

BEFORE THE MARYLAND STATE BOARD OF CONTRACT APPEALS

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In the Consolidated Appeals of

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**Scientific Games, LLC &
Intralot, Inc.**

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**Docket Nos. MSBCA 3337, 3338,
3341, 3344 & 3346**

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**Under
MLGCA Solicitation No. 2024-01**

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**Appearance for Appellant Scientific
Games, LLC**

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OPINION AND ORDER BY CHAIRWOMAN CHO

Scientific Games, LLC (“Sci Games”) and Intralot, Inc. (“Intralot”) (collectively, “Appellants”) each filed appeals from the final decisions of The Maryland Lottery and Gaming Control Agency (“MLGCA” or “Respondent”) denying Appellants’ protests in connection with the procurement under Lottery Central Monitoring and Control Systems and Related Services Request for Proposals No. 2024-01 (the “RFP”).

After a hearing held on April 28, 2026 on all dispositive motions filed in these Consolidated Appeals, the Board ruled on each motion as set forth below in the Order. This written decision sets forth the underlying rationale for each of the rulings.

UNDISPUTED MATERIAL FACTS

On July 19, 2024, MLGCA issued the RFP. Proposals were due on November 25, 2024. Under the RFP, the contract was to be awarded to a single contractor to obtain a complete and installed, implemented, operated and maintained system and related services for the State lottery system. The offeror whose proposal was determined to be “the most advantageous to the State,” primarily considering price and technical factors, would be selected.

The RFP’s MBE Participation Goal

The RFP included a Minority Business Enterprise (“MBE”) participation goal of twenty-eight percent (28%) of the total contract value, with subgoals of ten percent (10%) African

American and ten percent (10%) women (“MBE Goal”). RFP at iii, 102. The RFP defined MBE as “a minority business enterprise that is certified by the Maryland Department of Transportation (‘MDOT’)” and instructed that “[o]nly MBEs certified by MDOT may be counted for purposes of achieving the MBE participation goals.” RFP, Attachment D-1A (MBE Utilization and Fair Solicitation Affidavit & MBE Participation Schedule). To qualify, an MBE firm “must be MDOT-certified for the services, materials or supplies that it is committed to perform on the MBE Participation Schedule. A firm whose MBE certification application is pending may not be counted.” *Id.* (emphasis in original).

The RFP stated that “[o]nly those specific products and/or services for which a firm is certified in the MDOT [MBE] Directory can be used for purposes of achieving the MBE participation goals.” *Id.* The offeror must affirmatively represent that it has “confirmed with the MDOT database that the MBE firms identified ... (including any self-performing MBE prime firms) are performing work activities for which they are MDOT-certified.” *Id.* at D-7.

The RFP allowed offerors to request a full or partial waiver of the MBE Goal if they were unable to meet the MBE Goal or any subgoals, or unable to commit to meeting the entire MBE Goal. *See* RFP at 68 § 4.26.1. In such an event, the offeror was required to “submit documentation supporting its good faith efforts to meet the MBE goal made *prior to submission of its proposal* as outlined in Attachment D-1B, Waiver Guidance.” *Id.* (emphasis supplied).

An offeror’s failure to “properly complete, sign, and submit Attachment D-1A at the time it submits its Technical Response(s) to the RFP may result in the State’s rejection” of the proposal. *Id.*

Three offerors, including Sci Games and Intralot, submitted technical proposals on November 24, 2024.

Intralot's MBE Submission

Intralot's proposal listed eight MBE vendors to meet the MBE Goal. Two of the eight vendors, however, had pending applications for North American Industry Classification System ("NAICS") codes that were needed to fulfill the services they would perform. In March and April 2025, Intralot and the Procurement Officer John P. Lloyd (the "PO") "had a dialogue about how Intralot would satisfy MBE goals." Notice of Appeal, MSBCA 3341 at 5. Intralot informed the PO that "it could easily meet the goal of 32% MBE participation, with or without" the two MBEs with pending applications and proposed that Intralot "could shift work to the other six identified MBEs (who did hold the requisite codes)." *Id.* In its proposal, Intralot included a "Contingency Fallback Position" describing a backup plan "if both vendors were not certified with the correct NAICS codes in time." *Id.* at 5-6.

