Hello Craig: Our July 23 notes indicated notice of award recommendation would have been generated by 7/31. Did we misunderstand, or has the transportation award recommendation been made without notice to balance of vendors?

Thank you,

Nancy Lamarche CPA CMA
LBWD/Ratelinер
From: Stephen J. Judge <Stephen.Judge@liquor.state.nh.us>
Sent: Friday, August 02, 2013 3:25 PM
To: Rob Whipple (Exel US); msjudge5@comcast.net
Cc: sjudge@wadleighlaw.com; Craig W. Bulkley
Subject: RE: Exhibit C 8-1 PM

The contract has been executed. It remains confidential until further notice.

**************************************************
Stephen J. Judge
AG Legal Consultant for NHS Liquor Commission
Wadleigh, Starr & Peters, PLLC
95 Market Street
Manchester, New Hampshire 03101
Tel: 603-669-4140
Fax: 603-669-6018
Web: www.wadleighlaw.com
E-mail: sjudge@wadleighlaw.com
E-mail: stephen.j.judge@liquor.state.nh.us

Please do not print this email unless necessary

**** CONFIDENTIALITY NOTE ****
NOTICE: This e-mail, including any attachments, is intended for the receipt and use by the intended addressee(s) only, and may contain privileged, confidential, work product and/or trade secrets or other information of a proprietary nature. If you are not an intended recipient of this e-mail, you are hereby notified that any unauthorized use or distribution of this e-mail, including any attachments, is strictly prohibited.

From: Rob Whipple (Exel US) [mailto:Rob.Whipple@exel.com]
Sent: Friday, August 02, 2013 2:22 PM
To: 'msjudge5@comcast.net'; Rob Whipple (Exel US)
Cc: 'sjudge@wadleighlaw.com'; Stephen J. Judge; Craig W. Bulkley
Subject: Re: Exhibit C 8-1 PM

Steve,

Exel has reviewed the edits to Exhibit C and agrees with and accepts the edits.

Rob

Sent via Blackberry.

From: Steve & Maurine Judge [mailto:msjudge5@comcast.net]
Sent: Thursday, August 01, 2013 07:53 PM
To: Rob Whipple (Exel US)
Cc: 'Stephen Judge' <sjudge@wadleighlaw.com>; 'Stephen J. Judge' <stephen.j.judge@liquor.state.nh.us>; 'Craig W. Bulkley' <cbulkley@liquor.state.nh.us>
Subject: Exhibit C 8-1 PM
Rob,

Attached is revised Exhibit C.

For ease of reference, paragraph 4 of the P-37 is as follows:

4. **CONDITIONAL NATURE OF AGREEMENT.**
Notwithstanding any provision of this Agreement to the contrary, all obligations of the State hereunder, including, without limitation, the continuance of payments hereunder, are contingent upon the availability and continued appropriation of funds, and in no event shall the State be liable for any payments hereunder in excess of such available appropriated funds. In the event of a reduction or termination of appropriated funds, the State shall have the right to withhold payment until such funds become available, if ever, and shall have the right to terminate this Agreement immediately upon giving the Contractor notice of such termination. The State shall not be required to transfer funds from any other account to the Account identified in block 1.6 in the event funds in that Account are reduced or unavailable.

Paragraph 4 may be modified as below with additions underlined and strike outs in bold and underlined:

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Steve
From: Rob Whipple (Exel US) <Rob.Whipple@exel.com>
Sent: Friday, August 02, 2013 2:24 PM
To: Craig W. Bulkley
Subject: Automatic reply: EXHIBIT A.doc

I am out of the office. You can reach me via e-mail at rob.whipple@exel.com or by cell at [redacted].
From: Craig W. Bulkley <Craig.Bulkley@liquor.state.nh.us>
Sent: Friday, August 02, 2013 2:24 PM
To: Rob Whipple (Exel US)
Subject: RE: Exhibit C 8-1 PM

Received; thanks!

From: Rob Whipple (Exel US) [mailto:Rob.Whipple@exel.com]
Sent: Friday, August 02, 2013 2:22 PM
To: 'msjudge5@comcast.net'; Rob Whipple (Exel US)
Cc: 'sjudge@wadleighlaw.com'; Stephen J. Judge; Craig W. Bulkley
Subject: Re: Exhibit C 8-1 PM

Steve,

Exel has reviewed the edits to Exhibit C and agrees with and accepts the edits.

Rob

Sent via Blackberry.

From: Steve & Maurine Judge [mailto:msjudge5@comcast.net]
Sent: Thursday, August 01, 2013 07:53 PM
To: Rob Whipple (Exel US)
Cc: 'Stephen Judge' <sjudge@wadleighlaw.com>; 'Stephen J. Judge' <stephen.j.judge@liquor.state.nh.us>; 'Craig W. Bulkley' <cbulkley@liquor.state.nh.us>
Subject: Exhibit C 8-1 PM

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Attached is revised Exhibit C.

For ease of reference, paragraph 4 of the P-37 is as follows:

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Steve
Received; thanks!

Steven,

Exel ha reviewed the edits in Exhibit A and agrees with and accepts the edits.

Rob
Sent via Blackberry.

Rob,
Attached please find Exhibit A with all edits after Tuesday redlined.

Steve
Final

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

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.
EXHIBIT C

SPECIAL PROVISIONS

1. Certificate of Vote

This authorization notification must be consistent with Contractor’s corporate structure and must accompany the contract.

An officer of the company, name and title, must certify that the person signing the contract has been given the authority to do so. That authority must be in effect the day the contract is signed. The certifying official must not be certifying him or herself.

The document must certify that:

   A. The signature of Jim Gehr, President, Retail of the Corporation affixed to any Proposal shall bind the corporation to its terms and conditions.

   B. The foregoing signature authority has not been revoked, annulled or amended in any manner whatsoever, and remains in full force and effect as of the date of the contract.

2. Carrier Licenses

Contractor shall produce a current NHSLC Carrier License (RSA 178:14) and a US DOT common carrier operating authority on demand by the NHSLC. Prior to November 1, 2013, this demand shall provide the Contractor with a reasonable opportunity to acquire such licenses.

3. The Agreement is amended as follows:

INSERT NEW PARAGRAPHS 4.1 AND 4.2 BELOW:

4.1. In the event the NHSLC has insufficient funds available to make continued payments under the Agreement for any Services, the NHSLC will immediately:

   4.1.1. Use best efforts and in good faith seek the necessary funding from the General Court and other governmental authorities to fulfill its obligation to make continued payments under the Agreement; and,

   4.1.2 Provide Contractor with written notice of any such funding shortfall.

4.2. Contractor may cease providing Transportation Services to the NHSLC for which the NHSLC cannot or fails to make payment, and will not be obligated to resume
provision of Transportation Services to the NHSLC if funding for continued payments under the Agreement is not obtained, including without limitation, funding for any arrearages.

DELETE PARAGRAPH 5.2 AND ADD THE NEW PARAGRAPH 5.2 BELOW

5.2

(a) Rates. The Transportation Service charges listed in Exhibit F are valid for the entire initial term of the contract: from November 1, 2013 until January 31, 2019.

(b) Extraordinary Circumstances. Pursuant to RFP section 1.10.3, if during any year of this Agreement extraordinary circumstances arise leading either Party, in good faith, to believe that a Rate adjustment (whether an increase or decrease) is equitable in order to continue to provide or receive Transportation Services, it shall notify the other Party of the same, and the Parties shall endeavor in good faith to mutually agree upon a temporary or permanent Rate adjustment as promptly as possible. Any party requesting a change in Rates shall submit a comprehensive proposal providing detailed support for the requested change. For clarity, Extraordinary Circumstances shall be defined as the continuing consequences of events, beyond the reasonable control of the Contractor, such as, but not limited to, acts of God, riots, acts of war, epidemics, acts of government (other than acts of the NHSLC), fire, power failures, nuclear accidents, earthquakes, unusually severe weather, or other disasters, whether or not similar to the foregoing.

(c) Any Rate change(s) or adjustment(s) shall be reflected in an amendment to the Agreement, dated and signed by each Party.

(d) If the parties are not able to mutually agree upon an extraordinary circumstances Rate change or adjustment, then either party may invoke the Contract Protest Process.

DELETE PARAGRAPH 5.4

ADD to the end of paragraph 7.3

Notwithstanding the foregoing or any provision of the Agreement to the contrary, Contractor retains the right to pursue any of its remedies, both at law and in equity.

