

STATE OF NEW HAMPSHIRE
INTRA-DEPARTMENTAL COMMUNICATION

TO: Chairman Mollica and Commissioner Milligan

DATE: January 16, 2013. This Memorandum Consists of information shared with the Commissioners on or before November 7, 2012 with the exception of the Post Scripts.

FROM: Warehouse Long-Term RFP Evaluation Committee

OFFICE: Liquor

SUBJECT: Evaluation Committee Recommendation

This memorandum captures a detailed view of the information communicated to the Commissioners on or before November 7, 2012, including information that was communicated orally on November 7. Information gathered after November 7 is added as Post Scripts at the end of the document.

It is important to emphasize that the “ground rules” for the evaluation process included the rule that conversations were not binding. In Section 1.3 of the Request For Proposals (“RFP”), Vendors are required to communicate by electronic mail. What bound a party was what was written. You will not find descriptions in this memo of the content of conference calls or conferences. What you will find, in conjunction with the other documents released or to be released on the web site, is a description of the written record of the evaluation process.

Another point that needs to be underscored is the effect of RSA 21-I:13-a,II. As discussed below, this statute provides that “no information shall be available to the public... until a bid is actually awarded.” Therefore, there were no public meetings nor was there notice of conferences involving counsel, the Evaluation Committee (“EC”), the Commissioners and/or Vendors prior to actual award.

This memorandum is the work of the (“EC”) which consists of Former NHSLC Bureau Chief of Marketing, Merchandising and Warehousing, John Bunnell; Issuing Officer and NHSLC Chief of Administration, Craig Bulkley; NHSLC Director of Finance, George Tsiopras; and, Acting Commissioner Peter Hastings, Department of Information Technology. Attorney Stephen Judge of the Wadleigh, Starr & Peters law firm was selected by the Attorney General (“AG”) to serve as legal counsel to the NHSLC and the EC under the supervision of the AG.

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The facts and opinions expressed in this memorandum are the work of the EC. None of the opinions are intended to express the opinion of the Attorney General. This document does not waive any privileges or exemptions.

I. INTRODUCTION

The issuance of the Long-term Warehouse Request For Proposal (“RFP”) and the review of Proposals was a monumental undertaking. It was an undertaking that required hundreds of hours of review and analysis. Time is important, but the goal of the (“EC”) is a well-founded recommendation that puts you (“Commissioners”) in a position to select the best possible long-term solution for the people of New Hampshire and the New Hampshire State Liquor Commission’s (“NHSLC”) business partners.

The purpose of the bidding process is to attract qualified bidders and allow the Commissioners to select the Proposal that best meets the needs of the State after taking into consideration all of the evaluation factors contained in the RFP. As described below, the evaluation and review of Proposals encompasses a general overview of each Proposal and an analysis of the details contained in each Proposal. There is an enormous amount of information that needs to be fully understood.

This memorandum will discuss the distinction between subjective and objective criteria to make the point that most of the decisions made by the EC were subjective. A protest can only challenge objective decisions. This principle will set the scene for the discussion of the analysis of the Proposals later in this memorandum.

Next, there will be a brief summary of the scoring which will be explored in greater detail also later in the memorandum. A short section will discuss the history of short-term contracts with the private warehouse to establish the need for a long-term contract.

The RFP process will be discussed in great detail especially the need for confidentiality and the amendments of the RFP followed by submission of Proposals from five Vendors.

The next section provides detail on the EC analysis with supporting documents. Then the financial analysis is followed throughout the process until final numbers were established for the three finalists. The numbers are very close. The memorandum then returns to the beginning of the EC analysis to track the review of other more subjective criteria. It then reaches a recommendation from the EC that negotiations begin with Exel, Inc.

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Certain additional information is discussed in a Post Script.

II. OBJECTIVE v. SUBJECTIVE

This document describes the efforts of the EC to quantify and score the five Vendor Proposals. There are objective criteria within the RFP; for example, the financial analysis is relatively objective. See RSA 21-I:22-a. The RFP is clear, however, that the ultimate decision is an exercise of judgment in comparing areas that cannot be quantified such as Vendor Experience & Qualifications/Transition; Vendor Technical, Service, and Project Management Proposal/IT Competence; and Vendor Overall Solution. See RSA 21-I:22-b.

Indeed, the RFP Protest Process specifically states that a protest, if any, will be confined to challenging objective errors. Discretionary decisions shall not be subject to challenge. RFP Section 1.24, p. 16. The RFP also states that the Commissioners have discretion to draw their own fair and impartial conclusions in selecting the Proposal that they believe best meets the needs of the NHSLC. RFP Section 4.6, p. 35.

The RFP has selection criteria in section 4.4 that total one hundred points. The Pricing section is worth forty points. This score is a mathematical calculation based on the final numbers submitted by the Vendors.

The EC created a financial template and required each Vendor to submit its Best and Final Offer (“BAFO”) using the template. Each Vendor confirmed that the numbers used by the EC are accurate.

The EC created scoring templates for the remaining three sections, each worth 20 points. This exercise provided a good basis for discussing the pros and cons of each proposal. Numbers are assigned in these categories that reflect the EC’s view of each Proposal’s strengths and weaknesses. It must be emphasized, however, that these are subjective judgments. The EC has gathered all necessary information on each category but the determination of points assigned on the scoring sheet should be understood as a subjective judgment of the merits of each Proposal.

Finally, whatever scoring was used by the EC, the Commissioners must ultimately form their own judgment in determining which Proposal best meets the needs of the NHSLC.

III. EC SCORING

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At the end of this phase of the process, November 7, 2012, the EC has scored the proposals, as follows:



Evaluation Data
Sheet-11-2-12.xls

Bearing in mind the subjective nature of the scoring, the final numbers are:

Exel, Inc.	93.24
XTL-NH, Inc.	91.00
Law Warehouses, Inc.	82.00

NOT FINALISTS:

Hat Trick	78.76
Distributech	54.92

Attached as Exhibit A:

Please note that there are three categories of Exhibits identified in this memorandum. The Exhibits attached to the memorandum are identified as “Exhibit.” Where there is a reference to an exhibit that is part of the RFP, the exhibit is identified as “RFP exhibit.” Finally, where there is a reference to an exhibit that is part of the standard State contract, the P-37, it is identified as “P-37 Exhibit.” Neither the RFP exhibits nor the P-37 exhibits are attached to this memorandum. They are available online as part of the RFP and the Contract.

IV. HISTORY

The NHSLC, through the State, owns a 50,000 square foot warehouse on Storrs Street in Concord connected to the NHSLC headquarters. For many years, Law Warehouses, Inc. (Law) has provided, through an RFP process, a much larger warehouse which is located in Nashua. This warehouse consists of a number of buildings with a total of about 350,000 square feet capacity.

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In 1997, the Warehouse contract was the subject of an RFP. There were a number of Proposals. Law was awarded a five-year contract effective on May 1, 1997 with two five-year extensions (if both parties agreed to extensions). Those extensions were exercised with the second extension ending on April 30, 2012. The rate increases over the term of these contracts were reasonable.

These contracts, in general, do not involve a great expenditure of funds by the State but instead authorize the owner of the warehouse to collect fees, known as bailment, from the Suppliers who store wine and spirits in the warehouse. The State makes a profit upon the sale of the Product. There is an incentive for the State to keep the bailment low so that it does not inflate cost prices that would in turn negatively impact both cost prices and the NHSLC competitive advantage.

Pursuant to RSA 176, the primary duties of the Commission are to:

- I. Optimize the profitability of the commission.
- II. Maintain proper controls.
- III. Assume responsibility for the effective and efficient operation of the commission.
- IV. Provide service to the customers of the commission, pursuant to this title.

Following an analysis of the warehouse options, a short-term warehouse RFP was issued on May 20, 2011 for the term from May 1, 2012 until October 31, 2013. There were only two Proposals submitted, one of which required a twelve year term. Law provided two Proposals, one for the 18 month term requested and the other for 20 years. Law was awarded the short-term contract. A new 18-month warehouse services contract went into effect on May 1, 2012 until October 31, 2013.

