

To: California State Lottery Commission **Date**: August 15, 2007

From: Joan M. Borucki

Director

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Legal Office

Subject: Item 9(c)- Approval of Amendment to the Contract of DLA Piper

Rudnick Gray Cary US LLP to Extend the Term of the Contract for

Eight Months

ISSUE

Should the California State Lottery Commission (Commission) approve an eight month contract extension to the contract with DLA Piper Rudnick Gray Cary US LLP (DLA Piper) to continue to provide legal services for the California State Lottery (Lottery) without adding funding to the contract?

RECOMMENDATION

Lottery staff recommends that the Commission approve the eight month extension of the contract with DLA Piper without the addition of additional funding.

BACKGROUND

The Lottery has a small in-house legal staff and is also advised and represented in litigation by the Office of the Attorney General. To supplement those resources, the Lottery has also contracted with private law firms to be available for expert advice as needed in two subject areas. First, the private firms assist the Lottery in maintaining and defending its portfolio of registered trademarks. Second, the private firms have advised staff on issues relating to information technology contract management, disputes, and performance issues.

Pursuant to the Lottery's Competitive Bidding Procedures, contracts for specialized advice such as legal services are not competitively bid. However, by law, the Attorney General's Office must approve any contract for the services of private

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counsel. The Attorney General's Office approved the initial contract with DLA Piper. A new approval for an amendment is not necessary. The original contract term was from November 1, 2004 to June 30, 2006 for \$200,000 with the option to extend for two years. This was modified in July 2006 to extend the term of the contract for 16 months until October 31, 2007 and increase the amount of the contract to \$360,000. This left eight months still available to use the full two-year extension option.

DISCUSSION

The current contract for legal services is with the firm of DLA Piper Rudnick Gray Cary US LLP (DLA Piper). The Lottery has contracted with the firm for about six of the last nine years. DLA Piper is uniquely qualified to assist the Lottery because the firm includes experts in intellectual property law as well as attorneys who specialize in information technology-related laws and legal disputes. DLA Piper attorneys are readily available to assist staff with registering and protecting the Lottery's portfolio of trademarked materials.

In addition, the firm has a team of lawyers devoted to information technology outsourcing and contract management. Those attorneys have been very helpful to the Lottery in understanding and managing nuances of contracts with gaming vendors which are in essence the contracts for the information technology systems. While a standard government contract is for purchase of an object, these contracts describe a service expectation but leave the processes and systems to provide the service up to subsequent negotiation. As such, identifying roles, responsibilities, and performance standards is an ongoing obligation of the contract manager in consultation with the legal staff. DLA Piper attorneys can offer guidance on how to avoid disputes and articulate expectations in a way apt to avoid problems in the future.

As an added bonus, the firm includes attorneys with expertise in government procurement laws generally, especially at the federal level, and procurement dispute resolution. Since the Lottery's procurement process is based on the federal model, having expert guidance available has been very helpful to staff.

Extending the contract is beneficial for several reasons. Since the firm is now familiar with the details of the Lottery's very complicated contracts as well as its contracting process, DLA Piper attorneys can use their time efficiently. Similarly, the attorneys assigned to the Lottery understand our intellectual property portfolio and can advise on how to avoid problems and address challenges. For example, when the Lottery serves a cease and desist letter on organizations mimicking the Lottery's trademarks, DLA Piper attorneys work with staff counsel to aggressively defend the Lottery's interests while incorporating the latest legal developments. On the one occasion when the Lottery filed suit to stop infringement of its trademarks, DLA Piper attorneys assisted by drafting and reviewing legal pleadings and worked with Lottery

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staff attorneys and a Deputy Attorney General to bring the matter to a quick and successful conclusion.

In sum, staff is satisfied with the work of the firm, and wants to extend the current contract for eight months which will extend the contract to the full amount of the optional extension period. There is no additional funding added to this contract.

The proposed contract amendment is attached.