DELETE PARAGRAPH 8 AND INSERT NEW PARAGRAPH 8:

8. EVENT OF MATERIAL BREACH/REMEDIES.

Either party may terminate the Agreement and/or pursue its remedies at law and in equity for the material breach of the Agreement by the other party. The injured party shall give the other party written notice of such material breach. If there has been a failure to cure such material breach within thirty (30) business days after receipt of such notice by the
other party, the Parties shall utilize the Contract Protest Process set out in paragraph 25. Provided, however, in the event of a material breach of the Agreement which necessitates the State to obtain temporary substitute Transportation Services, the notice requirement shall be no less than twenty-four (24) hours.

DETERMINE PARAGRAPH 10

In paragraph 12, delete the reference to N.H. Department of Administrative Services and substitute New Hampshire State Liquor Commission.

Amend Paragraph 14.1.1 by adding after “insurance” and before “against” the following phrase, “with the State named as an additional insured.”

Delete Paragraph 14.1.2

Amend Paragraph 14 by adding Subparagraphs 14.1.3 through 14.1.7 as follows:

14.1.3 All Risk insurance coverage including but not limited to flood, fire and extended coverage solely for goods on hand belonging to the NHSLC in an amount of $500,000 per occurrence, and $10,000,000 aggregate. The All Risk insurance shall cover 100% of NHSLC’s Replacement Cost (defined as the NHSLC’s purchase price for such goods plus related storage and transportation costs, if any). In the event of a claim payment; insurer or Contractor agrees to make payment directly to NHSLC. A certificate of insurance demonstrating compliance with the requirements of this Paragraph 14 shall be provided to NHSLC upon request. For insurance purposes, title to Supplier’s product shall transfer to the NHSLC when the bill of lading is issued by the warehouse.

14.1.4 Performance Bond. Upon final approval of this Agreement, Contractor shall provide to NHSLC in a form satisfactory to NHSLC, a Performance Bond in the amount of One Million Dollars ($1,000,000.00), which shall be retained by the NHSLC for the initial term of this Agreement and any extension(s).

14.1.5 The Contractor shall be fully bonded and registered to the extent required by applicable state law. A copy of such registration shall be provided to NHSLC upon request.

14.1.6 Once licenses are issued, the Contractor shall maintain all licenses to the extent required by applicable law.

14.1.7 Transition Bond for completion of all necessary steps to provide Transportation Services on or before November 1, 2013. Prior to October 1, 2013, Contractor shall provide to NHSLC in a form satisfactory to NHSLC, a Transition Bond in the amount of One Million Five Hundred Thousand ($1,500,000.00), which shall be retained by the NHSLC until January 31st, 2014.
Amend Paragraph 14.3 by deleting the last sentence and replacing it with the following sentence, “The Contractor shall endeavor to provide the Contracting Officer identified in block 1.9, or his or her successor, no less than ten (10) days prior written notice of cancellation or modification of the policy.

AMEND PARAGRAPH 16 as follows:

Add “or Contractor” after “the State” in both sentences. Strike “on the part of the Contractor” at the end of the paragraph. In addition, the phrase “Event of Default” where it occurs in this paragraph is amended to read “Material Breach”.

ADD THE FOLLOWING NEW PARAGRAPHS:

25. Contract Protest Process

The Parties shall use the Contract Protest Process to resolve any dispute with respect to the Agreement

The Issuing Officer, or his or her successor, shall be the NHSLC’s representative.

Prior to the filing of any formal proceedings with respect to a dispute (other than an action seeking injunctive relief with respect to intellectual property rights), the party believing itself aggrieved (the “Invoking Party”) shall call for dispute negotiation by written notice to the other party. Such notice shall be without prejudice to the Invoking Party’s right to any other remedy permitted by this Agreement.

The parties shall use all reasonable efforts to arrange personal meetings and/or telephone conferences as needed, at mutually convenient times and places, between negotiators for the parties.

In the event that the Parties are unable to reach agreement after good faith negotiations, the parties may agree to utilize a Mediator with experience in the issue in dispute. The selection of the Mediator shall be by mutual agreement of the Parties. The decision by such Mediator shall be non-binding and not evidence in any further proceeding. Following the decision of the Mediator, if any, the matter shall be submitted to the NHSLC for a determination following a hearing. The resulting Order may be appealed pursuant to RSA 541.

26. Contract Transition Period

If this contract expires or is terminated before a vendor is selected and prepared to provide Transportation Services to the NHSLC, Contractor agrees to use best efforts to continue the Transportation Services described under the current contract for up to 6 months at the prices to be negotiated by the parties ("Transition").
Contractor also agrees, at the discretion of the NHSLC, to assist the NHSLC in all transition services.

For the purposes of this paragraph, the Contractor shall be known as the old ("old") and the new contractor shall be known as new ("new"). The NHSLC, in conjunction with both "old" and "new" contractors, shall establish a deadline for the Transition. The NHSLC will, if possible, select a period during a time of slow sales (such as January-March) and schedule as short a period as is practical for the Transition from the "old" to the "new" contractors. Notification of the deadline will be given within a reasonable period, to be arranged with the old and new contractors at award.

27. News Releases

After award and final approval, the Contractor may make public the existence of the contract and the business relationship with the NHSLC. All other information must be approved by the NHSLC before it is made public, such approval not to be unreasonably withheld.

28. Confidentiality/Sensitive Information

Contractor may have access to confidential/sensitive information in the course of performing its obligations under the contract, and may be required to sign a mutually agreed upon confidentiality agreement.

29. Extension of Contract

This contract may be extendable by the NHSLC for no more than two (2), five (5) year periods, unless a shorter period is negotiated between the parties. The NHSLC shall give the Contractor one (1) year’s notice of its decision to offer an extension. Following said notice, the Contractor and the NHSLC shall have four (4) weeks to negotiate new rates for the extension period. If the Parties do not reach agreement on Rates for the extension period within the four (4) week period, the NHSLC will notify the Contractor of its intention not to renew or in its discretion extend the time to negotiate.

END OF EXHIBIT C
Steve,

Exel has reviewed the edits to Exhibit C and agrees with and accepts the edits.

Rob

Sent via Blackberry.

---

Rob,

Attached is revised Exhibit C.

For ease of reference, paragraph 4 of the P-37 is as follows:

4. **CONDITIONAL NATURE OF AGREEMENT**.
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Steve
From: Craig W. Bulkley <Craig.Bulkley@liquor.state.nh.us>
Sent: Friday, August 02, 2013 2:22 PM
To: Rob.Whipple@exel.com
Subject: EXHIBIT A.doc
Attachments: EXHIBIT A.doc

Final

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

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.
EXHIBIT A

CONTRACT SERVICES

TRANSPORTATION SERVICES FOR SPIRIT AND WINE AND RELATED PRODUCT, EQUIPMENT AND SUPPLIES

1. Contractor shall provide transportation services to transport spirit and wine and related products from and between warehouses utilized by the NHSLC to its state liquor and wine outlets. Contractor shall be properly licensed, registered and insured to provide timely and efficient delivery of alcohol product, related products, supplies and equipment to the NHSLC’s retail outlets.

2. The NHSLC currently operates 77 retail liquor and wine stores located throughout the state of New Hampshire. Eleven of these locations are owned by the state and 66 are located in leased retail space. The various store locations are listed in Appendix F to the RFP. The frequency of deliveries varies based on the size and location of each store. Current data shows orders ranging from a low of one case for delivery to a store to approximately 2,200 cases in one order to one store. The NHSLC and Contractor shall mutually agree on the most efficient delivery schedule on a daily basis.

3. Contractor shall comply with the requirements for transportation of spirit and wine and related product services (“Transportation Services”) as specified in the Request for Proposals issued by the NHSLC and attached hereto as Exhibit D including, all appendices and all clarifications and amendments (“RFP”) only to the extent that Contractor has agreed to any such requirements as specified in Contractor’s proposal and replies submitted in response to the RFP (the “Proposal”) the proposal and replies attached as Exhibit E; the RFP and Proposal being incorporated herein by reference. Contractor shall also comply with all applicable administrative rules adopted by the NHSLC regulating Transportation Services and any amendments thereto and all applicable state law. Except as otherwise provided herein, in the event that any provision of the RFP or Proposal shall conflict or be inconsistent with any provision of Exhibits A, B, or F of this Agreement, the RFP shall govern.

