - c. Remand the bids to the Evaluation Committee for further review, analysis, and evaluation; or
  - d. Reissue the request for proposal previously issued at RFP No. MSL 23-001 (Internet Sales Platform & Related Services) for a full re-bid.

Sincerely,

Miller, Canfield, Paddock and Stone, P.L.C.

By: \_\_\_\_\_

  
Scott R. Eldridge



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