

## Craig W. Bulkley

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**From:** Craig W. Bulkley  
**Sent:** Tuesday, July 31, 2012 3:43 PM  
**To:** Scott Lyons (EXEL CA) (Scott.Lyons@exel.com)  
**Subject:** Best & Final Offer (Exel)  
**Attachments:** nhlc background check.doc; Clean Law Warehouse Contract Eff 5-1-12.pdf

Dear Scott:

As you were previously informed, the NHSLC Commissioners have selected you to participate in the Best and Final Offer (BAFO) phase of the RFP. The Evaluation Committee is authorized to enter into pre-selection discussions (RFP Section 4.7 a. 1. p. 36). This phase will begin with a written request. **This request may be the only opportunity to improve your proposal.** You may revise your proposal as a result of this request (RFP page 36).

We must receive written answers by **Friday, August 3, 2012.**

You are encouraged to review your entire proposal and improve it to the advantage of the State. There are several areas on which we are specifically focused in order to identify the Proposal that is the most advantageous to the State of New Hampshire.

I. Financial

This issue is highlighted in the Vendor pricing and Innovation Criterion, an area valued at 40 points. The desired end result is that Product will be available in a timely manner and in the necessary amount at every state store and for every Licensee. RFP p. 34. It is also a portion of the Vendor Overall Solution criterion in the requirement that the solution be, among other things, cost effective.

***Using the template reviewed at your Phase II presentation, please provide your lowest possible rates.***

***Please confirm that those rates will not change for the first 30 months of the contract.***

***If possible, please submit an alternative rate structure that provides for rates over the entire twenty-year contract.***

***Please confirm that the twenty-year rates will not change.***

II. Transition

This issue is highlighted in the Vendor Experience & Qualifications/Transition Criterion, an area valued at 20 points. It is also a portion of the Vendor Overall Solution in the requirement that the Vendor demonstrate suitable financial strength, stability and capacity to undertake a sophisticated and capital intensive Warehouse operation with a very high degree of performance and in a timely manner.

***Please confirm that the facility in your proposal and the solution for providing all services required by the RFP will be fully operational on or before October 31, 2013.***

***Please confirm the identity of those individuals who will be located in New Hampshire during the construction of or transition to the proposed facility (Appendix C, III, p. 43).***

***If you have constructed or transitioned to a facility similar to the facility in your proposal please identify the project and provide contact information for your client (Appendix C, II, page 43 of the RFP).***

The RFP requires a separate transition bond to cover any and all costs related to the transition. (RFP Section, 1.9, p. 10 as clarified by the April 18, 2012 clarifications).

***Please confirm that you will provide a transition bond for completion of all necessary items to make the facility fully operational on or before October 31, 2013.***

The amount of the bond will be discussed with any Vendor that is selected for contract negotiations.

### III Contract performance bond

A contract performance bond is required by Section 1.9, page 11 of the RFP. \$1,000,000 was provided as an example of the amount of the contract performance bond. The amount of the bond will be discussed with any vendor that is selected for contract negotiations.

### IV. Final Contract

The General Criterion provides for a review of whether the Vendor's exceptions to the RFP are acceptable to the NHSLC. Section 1.19 provides for cancellation of selection for contract award based on a failure to reach agreement on contractual terms, etc. The NHSLC wants to move as quickly as possible to contract award. To that end, a rather full description of the final contract is set out below. The current short-term warehouse services contract is attached to this email. Because it is a short-term contract, the State agreed to certain terms that it may not agree to in a long-term contract. The point is that the fewer exceptions that have been taken to either the RFP or the standard state contract, the more quickly a final document can be executed.

The Standard State Contract is contained in Exhibit E of the RFP. It is more frequently identified as Form P-37 and we will refer to it as such throughout this item but it is the same document that is contained in RFP Exhibit E. The P-37 cannot be changed on its face. At the end of this process, a P-37 will be signed by the parties. It will contain Exhibits A-F.

If you look at Paragraph 2 of the P-37, you will see that Exhibit A is required to contain a particular description of the work to be performed by the Vendor. Exhibit A will incorporate by reference the RFP and the Proposal. The fewer exceptions taken to the RFP, the easier it will be to craft Exhibit A. Paragraph 5 of the P-37 requires Exhibit B to describe the method of payment and terms of payment. It will incorporate the template that best suits the needs of the NHSLC. [This template will be contained in Exhibit F.]

Paragraph 22 of the P-37 allows changes to the P-37 if they are set forth in Exhibit C. That is why Appendix E in the RFP is modified by Exhibit C. Perhaps our effort to be consistent with the final product has caused more confusion than clarity.

Other documents required by the RFP will be part of the contract such as certificates of insurance, the transition bond, the performance bond, a certificate of vote, a certificate of good standing, and a warehouse license.

Exhibit D will be the RFP with all amendments and clarifications.

Exhibit E will be the winning proposal.

Exhibit F will be the price template.

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***Even if you have done so before, please identify and explain every exception that you intend to take.***

V Performance of contract

Any Vendor selected for contract discussions will be required to submit to a standard background check performed by Liberty Screening Services, LTD. A sample form is attached. The background check will be performed for all the individuals who will participate in the transition phase as well as the first 30 months of operation. It will also be performed for parent organizations, if you are a new entity.

***Please confirm that you and your employees will submit to the background check***

Appendix C, III. P. 43 of the RFP requested the physical location of each person during the time they will be working on the project.

***Please confirm the identity of the persons who will be located in New Hampshire to run the proposed facility for the first 30 months.***

The Vendor is required to identify a redundant warehouse site in the event of natural or man-made disasters (RFP APP C XIII, P.48)

***Please identify your redundant warehouse site.***

If you have any questions regarding this email, please contact me. Thank you.



Please consider the environment before printing this e-mail.

Craig W. Bulkley  
Director  
Division of Administration  
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## Craig W. Bulkley

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**From:** Craig Bulkley <cbulkley@myfairpoint.net>  
**Sent:** Saturday, August 04, 2012 3:51 PM  
**To:** Craig W. Bulkley  
**Subject:** FW: Law Best & Final Offer  
**Attachments:** Response to C Bulkley 2012-07-31 BAFO email.docx

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**From:** Brian Law [mailto:brianlaw@lawwarehouses.com]  
**Sent:** Friday, August 03, 2012 2:07 PM  
**To:** Craig W. Bulkley (cbulkley@myfairpoint.net)  
**Cc:** John Guerette; Jack Glow; Lehmann, Suzan M.  
**Subject:** FW: Best & Final Offer

Dear Craig: We have responded at the end of each item below. Should you have any questions please feel free to contact me.

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**From:** Craig W. Bulkley [mailto:cbulkley@liquor.state.nh.us]  
**Sent:** Tuesday, July 31, 2012 3:44 PM  
**To:** Brian Law  
**Subject:** Best & Final Offer

Dear Brian:

As you were previously informed, the NHSLC Commissioners have selected you to participate in the Best and Final Offer (BAFO) phase of the RFP. The Evaluation Committee is authorized to enter into pre-selection discussions (RFP Section 4.7 a. 1. p. 36). This phase will begin with a written request. **This request may be the only opportunity to improve your proposal.** You may revise your proposal as a result of this request (RFP page 36).

We must receive written answers by **Friday, August 3, 2012.**

You are encouraged to review your entire proposal and improve it to the advantage of the State. There are several areas on which we are specifically focused in order to identify the Proposal that is the most advantageous to the State of New Hampshire.

I. Financial

This issue is highlighted in the Vendor pricing and Innovation Criterion, an area valued at 40 points. The desired end result is that Product will be available in a timely manner and in the necessary amount at every state store and for every Licensee. RFP p. 34. It is also a portion of the Vendor Overall Solution criterion in the requirement that the solution be, among other things, cost effective.

***Using the template reviewed at your Phase II presentation, please provide your lowest possible rates. [Law] Throughout this process we have strived to provide the lowest possible combined cost to the NHSLC and its suppliers while providing the revenue necessary to ensure we remain a viable company. Other than the change we made to the storage charge for refrigerated product as part of our reply to Steve Judge's July email request our pricing remains unchanged.***

***Please confirm that those rates will not change for the first 30 months of the contract. [Law] Confirmed***

***If possible, please submit an alternative rate structure that provides for rates over the entire twenty-year contract. [Law] We do not believe this is in the best interest of either Law or the NHSLC and as such choose not to provide this alternative rate structure.***

***Please confirm that the twenty-year rates will not change. [Law] n/a***

## **II. Transition**

This issue is highlighted in the Vendor Experience & Qualifications/Transition Criterion, an area valued at 20 points. It is also a portion of the Vendor Overall Solution in the requirement that the Vendor demonstrate suitable financial strength, stability and capacity to undertake a sophisticated and capital intensive Warehouse operation with a very high degree of performance and in a timely manner.

***Please confirm that the facility in your proposal and the solution for providing all services required by the RFP will be fully operational on or before October 31, 2013. [Law] Confirmed***

***Please confirm the identity of those individuals who will be located in New Hampshire during the construction of or transition to the proposed facility (Appendix C, III, p. 43). [Law] All. (Specific key employees include Brian Law, President; John Guerette, Controller; Jack Glow, Operations Manager; Karen Wallington, Customer Service Manager; Jeff Malone, IT Manager; Julie McMahon, HR Manager; Chriss Carrier, Senior Accountant)***

***If you have constructed or transitioned to a facility similar to the facility in your proposal please identify the project and provide contact information for your client (Appendix C, II, page 43 of the RFP). [Law] We have transitioned product between the Nashua and Concord warehouses throughout our relationship without delay to the shipping of product to State stores and licensees.***

The RFP requires a separate transition bond to cover any and all costs related to the transition. (RFP Section, 1.9; p. 10 as clarified by the April 18, 2012 clarifications).

***Please confirm that you will provide a transition bond for completion of all necessary items to make the facility fully operational on or before October 31, 2013. [Law] Confirmed - we currently have a bond in place which will remain during the transition to make the Seabrook facility fully operational.***

The amount of the bond will be discussed with any Vendor that is selected for contract negotiations.

## **III. Contract performance bond**

A contract performance bond is required by Section 1.9, page 11 of the RFP. \$1,000,000 was provided as an example of the amount of the contract performance bond. The amount of the bond will be discussed with any vendor that is selected for contract negotiations. **[Law] Understood**

## **IV. Final Contract**

The General Criterion provides for a review of whether the Vendor's exceptions to the RFP are acceptable to the NHSLC. Section 1.19 provides for cancellation of selection for contract award based on a failure to reach agreement on contractual terms, etc. The NHSLC wants to move as quickly as possible to contract award. To that end, a rather full description of the final contract is set out below. The current short-term warehouse services contract is attached to this email. Because it is a

short-term contract, the State agreed to certain terms that it may not agree to in a long-term contract. The point is that the fewer exceptions that have been taken to either the RFP or the standard state contract, the more quickly a final document can be executed.

The Standard State Contract is contained in Exhibit E of the RFP. It is more frequently identified as Form P-37 and we will refer to it as such throughout this item but it is the same document that is contained in RFP Exhibit E. The P-37 cannot be changed on its face. At the end of this process, a P-37 will be signed by the parties. It will contain Exhibits A-F.

If you look at Paragraph 2 of the P-37, you will see that Exhibit A is required to contain a particular description of the work to be performed by the Vendor. Exhibit A will incorporate by reference the RFP and the Proposal. The fewer exceptions taken to the RFP, the easier it will be to craft Exhibit A. Paragraph 5 of the P-37 requires Exhibit B to describe the method of payment and terms of payment. It will incorporate the template that best suits the needs of the NHSLC. [This template will be contained in Exhibit F.]

Paragraph 22 of the P-37 allows changes to the P-37 if they are set forth in Exhibit C. That is why Appendix E in the RFP is modified by Exhibit C. Perhaps our effort to be consistent with the final product has caused more confusion than clarity.

Other documents required by the RFP will be part of the contract such as certificates of insurance, the transition bond, the performance bond, a certificate of vote, a certificate of good standing, and a warehouse license.

Exhibit D will be the RFP with all amendments and clarifications.

Exhibit E will be the winning proposal.

Exhibit F will be the price template.

***Even if you have done so before, please identify and explain every exception that you intend to take.*** [Law] The enclosed document summarizes our exceptions to the RFP.

#### V Performance of contract

Any Vendor selected for contract discussions will be required to submit to a standard background check performed by Liberty Screening Services, LTD. A sample form is attached. The background check will be performed for all the individuals who will participate in the transition phase as well as the first 30 months of operation. It will also be performed for parent organizations, if you are a new entity.