PO's Award Recommendations and Protests

After receiving the Best and Final Offers from the three offerors in June 2025, MLGCA determined that Intralot was the top-ranked overall offeror, and Sci Games was second overall. In its July 15, 2025 meeting, the State Lottery and Gaming Control Commission (the "Commission") voted five to one to approve MLGCA's recommendation to award the contract to Intralot. On July 16, 2025, MLGCA sent a Notice of Recommended Award to Intralot, and requested that Intralot submit additional documentation, including MBE forms, by July 30, 2025.

On July 21, 2025, Sci Games filed a bid protest concerning the recommendation of award to Intralot. On July 25, 2025, Sci Games submitted a Maryland Public Information Act ("MPIA") request to the MLGCA seeking, in part, documentary evidence of communications and meetings between Intralot and certain MLGCA officials.

On July 25, 2025, Intralot's two MBEs finally received MDOT's approval for the additional NAICS codes. Intralot submitted its MBE forms to the PO on July 30, 2025. Notice of Appeal, MSBCA 3341 at 7.

On August 1, 2025, Intralot was notified of the PO's decision to reject its proposal as non-responsive for failure to meet the RFP's MBE participation requirements. Also on August 1, 2025, the PO notified Sci Games that it was now being recommended for contract award. Shortly thereafter, Sci Games withdrew its July 21 bid protest.

On August 8, 2025, Intralot filed its own bid protest challenging the rejection of its proposal.

On September 25, 2025, the Commission met to consider MLGCA's revised recommendation to award the contract to Sci Games. After a closed session, the Commission rejected the recommendation by a vote of four to three. Sci Games filed its second bid protest on September 30, 2025.

“Ex Parte Communications” Produced in Response to Sci Games’ MPIA Request

On October 10, 2025, MLGCA produced documents in response to Sci Games’ MPIA request that showed that *ex parte* communications had taken place between Commission members and representatives of Intralot. The communications included emails and texts between lobbyists retained by Intralot and Commission members relating to the status of Intralot's MBE vendor applications for NAICS codes. The documents showed that these communications took place from June through August 2025.

On October 17, 2025, Sci Games filed a third protest to the PO and timely supplemented the protest to include the *ex parte* communications produced in response to the MPIA request.

On December 19, 2025, the PO issued his final decision sustaining in part and denying in part Sci Games' second and third protests. He found that the purported *ex parte* communications between Intralot and Commission members "adversely impacted the procurement," and concluded that "the only relief that MLGCA can offer is the rejection of all proposals and re-solicitation of the procurement" to place all proposers on "equal footing." That same day, the PO separately issued a notice rejecting all proposals,¹ stating that it "[was] in the State's best interest because [it] is the only remaining course of action that is in compliance with Maryland Procurement Law." On December 26, 2025, Sci Games filed its fourth protest challenging this decision, which the PO denied on February 4, 2026.

STANDARD OF REVIEW

Upon motion, the Board may dismiss an initial pleading if the Board cannot grant the relief requested. COMAR 21.10.05.06C. In reviewing a motion to dismiss, we assume the truth of all facts alleged by the appellant. *U.K. Constr. & Mgmt., LLC*, MSBCA 2773 at 2 (2011).

The Board may grant a motion for summary decision if: "(a) [a]fter resolving all inferences in favor of the party against whom the motion is asserted, there is no genuine issue of material fact; and (b) [a] party is entitled to prevail as a matter of law." COMAR 21.10.05.06D(2). This legal standard "is the same as that for granting summary judgment under Maryland Rule 2-501(a)." *Brawner Builders, Inc. v. State Highway Admin.*, 476 Md. 15, 31 (2021). And while we "must resolve all inferences in favor of the party opposing summary judgment, those inferences must be reasonable ones." *Crickenberger v. Hyundai Motor Am.*, 404 Md. 37, 45 (2008) (internal quotation marks and citation omitted). To defeat the motion for summary decision, "the non-moving party must produce admissible evidence demonstrating a dispute." *Brawner Builders*, 476 Md. at 31.