Because of the NHSLC's limited ability to bargain with a single Vendor, the new contract increased rates an average of six percent (6%) on May 1, 2012 with an additional fourteen percent (14%) average increase on January 1, 2013. These rates, again, generally apply to Suppliers who store product in the Law warehouse but far exceed the rates sought by the NHSLC and created much dissatisfaction with NHSLC Suppliers.

Based on the limited response to the short-term warehouse RFP, the price of the resulting short-term contract and a review of the industry, the Commission concluded that continuing to use a series of short-term warehouse contracts will probably result in a

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decline in profitability, inefficient operation and a potential diminution of services to customers.

The Commission reviewed advancements in the liquor warehouse industry including but not limited to warehouse construction or existing structures, logistics, computerization and automation that require an initial outlay of significant capital but over time reduce overall costs and increase profitability.

The Commission's review demonstrated that, in order to achieve the greatest potential, the term of a contract with a private warehouse should be up to and including 20 years.

V. RFP PROCESS

A. RFP Drafting

Drafting of the long-term Warehouse RFP ("RFP") began before the short-term contract was signed. The Commission posted a Notice on February 15, 2012 notifying the public and potential Vendors that a long-term RFP was going to be issued in the near future.

While the Commissioners were directly consulted during the process, as a matter of public record, the Commissioners appointed the EC to handle day-to-day developments with the RFP.

The RFP was drafted by the EC with the assistance of Attorney Judge.

As a matter of law, the Office of the Attorney General must approve any resulting contract. The Vendors are required to accept or negotiate the terms of the standard State contract. Representatives of the Attorney General's Office were engaged in review or consulted at every material stage of the process.

The RFP consists of 156 pages including appendices which describe in great detail the future needs and current statistical information regarding the distribution data. The idea was not necessarily to duplicate the existing system. The RFP was issued to solicit Vendors to submit a Proposal that best meets the needs of the NHSLC.

The RFP was approved by the Commissioners (including former Commissioner Mark Bodi) and released to the public on March 28, 2012. It remains on the Commission's website available to anyone who wants to review it.

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B. RFP Schedule

The RFP contains the following schedule leading up to the submission of Proposals:

<u>Events</u>	<u>Responsibility</u>	<u>Date</u>
Request for Proposals Issued:	Issuing Office	March 28, 2012
Vendor Written Inquiry Period Begins	Potential Vendors	March 29, 2012
Notification to NHSLC of the number of reps (no more than three) attending Mandatory Vendor Conference	Potential Vendors	April 13, 2012
Mandatory Vendor's Conference; location identified in General Instructions, Section 1.4	Potential Vendors/ Issuing Office	April 16, 2012 10:00 A.M.
Vendor Inquiry Period Ends (Final inquiries due)	Potential Vendors	April 19, 2012
Final NHSLC responses to Vendor inquiries	Issuing Office	April 27, 2012
Deadline for Submission of Sealed Proposals to Issuing Office at: ATTN: Craig W. Bulkley NH State Liquor Commission	Vendors	June 7, 2012 Time of day: <u>2:00 PM</u>

C Confidentiality

Throughout the process, the EC and the NHSLC were aware of the need to control the flow of information in order to satisfy State law and the requirements in the RFP.

There are two statutes as well as the principles of competitive bidding that require this control of information during the bidding process.

RSA 21-I:13-a,II provides: **No information shall be available to the public**, the members of the general court or its staff, notwithstanding the provisions of RSA 91-A:4, concerning specific invitations to bid or other proposals for public bids,

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from the time the invitation or proposal is made public **until the bid is actually awarded, in order to protect the integrity of the public bidding process.** (emphasis added)

The language in RSA 21-I:18 emphasizes the point that the NHSLC must use a competitive bidding process for this procurement:

(b) The liquor commission is completely exempted from the provisions of this chapter, provided that the liquor commission uses competitive bidding

In Section 1.3, the RFP provides:

From the issue date of this RFP until the effective date (date of NHSLC and Attorney General approval) of a resulting contract with any Vendor, the Issuing Officer shall serve as the sole point of contact concerning this RFP. Vendors are prohibited from distributing any part of their bids except to the Issuing Office as required under this RFP. Except for contacts with the Issuing Officer as permitted by this RFP, Vendors are prohibited from contacting or lobbying any NHSLC personnel or evaluation committee members regarding this RFP.

One conclusion from the above passage is that nothing is “actually awarded” until the AG’s office approves the contract for form, substance and execution. See RSA 21-I:13-a,II

Returning to the language in the RFP:

Vendors must not contact the Issuing Officer by telephone with any inquiries. Vendors must submit to the Issuing Officer all inquiries, exceptions, or additions regarding this RFP, including without limitation, requests for clarifications or modifications to the RFP, by electronic mail (with the subject line titled **Warehouse Services for Spirits & Wine Product.**)

The prohibition on telephone contact was relaxed for all Vendors although the requirement remained that only a written submittal served as the record.

Any Vendor’s attempt to improperly influence the evaluation of bids and selection of a Vendor may result in the disqualification and elimination of that Vendor from this RFP procurement process. If the NHSLC later discovers that the Vendor has engaged in any

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communications prohibited under this RFP, the NHSLC may reject the offending bid or rescind a contract award, without the NHSLC incurring any liability.

Section 1.14 Disclosure of Proposal provides, in pertinent part:

- a. Vendor Obligation. A Vendor must maintain the confidentiality of its Proposal until the effective date of a resulting contract with any Vendor. A Vendor's disclosure or distribution of its Proposal to any individual or entity, other than the Issuing Office, prior to the effective date may be grounds for disqualification at the discretion of the NHSLC.
- b. NHSLC Obligation. The NHSLC shall maintain the confidentiality of each Proposal until a contract award is made as contemplated under N.H. RSA 21-I: 13-a, II.

The EC and the Commission have maintained the integrity of the public bidding process required by RSA 21-I and also required by the RFP. This has included locking up all nonpublic RFP material. The only exceptions are when nonpublic material or information is directly in use by a Commissioner, a member of the EC, counsel, the AG or State officials with a need to know.

This RFP and the process are vitally important to the NHSLC, its business partners and the State. It is also important to the Vendors.

1. Goclowski and Corson Letters

On April 26, 2012, Attorney Suzan Lehmann, (Lehmann) counsel for Law, sent two letters to Chief Bulkley. The letters will hereafter be referred to as the "Corson Letter" and the "Goclowski Letter." Both letters are similar in that they questioned the potential participation in the RFP process by potential competitors to Law. If there were a factual or legal basis for the request, this would be entirely appropriate.

The Corson Letter questioned whether "certain prospective bidders will receive preferential treatment" in the RFP process if Corson was involved. The Corson letter contained a request for any contract that Corson had with the NHSLC. No such contract existed but a contract between Corson and Rumbletree, one of the NHSLC's advertising agencies, was produced on

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May 15, 2012. (Corson Contract) Under the contract, Corson's work for the commission involved performing a beer study. The RFP is for the warehousing of wine and spirits, not beer. It is puzzling that counsel for Law asserts that having a contractual relationship with the NHSLC presents a conflict of interest. Law has a contractual relationship with the NHSLC. The Corson Letter goes on to suggest that Corson has a relationship with a prospective bidder. Again, if a person who performed work for the NHSLC under a contract and had a relationship with a prospective bidder were disqualified, Law would fall into this category. In any event, to our knowledge, Mr. Corson has not participated in any way in the RFP process nor does he have any information which would have been helpful to a Vendor.

The Goclowksi Letter sought the disqualification of any Vendor who used his services because he had a contract with Law that "expressly" prohibited him from sharing Law's confidential information with a competitor. Also, the Goclowksi Letter contained an allegation that Goclowksi/WEI was in possession of confidential NHSLC information that would result in a competitive advantage for a bidder.