***Please confirm that you and your employees will submit to the background check*** [Law] We take exception to the broad language, the scope of the employees included, and to the form provided; however we are willing to work with the NHSLC to develop a process which protects the privacy of our employees while addressing the needs of the NHSLC.

Appendix C, III. P. 43 of the RFP requested the physical location of each person during the time they will be working on the project.

***Please confirm the identity of the persons who will be located in New Hampshire to run the proposed facility for the first 30 months.*** [Law] Our response to Item II above provides the names of our current key personnel.

The Vendor is required to identify a redundant warehouse site in the event of natural or man-made disasters (RFP APP C XIII, P.48)

***Please identify your redundant warehouse site.*** [Law] Our existing Nashua IT and storage facilities will remain.

If you have any questions regarding this email, please contact me. Thank you.

P Please consider the environment before printing this e-mail.

Craig W. Bulkley  
Director  
Division of Administration  
NH State Liquor Commission  
(603) 230-7008  
FAX (603) 271-3897  
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## Law Warehouses Summary of Exceptions

### Part 1

#### 1.5.2 Proposal Offer:

Law currently has options in place for our proposed facility in Seabrook, NH which expire September 30, 2012 (115 days from Proposal submission). To the extent that a contract is not executed with the NHSLC under this procurement process prior to August 30, 2012 Law reserves the right to withdraw its Proposal and shall not forfeit its bidders bond of \$50,000.

#### 1.5.4 Assignment:

Law cannot agree to a blanket and open ended assignment of its rights, but is willing to cooperate in good faith with the NHSLC so that the parties can effectively address any antitrust conduct should such a need arise.

#### 1.5.7 Liability:

Law understands that the RFP does not require the NHSLC, in the ordinary course, to reimburse the bidders for expenses they incurred in connection with their participation in the RFP process. Law simply seeks to retain and doesn't waive its rights to pursue available legal remedies and recovery of any damages legally available to Law, including those applicable to the RFP process, should such a need arise.

#### 1.5.8 Inspection of Records:

We have included information about our finances and operations, including but not limited to, our audited financial statements (Exhibit B), for the purpose of enabling the NHSLC to evaluate our ability to conduct the operations required under the RFP. This information is confidential, financial, and proprietary information exempt from public disclosure under RSA 91-A:5 and other applicable laws or regulations. We submit this confidential, financial and proprietary information to the NHSLC subject to the conditions described in Sections 1.13 (Property of NHSLC) and 1.14.b (Disclosure of Proposal; NHSLC Obligation) and our Statement of Confidentiality (Exhibit A) included with the proposal as required under RFP, Section 1.14b.

#### 1.7.4 Financing:

Provided the NHSLC complete this RFP award and negotiation with the current time schedule as identified in the RFP we take no exception.

#### 1.9 Bond:

Law currently has available a bond in the amount of \$1 million. Proposed rates are based on bonding at the current amount.

#### 1.10.2 Exclusive Contract:

Our proposal is specifically based upon the volumes only available through the award of an exclusive contract.



#### 1.10.4 CPI:

At the presentation meeting on July 17, 2012, it was agreed to use the Boston-Brockton 30-month CPI rate change, rather than the 12-month change identified in the RFP. Under normal circumstances, CPI is reflective of cost increases for a geographical area; however, unforeseen localized spikes in costs (e.g., a quadrupling of utility rates for one region within the CPI area) could cause unreimbursed costs. Likely costs that could have a material effect on cost that might not be reflected in CPI are: utility costs, taxes, rent, interest (if the State chooses a variable rate option), a change in operational parameters effecting wage costs. Law only seeks to reasonably adjust rates accordingly should such an event occur. In the end we are open to negotiate should we collectively be able to establish a more reliable metric to develop renewal pricing and are committed to maintaining the NHSLC's competitive pricing advantage through use of a cost effective distribution system. In the same regard, it is vital to the NHSLC's mission that the distribution system and distribution partner remain viable, which may require a change in rates which could not have been predicted 30-months prior. To that end, we also commit to lowering prices or increase revenue sharing should key parameters and cost reductions provide that opportunity.

#### 1.13 Property of NHSLC:

The information contained in our proposal includes proprietary, financial, confidential, and other competitively sensitive information, including, but not limited to, information pertaining to our operations and financial matters, services, suppliers, sales, revenues, customers, employees and other business matters. While we understand that the NHSLC will not return our written proposal to us, by submitting a proposal we do not agree to transfer any property or other rights, title or interest in the information and materials contained in our proposal, and all such rights, title and interest in the information shall remain with us and any third parties to whom the information belongs. We submit our proposal subject to the conditions that any use or disclosure, publication or dissemination of the information and materials in the proposal is limited to (a) authorized state officers and employees for the limited purpose of evaluating our proposal, (b) to those state officers and employees that have a reasonable need to know such information in order to assist in carrying out the provisions of any resulting contract with us, and (c) any public disclosure of the Confidential Information (as defined in Section 1.14.b) is subject to the conditions described in Section 1.14.b (Disclosure of Proposal; NHSLC Obligation) and our Statement of Confidentiality (Schedule A) included with the proposal as required under RFP, Section 1.14b.

#### 1.14 Disclosure of Proposal:

b. We have included in our proposal highly valuable and significant confidential, financial, and proprietary information belonging to us and third parties for the limited purpose of enabling the NHSLC to evaluate our proposal for contract award. This information includes without limitation and regardless of its format, information relating to our operations, customers, suppliers, business plans, finances, revenues, trade secrets, know-how, technology, and intellectual property as may exist now and/or hereafter come into existence, regardless of whether such rights arise under the laws of the United States or any other jurisdiction (including without limitation copyrights, trademarks, patents, rights of privacy and publicity, and goodwill), and information belonging to third parties, (collectively the confidential and proprietary information is referred to as the "Confidential Information").

The Confidential Information is exempt from public disclosure under the Right to Know Law, RSA 91-A:5, IV, because it constitutes "confidential," "commercial" and "financial" information, the disclosure of which would constitute an invasion of privacy within the meaning of RSA 91-A:5, IV. As held by the New Hampshire Supreme Court, and consistent with the State of New Hampshire's longstanding practice, the terms "commercial or financial" encompass information such as business sales statistics, research data, technical designs, overhead and operating costs, and information on financial condition. The disclosure of any of the Confidential Information would result in substantial harm and irreparable damage to our legitimate business interests and competitive position, and to those of third parties whose Confidential Information is included in our proposal. For example, if the Confidential Information were publicly disclosed, a competitor could use the information to develop similar practices or systems, placing us and third parties in jeopardy of losing our competitive positions. Given the nature of the Confidential Information and its high economic value, we have a valid and substantial interest in maintaining the confidentiality of the Confidential Information which far outweighs any interest in public disclosure. We do not waive any privacy interests in maintaining the confidentiality of the Confidential Information by submitting our proposal. We have included, as required under RFP Section 1.14b, a signed Statement of Confidentiality (Exhibit A) describing in detail the nature of the Vendor Confidential Information and the grounds for its position that the Vendor Confidential Information is exempt from public disclosure under applicable laws and regulations.

In addition, the benefits of non-disclosure to the NHSLC far outweighs any interest in public disclosure of the Confidential Information for numerous reasons, including without limitation, the NHSLC's interest in preventing any impairment of its ability to obtain confidential, financial or proprietary information in the future. If the Confidential Information were publicly disclosed, such disclosure would operate to discourage companies from responding to future RFPs, if, by responding, a company faces forced disclosure of its confidential, financial or proprietary information.

Accordingly, we are submitting the Confidential Information subject to the conditions that the NHSLC maintain the confidentiality of and not at any time publish, reproduce or disclose the Confidential Information, except as (a) reasonably necessary to authorized state officers and employees for the limited purpose of evaluating our proposal, and (b) to those state officers and employees that have a reasonable need to know such information in order to assist in carrying out the provisions of any resulting contract with us.

Further, we understand that the NHSLC will maintain the confidentiality of the Confidential Information in accordance with applicable laws and regulations, including, but not limited to, RSA 91-A. If the NHSLC receives a request for the Confidential Information and determines that any of the Confidential Information is subject to public disclosure for any reason, we understand that the NHSLC will immediately notify us and specify the date by which the NHSLC intends to release such information to the extent that the NHSLC determines in its opinion that any of the requested information is subject to public disclosure under RSA 91-A. Given the competitive and confidential nature of the Confidential Information, and the substantial harm that would result to us and third

parties if that information were disclosed, the Confidential Information must not be released in the absence of a final order by a court of competent jurisdiction requiring such disclosure. Further, the conditions described herein must remain in force even if we are not awarded a contract or notwithstanding the termination of any resulting contract with us.

1.15 News Releases:

In accordance with our existing contract, Law Warehouses may publicly disclose, including issue a press release or other public statement that refers to the Agreement or the existence of the parties' business relationship without the prior written consent of the State. Further, subject to the confidentiality provisions of the Agreement and NHSLC approval, which shall not be unreasonably withheld, Contractor may publicly disclose any information concerning the Agreement that is available for public disclosure under applicable laws and regulations, including without limitation, N.H. RSA Chapter 91-A.

1.19 Form of Contract:

We object to the inclusion of the following provisions contained in Appendix E (General Standards and Requirements), as amended in Exhibit C thereto, in any resulting contract, and request that these provisions be modified as follows:

9. Data:

In accordance with our existing contract, we require that the language in the existing contract serve as the definition of data.

12. Assignments:

In accordance with our existing contract, we require the addition of the existing language providing that consent not be unreasonably withheld.

App E, Sect 25 Protest (pg 11):

We request that the NHSLC modify the second paragraph as follows (additional proposed language is underlined):

"With the limited exception of an action seeking injunctive relief with respect intellectual property rights or confidential, commercial and financial information, the party believing itself aggrieved . . ."

App E, Sect 26 Transition (pg 11):

Law agrees to work in good faith with the NHSLC during a transition to another vendor and to reasonably adjust rates, only if needed, based on increased costs as a result of such transition. Shortages will be paid as agreed in the current, short-term proposal. Law will also work in good faith to negotiate a transition period for the mutual benefit of all parties.

App E, Sect 27 Assignment (pg 12):

In accordance with our existing contract we require this section be removed.

App E, Sect 28 News Release (pg 12):

Law may publicly disclose any information concerning this agreement that is available for public disclosure under applicable laws and regulations, including without limitation, the award of the contract to Law and existence of the contractual between the parties

1.22 Proposal Guaranty:

We have submitted this proposal with a certified check made payable to the NHSLC and pledge to enter into a contract with the NHSLC on the terms stated in our Proposal. We understand if we fail or refuse to enter into such a contract without just cause, the amount of the Proposal guaranty shall be forfeited to the NHSLC as liquidated damages, and not as a penalty.

Law currently has options in place for our proposed facility in Seabrook, NH which expire September 30, 2012 (115 days from Proposal submission). To the extent that a contract is not executed with the NHSLC under this procurement process prior to August 30, 2012 Law reserves the right to withdraw its Proposal and shall not forfeit its Proposal Guaranty of \$50,000.

1.24 Protest:

With respect to the first paragraph, Law seeks to retain its right to pursue any available claims without limitation should a need for a protest arise. With respect to the third paragraph, see requested addition in App E, 25 above.

1.25 Transition:

Covered in App E above.

Part 2

No exceptions taken

Part 3

3.0.2 Location of Product:

Our Proposal is contingent upon Law providing 100% of the distribution services for vendor owned wine and spirits for the NHSLC. Our rates are contingent upon the transition of the Concord Warehouse Vendor accounts and inventory no later than October 2012.

3.0.3 Conducting Business with NHSLC:

See Response to 3.11 Appendix K below.

3.0.4 Refrigeration:

We agree to provide 5,000sqft of refrigerated storage for the fee of \$2.75 per case upon receipt and for each 14-day recurring period subject to a monthly minimum of \$50,000. The NHSLC shall be upcharged each month for the difference. In the event this revenue exceeds \$50,000, we will share this extra revenue with the NHSLC on a 50/50 basis.

### 3.0.4 Receiving:

To facilitate improved receiving schedules, receiving entry, and to keep costs down for the entire system, the following supplier requirements will be enacted:

- Items with average monthly shipping volumes greater than three (3) pallets to be shipped inbound in full pallet quantities.
- Pallets must be no larger than 40" wide x 48" deep x 64" high. Pallets exceeding these dimensions will be subject to a break-down labor charge.
- Law will work with the NHSLC and suppliers to update the NHSLC's labeling requirements to facilitate bar code scanning of all cases in such a way that SKU tracking can be maintained throughout the warehouse.
- To receive an appointment an electronic or paper packing list identifying the details on the load must be in Law's possession.