4. By executing this Agreement, NHSLC makes no promises or guarantees as to the required volume of Transportation Services for the duration of this Agreement or any extension thereof. Notwithstanding any provision of this Agreement or the RFP and amendments thereto to the contrary, this Agreement is an exclusive agreement, and NHSLC will not retain any other person or entity to provide any Transportation Services for NHSLC during the term of this Agreement and any extensions/renewals thereof.
5. Force Majeure. Notwithstanding any other provision of this agreement or the RFP to the contrary, Contractor shall not be liable or responsible for delays or failures in performance, or any loss or damage to any liquor and wine Product of the NHSLC resulting from events beyond the reasonable control of the Contractor. Such events shall include, but not be limited to, acts of God, riots, acts of war, epidemics, acts of government, fire, power failures, nuclear accidents, earthquakes, unusually severe weather, or other disasters, whether or not similar to the foregoing.

6. Consequential and Indirect Damages. Notwithstanding any other provision of this agreement or the RFP to the contrary, neither party, in the performance of their obligations under this agreement shall be liable to the other for any indirect or consequential damages such as, but not limited to: loss of profits, loss of business, loss of customer goodwill or exemplary damages or the costs and expenses in providing or securing substitute revenues even if the parties have been advised of the possibility of the same, and without regard to the nature of the claim or the underlying theory or cause of action whether in contract, tort or otherwise.

7. In the event the Contractor owes damages due to a material breach or the Contractor owes liquidated damages due to not achieving the Target Level for the KPI as referenced in paragraphs 10-12 of this Exhibit A, the Contractor shall pay the damages or liquidated damages. If the Contractor fails to pay the damages or liquidated damages within a reasonable time, the NHSLC shall recover the damages or liquidated damages from the Performance Bond, provided, however, that the Contractor shall restore the bond to its original or any increased amount within a reasonable time.

8. The Contractor is responsible for the reasonable costs of making modifications and updates to the Contractor’s systems to stay current with the future systems utilized by NHSLC.

9. Contractor shall not assign any personnel to perform the services who Contractor knows or should have known, after reasonable investigation and other employment screening to the extent permitted by applicable law, (i) has been convicted of fraud, embezzlement or other similar crimes involving dishonesty (as evidenced by background checks by Contractor which seeks information for the past seven (7) years), or (ii) does not meet the requirements under New Hampshire or immigration law to be employed or to perform services at such locations as may be required. Contractor agrees to defend and indemnify NHSLC from losses or claims incurred by NHSLC to the extent arising from Contractor’s breach of the above requirements.

10. Key Performance Indicators (KPI)

a. In order to evaluate the performance of the Services, the parties agreed to the KPI listed on the KPI Schedule below. The KPI Schedule sets forth the KPI, the Goal and the Target Level. The Contractor’s failure to meet the KPI shall be excused to the extent such
failure is caused by the acts or omissions of the NHSLC, the Suppliers, other third parties or
because of Force Majeure events.

b. In the event of a significant service failure, Contractor will promptly notify the NHSLC (or NHSLC will notify Contractor) of such failure, and will advise the NHSLC as to the course of action that will be taken in order to correct such failure. The NHSLC will either agree with the course of action or advise Contractor that alternative measures should be taken. The Contractor will act to resolve the issue as swiftly as possible to the satisfaction of the NHSLC.

c. Each week, or as otherwise agreed by the parties, the Contractor will prepare a written status report and meet with NHSLC staff to review performance and resolve issues, if any.

d. For the KPI described in the KPI Schedule, if the average of the Contractor’s daily performance over a thirty (30) day rolling consecutive period fails to meet the Target Level as described in the KPI Schedule, the NHSLC may require the Contractor to pay the NHSLC liquidated damages in the amount of 0.25% (0.0025) of the Contractor’s daily revenue in November 2013, 0.5% (0.005) in December 2013, 0.75% (0.0075) from January 2014 through the initial term of the Agreement, 1% (0.01) of the Contractor’s daily revenue for each day that the Contractor fails to meet the Target Level.

e. Notwithstanding any other provision of this agreement or the RFP to the contrary, the liquidated damages described in paragraph (d) above are the NHSLC’s sole and exclusive remedy if the Contractor is not performing the Services adequately. For the sake of clarity, NHSLC retains the right to pursue direct damages arising from a breach of this Agreement outside the scope of this paragraph. Furthermore, in the event of a failure to cure a material breach, the NHSLC may terminate the Agreement and/or pursue its remedies at law and in equity pursuant to the provisions of new paragraph 8 set forth in Exhibit C.

11. KPI Schedule

a. The KPI detailed in the chart below shall apply as of November 1, 2013.

b. This Schedule describes the service levels and performance standards that the Contractor shall provide to the NHSLC with respect to the Transportation Services. The KPI shall be measured according to the Contractor’s standard operating procedures as approved by the NHSLC. The Parties shall in good faith mutually agree to these standard operating procedures prior to November 1, 2013. The method agreed to measure the standard may result in an adjustment to the Target Level.
c. At any time during the term of this Agreement, the NHSLC and the Contractor may upon agreement in writing revise the KPI, or add a new KPI.

d. The Contractor shall keep and maintain complete and accurate daily reports regarding the KPI and provide them to the NHSLC during the term of this Agreement.

e. Regular management review meetings between the NHSLC and the Contractor shall be scheduled to review the actual performance against projected performance.

<table>
<thead>
<tr>
<th>Key Performance Indicator</th>
<th>Goal</th>
<th>Target Level</th>
</tr>
</thead>
<tbody>
<tr>
<td>On-time Performance time</td>
<td>For every day a delivery route is created, the stores on that route will receive their delivery that day within the agreed upon delivery hours.</td>
<td>95%</td>
</tr>
</tbody>
</table>

12. Operating Parameters

The following operating parameters were used by the Contractor to develop the routes and pricing for its proposal. The NHSLC provided its data from historical information and projections. The future projections are estimates, and the purpose of providing the operating parameters is to assist with delineating accessorial services.

- Cases Per Pallet (from file name appendixMrevised41613.xlsx)
- Weight per case
- Frequency of Delivery by Store (from file name appendixMrevised41613.xlsx)
- Day of delivery by Store (from file name appendixMrevised41613.xlsx)
- Opening hours, Store receiving hours match operating hours (unless there’s a special requirement for an early delivery) – must arrive no later than 1 hour before close (or earlier if it is a hand unload and delivery stop time is greater than 1 hour) (operating hours by store posted in Appendix F in original RFP document)
- Store delivery restrictions. Unless a store has a specific requirement the general rule above applies (store restrictions posted in revised Appendix I on 3/29/13)
- Store delivery type hand v pallet v trailer drop (revised Appendix I on 3/29/13)
- Quantity of hand v pallet v trailer drop by store by day (quantities obtained from file named appendixMrevised41613.xlsx and type of delivery from revised Appendix I on 3/29/13)
- Holiday closures

END OF EXHIBIT A
From: Rob Whipple (Exel US) <Rob.Whipple@exel.com>
Sent: Friday, August 02, 2013 2:21 PM
To: msjudge5@comcast.net; Rob Whipple (Exel US)
Cc: sjudge@wadleighlaw.com; Stephen J. Judge; Craig W. Bulkley
Subject: Re: Exhibit A 8-1 PM

Steve,

Exel has reviewed the edits in Exhibit A and agrees with and accepts the edits.

Rob
Sent via Blackberry.

From: Steve & Maurine Judge [mailto:msjudge5@comcast.net]
Sent: Thursday, August 01, 2013 07:53 PM
To: Rob Whipple (Exel US)
Cc: 'Stephen Judge' <sjudge@wadleighlaw.com>; 'Stephen J. Judge' <stephen.j.judge@liquor.state.nh.us>; 'Craig W. Bulkley' <cbulkley@liquor.state.nh.us>
Subject: Exhibit A 8-1 PM

Rob,

Attached please find Exhibit A with all edits after Tuesday redlined.

Steve

Wadleigh, Starr & Peters, P.L.L.C.
95 Market Street
Manchester, New Hampshire 03101

603-669-4140 Main
603-669-6018 Facsimile
Website: www.wadleighlaw.com
Rob,

Once you and I have discussed today's edits, I will send you clean final exhibits. The paperwork will be complete when you respond to the "clean" email accepting the final exhibits.