Goclowksi did participate as a principal in one of the Vendors, Distributech, Inc. Despite the assertions in the Goclowksi Letter, Goclowksi did not have any information from the NHSLC that gave him an advantage in the RFP process. Despite the assertions in the Goclowksi Letter, counsel for Mr. Goclowksi denied that there was any agreement between Law and Goclowksi that limited Goclowksi's ability to participate fully in the RFP process. Goclowksi's attorney stated "Any assertion by any third party to the contrary would be simply false." Despite the allegations, no such contract has ever been produced by Law.

The two letters and the July 25, 2012 letter from Attorney Lauwers, counsel for Mr. Goclowksi, to Attorney Judge are attached as Exhibit B.

2. Chief Edwards

Subsequently, in August, 2012, Chief Edwards of NHSLC, Division of Enforcement (Edwards), complained to the Attorney General that person

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“A” had told him that person “B” had told person “A” that Attorney Judge was trying to keep the Corson Contract from becoming public and that the RFP process was slanted toward Law. This allegation was not true and was denied by both of Edwards’ sources as well as Attorney Judge. The Corson Contract was always treated as public and was produced within a short time of the request. All the Vendors were treated fairly.

3. House Committe

On August 23, 2012, the Commission and its staff were faced with the unique challenge of an investigation by a special committee appointed by the Speaker of the House that consisted solely of members of the House. The House Committee took unsworn statements regarding a plethora of issues. It began meeting on September 5, 2012, continued to hold meetings in September and October and has scheduled meetings on November 13 and 14. At times during these meetings, the House Committee asked questions regarding the RFP. None of these questions followed the procedure set out in the RFP. All of these questions ran the risk of compromising the integrity of the competitive bidding process. The Commission and its staff were placed in the untenable position of choosing between violating RSA 21-I or being chastised by the House Committee. The Commission and its staff universally refused to respond to these questions in order to comply with the RSA. The integrity of the process was preserved.

D. Vendor Inquiries/ Commission Amendments and Clarifications

The potential Vendors were allowed to submit written inquiries to the Issuing Officer beginning on March 29, 2012. Written responses were posted on the website by the Issuing Officer on April 6, 18 and 19, 2012 and on May 1, 8 and 16, 2012 for anyone, including all potential Vendors, to review. The responses remain available on the website. Over 170 questions were submitted and answered. As previously explained, the RFP is not designed to produce a foreordained result. It is necessary for the Vendors to ask numerous questions in order to apply their expertise to the legal and practical circumstances in New Hampshire.

In addition, there was a Vendors’ Conference on April 16, 2012 that was well attended.

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The process has always provided that the RFP may be amended, deadlines may be extended, and additional information may be requested from Vendors at any time. Some of the questions prompted changes to the RFP. These amendments and clarifications are available on the Commission's website and attached as Exhibit C.

E. Proposals Filed

The Proposals were filed on June 7, 2012. Five Vendors submitted Proposals and their names were announced. The RFP was designed to encourage competition and was successful in that regard.

The five Vendors were:

Law Warehouses, Inc. ("Law")

XTL-NH, Inc. ("XTL")

Exel New Hampshire ("Exel")

Hat Tricks Logistics, LLC. ("Hat Trick"), and

Distributech, LLC. ("Distributech").

The public portions of the Proposals are provided on the NHSLC website.

The Proposals were required to be valid for a period of 210 days. Law took an exception and its original Proposal was only valid until September 30, 2012. At various points during the process, Law agreed to extend its Proposal until ultimately it was valid until November 14, 2012.

The RFP reserved from June 7, 2012 – August 1, 2012 to allow the Commissioners and the EC to schedule tours, conduct tests and perform evaluations. This period was designated when the RFP was released, at a time when the Commissioners could not know the number of Proposals that would be submitted nor the amount of time necessary to explore each Proposal.

The NHSLC posted amendments to the RFP schedule on line, and the Vendors were instructed to regularly check the website for any amendments, extensions, clarifications, and answers to questions posed by any Vendor. Faced with the

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difficult task of reviewing five proposals, on July 23, 2012, the NHSLC extended the date for contract negotiations and award from August 1, 2012 to August 10, 2012. A further extension was required on August 7, and the date was extended to August 17, 2012. The date was extended to complete all of the necessary actions by September 12, 2012. Ultimately, the date was extended to on or before November 21, 2012.

VI. EC ANALYSIS

A. Vendors

The EC performed a quick review of the Vendors shortly after the Proposals were submitted. The entities that were involved in each bid in regard to the proposed sites are described below. The EC identified the actual entities that were involved and whether they are registered to do business in New Hampshire. The EC also gauged the size of the proposed facilities and whether there was an agreement in place to buy/lease/build the facility.

The following portion of this section is a June 11, 2012 email from Attorney Judge to the EC that was produced with little regard for the niceties of grammar or punctuation:

Law Warehouses, Inc. (Law)

This is a NH corp. created 12/27/1955. The agent is Brian Law. Law is represented by Suzanne Lehmann at Hinckley, Allen.

The proposed site is in Seabrook at 100 Ledge Street and is owned by ZSF/Seabrook Trust c/o Poland Springs (ZSF) in Stamford, CT according to the Seabrook tax database. It is 1 mile from exit 1 on I-95

ZSF is a foreign business trust created in 2002 with its headquarters in NYC. [REDACTED]

Law has an agreement with rent payments beginning on May 1, 2012; [REDACTED] RFP p.9 of 10. RFP Exhibit F. Sublease rent \$5.25/SF NNN;

NNN \$1/SQUARE FOOT; utilities \$.60/SQUARE FOOT; size 495,000 SQUARE FEET; 80 acres; built 2002 for Nestle Waters

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N.A. RFP Exhibit F. 56 loading docks 41' ceiling heights; zoned industrial; allowed use: warehouse.

XTL-NH, Inc. (XTL)

NH Corp created 4/27/2012; registered agent James Bianco; 300 no par shares; purpose: warehouse storage and distribution of merchandise. Parent company is XTL-Inc. President is Louis Cerone; headquarters in Philadelphia. Anthony Cerone, Chairman of XTL, Inc. has an agreement with Tamposi, Watson, Bosowski, and Clegg ("TWBC"), c/o Tamposi-Nash Real Estate Group (Bill Leurs) to purchase 19.3 acres of land on Mast Road in Merrimack to build a high bay automatic warehouse distribution facility. RFP B.3 (near end of RFP). The warehouse will be 182,250 SQUARE FEET with maximum capacity of 25,280 pallets. P. 7 Ex. Summary.

TWBC is the Harold W. Watson, SAT Sr. limited partnership consisting of Benjamin Bosowski, Jeffrey Clegg, Jessica Clegg, Jacob Mitchell and Ethan Mitchell d/b/a Watson-Tamposi-Nash in Nashua with Ballinger Properties as General Partner. Ballinger Properties, LLC is a NH corp. created in 1994, located in Nashua. Tamposi-Nash Real Estate Group is a NH corp. created 5/18/1999; in Nashua with Peter Nash, Deborah Nash, Samuel A. Tamposi, jr. and William Leurs on Bd. of Dir. and is represented by Shaheen and Gordon.

Exel New Hampshire (Exel)

NH corp. created 7/17/1991; Exel Inc. is a Mass. Corp headquartered in Ohio, member of NABCA; Deutsche Post DHL is ultimate parent of Exel; Exel is the North American division of DHL Supply Chain. A part of Exel called Exel Real Estate Services will buy unidentified land in Concord, build facility and recommend a finance solution, e.g., sales lease back. Note alternate proposal p. 10 of 62.

Hat Trick Logistics, LLC (Hat Trick)

NH corp. created on May 30, 2012. The purpose is warehousing. The proposal is signed by Christopher Brown, Manager. Brown is president and owner of New Hampshire Distributors, Inc. (NHD) p. 154. Hat Trick and NHD are represented by Orr and Reno.

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NHD was created in 1946. The Board of Directors is C. Thomas Brown, Gail Kelly, Lynn Morin and Christopher Brown.