### 3.0.6 Floor Capacity and Storage Strategy:

Vintage is recorded if the vintage is clearly printed on the outside of case or part of the bar code and easily identifiable at the time of receipt.

#### Appendix K:

See Response to 3.11 Appendix K below.

#### Customs Bonded Area:

In past years we have operated a Customs Bonded Area for bailment customers. Due to a lack of demand, this service was discontinued. We commit to reinstating this service upon sufficient demand. Rates for such service will be determined at the time of reinstatement based upon expected volumes and the administrative resources required to meet customs regulations in effect at that time.

#### Shipping Volumes:

We are aware that the combined volumes of Nashua and Concord have resulted in peak shipping days of more than 43,000 cases in one day. The significant investment in distribution systems we are making is specifically designed to more efficiently and effectively manage such volumes while at the same time provide for compressed cycle times. Over the life of the current contract daily shipping volume has grown more than 75%. We have specifically chosen this facility and this design to accommodate this type of growth over the next twenty-years.

Our Proposal is specifically contingent upon the total combined volumes of the current Concord vendor owned products and Nashua. Should the NHSLC choose an option which splits volume between warehouses, we reserve the right to withdraw our Proposal without forfeiture of our \$50,000 Proposal Guaranty. During the life of the contract, should the NHSLC choose to shift volume to another warehouse facility, we reserve the right to adjust rates accordingly; such adjustment cannot be unreasonably denied.

### 3.0.10 Computer Linkage with the NHSLC:

See Response to 3.11 Appendix K below.

### 3.0.11 Transition from the Current Contract:

Should Law not be the successful bidder, net overages and shortages by supplier shall be used to determine any financial obligation between Law and the supplier. The new warehouse vendor would be required to work with Law and perform cycle counts as needed to verify discrepancies.

### 3.0.15 Insurance, Bond and Registration:

Cancellation notices must be specifically endorsed in each policy and as such may vary from one insurer's practices to another. We agree to work diligently and in good faith to obtain their agreement but reserves the right to negotiate a different time period should an insurer not be able to provide the required notification period.

### 3.3 (Appendix C):

#### Proposal Guaranty:

Please refer to 1.5.2 above

### VII General Requirements – 1.4 Transportation:

Law Warehouse requires the following from the transportation vendor:

- An electronic load manifest must be transmitted prior to the start of each days picking shift within our defined window so as not adversely affect picking.
- A six (6) day per week delivery schedule, Sunday through Friday, with Sunday deliveries being for the highest volume stores within 1-hour of Seabrook.
- The staffing of a yard man to assure that all trailers are in place for loading at the start of each picking wave.
- That the order picking scheduling is controlled by the warehouse in coordination with the NHSLC.

### VII General Requirements - 10d. Penalties:

Law recognizes that the State is looking for a quantitative remedy for missed deliveries due to Contractor's inability to have product ready to ship on a timely basis. Law suggests that liquidated damages of \$250 be substituted for "up to \$10,000" and that the performance measure be three consecutive days. We believe that a reasonable cure period (e.g., 30-days) can be mutually agreed upon and that if warehouse cannot cure the delivery delays that liquidated damages should increase to \$500 with another reasonable cure period. We look forward to working with the NHSLC to reach an acceptable arrangement regarding this section.

### XVI Transition:

Please refer to Appendix E above

### 3.5 Appendix E:

Exceptions are documented in other sections of this document

### 3.11 Appendix K:

Law agrees to work in good faith to identify IT changes and implement such improvements for the benefit of all parties. We confirm that we will be responsible for our reasonable costs to make modifications and updates to our IT systems to stay current with the NHSLC's future system. We provided a list of concerns on July 17th and had a subsequent discussion with the EC on July 19th. Some of the primary concerns are the undetermined file specifications, the timing of reporting/file transfers being requested and the estimated costs involved. Law and the NHSLC have always worked together to meet each other's needs when adding new software, modifying existing software, improving the sharing of information, etc. Although no scope document has been provided regarding the new files and processes being requested, we believe that the NHSLC, Law and our respective IT groups can work together to fill in the details and create the file specs needed to meet the goals and objectives so determined. Law looks forward to continuing to work with the NHSLC to enhance our collective systems and seeks assistance from the committee to draft appropriate wording for this section.

## Craig W. Bulkley

---

**From:** Louis Cerone <lcerone@xtlonline.com>  
**Sent:** Friday, August 03, 2012 12:10 PM  
**To:** Craig W. Bulkley  
**Subject:** RE: Best & Final Offer  
**Attachments:** XTL-NH, Inc. - response to BAFO.docx; Book6 - revised.xls; XTL-NH, Inc. - background check forms.pdf

Mr. Bulkley,

Please find attached XTL-NH's response to the below questions, including the rate template.

Please find attached XTL-NH's signed background authorization forms.

Please confirm receipt.

Thank you.

Sincerely,

Louis J. Cerone, Ph.D.  
President  
XTL, Inc.  
3200 South 70th Street  
Philadelphia, PA 19153  
215-365-6200 ext. 159  
lcerone@xtlonline.com

---

**From:** Craig W. Bulkley [mailto:cbulkley@liquor.state.nh.us]  
**Sent:** Tuesday, July 31, 2012 3:43 PM  
**To:** lcerone@xtlonline.com  
**Subject:** Best & Final Offer

Dear Louis:

As you were previously informed, the NHSLC Commissioners have selected you to participate in the Best and Final Offer (BAFO) phase of the RFP. The Evaluation Committee is authorized to enter into pre-selection discussions (RFP Section 4.7 a. 1. p. 36). This phase will begin with a written request. **This request may be the only opportunity to improve your proposal.** You may revise your proposal as a result of this request (RFP page 36).

We must receive written answers by **Friday, August 3, 2012.**

You are encouraged to review your entire proposal and improve it to the advantage of the State. There are several areas on which we are specifically focused in order to identify the Proposal that is the most advantageous to the State of New Hampshire.

I. Financial



This issue is highlighted in the Vendor pricing and Innovation Criterion, an area valued at 40 points. The desired end result is that Product will be available in a timely manner and in the necessary amount at every state store and for every Licensee. RFP p. 34. It is also a portion of the Vendor Overall Solution criterion in the requirement that the solution be, among other things, cost effective.

***Using the template reviewed at your Phase II presentation, please provide your lowest possible rates.***

***Please confirm that those rates will not change for the first 30 months of the contract.***

***If possible, please submit an alternative rate structure that provides for rates over the entire twenty-year contract.***

***Please confirm that the twenty-year rates will not change.***

## II. Transition

This issue is highlighted in the Vendor Experience & Qualifications/Transition Criterion, an area valued at 20 points. It is also a portion of the Vendor Overall Solution in the requirement that the Vendor demonstrate suitable financial strength, stability and capacity to undertake a sophisticated and capital intensive Warehouse operation with a very high degree of performance and in a timely manner.

***Please confirm that the facility in your proposal and the solution for providing all services required by the RFP will be fully operational on or before October 31, 2013.***

***Please confirm the identity of those individuals who will be located in New Hampshire during the construction of or transition to the proposed facility (Appendix C, III, p. 43).***

***If you have constructed or transitioned to a facility similar to the facility in your proposal please identify the project and provide contact information for your client (Appendix C, II, page 43 of the RFP).***

The RFP requires a separate transition bond to cover any and all costs related to the transition. (RFP Section, 1.9, p. 10 as clarified by the April 18, 2012 clarifications).

***Please confirm that you will provide a transition bond for completion of all necessary items to make the facility fully operational on or before October 31, 2013.***

The amount of the bond will be discussed with any Vendor that is selected for contract negotiations.

## III. Contract performance bond

A contract performance bond is required by Section 1.9, page 11 of the RFP. \$1,000,000 was provided as an example of the amount of the contract performance bond. The amount of the bond will be discussed with any vendor that is selected for contract negotiations.

## IV. Final Contract

The General Criterion provides for a review of whether the Vendor's exceptions to the RFP are acceptable to the NHSLC. Section 1.19 provides for cancellation of selection for contract award based on a failure to reach agreement on contractual terms, etc. The NHSLC wants to move as quickly as possible to contract award. To that end, a rather full description of the final contract is set out below. The current short-term warehouse services contract is attached to this email. Because it is a

short-term contract, the State agreed to certain terms that it may not agree to in a long-term contract. The point is that the fewer exceptions that have been taken to either the RFP or the standard state contract, the more quickly a final document can be executed.

The Standard State Contract is contained in Exhibit E of the RFP. It is more frequently identified as Form P-37 and we will refer to it as such throughout this item but it is the same document that is contained in RFP Exhibit E. The P-37 cannot be changed on its face. At the end of this process, a P-37 will be signed by the parties. It will contain Exhibits A-F.

If you look at Paragraph 2 of the P-37, you will see that Exhibit A is required to contain a particular description of the work to be performed by the Vendor. Exhibit A will incorporate by reference the RFP and the Proposal. The fewer exceptions taken to the RFP, the easier it will be to craft Exhibit A. Paragraph 5 of the P-37 requires Exhibit B to describe the method of payment and terms of payment. It will incorporate the template that best suits the needs of the NHSLC. [This template will be contained in Exhibit F.]

Paragraph 22 of the P-37 allows changes to the P-37 if they are set forth in Exhibit C. That is why Appendix E in the RFP is modified by Exhibit C. Perhaps our effort to be consistent with the final product has caused more confusion than clarity.

Other documents required by the RFP will be part of the contract such as certificates of insurance, the transition bond, the performance bond, a certificate of vote, a certificate of good standing, and a warehouse license.

Exhibit D will be the RFP with all amendments and clarifications.

Exhibit E will be the winning proposal.

Exhibit F will be the price template.

***Even if you have done so before, please identify and explain every exception that you intend to take.***

#### V Performance of contract

Any Vendor selected for contract discussions will be required to submit to a standard background check performed by Liberty Screening Services, LTD. A sample form is attached. The background check will be performed for all the individuals who will participate in the transition phase as well as the first 30 months of operation. It will also be performed for parent organizations, if you are a new entity.

***Please confirm that you and your employees will submit to the background check***

Appendix C, III. P. 43 of the RFP requested the physical location of each person during the time they will be working on the project.

***Please confirm the identity of the persons who will be located in New Hampshire to run the proposed facility for the first 30 months.***

The Vendor is required to identify a redundant warehouse site in the event of natural or man-made disasters (RFP APP C XIII, P.48)

***Please identify your redundant warehouse site.***

If you have any questions regarding this email, please contact me. Thank you.



Please consider the environment before printing this e-mail.

Craig W. Bulkley  
Director  
Division of Administration  
NH State Liquor Commission  
☎ (603) 230-7008  
FAX (603) 271-3897  
Cell: (603) 490-1559  
✉ [cbulkley@liquor.state.nh.us](mailto:cbulkley@liquor.state.nh.us)

**CONFIDENTIALITY NOTICE**

This e-mail and any files transmitted with it are confidential and are intended solely for the use of the individual or entity to whom they are addressed. This communication may contain material protected by law. If you are not the intended recipient or the person responsible for delivering the e-mail to the intended recipient, be advised that you have received this e-mail in error and that any use, dissemination, forwarding, printing, or copying of this e-mail is strictly prohibited and may be subject to criminal prosecution. If you have received this e-mail in error, please destroy and immediately notify me by telephone at (603)230-7008.

I. Financial

***A. Using the template reviewed at your Phase II presentation, please provide your lowest possible rates:***

In accordance with RFP Section 4.7, Best and Final Offers, on pages 35-36, which states that "[v]endors are encouraged to submit their best price as part of their initial Proposal and **not to assume there will be an opportunity to provide a BAFO at a later date**," XTL-NH, through its Proposal, has submitted to the NHSLC its lowest possible rates for its proposed facility and all of its warehousing and distribution services.

Please see attached rate template.

***B. Please confirm that those rates will not change for the first 30 months of the contract:***

XTL-NH confirms that those submitted rates will not change for the first 30 months of the contract.