¹ Although fashioned as a "Notice of Cancellation," a "Rejection of All Proposals" is the action that the PO actually took under COMAR 21.06.02.02C.

DECISION

1. The PO correctly rejected Intralot's proposal as non-responsive because its MBE participation schedule was deficient at the time of submission.

Respondent and Sci Games argue that the PO properly disqualified Intralot's proposal because its MBE Participation Schedule was deficient as a matter of law. We agree.

Proposals with MBE participation goals must "identify the specific commitment of certified minority business enterprises at the time of submission" and "may not allow a business to participate as if it were a certified [MBE] if the business's certification is pending." STATE FIN. & PROC. § 14-303(b)(17) & (c). Only vendors who are fully MBE certified by MDOT *at the time of submission of proposals* to perform the work required under the contract may be listed in the MBE participation schedule. *See Rycon Const. Inc.*, MSBCA 3239 at 5 (2023); *ARC of the Central Chesapeake Region, Inc.*, MSBCA 3196 at 9 (2022).

Intralot asserts that its MBE Participation Schedule as submitted was sufficient to meet or exceed the 28% MBE Goal because it identified six other certified MBEs that could have filled the gaps in NAICS codes left by the two MBEs with pending applications. Instead of simply listing the six certified MBEs with appropriate allocations to meet the MBE Goal, however, Intralot chose to include two entities that were not properly certified at the time of proposal submission, with full knowledge that they were not certified. Nor did Intralot request a partial waiver, in the event the pending applications were not approved in time for submission.

The failure of an offeror to accurately complete and submit the MBE utilization affidavit and the MBE participation schedule shall result in a determination that the proposal is not reasonably susceptible of being selected for award unless the inaccuracy is determined to be the result of a minor irregularity that is waived or cured in accordance with COMAR 21.06.02.04.

COMAR 21.11.03.09C(6). What Intralot submitted here is not a minor irregularity, which is "merely as matter of form and not of substance or pertains to some immaterial or inconsequential

defect or variation in a bid or proposal from the exact requirement of the solicitation, the correction or waiver of which would not be prejudicial to other bidders or offerors.” COMAR 21.06.02.04A. *See also, AGovX, LLC*, MSBCA 3309 (2025) .

We do not find merit in Intralot’s assertion that it reasonably relied on the PO’s erroneous “instructions” with regard to the MBE forms, since the instructions in the RFP were clear as to the requirements. A procurement agency may reverse an award decision at any time prior to actual award upon discovering legal error. *Id.* at 7 (citing *Fortran Telephone Communications Systems, Inc.*, MSBCA 2068 & 2098 (1999)).

We also reject Intralot’s contention that the Maryland Procurement Reform Act of 2025 (“PRA”) applies retroactively to allow for a cure of the MBE form deficiency. Signed into law on May 20, 2025 with an effective date of October 1, 2025, the PRA states, in part:

If [the] procurement officer determines that a deficiency exists in the minority business enterprise participation schedule, the procurement officer shall notify the bidder or offeror of the deficiency and require the bidder or offeror to submit an amended minority business enterprise participation within a reasonable time period.

STATE FIN. & PROC. §14-302(a)(11)(ii)(1). There is nothing in the statute or its legislative history to suggest that the PRA should or was intended to apply retroactively. The RFP was issued in July 2024, and Intralot submitted its deficient MBE forms on November 24, 2024, months before the PRA was signed into law. Moreover, allowing Intralot to cure its MBE deficiency under these circumstances would be unfair and prejudicial to other offerors.

Because the PO correctly rejected Intralot’s proposal as non-responsive due to the deficiency in its MBE form, the Board grants Respondent’s and Sci Games’ motions to dismiss Appeal No. 3338. Furthermore, based on the foregoing, Intralot has no standing to pursue any other appeals before this Board and the motions to dismiss Appeal Nos. 3341 and 3346 are granted.