The letters of reference are on behalf of Bellavance Beverage and Clarke Distributors. Bellavance Beverage is a NH corp. created in 1935. It is located in Nashua. The Board of Directors is Joseph A. Bellavance, III and Samuel P. Bellavance. The purpose is to deal with all legalized liquor.

Clarke is a NH corp. created in 1949. Its headquarters are in Keene. The purpose of Clarke is focused on beverages, beer and ale. The officers are Richard and Jeffrey Clarke.

The site is 59 Daniel Webster Highway in Merrimack. The available space is 310,241 SQUARE FEET. Hat Trick has a proposal for a ten year lease. P. 214. The lease begins on April 1, 2013 and there is no rent until October 1, 2013 but Hat Trick will have to pay operating expenses during that time.

The landlord is NIP, LLC, a joint venture between Hackman Capital Partners, LLC. (LA, CA.), Calare Properties, Inc (Hudson, Ma.), Oaktree Capital (International/ Headquarters LA, CA.) and KBS Realty (Newport Beach, CA). I can't find a record of NIP, LLC at all or a record of any of these entities registered to do business in NH. The broker for the landlord is Roger Dieker of CB Richard Ellis at 2 Wall Street in Manchester. The Broker for Hat Trick is Michael Tamposi, Jr of CB Richard Ellis/New England at 2 Wall Street in Manchester.

Distributech, LLC (Dtech)

NH corp. created on 4/12/2012. Its purpose is to develop and operate warehouses. It is represented by Rath, Young. The manager is Michael Goclowski, the sole person affiliated with Dtech. It is located in Concord. The letters of reference are all for Goclowski. They are very general. One, from Ken Scupp, specifically makes the point that he is unfamiliar with the real estate or financial part of the proposal.

The site is a to-be-built 334,000 SQUARE FOOT warehouse with high density storage at 15 Integra Drive in Concord. 15 Integra Drive was bought by Fifteen Integra Drive LLC (Fifteen) on 12/30/2011 for \$890,000. Fifteen is owned by James McCarthy of

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McCarthy Properties. Fifteen is located in W. Wareham, MA. It is represented by Rich Uchida from Hinkley, Allen. The lot is zoned as an office performance park. There is a city council meeting tonight, June 10. On the agenda is whether to rezone to an industrial district designation. [The council approved the request.]

Dtech engaged the Stahlman Group (Stahlman) to perform design and construction management. Stahlman is a NH corp. created in 1998 and located in Concord. The Board is Philip Ostapowicz, Stephen Gilman, Michael Morin and Christopher Ciocci. It is an engineering, architectural and construction management company.

Late in the process, Distributech notified the EC that it had a new site in Hooksett. This notice came after the BAFO review. The NHSLC posted its decision that Vendors could change sites during the process but not after the BAFO review began. As a result, Distributech's request was denied.

B. Rejection of Non-Responsive Items

Law's Proposal contained four offers that were not responsive to the RFP and which would have compromised the RFP review process if allowed to influence the EC.

In section 3.0.11, the RFP clearly states that the NHSLC will bear all reasonable costs associated with the transfer of product from the existing warehouse. The NHSLC was aware that Law wanted to move its operation to Seabrook and, therefore, the NHSLC knew that whichever Vendor was awarded the contract, transportation costs would be incurred. This provision was placed in the RFP to level the playing field so that a Vendor with the ability to provide transportation would not have an unfair advantage.

Law Motor Freight has the current contract with the NHSLC to transport Product, a contract which ends on October 31, 2013. Despite the language in the RFP, Law's Proposal contained an offer that Law Motor Freight provide, at no cost, transportation of Product from its old to its proposed new warehouse. It used these "savings" in calculating the advantages of its Proposal. The EC rejected this offer out-of-hand.

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Law also assumed that it would be awarded the new Transportation contract and calculated a cost reduction which it included in its projected “savings.” This offer was also rejected.

Law has a contract with the NHSLC to warehouse Product until October 31, 2013. The contract contains a 14% rate increase on January, 1, 2013. As previously emphasized, the NHSLC argued strenuously against this increase during negotiations but to no avail.

The RFP requested that the Vendors propose rates beginning at the end of this contract, i.e., November 1, 2013. It is these rates, with the 14% increase, that serve as the benchmark for all the rates proposed by the Vendors. All other Vendors complied with this request. Law offered to forego the 14% increase set to start on January 1, 2013. Law used these “savings” in calculating the benefits of its Proposal. In fact, the section of Law’s Proposal for costs begins on January 1, 2013, not November 1, 2013 as requested. The EC summarily rejected this offer.

Finally, the NHSLC set up the RFP so that the process would not give an unfair advantage to a Vendor who either owned a site with an existing structure or had an agreement with the owner of such a site. Similarly, the NHSLC set up the RFP so that it did not give an unfair advantage to a Vendor who did not have an agreement with the owner of an existing structure. In other words, the RFP was designed to treat all Vendors equally. Law had an agreement with the owner of an existing structure and proposed a transfer of the Product from the NHSLC Concord warehouse in October of 2012 and in exchange, the elimination of existing “feeder” rates in the current contract. Again, these “savings” were counted by Law and, again, the offer was rejected.

Obviously, no other Vendor could offer all these items. To countenance any of these items would negatively affect the process.

C. Written Inquiries

With the success of obtaining five Proposals came the duty of reviewing all five Proposals. The EC fully analyzed, understood and compared all the Proposals.

During the process, the EC regularly consulted with counsel. It also consulted with the Attorney General’s Office and other State agencies. In fact, the Interim

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Commissioner of the Department of Information Technology is a member of the EC.

Other State agencies that were consulted are the Department of Environmental Services, the Department of Resources and Economic Development, and the Department of Administrative Services (Risk Management).

Confidentiality was maintained throughout this process.

On June 15, 2012, the Vendors were notified in writing that questions would be sent and that tours would be scheduled. The initial set of questions was sent on June 18 and the Vendors had until June 22 to respond. Other questions were sent throughout the process, with responses as recently as November. Some questions were sent to all five Vendors. In other cases a set of questions was sent to a specific Vendor regarding issues that were only related to its Proposal.

D. EC Tours, Presentation and Conferences-Phase I

The RFP required the Vendors to make their facilities and operations available for tour and review by the EC. The EC toured the proposed facilities during the week of June 18, 2012 with the exception of the Exel site in Bow which was not ready for inspection. The Exel site in Bow was toured on July 23, 2012.

A representative sampling of EC and counsel conferences and tours is set out below and in following sections of this memorandum. In addition to the listed conferences, one or two EC members, generally with counsel, frequently discussed issues in their area of expertise or general issues involving the RFP. Where material, these conferences led to an email to all or some of the Vendors.

- | | | |
|------------------------------------|------|---------|
| • RFP proposals due | 6/7 | 2:00 PM |
| • Evaluation Committee conference | 6/14 | 2:00 PM |
| • XTL Site Visit | 6/19 | 2:00 PM |
| • Law Site Visit | 6/20 | 9:00 AM |
| • Hat Trick Site Visit | 6/20 | 2:00 PM |
| • Distributech Site Visit | 6/21 | 9:00 AM |
| • Exel Conference (no site visit) | 6/21 | 3:00 PM |
| • Exel identifies final site | 6/27 | |
| • EC conference with Commissioners | 7/3 | 2:30 PM |

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E. Exploration of Proposals

During the course of the EC analysis, the Vendors were asked to respond in a number of different areas. As a result, the Proposals were sharpened and the EC enhanced its understanding of each Proposal.

These areas included an exploration of the proposed site and the Vendor's experience, qualifications and exact identity; the best financial terms and innovation; the warehouse process; technical, service and project management/IT competence; acceptance of standard State contract; and, overall solution.

F. Initial Calculation Template

This section will detail the financial exchanges throughout the entire process. The sections of this memorandum after this section will return to the beginning of the process to describe how other areas were handled. In other words, the financial discussion will encompass the entire chronology; then the memorandum will return to the start of the process to cover other issues.