***C. If possible, please submit an alternative rate structure that provides for rates over the entire twenty-year contract:***

XTL-NH, Inc. offers the following two (2) suggestions to the NHSLC:

Suggestion 1:

In lieu of the CPI increase (as described in RFP section 1.10.4, Rate Changes), XTL-NH proposes a **predetermined increase** that is **fixed** and not dependent on the Consumer Price Index (CPI) or any other variable. Specifically:

- 1<sup>st</sup> thirty (30) month period = contract rates as submitted
- 2<sup>nd</sup> thirty (30) month period = all rates increase 2% from prior thirty (30) month period
- 3<sup>rd</sup> thirty (30) month period = all rates increase 3% from prior thirty (30) month period
- 4<sup>th</sup> thirty (30) month period = all rates increase 4% from prior thirty (30) month period
- 5<sup>th</sup> thirty (30) month period = all rates increase 4% from prior thirty (30) month period
- 6<sup>th</sup> thirty (30) month period = all rates increase 4% from prior thirty (30) month period
- 7<sup>th</sup> thirty (30) month period = all rates increase 5% from prior thirty (30) month period
- 8<sup>th</sup> thirty (30) month period = all rates increase 5% from prior thirty (30) month period

Suggestion 2:

XTL-NH suggests changing who is invoiced for automatic orders (twelve cents (\$0.12) per case and the resulting one million six hundred forty-four thousand six hundred one dollars (\$1,644,601)).

XTL-NH suggests that this line item **not be charged to the NHSLC** but, rather, be **charged directly to the Supplier**.

If this suggested change is implemented, the rate template would reflect the following savings to the NHSLC and the Suppliers:

SUPPLIER COSTS		NHSLC COSTS	
	\$ 26,539,103	\$	271,695
		\$	(100,000)
-16%		-95%	\$ 171,695
Grand Total	\$ 26,710,798	-23%	
Cost/Case	\$ 1.93		

Please note that **both** Suggestion 1 and Suggestion 2 can be implemented, if the NHSLC so chooses.

***D. Please confirm that the twenty-year rates will not change:***

XTL-NH confirms that the twenty-year rates as part of Suggestion 1 will not change over the twenty-year term of the contract.

**II. Transition**

***A. Please confirm that the facility in your proposal and the solution for providing all services required by the RFP will be fully operational on or before October 31, 2013:***

XTL-NH confirms that its proposed facility and solution for providing all services, as required by the RFP and the NHSLC's needs, will be fully operational on or before October 31, 2013. Due to the significant experience of its senior management team, its proven success in other locations, its preparedness of the proposed site, and its financial resources and stability, XTL-NH is very confident that it will be able to meet this deadline and ensure a smooth transition from the current Vendor.

***B. Please confirm the identity of those individuals who will be located in New Hampshire during the construction of or transition to the proposed facility (Appendix C, III, p. 43):***

During the construction of and transition to the proposed facility, XTL-NH confirms that the following individuals will be located in New Hampshire:

Anthony Cerone  
Louis Cerone, Ph.D.  
Kenneth Garrett  
Karl Hilprecht  
Keith Hawkes  
Bob Harris (President of Cirrus Tech)

***C. If you have constructed or transitioned to a facility similar to the facility in your proposal please identify the project and provide contact information for your client (Appendix C, II, page 43 of the RFP):***

XTL-NH's management team has numerous, relevant experiences and expertise that it will utilize to help insure a successful operation for the NHSLC.

For the Pennsylvania Liquor Control Board (PLCB) in October 2000, XTL's management team entered into an Emergency Contract to operate the Philadelphia distribution center with only approximately four (4) days notice. At that time, the warehouse operator had defaulted on its contractual obligations and abruptly ended its tenure with the PLCB. This occurred during the peak season. Under extreme circumstances, XTL successfully managed the adverse labor and operational conditions and successfully transitioned this distribution center, based on its expertise in the warehousing and distribution in the alcohol beverage industry. The appropriate logistics contact persons for the PLCB have since retired, but Mr. Daniel Barnd (his contact information is listed on his reference supplied with our Proposal) may be able to elaborate on this transition.

XTL-NH's team member responsible for implementing and managing the Warehouse Management System (WMS) and the Warehouse Control System (WCS) in the proposed facility, Bob Harris, President of Cirrus Tech, has approximately twenty-five (25) years of experience performing these services for numerous, diverse customers. Please see the following contact information for some of these clients:

National Beef – Dodge City, KS, Liberal, KS, and Brawley, CA.  
Contact – (Kansas facilities)  
Telephone –

Bayer – Goose Creek, SC  
Contact –  
Telephone –

Herbalife – Memphis, TN, Los Angeles, CA, Dallas, TX, and Japan  
Contact – (Memphis and Los Angeles)  
Telephone –

XTL-NH's team member responsible for the implementation of the robotics and automation in the proposed facility, Keith Hawkes, has approximately twenty-three (23) years of experience performing these services for numerous, diverse customers prior to joining XTL. Please see the following contact information for some of these clients:

Associated Food Stores  
Contact –  
Telephone –

Contact – (no longer with company)  
Telephone –

Molex, Inc.  
Contact –  
Telephone –

XTL-NH's team member responsible for business development, Karl Hilprecht, has approximately thirty-six (36) year history with UPS. Mr. Hilprecht was directly involved with the opening of UPS's first automated building, located in Grand Rapids, MI, which was an automated sorting facility with voice-encoded sorting and smalls sorting. It was delivered on time due to Mr. Hilprecht's direct coordination of all of the contractors and the operators of the building. When construction was completed, Mr. Hilprecht managed

the day-to-day operations until he was relocated. This building was constructed from mid 1990 thru mid 1992. Everyone that had anything to do with the opening of this building has since retired from UPS.

If the NHSLC requires additional references, XTL-NH would be happy to provide them to the NHSLC at its convenience.

***D. Please confirm that you will provide a transition bond for completion of all necessary items to make the facility fully operational on or before October 31, 2013:***

XTL-NH confirms that it will provide a transition bond to cover any and all costs related to the transition from the contract in force at the time to the new contract, and any and all costs for necessary items to make the proposed facility fully operational on or before October 31, 2013. XTL-NH understands that the amount of this bond will be determined once the contract is awarded.

III Contract Performance Bond

XTL-NH confirms that it will provide a contract performance bond, or other performance guarantee acceptable to the NHSLC, in the amount it determines. In Section IV, document A.3 of its Proposal, XTL-NH provided documented evidence that a surety can be furnished if XTL-NH is awarded the contract. XTL-NH understands that the amount of this bond will be determined once the contract is awarded.

IV. Final Contract

***A. Even if you have done so before, please identify and explain every exception that you intend to take:***

XTL-NH fully accepts all of the RFP's terms and conditions and all of State of New Hampshire General Conditions, as outlined in RFP Appendix E (form P-37) and as amended by Exhibit C, without exception.

V. Performance of Contract

***A. Please confirm that you and your employees will submit to the background check:***

All XTL-NH employees, and all appropriate employees of XTL, Inc., XTL-NH's parent company, will submit to all background checks as required by the NHSLC.

***B. Please confirm the identity of the persons who will be located in New Hampshire to run the proposed facility for the first 30 months:***

During the first 30 months of the proposed facility's operation, XTL-NH confirms that the following individuals will be located in New Hampshire:

Anthony Cerone  
Louis Cerone, Ph.D.  
Kenneth Garrett

Karl Hilprecht  
Keith Hawkes  
Bob Harris (President of Cirrus Tech)

In addition, XTL-NH also plans to hire approximately twenty-seven (27) new employees, who will be located in New Hampshire, which will be dedicated to the daily operations of the proposed facility. These employees will include: three (3) full-time management personnel, two (2) full-time administrative personnel, one (1) full-time Quality Assurance supervisor, one (1) full-time liaison to the NHSLC, one (1) IT professional, three (3) full-time Material Handling System (MHS) mechanics, and sixteen (16) warehouse workers, some of whom will be part-time. XTL-NH anticipates increasing these personnel, as needed and concurrent with seasonal volume changes.

***C. Please identify your redundant warehouse site:***

XTL-NH completely understands the importance of business continuity in the face of natural disasters and unexpected changes in conditions that can range from severe weather, to a complete loss of power, to a state of emergency due to a catastrophic event. To maintain daily operations and services during potential times of interruption, XTL-NH has designed and tested multiple contingency plans to be used, which will depend on the type, extent, and cause of the interruption. Please see our answer to RFP section Appendix C, XIII in our Proposal, on pages 120-124, for details regarding XTL-NH's contingency plans.

By way of further answer, in the event that the entire facility is lost, XTL-NH will immediately seek another local facility that is available for immediate occupancy, and will set-up the quickest and most efficient warehouse and order fulfillment operation as possible to minimize interruption to the NHSLC. XTL-NH is an asset-based logistics company that has many direct company employees and resources who will be made immediately available to work in the crisis situation. If the entire contents of the facility need to be moved, we will immediately allocate the same company-owned assets and direct company employees to this function.

At this time, XTL-NH has not yet located a specific site for a redundant warehouse, but is willing to discuss the details of a redundant warehouse site further with the NHSLC at the NHSLC's convenience either before or after the contract is awarded.



### Summary of RFP Proposal - 1st 30 months

### Summary of RFP Proposal - 1st 30 months

Information Technology

No Bid Included for two warehouse scenario.

(a) Revenue sharing proposal is based on regional distribution of wine and spirits to locations outside of New Hampshire

XTL proposes to share \$10 per case for every case of product warehoused and shipped to locations outside of New Hampshire. Our estimates of this activity for the 30 month period total 85,448 cases. 85,448 cases  $\times$  \$10 = \$854,480 over the initial 30 month term. This figure was used for the above analysis.

XTL proposes 1,000,000 cases of this activity will occur over the 1st 30 month period totalling a revenue sharing opportunity of \$100,000 for the NHS/CLC. XTL to elaborate on this estimate during presentations.

# HAT TRICK - AUGUST 3, 2012

## I. Financial

This issue is highlighted in the Vendor pricing and Innovation Criterion, an area valued at 40 points. The desired end result is that Product will be available in a timely manner and in the necessary amount at every state store and for every Licensee. RFP p. 34. It is also a portion of the Vendor Overall Solution criterion in the requirement that the solution be, among other things, cost effective.

***Using the template reviewed at your Phase II presentation, please provide your lowest possible rates.***

We have attached the template reviewed at our Phase II presentation as our lowest possible rates for the first 30 month contract period. It is our hope that you find the revenue sharing and fee reductions provided in our template beneficial for the NHSLC and NH taxpayers. As part of our Best and Final Offer, we would like to offer an enhanced revenue sharing arrangement for the NHSLC. The structure of the enhancement would be as follows: the SLC would receive a 6% revenue share on inbound and storage bailment fees related to incremental volume over 5 million cases annually for the first 30 months of the contract period. Therefore, the NHSLC would receive a 5% revenue share on bailment fees related to the first 5 million cases annually, and 6% revenue share on bailment fees related to volume over 5 million cases annually.

***Please confirm that those rates will not change for the first 30 months of the contract.***  
Confirmed.

***If possible, please submit an alternative rate structure that provides for rates over the entire twenty-year contract.***

We feel the rate structure as reviewed in our Phase II presentation is the most appropriate template at this time. We would welcome the opportunity for future 30 month contracts to present and collaborate with NHSLC on an alternative rate structure.

***Please confirm that the twenty-year rates will not change.***

As requested by the NHSLC committee during our Phase II presentation, we agree to use the Northeast CPI as an annual adjuster to the subsequent 30month contract periods. We understand the Northeast CPI to be an annual measure, and therefore we would adjust the subsequent 30 month contract based on the compounded increase in the Northeast CPI. We also request the option to adjust the rates based on unforeseen expenses or events, including but not limited to a material change in warehouse bailment volume, a material change in NH legislation which may alter the current bailment model, a major IT platform change required by NHSLC.

### **Other items of value:**

Hat Trick Logistics is willing to engage in negotiations with the SLC and The State of NH to purchase the Storrs St Facility

Hat Trick Logistics is willing to engage in discussion with the SLC to develop and build a sampling and education room at the Merrimack Facility

Hat Trick Logistics is willing to offer the SLC office space at no cost for a period of time

Hat Trick Logistics recognizes that Green Building and Warehousing is a concept that continues to grow and become more acceptable nationally, especially in New Hampshire. We feel that our experience with this concept may be mutually advantageous to the SLC, Hat Trick Logistics and the people of New Hampshire. We've outlined some preliminary ideas below and hope you consider them positively as you make your vendor decision.

Potential Sustainability Initiatives:

Current Solar Power Projects include:

- Rutland VT warehouse has a 1.25 million KW Solar Array Design that is in the approving stages with State and local agencies. This will be roof and ground-mount system.
- Keene, NH warehouse is in the process of having a Solar Array Feasibility studied completed. Includes structural engineering, site analysis, panel recommendations and complete financial ROI. System proposed would be 120,000 KW Solar Array.