Steve
From: Rob Whipple (Exel US) <Rob.Whipple@exel.com>
Sent: Thursday, August 01, 2013 3:10 PM
To: Craig W. Bulkley
Subject: RE: Emailing: P-37 1-09.pdf

Thanks Craig.

Rob Whipple
Associate General Counsel

DHL Global Business Services
Dept. 230
570 Polaris Parkway
Westerville, Ohio 43082
U.S.A.

Telephone: 614.865.8415
Mobile: [Redacted]
Facsimile: 614.865.8879

www.dhl.com

-----Original Message-----
From: Craig W. Bulkley [mailto:cbulkley@liquor.state.nh.us]
Sent: Thursday, August 01, 2013 2:11 PM
To: Rob Whipple (Exel US)
Subject: RE: Emailing: P-37 1-09.pdf

Rob - completion date in 1.7 can be filled in by you. The date is January 31, 2019. Section 1.8 should remain blank. Call if you have any other questions. Assume you will Fedex this to us so it reaches us by 10 AM tomorrow? That is when the commissioners meet to sign the contract. Thanks.

II 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
C cbulkley@liquor.state.nh.us

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Hi Craig - we are at the point of having Jim Gehr sign the attached P-37 and need to know how to handle the sections above that need filled out. Should we have him sign as is and will NHSLC fill in needed information? Section 1.7 and 1.8 are of particular concern when signing before they are filled in.

Looking for guidance. Thanks.

Rob Whipple
Associate General Counsel

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-----Original Message-----
From: Rob Whipple (Exel US) [mailto:Rob.Whipple@exel.com]
Sent: Thursday, August 01, 2013 1:27 PM
To: Craig W. Bulkley
Cc: Greg Foreman (Exel US); Maria Tzagournis (Exel US)
Subject: FW: Emailing: P-37 1-09.pdf
Importance: High

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Westerville, Ohio 43082
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From: Craig W. Bulkley [mailto:cbulkley@liquor.state.nh.us]
Sent: Wednesday, July 31, 2013 12:35 PM
To: Rob Whipple (Exel US)
Subject: FW: Emailing: P-37 1-09.pdf

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Hi Craig

Please call me on my cel below. Thanks

Regards

Greg Foreman

cel [redacted]

www.exel.com
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AGREEMENT

The State of New Hampshire and the Contractor hereby mutually agree as follows:

GENERAL PROVISIONS

1. IDENTIFICATIONS.

<table>
<thead>
<tr>
<th>1.1 State Agency Name</th>
<th>1.2 State Agency Address</th>
</tr>
</thead>
<tbody>
<tr>
<td>New Hampshire State Liquor Commission</td>
<td>P.O. Box 503, 50 Storrs St., Concord, NH 03302-0503</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>1.3 Contractor Name</th>
<th>1.4 Contractor Address</th>
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<td></td>
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</tbody>
</table>

<table>
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<tr>
<th>1.5 Contractor Phone Number</th>
<th>1.6 Account Number</th>
<th>1.7 Completion Date</th>
<th>1.8 Price Limitation</th>
</tr>
</thead>
<tbody>
<tr>
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<td></td>
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<td></td>
</tr>
</tbody>
</table>

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<tr>
<th>1.9 Contracting Officer for State Agency</th>
<th>1.10 State Agency Telephone Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>George P. Tsiopras, CFO</td>
<td>603-230-7010</td>
</tr>
</tbody>
</table>

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<tr>
<th>1.11 Contractor Signature</th>
<th>1.12 Name &amp; Title of Contractor Signatory</th>
</tr>
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<tbody>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>

1.13 Acknowledgment: State of __________, County of __________, On, ________________, before the undersigned officer, personally appeared the person identified in block 1.12, or satisfactorily proven to be the person whose name is signed in block 1.11, and acknowledged that s/he executed this document in the capacity indicated in block 1.12.

1.13.1 Signature of Notary Public or Justice of the Peace

(Seal)

1.13.2 Name and Title of Notary Public or Justice of the Peace

1.14 State Agency Signature

1.15 Name/Title of State Agency Signatory

Joseph W. Mollica, Chairman

Michael R. Milligan, Commissioner

1.16 Approval by the N.H. Department of Administration, Division of Personnel *if applicable*

By: Director, On:

1.17 Approval by Attorney General (Form, Substance, and Execution)

By: On:

1.18 Approval by Governor and Council

By: On:
2. EMPLOYMENT OF CONTRACTOR/SERVICES TO BE PERFORMED. The State of New Hampshire, acting through the agency identified in block 1.1 (“State”), engages contractor identified in block 1.3 (“Contractor”) to perform, and the Contractor shall perform, the work or sale of goods, or both, identified and more particularly described in the attached EXHIBIT A which is incorporated herein by reference (“Services”).

3. EFFECTIVE DATE/COMPLETION OF SERVICES.
3.1. Notwithstanding any provision of this Agreement to the contrary, and subject to the approval of the Governor and Executive Council of the State of New Hampshire, this Agreement, and all obligations of the parties hereunder, shall not become effective until the date the Governor and Executive Council approve this Agreement, (“Effective Date”)
3.2. If the Contractor commences the Services prior to the Effective Date, all Services performed by the Contractor prior to the Effective Date shall be performed at the sole risk of the Contractor, and in the event that this Agreement does not become effective, the State shall have no liability to the Contractor, including without limitation, any obligation to pay the Contractor for any costs incurred or Services performed. Contractor must complete all Services by the Completion Date specified in block 1.7.

4. CONDITIONAL NATURE OF AGREEMENT.
Notwithstanding any provision of this Agreement to the contrary, all obligations of the State hereunder, including, without limitation, the continuance of payments hereunder, are contingent upon the availability and continued appropriation of funds, and in no event shall the State be liable for any payments hereunder in excess of such available appropriated funds. In the event of a reduction or termination of appropriated funds, the State shall have the right to withhold payment until such funds become available, if ever, and shall have the right to terminate this Agreement immediately upon giving the Contractor notice of such termination. The State shall not be required to transfer funds from any other account to the Account identified in block 1.6 in the event funds in that Account are reduced or unavailable.

5. CONTRACT PRICE/PRICE LIMITATION/PAYMENT.
5.1. The contract price, method of payment, and terms of payment are identified and more particularly described in EXHIBIT B which is incorporated herein by reference.
5.2. The payment by the State of the contract price shall be the only and the complete reimbursement to the Contractor for all expenses, of whatever nature incurred by the Contractor in the performance hereof, and shall be the only and the complete compensation to the Contractor for the Services. The State shall have no liability to the Contractor other than the contract price.
5.3. The State reserves the right to offset from any amounts otherwise payable to the Contractor under this Agreement those liquidated amounts required or permitted by N.H. RSA 80:7 through RSA 80:7-c or any other provision of law.
5.4. Notwithstanding any provision in this Agreement to the contrary, and notwithstanding unexpected circumstances, in no event shall the total of all payment authorized, or actually made hereunder, exceed the Price Limitation set forth in block 1.8.

6. COMPLIANCE BY CONTRACTOR WITH LAWS AND REGULATIONS/EQUAL EMPLOYMENT OPPORTUNITY.
6.1. In connection with the performance of the Services, the Contractor shall comply with all statutes, laws, regulations, and orders of federal, state, county or municipal authorities which impose any obligation or duty upon the Contractor, including, but not limited to, civil rights and equal opportunity laws. In addition, the Contractor shall comply with all applicable copyright laws.
6.2. During the term of this Agreement, the Contractor shall not discriminate against employees or applicants for employment because of race, color, religion, creed, age, sex, handicap, sexual orientation, or national origin and will take affirmative action to prevent such discrimination.
6.3. If this Agreement is funded in any part by monies of the United States, the Contractor shall comply with all the provisions of Executive Order No. 11246 (“Equal Employment Opportunity”), as supplement by the regulations of the United State Department of Labor (41 C.F.R. Part 60), and with any rules, regulation and guidelines as the State New Hampshire or the United States issue to implement these regulations. The Contractor further agrees to permit the State or United States access to any of the Contractor’s books, records and accounts for the purpose of ascertaining compliance with all rules, regulations and orders, and the covenants, terms and conditions of this Agreement.