2. Whether the PO Properly Rejected All Proposals is a Question of Fact.

As a result of Sci Games' October 17, 2025 protest, the PO learned of the Commission's *ex parte* communications with Intralot's lobbyists from June through August 2025. In light of what he learned, the PO sustained the protest in part. He also decided to reject all proposals and resolicit, reasoning that the procurement had been "adversely impacted" and that continuing with the current RFP would not be in the best interest of the State. Respondent argues that the PO had no choice but to reject all proposals and start over, and that his decision was reasonable as a matter of law.

Sci Games counters that the PO's decision to reject all proposals is unreasonable and "a mere pretext to avoid political repercussions" on MLGCA officials. It asserts that it is irrational and unfair to reject Sci Games' proposal when it was Intralot's *ex parte* communications that "tainted" the procurement process. Sci Games urges that the PO had other alternatives to rejection of all proposals, and his failure to consider them rendered his decision arbitrary, capricious, unreasonable, and unlawful.

A procurement officer may reject all bids or proposals if,

After opening of bids or proposals but before award ... the procurement agency, with the approval of the appropriate Department head or designee, determines that this action is fiscally advantageous or otherwise in the State's best interest.

COMAR 21.06.02.02C(1).

Based on the procedural posture and the evidence put before the Board at this time, we are unable to find that either Respondent or Sci Games is entitled to judgment as a matter of law. We find that the determination as to the reasonableness of the PO's decision to reject all proposals in the context of these appeals requires a further factual inquiry. Consequently, the Board denies Respondent's Motions to Dismiss Appeal Nos. 3337 and 3344 and further denies Sci Games' Motion for Summary Decision and Opposition to Motions to Dismiss Docket Nos. 3337 and 3344.

ORDER

Based on the foregoing, it is this 4th day of May 2026, ORDERED:

1. That Respondent's Motion to Dismiss MSBCA No. 3337 is DENIED as MOOT;
2. Respondent's Motion to Dismiss MSBCA No. 3338 is GRANTED;
3. Respondent's Motion to Dismiss MSBCA No. 3341 is GRANTED;
4. Respondent's Motion to Dismiss MSBCA No. 3344 is DENIED;
5. Respondent's Motion to Dismiss MSBCA No. 3346 is GRANTED;
6. Sci Games' Motion for Summary Decision and Dismissal Against Intralot and in support of MLGCA's Motion to Dismiss Docket Nos. 3338, 3341 & 3346 is GRANTED; and
7. Sci Games' Cross Motion for Summary Decision and Opposition to Motions to Dismiss Docket Nos. 3337 & 3344 is DENIED.

/s/
Sonia S. Cho, Esq., Chairwoman

I concur:

/s/
Senchal Dashiell Barolle, Esq., Member

/s/
Michael J. Stewart Jr., Esq., Member

Certification

COMAR 21.10.01.02 **Judicial Review.**

A decision of the Appeals Board is subject to judicial review in accordance with the provisions of the Administrative Procedure Act governing contested cases.

MD Rule 7-203 **Time for Filing Action.**

(a) Generally. Except as otherwise provided in this Rule or by statute, a petition for judicial review shall be filed within 30 days after the latest of:

- (1) the date of the order or action of which review is sought;
- (2) the date the administrative agency sent notice of the order or action to the petitioner, if notice was required by law to be sent to the petitioner; or
- (3) the date the petitioner received notice of the agency's order or action, if notice was required by law to be received by the petitioner.

(b) Petition by Other Party. If one party files a timely petition, any other person may file a petition within 10 days after the date the agency mailed notice of the filing of the first petition, or within the period set forth in section (a), whichever is later.

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I certify that the foregoing is a true copy of the Maryland State Board of Contract Appeals' Opinion and Order in Docket Nos. MSBCA 3337, 3338, 3341, 3344 & 3346, The Consolidated Appeals of Scientific Games, LLC and Intralot, Inc. under Maryland State Lottery and Gaming Contral Agency Solicitation No. 2024-01.

Date: May 4, 2026

/s/
Ruth W. Foy
Clerk