Proposal: Undergo a detailed Solar Feasibility Study for the Hat Trick Logistics Warehouse. This would include site review and analysis, structural engineering review, project proposal and ROI. We believe this is worth considering because it is green energy, would offset traditional power, could save expenses in the future and aligns with the SLCs current focus on Green Stores.

Green Building Proposal: Consider Green Building and Retrofitting Practices with some of the following agencies:

- **NHSaves ([www.nhsaves.com](http://www.nhsaves.com)):** Offered by the electric utilities in NH for both commercial and residential programs available.
- **Gas Networks ([www.gasnetworks.com](http://www.gasnetworks.com)):** Efficiency programs available to commercial and residential building owners.
- **Pay for Performance ([www.p4pnh.com](http://www.p4pnh.com)):** Offers more comprehensive energy savings to include both thermal and electric. Rebates and financing.
- **BetterBuildings Program ([www.betterbuildingsnh.com](http://www.betterbuildingsnh.com)):** Offers grants and very low interest loans
- Other programs that have revolving loan funds for energy efficiency include: the Enterprise Energy Fund at CDFA and Energy Efficiency Loan Fund at BFA.

II. Transition

This issue is highlighted in the Vendor Experience & Qualifications/Transition Criterion, an area valued at 20 points. It is also a portion of the Vendor Overall Solution in the requirement that the Vendor demonstrate suitable financial strength, stability and capacity to undertake a sophisticated and capital intensive Warehouse operation with a very high degree of performance and in a timely manner.

Please confirm that the facility in your proposal and the solution for providing all services required by the RFP will be fully operational on or before October 31, 2013.

Confirmed.

**Please confirm the identity of those individuals who will be located in New Hampshire during the construction of or transition to the proposed facility (Appendix C, III, p. 43).**

Hat Trick Logistics LLC has attached two organizational charts. Chart 1 identifies the Hat Trick Logistics Transition Team that will be in place during the transition and implementation process. This team will also be an integral part of the business during the first 30 months of operation. All employees of Hat Trick as well as the individual companies are located in New Hampshire. Ted Speas, part of our implementation team, resides in Florida.

**If you have constructed or transitioned to a facility similar to the facility in your proposal please identify the project and provide contact information for your client (Appendix C, II, page 43 of the RFP).**

Members of Hat Trick Logistics have built new facilities or transitioned to different facilities due to organic growth, acquiring new brands, or opportunities run our businesses more efficiently:

**Clarke Distributors:**

In 2009, g.Housen acquired a 120,000 square foot warehouse and distribution facility in Rutland, VT. Consolidated the operations of two previously existing warehouses into the new facility. Upgraded the building infrastructure with high-efficiency lighting and cooling systems, constructed a 5,000 square foot refrigerated cold-storage space within the building, installed racking to support the organization and storage of over 4,000 product SKU's of wine, beer and non-alcohol products. A large number of new hires were needed to accommodate this move in a very short time frame and it was accomplished efficiently and timely as to not interrupt the flow of business.

**New Hampshire Distributors, Inc.:**

Expanded current warehouse two times to gain additional bulk storage and constructed a 4000 square foot barrel cooler. Retrofitted warehouse lighting with T-5 motion sensor lights and retrofitted warehouse space with case flow and static racking to better handle the explosion in number of SKU's in the past 4 years. Created individual pick spots and unique locations for all products to enable the use of VIP Warehouse Management Software including layered inventory and voice pick. Current plans to expand physical footprint by 40,000 square feet.

**Bellavance Beverage:**

In 2004 Bellavance Beverage completed construction on 72,000 square foot climate controlled distribution facility. The current management team was involved in the design, layout and fit-up of the building. The facility incorporates a shrinkage compensating concrete slab, multiple types of racking and pick spots, energy efficient lighting, circulation fans and dock leveling equipment, a hospitality area and future expansion options. Operations were successfully transferred to this facility from the Company's previous location in a single weekend through teamwork and planning. The deliberate flexible design of the warehouse has allowed the Company to nearly double the number of SKUs it handles with minimal reconfiguration and disruption to work processes.

**Theodore Speas: Relevant Projects**

Chester Perishables Distribution Center Expansion – Chester, NY  
350,000 sf refrigerated distribution center expansion

Nestle Waters North America, Poland Springs Bottling Plant – Hollis, Maine  
320,000 sf plant and distribution center expansion including pre-form injection molding, bottle blow molding, filling, packaging, and offices. LEED certified project

Atlanta General Merchandise Distribution Center – Lawrenceville, Georgia  
550,000 sf automated DC. Role – Project Manager.

The RFP requires a separate transition bond to cover any and all costs related to the transition. (RFP Section, 1.9, p. 10 as clarified by the April 18, 2012 clarifications).

**Please confirm that you will provide a transition bond for completion of all necessary items to make the facility fully operational on or before October 31, 2013.**

Confirmed.

Securing the bond is not an issue but knowing the amount of the bond is critical for planning our operational budget

The amount of the bond will be discussed with any Vendor that is selected for contract negotiations.

**III Contract performance bond**

A contract performance bond is required by Section 1.9, page 11 of the RFP. \$1,000,000 was provided as an example of the amount of the contract performance bond. The amount of the bond will be discussed with any vendor that is selected for contract negotiations.

Confirmed.

Securing the bond is not an issue but knowing the amount of the bond is critical for planning our operational budget

**IV. Final Contract**

The General Criterion provides for a review of whether the Vendor's exceptions to the RFP are acceptable to the NHSLC. Section 1.19 provides for cancellation of selection for contract award based on a failure to reach agreement on contractual terms, etc. The NHSLC wants to move as quickly as possible to contract award. To that end, a rather full description of the final contract is set out below. The current short-term warehouse services contract is attached to this email. Because it is a short-term contract, the State agreed to certain terms that it may not agree to in a long-term contract. The point is that the fewer exceptions that have been taken to either the RFP or the standard state contract, the more quickly a final document can be executed.

The Standard State Contract is contained in Exhibit E of the RFP. It is more frequently identified as Form P-37 and we will refer to it as such throughout this item but it is the same document that is contained in RFP Exhibit E. The P-37 cannot be changed on its face. At the end of this process, a P-37 will be signed by the parties. It will contain Exhibits A-F.

If you look at Paragraph 2 of the P-37, you will see that Exhibit A is required to contain a particular description of the work to be performed by the Vendor. Exhibit A will incorporate by reference the RFP and the Proposal. The fewer exceptions taken to the RFP, the easier it will be to craft Exhibit A. Paragraph 5 of the P-37 requires Exhibit B to describe the method of payment and terms of payment. It will incorporate the template that best suits the needs of the NHSLC. [This template will be contained in Exhibit F.]

Paragraph 22 of the P-37 allows changes to the P-37 if they are set forth in Exhibit C. That is why Appendix E in the RFP is modified by Exhibit C. Perhaps our effort to be consistent with the final product has caused more confusion than clarity.

Other documents required by the RFP will be part of the contract such as certificates of insurance, the transition bond, the performance bond, a certificate of vote, a certificate of good standing, and a warehouse license.

Exhibit D will be the RFP with all amendments and clarifications.

Exhibit E will be the winning proposal.

Exhibit F will be the price template.

**Even if you have done so before, please identify and explain every exception that you intend to take.**

**Exceptions to NHSLC RFP 2012-14 and reasons for exception:**

**Section 1.5.8** is understood with the following exception: Because Hat Trick Logistics, LLC is a newly-formed entity, it does not have audited annual financial statements for the past three years. As an alternative, Hat Trick Logistics, LLC submits the following information as evidence of its solvency and ability to conduct the large-scale operation anticipated by the RFP: The three members comprising Hat Trick Logistics, LLC are wholesale distributors licensed by the NHSLC. They each have met bonding, financial and other obligations required of NHSLC licensees, and are in good standing with the NHSLC. Their individual and collective financial strength, as evidenced by the longevity of their respective companies and their solid business reputations, demonstrates that Hat Trick Logistics, LLC is financially capable of providing the services described in the RFP. In addition, Hat Trick Logistics, LLC has submitted a letter from the Rowley Insurance Agency in Section IV, 10 attesting to its familiarity with the Fiscal Year End Financial information of all three members of Hat Trick Logistics, LLCs and concluding that the company "is more than strong enough to offer the State of NH the financial stability and capacity to fund the proposed operation" described NHSLC RFP 2012-14. Lastly, Hat Trick Logistics would be happy to answer NHSLC's specific questions about Hat Trick Logistics, LLC's financial capabilities.

**Reason for exception:** As indicated above, Hat Trick Logistics, LLC does not have audited annual financial statements for the past three years. Therefore, it has submitted an alternative method of demonstrating evidence of its solvency and ability to conduct the large-scale operation anticipated by the RFP.

**Section 1.10.4 (Rate changes)** is understood with the following exception: delete from said Section 1.10.4 the words "limited to the CPI for the previous twelve (12) months and".

Add the following sentence after the second sentence of this section:

"In addition to the CPI for this region, the following information shall be considered by the parties in negotiating rate changes: Hat Trick Logistics, LLC agrees to use the Northeast CPI as a cap on an annual adjuster to the subsequent 30 month contract periods. We understand the Northeast CPI to be an annual measure, and therefore we would cap any adjustment to the subsequent 30 month contracts based on the compounded increase in the Northeast CPI. We also request the option to adjust the rates beyond this cap based on unforeseen expenses or events, including but not limited to a material change

in warehouse bailment volume, a material change in NH legislation which may alter the current bailment model, or a major IT platform migration mandated by NHSLC or the State of NH.

**Reason for exception:** Hat Trick Logistics, LLC believes the alternative language above is reasonable as it provides more flexibility to the parties to address unforeseen circumstances when negotiating rate changes than the RFP language (which limits those changes to the CPI for the previous 12 months.)

Sections 1.20.4 and 1.20.5 are understood with following exceptions/additional language noted in italics:

**1.20.4** The State shall *immediately* provide Contractor with written notice of any such funding shortfall.

**Reason for exception:** To enable Hat Trick Logistics, LLC to make timely decisions to address the implications of the funding shortfall.

**1.20.5** Contractor may cease providing Services to the State for which the State cannot or fails to make payment, and will not be obligated to resume provision of Services to the State if funding for continued payments under the Agreement is not obtained, including without limitation, funding for any arrearages. *Contractor may also pursue any additional legal or equitable remedies for such inability or failure to make payment for Services.*

**Reason for exception:** To recognize that in the event of insufficiency of state funding for the payment of contract services, Hat Trick Logistics, LLC's remedies are not limited to cessation of services, but also include legal and equitable remedies.

Section 1.22 is understood with the following exception/additional language noted in italics:

Each Vendor shall submit a guaranty in the amount of \$50,000 which may be in the form of a bid bond or certified check made payable to the NHSLC. By submitting a Proposal, each Vendor pledges to enter into a contract with the NHSLC on the terms stated in the RFP to the extent the Proposal accepts such terms. If a selected Vendor fails or refuses to enter into such a contract without just cause, the amount of the Proposal guaranty shall be forfeited to the NHSLC as liquidated damages, and not as a penalty. The determination of whether a Vendor has just cause is in the sole discretion of the Chairman of the NHSLC. *If the above-referenced Proposal guaranty is forfeited by the Vendor, the NHSLC shall have no further cause of action against the Vendor for the Vendor's failure or refusal to enter into a contract without just cause.*

**Reason for exception:** To clarify that full extent of Hat Trick Logistics, LLC's liability for its failure execute a contract without just cause is limited to the proposal guaranty, and that NHSLC cannot maintain a cause of action against Hat Trick for such failure.

**Section 3.0.3 (Conducting Business with the NHSLC):** Exception: The following language is substituted for that contained in Section 3.0.3 of the RFP:

Vendor shall provide data-transfer capability at all times except as reasonably necessary for system and file maintenance. Such down time will be scheduled so as to not disrupt normal business operations and will be communicated in advance.

Vendor acknowledges both the ability and desire to accommodate periodic updates and enhancements to NHSLC and Warehouse computer and software systems. NHSLC and Warehouse will work cooperatively to plan and implement updates, enhancements and transitions. Large scale changes and/or migration to new systems can have significant cost implications for both parties and may necessitate adjustments to the Warehouse fee schedule. NHSLC and Warehouse will work cooperatively identify, fund and implement large scale changes or migrations that will improve the overall operations for both parties.

**Reason for exception:** Hat Trick Logistics, LLC believes the above language protects both parties as it offers them more flexibility than the RFP language for dealing with necessary updates and enhancements to computer and software systems.