7. PERSONNEL.
7.1. The Contractor shall at its own expense provide all personnel necessary to perform the Services. The Contractor warrants that all personnel engaged in the Services shall be qualified to perform the Services, and shall be properly licensed and otherwise authorized to do so under all applicable laws.
7.2. Unless otherwise authorized in writing, during the term of this Agreement, and for a period of six (6) months after the Completion Date in block 1.7, the Contractor shall not hire, and shall not permit any subcontractor or other persons, firm or corporation with whom it is engaged in a combined effort to perform the Services to hire, any person who is a State employee or official, who is materially involved in the procurement, administration or performance of this Agreement. This provision shall survive termination of this Agreement.
7.3. The Contracting Officer specified in block 1.9, or his or her successor, shall be the State’s representative. In the event of any dispute concerning the interpretation of this Agreement, the Contracting Officer’s decision shall be final for the State.

Contractor Initials____________
Date____________
8. EVENT OF DEFAULT/REMEDIES.
8.1. Any one or more of the following acts or omissions of the Contractor shall constitute an event of default hereunder (“Event of Default”):
8.1.1. failure to perform the Services satisfactorily or on schedule;
8.1.2. failure to submit any report required hereunder; and/or
8.1.3. failure to perform any other covenant, term or condition of this Agreement.
8.2. Upon the occurrence of any Event of Default, the State may take any one, or more, or all, of the following actions:
8.2.1. give the contractor a written notice specifying the Event of Default and requiring it to be remedied within, in the absence of a greater or lesser specification of time, thirty (30) days from the date of the notice, and if the Event of Default is not timely remedied, terminate this Agreement, effective two (2) days after giving the Contractor notice of termination;
8.2.2. give the Contractor a written notice specifying the Event of Default and suspending all payments to be made under this Agreement and ordering that the portion of the contract price which would otherwise accrue to the Contractor during the period from the date of such notice until such time as the State determines that the Contractor has cured the Event of Default shall never be paid to the Contractor;
8.2.3. set off against any other obligations the State may owe to the Contractor any damages the State suffers by reason of any Event of Defaults; and/or
8.2.4. treat the Agreement as breached and pursue any of its remedies at law or in equity, or both

9. DATA/ACCESS/CONFIDENTIALITY/ PRESERVATION.
9.1. As used in this Agreement, the word “data” shall mean all information and things developed or obtained during the performance of, or acquired or developed by reason of, this Agreement, including, but not limited to, all studies, reports, files, formulae, surveys, maps, charts, sound recordings, video recordings, pictorial reproductions, drawings, analyses, graphic representations, computer programs, computer printouts, notes, letters, memoranda papers, and documents, all whether finished or unfinished.
9.2. All data and any property which has been received from the State or purchased with funds provided for that purpose under this Agreement, shall be the property of the State, and shall be returned to the State upon demand or upon termination of this Agreement for any reason.
9.3. Confidentiality of data shall be governed by N.H. RSA chapter 91-A or other existing law. Disclosure of data requires prior written approval of the State.

10. TERMINATION. In the event of an early termination of this Agreement for any reason other than the completion of the Services, the Contractor shall deliver to the Contracting Officer, not later than fifteen (15) days after the date of termination, a report (“Termination Report”) describing in detail all Services performed, and the contract price earned, to and including the date of termination. The form, subject matter, content, and number of copies of the Termination Report shall be identical to those of any Final Report described in the attached EXHIBIT A.

11. CONTRACTOR’S RELATION TO THE STATE.
In the performance of this Agreement the Contractor is in all respects and independent contractor, and is neither an agent nor an employee of the State. Neither the Contractor nor any of its officers, employees, agents or members shall have authority to bind the State or receive any benefits, workers’ compensation or other emoluments provided by the State to its employees.

12. ASSIGNMENT/DELEGATION/SUBCONTRACTS.
The contractor shall not assign, or otherwise transfer any interest in this Agreement without the prior written consent of the N.H. Department of Administrative Services. None of the Services shall be subcontracted by the Contractor without the prior written consent of the State.

13. INDEMNIFICATION. The Contractor shall defend, indemnify and hold harmless the State, its officers and employees, from and against any and all losses suffered by the State, its officers and employees and any and all claims, liabilities or penalties asserted against the State, its officers and employees, by or on behalf of any person, on account of, based or resulting from, arising out of (or which may be claimed to arise out of) the acts or omissions of the Contractor. Notwithstanding the foregoing, nothing herein contained shall be deemed to constitute a waiver of the sovereign immunity of the State, which immunity is hereby reserved to the State. This covenant in paragraph 13 shall survive the termination of this Agreement.

14. INSURANCE.
14.1. The Contractor shall, at its sole expense, obtain and maintain in force, the following insurance:
14.1.1. Comprehensive general liability insurance against all claims of bodily injury, death or property damage in amounts
14.1.2. fire and extended coverage insurance covering all property subject to subparagraph 9.2 herein, in an amount not less than $250,000 per occurrence; and
14.2. The policies described in subparagraph 14.1 herein shall be on policy forms and endorsements approved for use in the State of New Hampshire by the N.H. Department of Insurance and issued by insurers licensed in the State of New Hampshire.

Contractor Initials____________
Date____________
14.3. The Contractor shall furnish to the Contracting Officer identified in block 1.9, or his or her successor, a certificate(s) of insurance for all insurance required under the Agreement. Contractor shall also furnish to the Contracting Officer identified in block 1.9, or his or her successor, certificate(s) of insurance for all renewal(s) of insurance required under this Agreement no later than fifteen (15) days prior to the expiration date of each of the insurance policies. The certificate(s) of insurance and any renewals thereof shall be attached and are incorporated herein by reference. Each certificate(s) of insurance shall contain a clause requiring the insurer to endeavor to provide the Contracting Officer identified in block 1.9, or his or her successor, no less than ten (10) days prior written notice of cancellation or modified of the policy.

15. WORKER'S COMPENSATION.
15.1. By signing this agreement, the Contractor agrees, certifies and warrants that the Contractor is in compliance, with or exempt from, the requirements of N.H. RSA chapter 281-A ("Workers' Compensation")
15.2. To the extent the Contractor is subject to the requirements of N.H. RSA chapter 281-A, Contractor shall maintain, and require any subcontractor or assignee to secure and maintain, payment of Workers’ Compensation in connection with activities which the person proposes to undertake pursuant to this Agreement. Contractor shall furnish the Contracting Officer identified in block 1.9, or his or her successor, proof of Workers’ Compensation in the manner described in N.H. RSA chapter 281-A and any applicable renewal(s) thereof, which shall be attached and are incorporated herein by reference. The State shall not be responsible for payment of any Workers’ Compensation premiums or for any other claim or benefit for Contractor, or any subcontractor or employee of Contractor, which might arise under applicable State of New Hampshire Workers’ Compensation laws in connection with the performance of the Services under this Agreement.

16. WAIVER OF BREACH. No failure by the State to enforce any provisions herof after any Event of Default shall be deemed a waiver of its rights with regard to that Event of Default; or any subsequent Event of Default. No express failure to enforce any Event of Default shall be deemed a waiver of the right of the State to enforce each and all of the provisions hereof upon any further or other Event of Default on the part of the Contractor.

17. NOTICE. Any notice by a party hereto to the other party shall be deemed to have been duly delivered or given at the time of mailing by certified mail, postage prepaid, in a United States Post Office addressed to the parties at the addresses given in blocks 1.2 and 1.4, herein.

18. AMENDMENT. This Agreement may be amended, waived or discharged only by an instrument in writing signed by the parties hereto and only after approval of such amendment, waiver or discharge by the Governor and Executive Council of the State of New Hampshire.

19. CONSTRUCTION OF AGREEMENT AND TERMS. This agreement shall be construed in accordance with the laws of the State of New Hampshire, and is binding upon and inures to the benefit of the parties and their respective successors and assigns. The wording used in this Agreement is the wording chosen by the parties to express their mutual intent, and no rule of construction shall be applied against or in favor of any party.

20. THIRD PARTIES. The parties hereto do not intend to benefit any third parties and this Agreement shall not be construed to confer any such benefit.

21. HEADINGS. The headings throughout the Agreement are for reference purposes only, and the words contained therein shall in no way be held to explain, modify, amplify or aid in the interpretation, construction or meaning of the provisions of this Agreement.

22. SPECIAL PROVISIONS. Additional provisions set forth in the attached EXHIBIT C are incorporated herein by reference.

23. SEVERABILITY. In the event any of the provisions of this Agreement are held by a court of competent jurisdiction to be contrary to any state or federal law, the remaining provisions of this Agreement will remain in full force and effect.