On June 27, 2012, the following instructions were sent to all vendors:

Attached please find a template which we must have filled out and returned to us by noon on Monday July 2, 2012. The very same email is being sent to all Vendors in order to evaluate the effect of the proposed costs on Suppliers and the NHSLC, given a consistent volume base.

We have included estimates of the most recent total volumes of activity in each of the categories identified in Appendix D of the RFP. We have also included estimates of the most recent material total volumes of activity in each of the categories identified in Appendix D-1. Because all vendors are receiving the same estimates, do not change any of the volume estimates provided in the template.

In addition we have estimated total volumes for the same categories over the first 30 month term (from November 1, 2013 thru April 30, 2016). Utilizing these volumes, please insert your rates in each category and calculate the respective costs in each category. The evaluation committee reserves the right to repeat

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this exercise and request lower rates, but at this time use the rates from your original Proposal.

For each of the seven subsequent 30-month periods of the contract, please provide us with estimates of any changes in rates as a percentage over your initial rate as well as the justification or basis for your estimate. For example, in section 1.10.4 of the RFP we requested that rate changes be based on the CPI for the previous 12 months, you may indicate you are estimating the percentage rate change by projecting the CPI.

With regard to revenue sharing Proposals, please utilize the estimated volumes, and in a separate document, identify and quantify the revenue sharing calculation to the State for the first 30-month period. Please identify any estimated changes in each of the subsequent 30-month periods.

Please note the attached spreadsheet has two tabs that need to be completed, unless you have already taken an exception in your Proposal dated on or before June 7, 2012, to the two warehouse model.

Please do not add any calculations of savings or costs prior to the start date of the contract on November 1, 2013.

On June 29, 2012, the following corrected template was sent to each Vendor with additional instructions and an extension of the reply date to July 3, 2012:

For the purposes of this exercise, below are the answers to questions posed by the Vendors as a result of reviewing our original email with our template.

See attached template with revised volumes highlighted in yellow. Be careful to note that even though there are subtotals, in certain categories there may be a mix of cases and pallets (e.g. there are not 19 million cases in storage; this sub-total is blended between cases and pallets).

Quantities shown under each category are reflective of the estimated product shipped, stored, or otherwise handled as noted. For example, under Storage, 1-84 days, 14 million plus cases were received and stored for between 1 and 84 days.

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Feel free to enter any formulas required to provide total estimated cost (e.g. Estimated Volume X Proposed Contract Rates = Total Estimated Cost).

Outbound activities include preparing orders which include picking, packing and loading.

The two corrected templates that were sent to the Vendors to fill out are attached as Exhibit D.



RFP2012-14 Rate
Calculation Template

All five Vendors submitted completed templates on July 3, 2012. Eight completed templates are attached as Exhibit E. All five Vendors submitted a one warehouse template; three of the five Vendors also submitted a two warehouse template.

A question was submitted to Law on July 3rd. On July 5th, the other four Vendors received a series of questions to explore the templates that they had produced. Following this exchange, a separate template was produced for and approved by each Vendor as accurate for its proposal. This refined financial information is dated July 9, 2012 and attached as Exhibit F.

The EC had a conference at 9 AM on July 19 to complete Phase I. The ranking was XTL, Law, Exel, Hat Trick and Distributech.

All five Vendors were allowed to proceed to Phase II and each Vendor was called to present its proposal to the EC and to confirm the numbers in its template.

G. Phase II

Law proposal presentation to EC	7/19	1:30 PM
Distributech proposal presentation to EC	7/23	9:00 AM
EC Tour of Exel site	7/23	1:30 PM
Hat Trick proposal presentation to EC	7/24	9:00 AM
Exel proposal presentation to EC	7/24	1:30 PM

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J. Acceptance of State Standard Contract and RFP

An initial review of the terms requested by Law was completed on June 12, 2012. As previously discussed, there were four items that were not responsive, for example, eliminating the 14% increase in the executed contract. Law took exceptions to a number of other terms including the standard indemnification provision.

XTL accepted all of the terms.

Exel, Distributech and Hat Trick took some exceptions that were ultimately resolved.

VI. BAFO Overview

As previously described, the process included the solicitation of BAFOs. The BAFO process included written questions and oral presentations and the ability to request revised proposals.

The EC and counsel met with the Commissioners on July 25, 2012 to discuss the relative merits of the Vendors.

The Commissioners authorized the EC to solicit BAFOs from four of the five Vendors.

- EC and counsel conference with Commissioners 7/25 1 PM
- BAFO Requests Sent 7/31 3:40 PM
- BAFO responses 8/3

For these documents see Exhibit G.

Additional Questions were raised on August 10th for the three finalists Exel, XTL and Law.

- EC and counsel conference with Commissioners re BAFOs 8/10 10 AM
- New BAFO Requests 8/10
- Bulkley and Judge call with Law 8/13 9 AM

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- Bulkley and Judge call with EXEL 8/13 10 AM
- Bulkley and Judge call with XTL 8/13 11:30 AM
- New BAFO Responses 8/13

The responses of the three finalists were filed on August 13 and are attached as Exhibit H.

- Conference call with Law 8/16 1:30 PM

During the 8/16 telephone conference, Brian Law claimed that XTL had made contact with someone at the Seabrook site and XTL had indicated to that person that it had the winning bid. At that time, the EC had made no decision on which Vendor to recommend. On 8/20, Mr. Law was asked for any facts to support his claim. Instead, he withdrew the claim.

- Bulkley/Judge conference with reps from DES and DRED re Property 8/20 2 PM

VII. BAFO Detail

A. Initial Notice

On July 30, 2012, the following notice was sent to four of the Vendors, all but Distributech.

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.

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The written request will be an email from Craig. The current plan is to send out the email by cob tomorrow with your response due by noon on Friday.

B. Tour By Commissioners

Accompanied by counsel, the Commissioners toured each facility or site on Monday, July 30th.

The tours at the sites with existing structures (Hat Trick and Law) included brief oral presentations and discussions. The Distributech site was not toured. Subsequently, Distributech requested to change its location.

- 9:15 AM – Exel site – Route 3A – Bow
- 10:00 AM – XTL site – Route 3 – Merrimack
- 10:30 AM – Hat Trick facility – Route 3 – Merrimack
- 11:45 PM – Law facility – Ledge Road – Seabrook

C. BAFO Request

On July 31, 2012, a follow up email was sent to four of the Vendors, not Distributech:

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.

1. Financial

This issue is highlighted in the Vendor pricing and Innovation Criterion, an area valued at 40 points. The desired end result is that

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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 you can submit an alternative rate structure that provides for rates over the entire 20 year contract, please confirm your ability to do so.

If you can, please provide such rates.

Please confirm that the 20 year rates will not change.

2. 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 (See 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).

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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.

3. 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.

4. Contract Terms Revisited

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 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 RFP Exhibit E. 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 P-37 Exhibits A-F.

If you look at Paragraph 2 of the P-37, you will see that P-37 Exhibit A is required to contain a particular description of the work to be performed by the Vendor. P-37 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 P-37 Exhibit A.

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Paragraph five of the P-37 requires P-37 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 P-37 Exhibit F.]

Paragraph 22 of the P-37 allows changes to the P-37 if they are set forth in P-37 Exhibit C. That is why Appendix E in the RFP is modified by P-37 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.

P-37 Exhibit D will be the RFP with all amendments and clarifications.

P-37 Exhibit E will be the winning proposal.

P-37 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.***

5. 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.

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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.

See Exhibit G, already referenced

D. Contract and RFP Exceptions I

One issue that continued to be a problem was Law's exceptions to the contract and the RFP. The following recitation from an August 22, 2012 email to the EC will give you an idea of the difficulty.

Steve Judge: the EC met with Law and discussed numerous issues that we had with his exceptions. Brian went on vacation. I had a congenial conversation with John Guerette. John produced a scaled down list. We requested BAFOs. I noticed that the old exceptions were back and queried John G. This is his written response:

Question 2: After Brian's review of the communications during his absence and in response to Craig's email dated July 31, 2012, a complete list of exceptions was prepared. Yes, this is a more exhaustive list than was presented by John and supersedes that original list.