Section 3.0.11 is understood with the following exception/additional language proposed to be inserted into the third paragraph and noted below in italics:

All reasonable costs associated with the transfer of Product and control from the existing Warehouse (s) ("old") to the Warehouse of the successful Vendor ("new"), including handling and incurred within 150 days from the effective date of the contract shall be borne by the NHSLC at its discretion. *Such costs shall not be borne by the new Vendor.* In an effort to avoid charging the NHSLC or Suppliers duplicate storage fees, storage charges for transferred Product shall not accrue until the first day of the month following the end of the transfer.

**Reason for exception:** To clarify that Hat Trick Logistics, LLC is not responsible for costs associated with transferring product from the existing warehouse to Hat Trick's warehouse.

Section 3.0.14 (Fire) is understood. Further response: The warehouse will use a combination of fire suppression systems, including Early Suppression Fast Response (ESFR) wet system for fire suppression. Sprinkler specifications for the warehouse facility are contained in Section-IV, 9. Because Hat Trick Logistics, LLC does not currently occupy the warehouse, it does not have current certifications for the fire protection systems or permits for the storage of flammable liquids, and therefore takes exception to the RFP request for such certifications and permits. However, should the warehouse contract be awarded to Hat Trick Logistics, LLC, all necessary permits will be obtained and applicable codes, regulations and statutes will be followed. Hat Trick Logistics, LLC will coordinate these activities with the Merrimack Fire Department and other state and local officials and agencies as necessary.

**Reason for exception/further response:** Section 3.0.14 of the RFP requires that proposals detail and include current certification for fire protection systems. As indicated above, because Hat Trick Logistics, LLC does not currently occupy the warehouse, it does not have current certifications for the fire protection systems or permits for the storage of flammable liquids.

The provisions of RFP Appendix E as amended by Exhibit C are understood subject to the following exceptions:

**Paragraph 3.3.1.4:** Add the following words at the end of the first sentence of said paragraph: *and shall not be borne by the Contractor.*

**Reason for exception:** To clarify that Hat Trick Logistics, LLC will not be responsible for transition service costs and expenses that are properly the responsibility of NHSLC and/or the new contractor.

**Paragraph 4.2:** Add the following sentence at the end thereof: *Contractor may also pursue any additional legal or equitable remedies for such inability or failure to make payment for Services.*

**Reason for exception:** To recognize that in the event of insufficiency of state funding for the payment of contract services, Hat Trick Logistics, LLC's remedies are not limited to cessation of services, but also include legal and equitable remedies.

**Paragraph 8**

In Exhibit C in the RFP State Funding, it talks about state shortfalls, should it or could it address the occurrences below:

*Material breach by NHSLC shall include, but not be limited to, any action taken by the State of New Hampshire and/or NHSLC that result in the privatization, elimination or material change in the bailment warehouse system that existed at the time this contract was executed.*

**Reasons for exception:** Hat Trick will be required to invest substantial funds to perform its obligations under the contract. This investment is made with the assumption that the current liquor warehouse bailment system will continue throughout the term of the contract. In the event that the



current system is privatized, eliminated or otherwise materially changed, and if Hat Trick Logistics, LLC suffers damages as a result, Hat Trick will pursue its remedies. This clarification will assist Hat Trick in doing so.

\*\*\*If current language in the RFP exists to address these concerns than Hat Trick will waive this exception.

#### **Appendix K: High Level Product and Information Flow**

All items in RFP Appendix K are answered as "understood." Additional language/exceptions are noted below:

Hat Trick Logistics has identified Vermont Information Processing (VIP) of Colchester, Vermont as its preferred IT provider for the warehouse management and reporting system. We are confident that VIP can deliver the required reliability and functionality. However, given additional clarifications needed on certain aspects of the RFP, Hat Trick Logistics reserves the right to select an alternate IT provider or providers that will fully meet the requirements of the RFP.

The work process will be driven by Vermont Information Processing's (VIP) software suite. The software is UNIX based and runs on the IBM AS-400 platform. Our experience with this software and hardware over the past 20+ years has proven this combination to be incredibly reliable. We will utilize an ASP model with VIP hosting our system at their Colchester, VT, facility. VIP currently has 140 customers using their ASP solution. Security and redundancy meet or exceed industry standards. A complete, redundant hosting facility is located 10 miles from their Colchester location. A full failover test was successfully conducted in March 2012 with all ASP customers moved to the backup location, run for a 28 day period on the backup box and then restored to the production box. The backup facility is scheduled to move to the greater Boston area in early 2013 to add additional distance from the production site.

Connectivity to the ASP will be through a bonded T1 pair and/or Comcast fiber internet. Backup connectivity will be through the Verizon 4G LTE wireless network. Hat Trick member companies are located in close proximity (Nashua, Concord, Keene) to the warehouse and offer an additional level of connectivity and processing backup.

The inventory, receiving, picking and loading processes are explained elsewhere in this Response/Proposal. Order processing and validation will follow a similar flow as used in current members' warehouse operations. Properly submitted and formatted orders are uploaded – notification of successful upload or rejection is sent to SLC. The assigned staff processes uploaded order data against the required exception standards (authorized to order, scheduled delivery day, credit availability, etc). Final order acceptance confirmation is sent back to SLC. Accepted orders are submitted to the routing and picking module for further processing ending in the generation of a virtual pick "ticket". The picking process then begins.

#### **High Level Product and Information Flow**

- Warehouse and NHSLC may agree to provide Broker and Supplier reports via Warehouse's web server provided it meets the specified reporting requirements.

#### **Process for On Line Orders Overview**

- Live connectivity by the NHSLC Internet Ordering system into the Warehouse Ordering System will be permitted provided such connectivity can be accomplished in a manner that does not jeopardize the security or integrity of the Warehouse Order system

- Further clarification is required as to what "validation" of Customer, Brand Master and Price must occur prior to order processing; the Warehouse does not generate invoices, only shipping reports, further clarification is needed regarding any involvement of the Warehouse with pricing
- Further clarification of Credit review and approval process by Warehouse is required
- An understanding of the record format required by the NHSLC for Warehouse confirmation back to the Internet Ordering system is needed prior to committing to a 30 second turn around time for such confirmation

#### **Process for Batch Orders Overview**

- NHSLC is responsible for orders transmitted by the NHSLC Internet Order system that are rejected due to incompleteness, inaccuracy or corruption by the NHSLC system
- Further clarification of Credit review and approval process by Warehouse is required

#### **Process for Shipping Orders Overview**

- Warehouse will combine all orders for Licensees and NHSLC stores into single shipments provided such multiple orders are received within an agreed upon window and prior to the initial order being assigned to a pick ticket; multiple orders for same-day picking will be viewed as the exception rather than the rule recognizing that such ordering can adversely impact service and costs
- It is preferred that the Warehouse system generate and assign sequential shipping numbers for each shipment and that the Warehouse provide the NHSLC with the list of shipping numbers on a yearly basis
- There is a potential for cost-savings sharing by reducing or eliminating paper Shipping Orders and utilizing electronic shipping documents

#### **Inventory Management (Brand Management, General Management, Warehouse Receiving, NHSLC Breakage, Vendor Breakage)**

##### **Brand Management**

- Warehouse reserves right to refuse products from unapproved vendors
- NHSLC shall provide reasonable notification (24 hours) to Warehouse of brands or shipments suspended by NHSLC

##### **General Management**

- Further clarification is needed on Blanket Purchase Orders

##### **Warehouse Receiving**

- There is a potential for cost-savings sharing by reducing or eliminating paper Warehouse Receipt documents and utilizing electronic receipt documents

##### **Vendor Breakage**

- Warehouse will work with Vendor to remove product so required by NHSLC. If after 21 days from date of notification Vendor has not removed product or made acceptable arrangements for its removal, Warehouse may destroy product and update the perpetual inventory file with the appropriate status change

#### **Warehouse System Requirements: Operation Requirements (Quantities, Bailment Stock, Physical Inventory, Cycle Inventory, Data Processing Requirements, Shipping Labels, Single Bottle Picks, Inventory Report)**

##### **Operation Requirements**

- Data Processing Requirements

- NHSLC will discuss contemplated changes to the manner and content of data exchange with Warehouse and both will work collaboratively to implement changes and/or identify alternate solutions

**General Reporting Requirements: Broker/Supplier, Licensee Orders**

**Broker / Supplier**

- Warehouse and NHSLC may agree to provide Broker and Supplier reports via Warehouse's web server provided it meets the specified reporting requirements
- Live connectivity by the NHSLC and Suppliers/Brokers into the Warehouse Ordering and Inventory System will be permitted provided such connectivity can be accomplished in a manner that does not jeopardize the security or integrity of the Warehouse Order system

**Reason for exceptions:** Reliability and functionality of the overall Warehouse management system are critical to successful operation. Security of data transmissions and integrity of data transmitted are integral to this system. Additional clarification is needed in several areas as noted to insure optimal function of the picking, inventory and reporting systems. Efficient warehouse operation is required to deliver projected operating results and certain exceptions are noted to support this. Cost saving measures will prove beneficial to both parties and should be explored through further discussion. Hat Trick is capable of satisfying all technical requirements of the RFP within its proposed pricing schedule.

**V Performance of contract**

**Any Vendor selected for contract discussions will be required to submit to a standard background check performed by Liberty Screening Services, LTD. A sample form is attached. The background check will be performed for all the individuals who will participate in the transition phase as well as the first 30 months of operation. It will also be performed for parent organizations, if you are a new entity.**

**Please confirm that you and your employees will submit to the background check**  
Confirmed

Appendix C, III. P. 43 of the RFP requested the physical location of each person during the time they will be working on the project.

**Please confirm the identity of the persons who will be located in New Hampshire to run the proposed facility for the first 30 months.**

Hat Trick Logistics LLC has attached two organizational charts. Chart 2 identifies the Hat Trick Logistics Team that will be an integral part of the business during the first 30 months of operation. All employees of Hat Trick as well as the individual companies are located in New Hampshire. Ted Speas, part of our implementation team, resides in Florida, but will make several trips to NH and is available via email and phone.

The Vendor is required to identify a redundant warehouse site in the event of natural or man-made disasters (RFP APP C XIII, P.48)

**Please identify your redundant warehouse site.**

Hat Trick will utilize the existing warehouses of its members as redundant sites in the event of a natural or man-made disaster that impacts the operation of the primary warehouse. The locations of these sites

in order of proximity to the primary warehouse: Nashua, Concord and Keene. There are additional warehouse properties owned by Hat Trick members in Nashua and Concord that could also be used. Finally, Hat Trick will work to develop a longer-term contingency plan that includes utilization of out-of-state wine and spirits warehouses for order fulfillment.

If you have any questions regarding this email, please contact me. Thank you.

## Craig W. Bulkley

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**From:** Scott Lyons (EXEL CA) <Scott.Lyons@exel.com>  
**Sent:** Friday, August 03, 2012 4:07 PM  
**To:** Craig W. Bulkley  
**Cc:** George P. Tsiopras; Greg Foreman (EXEL US)  
**Subject:** Exel's Best and Final Offer  
**Attachments:** Robert MacLellan.doc; Becky Ross.doc; CREA - Our Team.12.pdf; John Flanagan.pptx; Laurie Parent Bio.docx; Michael Hecker Profile.docx; Mike Shea.doc; Norm Hollingsworth.doc; Paul Ledger.doc; Profile - Omer Rashid (Jul 2011).docx; Resume Marc Belanger.doc; NH BAFO Summary Final - Aug 3 2012.xlsx; Best and Final Offer to NHS LC for RFP 2012-14 Final Aug 3, 2012.docx

Attached please find a number of files.

The file titled Best and Final Offer to NHS LC for RFP 2012-14 Final Aug 3, 2012 provides the response to the questions posed in your email note.

The Exel file lists our rates referred to in our response.

The remaining word and power point slides are the Bios and resumes of our team members who will be delivering our solution if we are successful. *Redacted*

Thank-you for your consideration.

Scott Lyons

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August 3, 2012

Mr. Craig W. Bulkley  
Director Division of Administration  
NH State Liquor Commission  
P.O. Box 503  
Concord, NH, 03302-0503

VIA Email: [cbulkley@liquor.state.nh.us](mailto:cbulkley@liquor.state.nh.us)

Reference: RFP 2012-14 – Warehouse Services for Spirits & Wine Product

Dear Mr. Buckley,

Below please find Exel's Best and Final Offer (BAFO) and response to the questions on the several areas where the Commission is specifically focused. We would appreciate the opportunity to present our Best and Final Offer as we believe our commercial model is unique, and we believe there will still be questions even though we have done our best to explain it below.