24. ENTIRE AGREEMENT. This Agreement, which may be executed in a number of counterparts, each of which shall be deemed an original, constitutes the entire Agreement and understanding between the parties, and supersedes all prior Agreements and understandings relating hereto.

Contractor Initials________________
Date________
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Sent: Wednesday, July 31, 2013 12:35 PM
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Subject: FW: Emailing: P-37 1-09.pdf
Attachments: P-37 1-09.pdf

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<tr>
<td>1.12</td>
<td>Name &amp; Title of Contractor Signatory</td>
</tr>
<tr>
<td>1.13</td>
<td>Acknowledgment: State of __________, County of __________ On, __________, before the undersigned officer, personally appeared the person identified in block 1.12, or satisfactorily proven to be the person whose name is signed in block 1.11, and acknowledged that s/he executed this document in the capacity indicated in block 1.12.</td>
</tr>
<tr>
<td>1.13.1</td>
<td>Signature of Notary Public or Justice of the Peace</td>
</tr>
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<td>(Seal)</td>
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<td>1.13.2</td>
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<td>State Agency Signature</td>
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<td>Name/Title of State Agency Signatory</td>
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<tr>
<td>Joseph W. Mollica, Chairman</td>
<td></td>
</tr>
<tr>
<td>Michael R. Milligan, Commissioner</td>
<td></td>
</tr>
<tr>
<td>1.16</td>
<td>Approval by the N.H. Department of Administration, Division of Personnel <em>if applicable</em></td>
</tr>
<tr>
<td>By:</td>
<td>Director, On:</td>
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3.2. If the Contractor commences the Services prior to the Effective Date, all Services performed by the Contractor prior to the Effective Date shall be performed at the sole risk of the Contractor, and in the event that this Agreement does not become effective, the State shall have no liability to the Contractor, including without limitation, any obligation to pay the Contractor for any costs incurred or Services performed. Contractor must complete all Services by the Completion Date specified in block 1.7.

4. CONDITIONAL NATURE OF AGREEMENT.
Notwithstanding any provision of this Agreement to the contrary, all obligations of the State hereunder, including, without limitation, the continuance of payments hereunder, are contingent upon the availability and continued appropriation of funds, and in no event shall the State be liable for any payments hereunder in excess of such available appropriated funds. In the event of a reduction or termination of appropriated funds, the State shall have the right to withhold payment until such funds become available, if ever, and shall have the right to terminate this Agreement immediately upon giving the Contractor notice of such termination. The State shall not be required to transfer funds from any other account to the Account identified in block 1.6 in the event funds in that Account are reduced or unavailable.

5. CONTRACT PRICE/PRICE LIMITATION/PAYMENT.
5.1. The contract price, method of payment, and terms of payment are identified and more particularly described in EXHIBIT B which is incorporated herein by reference.
5.2. The payment by the State of the contract price shall be the only and the complete reimbursement to the Contractor for all expenses, of whatever nature incurred by the Contractor in the performance hereof, and shall be the only and the complete compensation to the Contractor for the Services. The State shall have no liability to the Contractor other than the contract price.
5.3. The State reserves the right to offset from any amounts otherwise payable to the Contractor under this Agreement those liquidated amounts required or permitted by N.H. RSA 80:7 through RSA 80:7-c or any other provision of law.

5.4. Notwithstanding any provision in this Agreement to the contrary, and notwithstanding unexpected circumstances, in no event shall the total of all payment authorized, or actually made hereunder, exceed the Price Limitation set forth in block 1.8.

6. COMPLIANCE BY CONTRACTOR WITH LAWS AND REGULATIONS/EQUAL EMPLOYMENT OPPORTUNITY.
6.1. In connection with the performance of the Services, the Contractor shall comply with all statutes, laws, regulations, and orders of federal, state, county or municipal authorities which impose any obligation or duty upon the Contractor, including, but not limited to, civil rights and equal opportunity laws. In addition, the Contractor shall comply with all applicable copyright laws.
6.2. During the term of this Agreement, the Contractor shall not discriminate against employees or applicants for employment because of race, color, religion, creed, age, sex, handicap, sexual orientation, or national origin and will take affirmative action to prevent such discrimination.
6.3. If this Agreement is funded in any part by monies of the United States, the Contractor shall comply with all the provisions of Executive Order No. 11246 (“Equal Employment Opportunity”), as supplement by the regulations of the United State Department of Labor (41 C.F.R. Part 60), and with any rules, regulation and guidelines as the State New Hamphire or the United States issue to implement these regulations. The Contractor further agrees to permit the State or United States access to any of the Contractor’s books, records and accounts for the purpose of ascertaining compliance with all rules, regulations and orders, and the covenants, terms and conditions of this Agreement.

7. PERSONNEL.
7.1. The Contractor shall at its own expense provide all personnel necessary to perform the Services. The Contractor warrants that all personnel engaged in the Services shall be qualified to perform the Services, and shall be properly licensed and otherwise authorized to do so under all applicable laws.
7.2. Unless otherwise authorized in writing, during the term of this Agreement, and for a period of six (6) months after the Completion Date in block 1.7, the Contractor shall not hire, and shall not permit any subcontractor or other persons, firm or corporation with whom it is engaged in a combined effort to perform the Services to hire, any person who is a State employee or official, who is materially involved in the procurement, administration or performance of this Agreement. This provision shall survive termination of this Agreement.
7.3. The Contracting Officer specified in block 1.9, or his or her successor, shall be the State’s representative. In the event of any dispute concerning the interpretation of this Agreement, the Contracting Officer’s decision shall be final for the State.
8. EVENT OF DEFAULT/REMEDIES.
8.1. Any one or more of the following acts or omissions of the Contractor shall constitute an event of default hereunder (“Event of Default”):
8.1.1. failure to perform the Services satisfactorily or on schedule;
8.1.2. failure to submit any report required hereunder; and/or
8.1.3. failure to perform any other covenant, term or condition of this Agreement.
8.2. Upon the occurrence of any Event of Default, the State may take any one, or more, or all, of the following actions:
8.2.1. give the contractor a written notice specifying the Event of Default and requiring it to be remedied within, in the absence of a greater or lesser specification of time, thirty (30) days from the date of the notice, and if the Event of Default is not timely remedied, terminate this Agreement, effective two (2) days after giving the Contractor notice of termination;
8.2.2. give the Contractor a written notice specifying the Event of Default and suspending all payments to be made under this Agreement and ordering that the portion of the contract price which would otherwise accrue to the Contractor during the period from the date of such notice until such time as the State determines that the Contractor has cured the Event of Default shall never be paid to the Contractor;
8.2.3. set off against any other obligations the State may owe to the Contractor any damages the State suffers by reason of any Event of Defaults; and/or
8.2.4. treat the Agreement as breached and pursue any of its remedies at law or in equity, or both

9. DATA/ACCESS/CONFIDENTIALITY/ PRESERVATION.
9.1. As used in this Agreement, the word “data” shall mean all information and things developed or obtained during the performance of, or acquired or developed by reason of, this Agreement, including, but not limited to, all studies, reports, files, formulae, surveys, maps, charts, sound recordings, video recordings, pictorial reproductions, drawings, analyses, graphic representations, computer programs, computer printouts, notes, letters, memoranda papers, and documents, all whether finished or unfinished.
9.2. All data and any property which has been received from the State or purchased with funds provided for that purpose under this Agreement, shall be the property of the State, and shall be returned to the State upon demand or upon termination of this Agreement for any reason.
9.3. Confidentiality of data shall be governed by N.H. RSA chapter 91-A or other existing law. Disclosure of data requires prior written approval of the State.

10. TERMINATION. In the event of an early termination of this Agreement for any reason other than the completion of the Services, the Contractor shall deliver to the Contracting Officer, not later than fifteen (15) days after the date of termination, a report (“Termination Report”) describing in detail all Services performed, and the contract price earned, to and including the date of termination. The form, subject matter, content, and number of copies of the Termination Report shall be identical to those of any Final Report described in the attached EXHIBIT A.

11. CONTRACTOR’S RELATION TO THE STATE. In the performance of this Agreement the Contractor is in all respects and independent contractor, and is neither an agent nor an employee of the State. Neither the Contractor nor any of its officers, employees, agents or members shall have authority to bind the State or receive any benefits, workers’ compensation or other emoluments provided by the State to its employees.