In the BAFO, Law identified over 25 items in the RFP that it wanted to change or, at least, discuss.

VIII. BAFO FOLLOW UP I

On August 10, 2012, the EC and counsel met with the Commissioners to discuss the information gathered to that date. At that conference the EC was asked to focus on Exel, XTL and Law. As a result, another effort was made to explore the BAFOs of these three Vendors. An email was sent on August 10, 2012:

The following is the NHSLC's effort to fine tune the proposals in order to identify the proposal(s) that best meet the needs of the State. **Your response is due by noon, Monday, August 13, 2012.**

1. Financial

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Using the template from your BAFO, indicate whether you can reduce your Grand Total to \$25,500,000. You may not change any other financial terms. You do not need to recalculate each rate that will support this number.

2. RFP / Standard Contract

We have resolved issues regarding the Transition Bond, the Performance Bond, and IT issues in Appendix K. We understand your proposal regarding Section 1.10.4 – Rate Changes – Page 11 and, during the next phase, Contract Negotiation, are prepared to negotiate that item. We are also prepared, during that phase, to discuss the requirements in Appendix E, Section 14.3 – Insurance – in regard to the requirement that the insurer provide notice no less than ten days prior to cancellation or modification of the policy.

In consultation with the Office of the Attorney General, the Commission makes the following clarifications. All other exceptions are rejected.

- Section 1.9 – Contract Performance Bond – Page 10 – The NHSLC understands that the proposed rates are based on a \$1 million performance bond. If the NHSLC requires a higher bond, the NHSLC will engage in a good-faith negotiation of the proposed rates.
- Section 3.0.2 – Location of Product – Vendor-owned product produced by a vendor with a NH manufacturing license shall be stored at the Concord warehouse.
- Appendix E – P-37 Exhibit C – Paragraph 14.1.2 and 14.1.3 – Insurance – The NHSLC will allow the equivalent of \$2 million coverage of 100% of acquisition cost for all liquor and wine product owned by the NHSLC for all risks and, fire and extended coverage.
- Appendix E – Paragraph 16 – Waiver of Breach – The phrase “Event of Default” where it occurs in this paragraph is amended to read “Material Breach.”

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- Appendix E – P-37 Exhibit C – Paragraph 26 – In sub-paragraph 4, (which begins “All costs associated...”) strike the phrase “...as provided in Paragraph 8.”

You may discuss these clarifications and rejected exceptions by telephone with Steve Judge and Craig Bulkley at 10:00 AM, Monday, August 13, 2012. If you wish to have a discussion, at least ½ hour prior to that time, please provide us with a contact phone number and email Mr. Bulkley a list of the sections of the RFP that you wish to discuss including the page numbers. This will be an opportunity for you to understand why the Commission has made this decision. It is not an opportunity to argue about the wisdom of the Commission’s decision.

See Exhibit H, previously described.

A. Contract/RFP Exceptions II

Set out below are the exceptions from Law and the two other finalist Vendors as of August 22, 2012. To put the following into RFP context, the General Requirement (Qualified/Disqualified) requires that the Vendor’s exceptions be acceptable.

Vendor Overall Solution includes any portion of the Proposal that describes the Vendor’s plan for fulfilling the requirements of the RFP.

The Commissioners have discretion to draw their own free and impartial conclusions.

The contract is based on the standard terms and modifications acceptable to the NHSLC and the AG.

XTL None

Exel allow broader use of Concord warehouse than Law; will negotiate limits of Exel liability.

Law

- 1.5.7 Liability, page 8: Does this section state that employees of the State and contractors such as Steve Judge and John Bunnell shall incur no personal liability or does this section seek to protect the State of NH and the Liquor Commission from liability? We are not [sic] seeking to reserve the right to pursue legal remedies against the State, not against individuals.

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- 1.10.2 Exclusive Contract & 3.0.2 Location of Product ...must have one warehouse scenario with Concord warehouse for NHSLC owned and NH winery product produced in NH.
- Appendix C, VII-10d Penalties, page 46: We proposed an alternative which was not addressed in your email
- Appendix E Section 9 Data, page 60
- Appendix E – Exhibit C – Contract Protest Process Paragraph 25, page 66

IX. BAFO FOLLOW UP II

The Commissioners also have the power to conduct oral interviews, receive oral presentations and take any necessary actions to draw their own fair and impartial conclusions in selecting a Vendor(s) Proposal(s). The Commissioners scheduled conferences with the three finalists, the EC and counsel.

Each vendor was informed that the conference would last an hour and that this was an opportunity for the Commissioners to meet each vendor and to have a high-level discussion about their respective proposals. The vendors were also told that this was their opportunity to point out why they should be the vendor of choice in this process.

- | | | |
|---|-------|----------|
| • XTL presentation to Commissioners | 8/21 | 9:30 AM |
| • Law presentation to Commissioners | 8/23 | 9:00 AM |
| • Exel presentation to Commissioners | 8/23 | 1:00 PM |
| • EC and counsel conference | 8/23 | 2:30 PM |
| • EC and counsel conference with Commissioners | 8/30 | 3:00 PM |
| • EC and counsel conference | 9/4 | 10:00 AM |
| • EC and counsel conference with Exel at NHSLC HQ | 9/4 | 2:00 PM |
| • EC and counsel conference with Commissioners | 9/7 | 1:00 PM |
| • EC and Counsel call with Exel | 9/10 | 1:30 PM |
| • Distributech site change | 9/24 | |
| • EC call with Exel | 10/24 | 2:30 PM |
| • EC call with Exel | 10/29 | 12:45 PM |

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- EC call with XTL 10/31 9:00 AM

X. ONE WAREHOUSE VERSUS TWO

The first point is that the Concord Warehouse will remain open. The issue is whether it will continue as a full bailment warehouse or be used to store NH wine and special buys of Product either spirits or wine.

The RFP requested that Vendors propose a solution with two warehouses and one with one warehouse. The point of the exercise was to determine whether a proposed solution would work for the Concord Warehouse as it operates today.

Three Vendors submitted two warehouse proposals: Hat Trick, Distributech and XTL. After the NHSLC reached the BAFO phase, Hat Trick and Distributech were not finalists and XTL was focused on a single warehouse option.

The use of two warehouses escalates costs for Suppliers delivering goods to two different addresses. It delays product replenishment from Suppliers which results in lost sales and increased cost of products. It also delays shipments to NHSLC Stores and licensees which lead to additional lost sales and adverse customer service.

Furthermore, the use of two warehouses increases transportation costs in moving product from Concord to the second location.

Moreover, over 50% of NHSLC retail stores consolidate (co-mingle) loads from both warehouses. A single warehouse will save transportation costs to stores. This consolidation could become the responsibility of the transportation contractor if different from the warehouse contractor leading to substantial increased NHSLC costs. To put this in a positive light, the contract for a transportation Vendor may result in lower costs with the use of one warehouse.

The EC recommends that the Concord Warehouse remain open for limited purposes (NH wine and spirits, special buys of wine and spirits, etc.) but that the bulk of the Product be handled exclusively through one warehouse.

XI. REVENUE SHARING

During the course of the RFP process, the Vendors were asked on numerous occasions to reduce their overall number and ultimately their rates. XTL and Law proposed

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revenue sharing methods. These methods were calculated and incorporated into the Grand Total on each of their templates. The EC recommends that a mechanism be used to adjust the revenue stream in the future if it becomes necessary. This issue will be addressed in contract negotiations. The basic concept is that the winning Vendor's rates will serve as "Base Rates." In the event that the NHSLC determines that a situation has arisen where the cost of doing business and satisfying all statutory requirements calls for an adjustment in rates, the Base Rate may be adjusted upward with the difference returned to the NHSLC.

XII. NEW TIMING ISSUE

With the date of contract award placed on or before November 14, 2012, the Vendors were asked on August 31, 2012, whether that date would cause additional costs. Hat Trick and Distributech stated that they would not need to request additional costs.