I. Financial

Question:

**Using the template reviewed at your phase II presentation, please provide your lowest possible rates.**

Answer:

It is our proposal that the cost of warehousing should be fully funded by the Product Suppliers. Therefore, there are no rates for the NHSLC under our proposal. To minimize change we recommend maintaining the categories of services that are in place today. Only the rates for each service will change.

Under our proposal warehousing will become a profit center for the NHSLC. The Commission will set the Warehouse Service Charges for the Product Suppliers. Exel will pay the NHSLC the difference between the revenues collected from Product Suppliers, and the rates listed in Column Y of the attached spreadsheet "NH BAFO Summary Final - Aug 3 2012".

According to the Exel Financial Analysis Confirmation spreadsheet provided by the NHSLC, the Commission will save \$3.1 M over the initial 30 month term compared to the rates that will be coming into effect on January 1, 2013.

Again utilizing the Exel Financial Analysis Confirmation spreadsheet provided by the NHSLC, the Commission could generate as much as \$4.0 M in additional net income over the initial 30 month term. This assumes the NHSLC maintains the rates coming into effect on January 1, 2013 for Product Suppliers. It would be our recommendation that the NHSLC roll back some of the planned 14% increase in rates to the Product Suppliers. In any event, our rates represent a reduction in cost to the industry of \$7.1 M, and depending on the NHSLC a potential total improvement to its net income of \$7.1 M.

Question:



**Please confirm that those rates will not change for the first 30 months of the contract.**

Answer:

We can confirm that our rates will not change over the first 30 months of the contract. Consistent with the answer provided to question 22 from the May 1, 2012 CLARIFICATIONS AND AMENDMENTS, if the actual volumes or profile of work vary materially from the data provided by the NHSLC in the RFP process than either of us should have the opportunity to request a review of the rates. Exel proposes that materially is greater than 10%.

Question:

**If possible, please submit an alternative rate structure that provides for rates over the entire twenty-year contract**

Answer:

Our proposal for rates over the entire twenty-year contract is that we maintain the Warehouse Service Charges for Product Suppliers scheduled to come into effect on January 1, 2013. Every five years these rates will rise by 5%. Please see the rates listed in Columns AE - AG of the attached spreadsheet "NH BAFO Summary Final - Aug 3 2012". We would like the opportunity to discuss these rates as over the twenty years it would make sense to have them more representative of the costs incurred to deliver the services.

Again, our proposal is that there are no costs for the NHSLC. The commission will save \$26 M over the contract life of 20 years, and Product Suppliers will have certainty of costs over the term of our agreement. Similar, to the 30 month rates, the NHSLC could choose to set up the warehouse as a profit center.

Question:

**Please confirm that the twenty-year rates will not change.**

Answer:

We can confirm that our rates will not change other than the scheduled increases over the entire twenty-year contract. Consistent with the answer provided to question 22 from the May 1, 2012 CLARIFICATIONS AND AMENDMENTS, if the actual volumes or profile of work vary materially from the data provided by the NHSLC in the RFP process than either of us should have the opportunity to request a review of the rates. Exel proposes that materially is greater than 10%. Also, our commitment is contingent on inflation staying at historic (last 15 year) levels.

## II. Transition

Question:

**Please confirm that the facility in your proposal and the solution for providing all services required by the RFP will be fully operational on or before October 31, 2013.**

Answer:

We confirm that the facility in our proposal and the solution for providing all services required by the RFP will be fully operational on or before October 31, 2013.

As stated in Exhibit C, paragraph 26 to Appendix E, p.67, all costs associated with the transfer of Product and control... shall be borne by the NHSLC... As a result, we have not



included these costs in our rates. We respectfully point out that the cost of transition includes duplicated fixed costs while the new facility ramps up to handling all products and shipments to all stores, and the old facilities similarly ramp down.

Question:

**Please confirm the identity of those individuals who will be located in New Hampshire during the construction of or transition to the proposed facility (Appendix C, III p.43).**

Answer:

The following individuals will be on the ground in New Hampshire to support the construction and transition. We attached bios for the majority of them.

Account Management Role: Paul Ledger

General Contractor role:

- Paul Roy from Pro Con Construction
- There will also be a full time site supervisor from Pro Con Construction

Exel Real Estate:

- Steve Hess
- Larry Wright

Exel Construction: Mike Hecker

- This role ensures that the building design and improvements are exactly suitable for operational functions. They represent operations with the General Contractor and the Real Estate team

Project Management: John Flanagan

IT Systems: Becky Ross

Industrial Engineering: Omer Rashid

Question:

**If you have constructed or transitioned to a facility similar to the facility in your proposal please identify the project and provide contact information for your client (Appendix C, II page 43 of the RFP)**

Answer:

We have extensive experience with both constructing new facilities, and transitioning into existing facilities.

In terms of constructing new facilities we offer the following projects

LION INDUSTRIAL TRUST



We have developed over 3 million square feet of distribution facilities partnering with Lion Industrial Trust, based in Dallas, Texas.

- A pair of 250,000 square foot buildings known as Hardy Distribution Center, located in Houston, TX
- Three buildings in the Carlisle Distribution Center ( 575,000 square feet, 800,000 square feet, and 310,000 square feet) located in Carlisle, PA
- A 736,000 square foot building at Laraway Distribution Center, in Joliet, IL
- A 700,000 square foot building in Byhalia, MS occupied by Carrier Corporation

Mr. Jim Hendricks  
214-647-4902

In terms of transitioning into new facilities we offer the following projects



Since 2007, Exel transitioned into 7 facilities, and out of 3 facilities in order to maintain services during an economic boom in the province of Alberta

Mr. Alain Maisonneuve  
Director, Liquor and Strategic Services  
[alain.maisonneuve@aglc.ca](mailto:alain.maisonneuve@aglc.ca)  
780-447-8731

Question:

**Please confirm that you will provide a transition bond for completion of all necessary items to make the facility fully operational on or before October 31, 2013.**

Answer:

We will provide a transition bond for completion of all necessary items to make the facility fully operational on or before October 31, 2013. It is our perspective that the transition bond covers situations where we are at fault for the facility not being fully operational on or before October 31, 2013.

### III. Contract performance bond

Comment:

A contract performance bond is required by Section 1.9, page 11 of the RFP. \$1,000,000 was provided as an example of the amount of the contract performance bond. The amount of the bond will be discussed with any vendor that is selected for contract negotiations.

Response:

Acknowledged and understood.

### IV. Final Contract

Question:



**Even if you have done so before, please identify and explain every exception that you intend to take.**

Answer:

The following are the paragraphs we wish to discuss with the NHSLC and the reasoning for wanting to make a change. As per your guidance these paragraph references relate to Exhibit C of the P-37

**Paragraph 5.2**

As per the answer to question 18 from the May 1, 2012 CLARIFICATIONS AND AMENDMENTS this clause needs to be amended to conform to Sections 1.10.3 and 1.10.4 of the RFP.

As per the answer to question 22 from the May 1, 2012 CLARIFICATIONS AND AMENDMENTS this clause needs to be amended to enable the parties to review rates if the actual volumes or profile of work change materially over the contract life. As our rates for the first 30 month period are based on the data provided by the NHSLC though the RFP process, if the actual volumes or profile of work vary materially from the data provided by the NHSLC in the RFP process than either of us should have the opportunity to request a review of the rates. Exel proposes that materially is greater than 10%.

**Paragraph 14.1.2**

As further clarified in the answer to question 33 from the May 1, 2012 CLARIFICATIONS AND AMENDMENTS the NHSLC requires the maximum coverage from all perils to its product. This answer further invites vendors to propose an alternative to using all perils property insurance fire and extended coverage insurance to achieve maximum coverage. Exel will provide coverage through its warehouse legal liability policy. This policy is designed to meet the unique needs of all our clients across North America. As such, our warehouse legal liability insurance is written to provide whatever level of coverage is listed in our contract with our client. Therefore, if our contract states Exel is liable for all risks for 100% of the acquisition cost of any and all liquor and wine products owned by the NHSLC up to a total of two million dollars (\$2,000,000), that is what the policy will cover. In this case, all risks include fire and floods; therefore a separate fire and extended coverage policy would not be required. Please note that we believe the NHSLC inventory value to be \$6,000,000. This includes the inventory in the Concord warehouse and the private provider warehouse. If this is the case our insurance policy will cover the \$6,000,000 figure.

**Paragraph 14.1.3**

As stated in the paragraph above Exel will provide coverage through its warehouse legal liability policy, not a property policy. As a warehouse legal liability insurance policy it covers Exel's liability for loss or damage to the goods. In the event of loss or damage to the goods, the NHSLC would make a claim to Exel and Exel would pay that claim to the Commission. Exel would then recover from its insurance company. The benefit for the NHSLC is that it does not have to deal with Exel's insurance company. This also negates the need to have the NHSLC named as a loss payee

**Paragraph 14.1.4**

We would like to add a sentence clarifying that the performance bond can be drawn upon in the event of a material breach for the amount of damages owed.

**Paragraph 14.3**



This paragraph requires the insurer to endeavor to provide the NHSLC written notice of cancellation or modified of the policy. This paragraph is inconsistent with Appendix C, VII, 8, page 45. Additionally, in accordance with the new Accord standards insurance companies no longer provide this type of notice. The insurance company will only provide notice to Exel. As suggested in the answer to question 36 from the May 1, 2012 CLARIFICATIONS AND AMENDMENTS Exel would like to recommend that that upon receiving notice from its insurance company Exel will in turn to provide notice to the NHSLC. The notice period from our insurance company is 30 days.

#### Paragraph 16

We believe that the references to "Event of Default" should read "material breach". This is merely a tidying up of the agreement language and is needed to mesh with the changes in Paragraph 8 of Exhibit C.

#### New Paragraph

It is our perspective that we should have a mutual exclusion of indirect and consequential damages. These are not an insurable item, and committing to cover these damages is not a good business practice. Unless a vendor is large enough it is likely they could not stand behind this commitment. If we cannot completely exclude these damages we would like to agree on the events that trigger these types of damages and maximum liability levels.

#### New Paragraph

As we discussed in our presentation, the NHSLC should have security and continuity in its business. To ensure this the NHSLC or a new provider should be able to continue operations in the facility, and after purchasing appropriate licenses utilize the IT systems integrated with the NHSLC's IT systems.

To this end we wish to add a paragraph outlining that in the case of early termination the NHSLC has the obligation to take an assignment of the lease, and purchase assets tied to the building (e.g. racking), and IT interface development costs at their net book value. Exel will redeploy all material handling equipment and other mobile assets or make them available to the NHSLC at their Net Book Value. Further, upon the contract expiring all the assets will be available to the NHSLC free of charge.

#### V. Performance of contract

Question:

**Please confirm that you and your employees will submit to reasonable background checks**

Answer:

We confirm that our employees working on this account will submit to reasonable background checks.

Question:

**Please confirm the identity of the persons who will be located in New Hampshire to run the proposed facility for the first 30 months**

Answer:



The following individuals will lead the operation in New Hampshire.

Director of Operations: Robert Maclellan

Account Director Role: Paul Ledger

General Manager: Marc Belanger

Operations Manager: Norm Hollingsworth

Operations Manager: Frank Ayala

Warehouse Supervisor: Mike Shay

Warehouse Supervisor: Juan Rivera

Human Resources Support Role: Laurie Parent

Question:

**Please identify your redundant warehouse site**

Answer:

It is very expensive to have vacant warehouse space, idle material handling equipment, and dormant IT infrastructure. Thus, it is our perspective that it is unrealistic to have a truly redundant warehouse site. We do have clients in the pharmaceutical industry that maintain duplicate inventory in the same building on either side of a fire wall, but that is the extent of what we see in terms of permanent redundancy.

What we recommend is having a target list of sites that are temporarily vacant that may be utilized on short notice until the permanent site is repaired or a suitable permanent alternative is found. It is too early to identify redundant warehouse space. The operation does not go live for another 15 months. Too much will change regarding vacant space in this timeframe.

Through our Business Continuity Planning (BCP) process we will identify multiple sites as potential redundant warehouses. Our BCP for this operation will be completed before the first case is received as part of the start-up phase of the operation. Then as part of our BCP we will review and update our list of candidate sites for redundancy on a quarterly basis.

In preparation to respond to this question we completed a market survey of New Hampshire and found 14 sites with between 50,000 and 200,000 square feet available. Though not suitable as permanent sites for this operation many of them could be suitable in the case of a disaster.