12. ASSIGNMENT/DELEGATION/SUBCONTRACTS. The contractor shall not assign, or otherwise transfer any interest in this Agreement without the prior written consent of the N.H. Department of Administrative Services. None of the Services shall be subcontracted by the Contractor without the prior written consent of the State.

13. INDEMNIFICATION. The Contractor shall defend, indemnify and hold harmless the State, its officers and employees, from and against any and all losses suffered by the State, its officers and employees and any and all claims, liabilities or penalties asserted against the State, its officers and employees, by or on behalf of any person, on account of, based or resulting from, arising out of (or which may be claimed to arise out of) the acts or omissions of the Contractor. Notwithstanding the foregoing, nothing herein contained shall be deemed to constitute a waiver of the sovereign immunity of the State, which immunity is hereby reserved to the State. This covenant in paragraph 13 shall survive the termination of this Agreement.

14. INSURANCE.
14.1. The Contractor shall, at its sole expense, obtain and maintain in force, and shall require any subcontractor or assignee to obtain and maintain in force, the following insurance:
14.1.1. Comprehensive general liability insurance against all claims of bodily injury, death or property damage in amounts of not less than $250,00 per claim and $2,000,000 per occurrence; and
14.1.2. fire and extended coverage insurance covering all property subject to subparagraph 9.2 herein, in an amount not less than 80% of the whole replacement value of the property.
14.2. The policies described in subparagraph 14.1 herein shall be on policy forms and endorsements approved for use in the State of New Hampshire by the N.H. Department of Insurance and issued by insurers licensed in the State of New Hampshire.

Contractor Initials
Date
14.3. The Contractor shall furnish to the Contracting Officer identified in block 1.9, or his or her successor, a certificate(s) of insurance for all insurance required under the Agreement. Contractor shall also furnish to the Contracting Officer identified in block 1.9, or his or her successor, certificate(s) of insurance for all renewal(s) of insurance required under this Agreement no later than fifteen (15) days prior to the expiration date of each of the insurance policies. The certificate(s) of insurance and any renewals thereof shall be attached and are incorporated herein by reference. Each certificate(s) of insurance shall contain a clause requiring the insurer to endeavor to provide the Contracting Officer identified in block 1.9, or his or her successor, no less than ten (10) days prior written notice of cancellation or modified of the policy.

15. WORKER’S COMPENSATION.
15.1. By signing this agreement, the Contractor agrees, certifies and warrants that the Contractor is in compliance, with or exempt from, the requirements of N.H. RSA chapter 281-A (“Workers’ Compensation”)
15.2. To the extent the Contractor is subject to the requirements of N.H. RSA chapter 281-A, Contractor shall maintain, and require any subcontractor or assignee to secure and maintain, payment of Workers’ Compensation in connection with activities which the person proposes to undertake pursuant to this Agreement. Contractor shall furnish the Contracting Officer identified in block 1.9, or his or her successor, proof of Workers’ Compensation in the manner described in N.H. RSA chapter 281-A and any applicable renewal(s) thereof, which shall be attached and are incorporated herein by reference. The State shall not be responsible for payment of any Workers’ Compensation premiums or for any other claim or benefit for Contractor, or any subcontractor or employee of Contractor, which might arise under applicable State of New Hampshire Workers’ Compensation laws in connection with the performance of the Services under this Agreement.

16. WAIVER OF BREACH. No failure by the State to enforce any provisions herof after any Event of Default shall be deemed a waiver of its rights with regard to that Event of Default, or any subsequent Event of Default. No express failure to enforce any Event of Default shall be deemed a waiver of the right of the State to enforce each and all of the provisions hereof upon any further or other Event of Default on the part of the Contractor.

17. NOTICE. Any notice by a party hereto to the other party shall be deemed to have been duly delivered or given at the time of mailing by certified mail, postage prepaid, in a United States Post Office addressed to the parties at the addresses given in blocks 1.2 and 1.4, herein.

18. AMENDMENT. This Agreement may be amended, waived or discharged only by an instrument in writing signed by the parties hereto and only after approval of such amendment, waiver or discharge by the Governor and Executive Council of the State of New Hampshire.

19. CONSTRUCTION OF AGREEMENT AND TERMS. This agreement shall be construed in accordance with the laws of the State of New Hampshire, and is binding upon and inures to the benefit of the parties and their respective successors and assigns. The wording used in this Agreement is the wording chosen by the parties to express their mutual intent, and no rule of construction shall be applied against or in favor of any party.

20. THIRD PARTIES. The parties hereto do not intend to benefit any third parties and this Agreement shall not be construed to confer any such benefit.

21. HEADINGS. The headings throughout the Agreement are for reference purposes only, and the words contained therein shall in no way be held to explain, modify, amplify or aid in the interpretation, construction or meaning of the provisions of this Agreement.

22. SPECIAL PROVISIONS. Additional provisions set forth in the attached EXHIBIT C are incorporated herein by reference.

23. SEVERABILITY. In the event any of the provisions of this Agreement are held by a court of competent jurisdiction to be contrary to any state or federal law, the remaining provisions of this Agreement will remain in full force and effect.

24. ENTIRE AGREEMENT. This Agreement, which may be executed in a number of counterparts, each of which shall be deemed an original, constitutes the entire Agreement and understanding between the parties, and supersedes all prior Agreements and understandings relating hereto.
See below

From: Rob Whipple (Exel US) <Rob.Whipple@exel.com>
Sent: Wednesday, July 31, 2013 11:49 AM
To: Stephen Judge
Subject: RE: KPI and Material Breach

Great – do you have the 4-page P-37 for this agreement that you can send me? I thought I had it but I cannot seem to put my hands on it.

Thanks.

Rob Whipple
Associate General Counsel

DHL Global Business Services
Dept. 230
570 Polaris Parkway
Westerville, Ohio 43082
U.S.A.

Telephone: 614.865.8415
Mobile: 614.865.8879
Facsimile: 614.865.8879

www.dhl.com

From: Stephen Judge [mailto:sjudge@wadleighlaw.com]
Sent: Wednesday, July 31, 2013 11:01 AM
To: Rob Whipple (Exel US)
Cc: Brown, Michael K.; English, Lisa; Scott Lyons (EXEL CA)
Subject: RE: KPI and Material Breach

looks good to me.

From: Rob Whipple (Exel US) <Rob.Whipple@exel.com>
Sent: Wednesday, July 31, 2013 10:29 AM
To: Stephen Judge
Cc: Brown, Michael K.; English, Lisa; Scott Lyons (EXEL CA)
Subject: RE: KPI and Material Breach

Steve -

Slight revision suggested – see below and let me know if this still works for you.

Rob Whipple
Rob,

Here is draft language at the end of 10e in Exhibit A to fix the problem we discussed. The NHSLC’s remedy is limited to liquidated damages if Exel is not performing adequately, however, if the level of performance constitutes a material breach, for example, failure to perform at all, the provisions of Paragraph 8 in Exhibit C will apply.

   e. Notwithstanding any other provision of this agreement or the RFP to the contrary, the liquidated damages described in paragraph (d) above are the NHSLC’s sole and exclusive remedy if the Contractor is not performing the Transportation Services adequately. For the sake of clarity, NHSLC retains the right to pursue direct damages arising from a breach of this Agreement outside the scope of this paragraph. Furthermore, in the event of a failure to cure a material breach, the NHSLC may terminate the Agreement and/or pursue its remedies at law and in equity pursuant to the provisions of new paragraph 8 set forth in Exhibit C.

   Steve
From: Nancy Lamarche [mailto:nancylamarchecpa@gmail.com]
Sent: Wednesday, July 31, 2013 11:17 AM
To: Craig W. Bulkley
Subject: follow up to BOFA meeting

Dear Craig:

We want to genuinely express our appreciation to the Commission and particularly to the EC for working with us up the procedural ladder. As we freely admitted at the BAFO meeting, the knowledge we have gained during the process has been a benefit to us, and we firmly believe it has contributed to both of our respective interests.

At the same time, our team is not convinced that the Commission has fully embraced the fact that together with the supply chain distribution knowledge both your undersign and WTG bring to the RFP table; there can be no other best overall vendor solution that provides for the precedent setting price relief that is a primary goal of this process.

Therefore, it should come as no great surprise that we wish to register our disappointment in the BAFO meeting. More particularly that most of the questions were generated by Attorney Judge, which could be inferred to mean that an escape clause was being sought, rather than looking to enter into the next logical phase of BAFO discussion (RFP Appendix E), even if only in a back-up vendor position. What is more, even if our spokesperson did not speak to the issues with absolute clarity, the original RFP, as amended, does offer support to our position as to the main focus points which monopolized the discussion, with particular reference to Attorney Judge’s lines of questions.