In an email on September 4, Law suggested that the extension was part of a conspiracy:

This delay appears specifically intended to allow other bidders time to improve the [sic] position while adding significant cost to our Proposal.

The EC denied this allegation. Eventually, on September 11, 2012, Law stated that it would not increase its rates.

In September, XTL and Exel both indicated that they would incur additional costs. They were asked to submit new templates reflecting the costs over the first 30 months. Exel then discussed whether it would spread the costs over the entire contract and decided to withdraw the extra costs. The EC approached XTL and asked whether it would spread the additional costs over the entire contract. XTL agreed. The EC used these final numbers submitted in early November from XTL and Exel and Law's already established rates in evaluating the Proposals. Attached as Exhibit I .

The final amounts are provided on the score sheet and repeated below. See Exhibit A

XTL	\$26,484, 586
Exel	\$27,000,000
Law	\$27,875,457

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One financial item bears further discussion. The RFP required that the Vendors agree to provide refrigeration for an area of approximately 5,000 square feet. The RFP allowed the Vendor to charge a premium for storage in this area. Law took exception to this requirement. When pressed, it grudgingly agreed to provide the service, with a condition. The condition is that the refrigeration area must generate a monthly revenue minimum of \$50,000 and that the NHSLC make up the difference if Law makes less than \$50,000. It was extremely difficult to calculate the charge to the NHSLC under this condition. Therefore the final amount for Law does not include this number, a number which, in an unlikely worst case scenario, could approach as much as \$1,500,000 over the initial 30 month period. In fairness, Law offered to share revenue above \$50,000. Above and beyond the number involved, this provision shifts the risk of a shortfall to the NHSLC.

Additional conferences were held:

EC and counsel conference	11/1 2:30 PM
EC and counsel conference call with Exel	11/7 9:30 AM
EC and counsel conference	11/7 10:30 AM
EC conference with Commissioners	11/7 2:30 PM

XIII. EC RECOMMENDATION

The following is a guide developed by the EC which follows the language in the RFP. It assigns point values to the numerical categories. As has already been explained, the scoring other than financial is subjective. We have calculated scores based on objective data but the ultimate conclusion is subjective. The EC recommends that negotiations begin with Exel, holding XTL as back up with Law as third.

The touchstone is to determine what:

BEST MEETS THE NEEDS OF THE NHSLC.

The EC will take into account factors specific to each Vendor's Warehouse facility and/or Proposal which the EC deems to be superior, or to the benefit of the NHSLC.

The Issuing Office will notify in writing of its selection for contract discussions the responsible Vendor(s) whose Proposal(s) is determined to be the most

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advantageous to the State of New Hampshire as determined by the NHSLC after taking into consideration all of the evaluation factors.

A. General: Qualified/Disqualified

While Law claimed numerous exceptions to the standard State contract and the RFP, all five Vendors were Qualified.

B. Vendor Experience & Qualifications/Transition 20 Points

1. 3 Points: The Vendor understands and is committed to implement business relationships and protocols with the NHSLC, its Suppliers, Licensees, and other contractors, according to NHSLC requirements.

2. 6 Points: The Vendor has adequate warehousing and transportation knowledge and experience consistent with the nature and magnitude of the NHSLC's warehousing operation. The Vendor is able to demonstrate operational ability.

The Vendor has specific organizational operating experience with emphasis on storing, handling, shipping, receiving and securing spirits and Wine

3. 4 Points: qualifications of key staff,

a. Proposed team organization and designation and identification of key staff;

b. Qualification of candidates for Project Manager; and

c. Qualifications of candidates for key Vendor staff roles.

4. 7 Points: The Vendor has correctly estimated the magnitude of effort and resources necessary to provide a Warehouse, has demonstrated the ability and willingness to resolve unforeseen problems that may arise, and has shown skill in anticipating and averting potential disruptions.

See Exhibit A: Exel 17; XTL 17; Law 16

C. Financial Stability and Capacity: Qualified/Disqualified

All five Vendors submitted financial Statements and are Qualified.

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D. Vendor Technical, Service, and Project Management Proposal 20 Points

A Vendor's proposed Technical, Service and Project Management services shall be allocated a maximum of 20 points. The Vendor is able and committed to perform the IT requirements as set out in APPENDIX K according to specifications. The ability to understand, implement and support all MIS/computer/business protocols in a timely and skilled manner, and without excessive error; which includes the recognition that some errors, however slight or infrequent, carry the potential for severe disruption. To apply appropriate resources in establishing an acceptable level of business intercourse with the NHSLC and its Suppliers and Licensees, and to provide mechanisms for rapidly and effectively resolving errors and disruptions when they do occur. The Vendor has the ability to properly accept, inventory, Warehouse, manage, and track incoming and outgoing shipments of Product. The Vendor demonstrates the ability to achieve full cooperation and coordination with the NHSLC's transportation contractor(s), other Warehouse contractor(s), and the NHSLC-owned Warehouse in Concord.



IT

Scoring_11122012.xls

Attached as Exhibit J: Exel 19; XTL 17; Law 13

E. Vendor Overall Solution 20 Points

1. 7 Points: evaluate the ability of the Vendor to properly accept, inventory, Warehouse, manage, and track incoming and outgoing shipments of Product in the timeliest, efficient and cost effective manner.

The Vendor must be open to accept inbound deliveries from 6 AM to 8 PM Monday through Friday. The Vendor must provide full cooperation, efficiency and coordination with the NHSLC's transportation contractor(s), other Warehouse contractor(s), and the NHSLC-owned Warehouse in Concord.

2. 4 Points: The Vendor must 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.

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3. 4 Points: The Vendor solution will anticipate growth in the number of retail stores, Licensees and Product as well as increasing complexity in the process.
4. 5 Points: the evaluation shall consider the following as well as any other portion of the Proposal which describes the Vendor's overall plan for fulfilling the requirements set forth in the RFP.

See Exhibit A: Exel 18; XTL 17; Law 15

F. Vendor Pricing and Innovation

The Vendor's Proposal will be allocated a maximum score of 40 points. All rate and pricing information, including rates for alternate Proposals, must be bound and sealed separately from the remainder of the Proposal.

The Vendor must provide a Proposal which secures for the NHSLC the highest revenue. One measure of revenue is an evaluation of the cost proposed by a Vendor. The Cost Proposal must include the Activities/Deliverables/Milestones Pricing Worksheet prepared using the format provided in APPENDIX D and APPENDIX D-1 – Pricing Worksheets and any discussion necessary to ensure understanding of data provided.

Another measure of revenue is a Proposal which contains revenue sharing. The Vendor shall describe any additional value-added services it will provide to the NHSLC both at the inception of the contract and in the future. An example of value added services is the sharing of bailment charges.

The Proposal must also identify advantages for the NHSLC's business partners/ customers. The Vendor must cooperate and coordinate with all Suppliers and the Transportation Contractor as well as entities that transport Product for licensees. 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.

In order to properly evaluate each Proposal's cost, all factors shall be addressed and completed as requested without deviations in the primary Proposal. The EC will rank basic handling, bailment (storage) and accessorial Warehouse charges to the NHSLC, in total or by component, depending on the scenario the NHSLC chooses to pursue. The EC will evaluate additional charges or cost savings.

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Vendors wishing to submit deviations from rate information requested in APPENDIX D and APPENDIX D-1 shall submit them as sealed, alternate Proposals.

On November 7, 2012, the XTL and Exel were asked to take their BAFO template and calculate the rates that would be applied to reach the Grand Total for the initial 30 month period. Law had not decreased its initial Grand Total; therefore the EC already had its rates. The responses are attached as previously referenced Exhibit I.

While not conclusive, the comparison of one rate is instructive. The rate for inbound handling for 1-180 cases per code is as follows:

Law \$1.20

XTL \$1.10

Exel \$0.92

Rate Reduction Analysis

By comparing the templates, an estimate of the amount of savings with XTL, Exel or Law over the first 30 months can be calculated. Exel's Grand Total was \$27,000,000. XTL had the lowest Grand Total over the initial 30 month period, lower than Exel by \$515,414. This is a difference of \$17,180 a month. Ignoring the previously described refrigeration issue, Law's Grand Total for 30 months was \$875,457 higher than Exel, an increase of \$29,000 a month. Law was over \$1,300,000 higher than XTL, greater than \$46,000 a month.