At this point in time, we would identify this site as a good candidate to be a redundant site: 59 Daniel Webster Highway, Merrimack, NH 03054.

- We considered this site as a permanent option, but when we toured it we found it demised multiple times.
- 280,000 square feet are available
- Most of it is 32 feet clear
- 26 dock doors
- Centrally located in New Hampshire

Exel is in a unique position to provide redundancy options. We have a very capable real estate team, and given our credit worthiness we can act very quickly. We have a very large client base in the North Eastern United states. A number of these sites may be options for



redundancy. As these sites are in operation they have IT systems, material handling equipment, and established management and team members. For example currently we have,

- 3 sites in Albany NY
- 11 site in Boston MA
- 26 sites in North Eastern PA
- 9 sites in New York NY
- 2 sites in Rochester NY

VI. Current & Future Data Requirements

Question:

**Please confirm that you will be responsible for your costs to make modifications and updates to your environment to stay current with the future system.**

Answer:

We can confirm that we are responsible for our costs to make modifications and updates to our environment to stay current with future system at the NHSLC. Consistent with the answer provided to question 22 from the May 1, 2012 CLARIFICATIONS AND AMENDMENTS.

If you have any questions regarding this Best and Final Offer, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Scott Lyons".

Scott Lyons  
Senior Director



ONE WAREHOUSE APPENDIX D APPENDIX D1		CONTRACT RATES		EXEL		NHS/C COSTS - APP D1		30 Month Rates		Savings / Net Income Potential	
Total Est Volume (1st 30 Months)	Total Est Volume (1st 30 Months)	Volume	Rate	Volume	Rate	Volume	Rate	BAFO Rates	Suppliers	1-Nov-13	1-Nov-18
1,539,271	1,539,271	1,539,271	1.40	1,539,271	1.40	1,539,271	1.40	1,539,271	1.40	1,539,271	1,539,271
3,004,562	3,004,562	3,004,562	1.35	3,004,562	1.35	3,004,562	1.35	3,004,562	1.35	3,004,562	3,004,562
2,976,765	2,976,765	2,976,765	1.30	2,976,765	1.30	2,976,765	1.30	2,976,765	1.30	2,976,765	2,976,765
4,910	4,910	4,910	7.80	4,910	7.80	4,910	7.80	4,910	7.80	4,910	4,910
6,929	6,929	6,929	5.00	6,929	5.00	6,929	5.00	6,929	5.00	6,929	6,929
4,535	4,535	4,535	35.00	4,535	35.00	4,535	35.00	4,535	35.00	4,535	4,535
14	14	14	1.00	14	1.00	14	1.00	14	1.00	14	14
362	362	362	1.00	362	1.00	362	1.00	362	1.00	362	362
13,020,074	13,020,074	13,020,074	1.40	13,020,074	1.40	13,020,074	1.40	13,020,074	1.40	13,020,074	13,020,074
50,450,804	50,450,804	50,450,804	0.11	50,450,804	0.11	50,450,804	0.11	50,450,804	0.11	50,450,804	50,450,804
8,116,185	8,116,185	8,116,185	0.29	8,116,185	0.29	8,116,185	0.29	8,116,185	0.29	8,116,185	8,116,185
2,906,936	2,906,936	2,906,936	1.40	2,906,936	1.40	2,906,936	1.40	2,906,936	1.40	2,906,936	2,906,936
1,650,772	1,650,772	1,650,772	0.80	1,650,772	0.80	1,650,772	0.80	1,650,772	0.80	1,650,772	1,650,772
558,688	558,688	558,688	0.80	558,688	0.80	558,688	0.80	558,688	0.80	558,688	558,688
72,603	72,603	72,603	1.40	72,603	1.40	72,603	1.40	72,603	1.40	72,603	72,603
66,904	66,904	66,904	0.11	66,904	0.11	66,904	0.11	66,904	0.11	66,904	66,904
38,597	38,597	38,597	0.29	38,597	0.29	38,597	0.29	38,597	0.29	38,597	38,597
1,136	1,136	1,136	1.40	1,136	1.40	1,136	1.40	1,136	1.40	1,136	1,136
8,946	8,946	8,946	13.90	8,946	13.90	8,946	13.90	8,946	13.90	8,946	8,946
3,515	3,515	3,515	36.00	3,515	36.00	3,515	36.00	3,515	36.00	3,515	3,515
2,101	2,101	2,101	63.00	2,101	63.00	2,101	63.00	2,101	63.00	2,101	2,101
1,136	1,136	1,136	63.00	1,136	63.00	1,136	63.00	1,136	63.00	1,136	1,136
63,891,505	63,891,505	63,891,505	1.40	63,891,505	1.40	63,891,505	1.40	63,891,505	1.40	63,891,505	63,891,505
1,479,298	1,479,298	1,479,298	0.75	1,479,298	0.75	1,479,298	0.75	1,479,298	0.75	1,479,298	1,479,298
13,705,006	13,705,006	13,705,006	0.15	13,705,006	0.15	13,705,006	0.15	13,705,006	0.15	13,705,006	13,705,006
62,653	62,653	62,653	0.25	62,653	0.25	62,653	0.25	62,653	0.25	62,653	62,653
13,853,198	13,853,198	13,853,198	0.75	13,853,198	0.75	13,853,198	0.75	13,853,198	0.75	13,853,198	13,853,198
132	132	132	1.00	132	1.00	132	1.00	132	1.00	132	132
477	477	477	2.50	477	2.50	477	2.50	477	2.50	477	477
132	132	132	1.00	132	1.00	132	1.00	132	1.00	132	132
6,143	6,143	6,143	1.00	6,143	1.00	6,143	1.00	6,143	1.00	6,143	6,143
2,906	2,906	2,906	30.00	2,906	30.00	2,906	30.00	2,906	30.00	2,906	2,906
1,152	1,152	1,152	37.75	1,152	37.75	1,152	37.75	1,152	37.75	1,152	1,152
1,916	1,916	1,916	46.20	1,916	46.20	1,916	46.20	1,916	46.20	1,916	1,916
910	910	910	69.25	910	69.25	910	69.25	910	69.25	910	910
22	22	22	107.40	22	107.40	22	107.40	22	107.40	22	22
11	11	11	46.30	11	46.30	11	46.30	11	46.30	11	11
2,985,541	2,985,541	2,985,541	0.18	2,985,541	0.18	2,985,541	0.18	2,985,541	0.18	2,985,541	2,985,541
42,989	42,989	42,989	0.18	42,989	0.18	42,989	0.18	42,989	0.18	42,989	42,989
44	44	44	36.00	44	36.00	44	36.00	44	36.00	44	44
3,816	3,816	3,816	5.00	3,816	5.00	3,816	5.00	3,816	5.00	3,816	3,816
15,289	15,289	15,289	3.45	15,289	3.45	15,289	3.45	15,289	3.45	15,289	15,289
27,861	27,861	27,861	3.40	27,861	3.40	27,861	3.40	27,861	3.40	27,861	27,861
31,321	31,321	31,321	2.50	31,321	2.50	31,321	2.50	31,321	2.50	31,321	31,321
47,084	47,084	47,084	6.90	47,084	6.90	47,084	6.90	47,084	6.90	47,084	47,084
1,152	1,152	1,152	30.00	1,152	30.00	1,152	30.00	1,152	30.00	1,152	1,152
46,339	46,339	46,339	1.75	46,339	1.75	46,339	1.75	46,339	1.75	46,339	46,339
52	52	52	30.00	52	30.00	52	30.00	52	30.00	52	52
731	731	731	1.00	731	1.00	731	1.00	731	1.00	731	731
185	185	185	30.00	185	30.00	185	30.00	185	30.00	185	185

30 Month Rates		Savings / Net Income Potential	
BAFO Rates - Suppliers	BAFO Rates - Suppliers	B/B/M Than Jan 1, 2013 Rates	B/B/M Than Jan 1, 2013 Rates
\$ 1.03 \$ 6,346,940	\$ 0.37 \$ 2,285,401		
\$ 1.05 \$ 1,407,301	\$ 0.17 \$ 27,285		
\$ 1.05 \$ 3,940,899	\$ 0.02 \$ 4,001		
\$ 1.05 \$ 3,408,648	\$ (0.08) \$ (28,314)		
\$ 1.05 \$ 3,408,648	\$ 0.05 \$ 3,464		
\$ 5.59 \$ 38,118	\$ 0.59 \$ 2,258		
\$ 4.50 \$ 20,410	\$ 0.50 \$ 69		
\$ 10.00 \$ 138	\$ 5.00 \$ 23,857.451		
\$ 1.00 \$ 392	\$ - \$ -		
\$ 14,620,162	\$ - \$ -		
\$ 0.99 \$ 5,045,660	\$ 0.01 \$ 504,566		
\$ 0.79 \$ 2,010,352	\$ 0.01 \$ 201,035		
\$ 0.79 \$ 2,010,352	\$ 0.10 \$ 201,035		
\$ 1.20 \$ 1,960,526	\$ 0.20 \$ 390,554		
\$ 1.20 \$ 6,124	\$ 0.10 \$ 14,521		
\$ 0.90 \$ 6,690	\$ 0.20 \$ 669		
\$ 0.20 \$ 9,026	\$ 0.01 \$ 385		
\$ 4.25 \$ 82,476	\$ 0.75 \$ 34,690		
\$ 0.90 \$ 10,118	\$ 0.10 \$ 2,023		
\$ 0.90 \$ 309,448	\$ 0.60 \$ 21,092		
\$ 52.00 \$ 3,477	\$ 31.00 \$ 21,310		
\$ 30.00 \$ 34,678	\$ 6.00 \$ 6,316		
\$ 52.00 \$ 717	\$ 11.00 \$ 352		
\$ 12,297,413	\$ 1,356,096		
\$ - \$ -	\$ 0.75 \$ 1,109,473		
\$ - \$ -	\$ 0.15 \$ 2,085,751		
\$ - \$ -	\$ (0.25) \$ (71,367)		
\$ 1.00 \$ 85,449	\$ 3,159,235		
\$ 1.00 \$ 85,449			
\$ 0.74 \$ 98	\$ 0.26 \$ 34		
\$ 1.04 \$ 925	\$ 0.56 \$ 267		
\$ 0.50 \$ 66	\$ 0.50 \$ 66		
\$ 3.50 \$ 1,409	\$ 0.50 \$ 465		
\$ 3.50 \$ 466	\$ 0.50 \$ 466		
\$ 3.50 \$ 22,446	\$ 1.00 \$ 6,413		
\$ 24.75 \$ 1,292	\$ 15.00 \$ 1,292		
\$ 24.75 \$ 28,234	\$ 13.00 \$ 14,982		
\$ 6.50 \$ 12,455	\$ 2.00 \$ 3,852		
\$ 34.05 \$ 31,529	\$ 11.95 \$ 10,509		
\$ 52.00 \$ 1,426	\$ 17.25 \$ 696		
\$ 81.00 \$ 1,426	\$ 28.40 \$ -		
\$ 34.05 \$ 342	\$ 11.55 \$ 127		
\$ 52.00 \$ 342	\$ 17.25 \$ -		
\$ 0.13 \$ 265,464	\$ 0.05 \$ 11,333		
\$ 0.09 \$ 3,421	\$ 0.09 \$ 3,421		
\$ 0.13 \$ 5,589	\$ 0.05 \$ 2,149		
\$ 0.00 \$ 1,426	\$ 1.30 \$ 4,579		
\$ 3.00 \$ 14,120	\$ 0.85 \$ 12,979		
\$ 3.00 \$ 69,652	\$ 0.60 \$ 16,716		
\$ 2.00 \$ 62,442	\$ 0.50 \$ 15,560		
\$ 1.25 \$ 70,660	\$ 0.30 \$ 16,944		
\$ 0.75 \$ 35,298	\$ 0.15 \$ 7,060		
\$ 13.50 \$ 15,558	\$ 3.50 \$ 20,026		
\$ 46.50 \$ 46,500	\$ 34.76 \$ 34,766		
\$ 15.00 \$ 781	\$ 15.00 \$ 781		
\$ 1.00 \$ 711	\$ - \$ -		
\$ 15.00 \$ 2,771	\$ 15.00 \$ 2,771		
\$ 780,157	\$ 287,915		
\$ 22,891,181	\$ -		
\$ - \$ -	\$ 7,151,887		
\$ 22,891,181	\$ 0		
\$ 1.00	\$ 0.03		
\$ 3,300,000	\$ 3,300,000		
\$ 3,300,000	\$ 3,300,000		
\$ 7,151,887	\$ 7,151,887		
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