The fact that the original RFP advertisement to bring innovation and/or a licensee plan to the bid construct has seemingly been cast aside in favor of presumably traditional equipment means and ways, any ambiguity we may have portrayed concerning either the Rateliner equipment model or our pallet “seal integrity” plan, I trust you will agree, should be entered into the record regardless of your impending award decision. Our position, although abbreviated, is set forth and is respectfully submitted by attachment.

Sincerely,

Nancy Lamarche, CPA, CMA
LBWD-Rateliner
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<tr>
<td>1.7.3, pg 9 Innovation</td>
<td>As of the July 23 BAFO meet, no consideration has been made to Exhibit E, the contract itself (even in a back-up vendor capacity), and no consideration or discussion has been entered around the Vendor offer to reduce licensee product delivery by approximately 40% by comparison to the otherwise established lowest cost licensee delivery provider. At $0.75/cs x 1M cs per annum (as proposed) the licensee community stands to realize per annum savings equal to $0.50 per cs or $500,000 per year, all to the NHSLC’s continued business development and responsibility to the licensee community.</td>
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<tr>
<td>Licensee Advertisement 2.5, pg 18 Separate Second Proposal for Co-mingling Product Loads……</td>
<td>Even if the NHSLC may be willing to leave 6 figures plus in bottom-line annual State Liquor Store transportation outlay on the table in order to comply with the load-to-ride warehouse loading model seemingly designed by EXCEL, the NHSLC should or may not want able to dismiss up to $500,000 in annual price relief in favor of licensees (ref 1M cs/yr). The NHSLC, by its RFP, adopted what is commonly referred to as LOAD-TO-GO (“LTG”) warehouse to motor carrier delivery plan (the whse dock transfer of product to the carrier by LTG means could only have come about by EXCEL preferred RFP language). Of course EXCEL recommended a trailer seal system at point of origin (POO) because it effectively removed all other bidders from pricing contention. An “LTG” trailer seal plan essentially evicted all other motor carrier candidates from the bidding arena (90% of originally registered bidders walked).</td>
</tr>
<tr>
<td>Specific Requirements 3, pg 34 All loads shall be exclusively comprised of NHSLC merchandise shipped under seal, for delivery at the direction of the NHSLC only…. “The NHSLC, however, is open to allowing a proposal from a Vendor regarding comingled loads going to both state stores and licensees if the Vendor demonstrates a benefit to the NHSLC……”</td>
<td>1. In lieu of a trailer seal system, applicant identified a pallet “Seal Integrity” program, an actual upgrade in security plan (pallet seal program identified as of original bid forward).</td>
</tr>
<tr>
<td>Seal Appendix C Requirements General Requirements 1.f, pg 30. The trailer shall be sealed and the seal broken by a warehouse representative or a store representative.</td>
<td>2. Even if there was no “seal” program surrounding the Rateliner bid (the current transportation Vendor materially waives a seal program at the point in the whse to load-on process except to satisfy either drop delivery stores or store to store “seal” protocol; but then only after enacting its own transload order of delivery priority. The RFP specifically provides or by</td>
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1. In lieu of a trailer seal system, applicant identified a pallet “Seal Integrity” program, an actual upgrade in security plan (pallet seal program identified as of original bid forward).

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Vendor Overall Solution, pg 22
The EC shall determine whether the Vendor can satisfactorily maintain and operate terminals, ....loading purchases: and whether Vendor will provide acceptable equipment including a list of all equipment proposed or likely to be held in the speculation.....size of trucks....The Vendor must demonstrate the ability to handle the anticipated workload...without delay, disrupting stores, licensee, suppliers or carriers.

construction implies that the alternative is that Vendor is responsible for shortages and the like. Vendor attempted as of 7/23 to acknowledge and confirm the Rateliner complete liability in addition to its terminal POO proffered “seals,” just as presently practiced by the encumbant Vendor.

3) At the NHSLC meeting of July 23, Vendor admittedly missed the moment to the degree discussion fell on a pallet seal integrity program. While Vendor mistakenly responded with discussion that centered around a POO pallet seal procedure; Vendor’s priority is to perform the pallet seal procedure at Vendor’s terminal. a.) Vendor further failed to point out the RFP authority to waive trailer seals on the condition of full liability unto Vendor; b.) Vendor did acknowledge and confirm that a pallet seal integrity program that might take place at the Bow whse would translate to whse loading delays; avoidable delays to stores, licensees, suppliers or carriers being prohibited by RFP authority, pg 22; and, however, c.) Even if the July 23 Vendor seal program solution fell short of the EC’s preferred vision of a “LTG” trailer seal program, or even if Vendor arguably caused a loading delay in order to perfect the pallet seal program at the Bow whse, Vendor (at the very same EC meeting) demonstrated (i) a 50% reduction in trailer equipment for whse loading, as well as (ii) Rateliner implemented corrective action to RFP misinformation that all “drop” equipment delivery stores formed around full trailer loads (emphasis added to RFP authority pg 35, “.....where full trailers are dropped.....”. Bottom line: Vendor removes not less than seven (7) direct “drop” loads/trailer loadings per day averaging 10 to 11 pallets per trailer delivery; more than compensating and completely quashing the any “delay” argument if the pallet seal integrity program were to occur at point-of origin whse. Reiterating Rateliner’s “seal” plan priority would be to perform both the pallet seal integrity program and place into the record the inherent liability in performing the pallet seal process with bonded personnel at its transload facility.

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<td>1) Vendor not only cannot be named in a Junior position to EXCEL under Vendor Overall Solution, Vendor is the only bidder to respond to the complete RFP advertisement; Vendor and Vendor seemingly alone has crafted a proposal based on innovation and</td>
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pg. 2
equipment to provide a connection between the truck and the rollers maintained in stores....Transportation staff must be trained in....the correct use of equipment.

P 6, pg 34
“All vendors must file with their bid, a list of vehicles as defined in Section 1.0 including but not limited to tractor trailers......”

Substantial (non dischargeable) RFP Error
Pg 35  Retail store delivery requirements for a breakdown of stores where full trailers are dropped and left for unloading by store personnel......

Vendor Overall Solution, pg 22
The EC shall determine whether the Vendor can satisfactorily maintain and operate terminals, ......loading purchases: and whether Vendor will provide acceptable equipment including a list of all equipment proposed or likely to be held in the speculation.....size of trucks....The Vendor must demonstrate the ability to handle the anticipated workload...without delay, disrupting stores, licensee, suppliers or carriers.

price relief to the licensee community as well as to the benefit of the State –all falling on its equipment model, equipment that must meet USDOT and State DOT compliance, “including not limited to tractor trailers.....” sic RFP p 6, pg 34.

2) By all but dismissing the Vendor’s secondary equipment “goose-neck” model, any alternative vendor certainly cannot meet the RFP pricing goal, as well as there is also no price relief unto the licensee community equal to not less than 40 percent less than nearest independent license delivery provider. If other vendor applicant offered price relief to the licensee community.

3) The RFP represented that “drop” store deliveries would form around full trailer load deliveries, RFP pg 35. By virtue of same RFP misinformation pertaining to the seven (7) “drop” equipment stores (the highest cs volume stores), same seven (7) daily deliveries take place at a 50% equipment load to mileage deficiency ratio (50% of drop trailer deliveries are not cost effective under either the present vendor regime and/or any other third-party model), and the NHSL, by adopting the EXCEL LTG trailer seal program, a third-party vendor is obstructed from efficiency and incurs double its operating costs by performing half “drop” loads if by the strict trailer seal system approach.

4) In any light of day, the RFP guidelines do not disallow and actually promote Vendor’s equipment model, and absent a vendor trailer seal exception on the condition of full acceptance of liability, the NHSLC seal trailer standard has created an unfair advantage to the warehouse provider’s transportation bid.

5) Even if the NHSLC predicated its presumed award to EXCEL grounded on the Rateliner equipment model, such grounds would fly in the face of logic and foundation of the Rateliner bid itself as to the undisputed WTG-TTS subcontractor TT equipment reserve. An argument cannot be sustained that Vendor Applicant does not hold ample conventional means and ways tractor trailer equipment by virtue of same WTG-TTS equipment support.