

Craig W. Bulkley

From: Louis Cerone <lcerone@xtlonline.com>
Sent: Monday, August 13, 2012 12:32 PM
To: Craig W. Bulkley
Subject: RE: Best & Final Offer Follow-Up

Mr. Bulkley,

Thank you for your email dated August 10th and your two (2) follow-up emails dated August 13th.

After our telephone conversation this morning, XTL-NH is confirming that it can reduce its Grand Total by \$500,000 over the first 30-month period, so that XTL-NH's revised Grand Total is \$26,210,798 for the first 30-month period.

In addition, XTL-NH will **guarantee** the minimum payment of its Revenue Sharing Proposal with the NHSLC, regardless of the volume of cases handled. The total sharing is \$1,850,000 over the 20-year term of the contract.

XTL-NH understands and accepts, without any exceptions, all of the Commission's and the Office of the Attorney General's clarifications regarding the RFP and standard contract sections that were referenced in the NHSLC's August 10, 2012 and August 13, 2012 emails.

XTL-NH reaffirms that it fully accepts all of the RFP's terms and conditions and all of State of New Hampshire General Conditions, as outlined in RFP Appendix E, as amended by Exhibit C, and in the standard contract, without any exceptions.

XTL-NH is fully prepared to enter the Contract Negotiations phase, if the NHSLC decides that XTL-NH's proposal best meets the needs of the NHSLC and the citizens of New Hampshire.

Please confirm receipt.

Thank you.

Sincerely,

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

From: Craig W. Bulkley [mailto:cbulkley@liquor.state.nh.us]
Sent: Friday, August 10, 2012 2:58 PM
To: lcerone@xtlonline.com
Subject: Best & Final Offer Follow-Up

Louis:

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

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 – 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.”
- Appendix E – 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 **11:00 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.



Please consider the environment before printing this e-mail.

Craig W. Bulkley
Director
Division of Administration
NH State Liquor Commission
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FAX (603) 271-3897
Cell: (603) 490-1559

Craig W. Bulkley

From: Brian Law <brianlaw@lawwarehouses.com>
Sent: Monday, August 13, 2012 11:08 AM
To: Craig W. Bulkley
Cc: John Guerette; LAW-Jack Glow; Lehmann, Suzan M.; Jack Law
Subject: RE: Best & Final Offer Follow-Up

Craig:

1. We are not able to reduce our Grand Total. Throughout this process we have strived to provide the lowest possible cost to the NHSLC and its suppliers while providing the revenue necessary to ensure our ability to continue to provide a comprehensive and efficient distribution system.
2. We must retain our exception to the following items:
 - a. Liability (1.5.7)
 - b. Exclusive Contract (1.10.2) & Location of Product (3.0.2): Our Proposal is specifically contingent upon a one warehouse scenario, with the provision that the NHSLC may use the Concord warehouse for NHSLC owned and NH winery product produced in NH.
 - c. Data (App E, Section 9)
 - d. Assignment (App E, Section 12): add "consent will not be unreasonably withheld or delayed".
 - e. Protest Process (1.24 & App E, Exh C, P25)
 - f. Liquidated Damages (App C, VII 10d): Too broad, three scheduled deliveries can be missed by one trailer load being late.

Brian

From: Craig W. Bulkley [mailto:cbulkley@liquor.state.nh.us]
Sent: Friday, August 10, 2012 2:58 PM
To: Brian Law
Subject: Best & Final Offer Follow-Up

Brian:

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

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 1.5.2 – Proposal Offer – Page 8, Section 1.22 – Proposal Guarantee – “App C, 3.3” (we can not find this reference). The NHSLC will allow your proposal to be withdrawn with no penalty on August 29, 2012.
- 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 – 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.”
- Appendix E – 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 your rejected exceptions by telephone with Steve Judge and Craig Bulkley at 9:00 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.



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August 13, 2012

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

VIA Email: cbulkley@liquor.state.nh.us

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

Dear Mr. Buckley,

Below please find Exel's response to the NHSLC's request to fine tune its Best and Final Offer (BAFO).

1. Financial

Question:

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.

Answer:

We can reduce our Grand Total to \$25,500,000, assuming that we together find a mutually satisfactory solution to Exel's request for the backing of certain assets by the new provider in the event of an early termination.

Alternatively, we offer a Grand Total of \$28,000,000 if the State is not able to back certain assets or to contractually commit to having the new provider assume certain assets.

2. RFP / Standard Contract

Comment:

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

Response:

We confirmed on our call today that if successful we have exclusivity for warehousing all liquor and wine products in New Hampshire except for product owned by the state or vendor-owned product produced by a vendor with a NH manufacturing license.