Because the numbers for XTL and Exel were so close, the financial analysis was not the final determinant for the EC's recommendation.

The basic analysis for Exel is that the change in warehouse rates equates to \$7,000,000 less than the rates in effect on October 31, 2013. To break this down further, warehouse rates will be reduced to suppliers by \$4,000,000. Warehouse rates for the NHSLC will be reduced by \$3,000,000.

In this illustration, the reduction in rates for the State includes eliminating the costs for outbound handling, single bottle pick and auto orders which amounts to about \$3,200,000 over the first 30 months of the contract.

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The Vendor Scores were:

XTL	40
Exel	39.24
Law	38
[Hat Trick	37.76
Distributech	33.42]

See previously referenced Exhibit A

G. Vendor References: Qualified/Disqualified

All five Vendors were Qualified although Distributech has no warehouse track record.

1. Exel
 - i. Alberta Liquor Control Board Mr. Alain Maisonnove, Exel has managed warehouse operations for several years and the Liquor Board is very pleased with the service. All operational questions were answered and all responses were positive.
 - ii. Diageo Bolingbrook, Illinois Mr. Tiago Freitas, Exel does an excellent job for Diageo and they are also responsible for arranging distribution through the United States from the Illinois facility. Diageo recently executed a new agreement with Exel to extend their agreement.
2. XTL
 - i. On August 7, 2012, an email was sent by Attorney Judge to the members of the EC to follow up on an issue that had been raised before the initial presentation by XTL, Inc. The email is attached as Exhibit K. The recommendation from Attorney Judge was that XTL's Proposal rise or fall on its own merits. This recommendation was followed by the EC.
 - ii. The EC asked all the Vendors whether they would be willing to fill out background check forms for their key people. All agreed. XTL actually filled out the forms and

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they were run through the system. Everyone passed including Anthony Cerone.

- iii. John Bunnel: I have received two very favorable recommendations concerning the service and support that is delivered in Pennsylvania from XTL, one from Mr. Joe Conti, Chief Executive Officer of the PA Liquor Control Board and one from Mr. Bart Tiel of Bartelamio Pio Imports. I also spoke with John Barr of Moet Hennessey who did not have any adverse comments pertaining to operational issues with XTL. Stephen Judge was also present during my conversations with the first two telephone contacts above.
- iv. Craig Bulkley: I spoke with John Metzger who handles logistics for the PALCB at the NABCA Administrator's Conference in Manchester on October 22, 2012. He confirmed (again) that XTL was doing a good job for the PALCB regarding warehousing services and that he was pleased with their performance.

3. Hat Trick Logistics

- i. Market Basket - James Lacourse - all positive regarding the replacement and transportation of Beer to the 26 Market Basket stores located in New Hampshire.
- ii. State of Vermont - Bill Goggins, Director of Enforcement - Clarke Distributors was recently fined \$5000.00 for providing things of value to licensees and ten years prior failed to report wines which was a violation of Vermont sales tax.

4. Law

The NHSLC has had a good working relationship with Law for decades. Its recent history is well known to the NHSLC.

5. Distributech

Distributech has no track record to review in the warehousing of spirits and wine.

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XIV. CONCLUSION

The EC met at 10:30 on November 7, 2012 to finalize its recommendation. Following the meeting with the Commissioners scheduled for the afternoon of November 7, 2012 and once the Commissioners have made a decision, contract discussions may begin with one or more than one Vendor. The EC requests permission to begin contract negotiations with Exel. In the event negotiations do not bear fruit, the EC seeks permission to negotiate with XTL followed by Law.

XV. POST SCRIPTS

1. The EC and counsel met with the Commissioners for one and one-half hours on November 7, 2012 to discuss its recommendation. On November 8, 2012, the Commissioners notified the EC that it had permission to begin negotiations with Exel. There was a conference call with Exel at 1:30PM to confirm that the parties understood Exel's current BAFO. After this discussion, Exel was notified at about 2:30 PM that it had been selected to negotiate a contract but cautioned that the EC would turn to a different Vendor if negotiations were not successful.
2. Lehmann spoke with counsel to the EC in the morning on 11/8. She was informed that the BAFO process was ongoing. Lehmann called again on 11/9 and was informed by counsel that the BAFO process was over, that her client could not make any changes to its proposal at that time, that the plan was for negotiations to begin on the final contract and if successful, the Contract would be signed by the Vendor on or before November 14. She was also told that there would be a nonpublic session on November 14th. Beyond that, Lehmann was directed to the RFP for the process going forward.

Lehmann sent an e-mail on 11/10 that made two fundamental misstatements:

BAFO- the NHSLC will not allow any parties to make any changes to their proposals and exceptions taken to the RFP (including waiving any exceptions) as of yesterday, November 9th.

Contract Award - the contract will be signed "on or before" November 14th. The commissioners will take a formal vote on the contract in a nonpublic session on November 14th. A public notice pursuant to RSA 91-A, the Administrative Procedures Act, will be issued by the NHSLC no later than 24 hours before the Commission's scheduled nonpublic session on Wednesday, November 14th. The

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contract will be signed by the parties before the vote is taken in that nonpublic session. (emphasis added)

The idea that a Vendor enters the negotiation phase of the RFP and is not allowed to make any changes is incorrect. Lehmann was told that Law could not make any changes at that time. The RFP states and the Vendors had been notified that there would be negotiations with a selected Vendor. Furthermore, if negotiations failed with the first selection (Exel) and with a subsequent selection (XTL), then the EC would turn to the next in line (Law) which would be able to make changes during negotiations. This process is clearly set out in the RFP at 4.6.1, P. 35.

The suggestion that “the parties,” the NHSLC and the Vendor, will sign a contract before the NHSLC votes is inaccurate. Lehmann’s email was sent before the contract was negotiated, signed by the Commission or approved by the AG’s Office.

On November 13, 2012, Lehmann sent a letter to Chief Bulkeley which she described as a Right-to-Know request. In sum, this letter demanded, within the span of hours, the production of information that no one was entitled to have and which would have compromised the integrity of the process in violation of RSA 21-I:13-a, II. This letter appeared to be based on a legally flawed argument, that the NHSLC had made the process public by noticing a nonpublic session. This is completely contrary to RSA 91-A and particularly RSA 21-I. Chief Bulkeley responded on November 19, before the contract was approved by the AG’s office, and pointed out the flaw in her logic. On November 21, after the contract was awarded and approved, Lehmann sent yet another letter on this issue alleging that the NHSLC had violated RSA 91-A. The Vendors were informed of this Right to Know request within five business days (Thanksgiving intervened). On November 29, 2012, the NHSLC began posting information on its website including the Proposals from Hat Trick, Distributech and XTL with redactions for confidential financial information. Exel and Law had significantly redacted their Proposal and needed time to produce Proposals that they maintained were public.

3. On November 13, the House Committee released its Final Report. In its report, the committee was critical of the NHSLC’s refusal to answer questions about the RFP. The House Committee appeared to believe that the criticism was justified because the RFP was a public document. The EC hopes that this memorandum will give the public and legislature a fuller understanding of the statutory

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obligation to keep the process confidential and illuminate why innocent appearing questions could not be answered during the House Committee's hearing. On a different subject, in examining Chief Edwards' allegations about the RFP, the attorneys for the Special House Committee concluded that: there do not appear to be any improprieties concerning conflicts of interest or other irregularities in the [RFP] process.

4. The Contract was signed by Exel on November 15, 2012. It was signed by the Commissioners at a nonpublic session on November 19, 2012. It was approved by the AG shortly after noon on November 20, 2012. In compliance with the RFP, the bulk of the contract, less Exel's Proposal, was made public on the Commission's website by November 29, 2012.