

§90. Contract for wholesale spirits activities and marketing

1. Statement of purpose. The Legislature finds that it is in the public interest to continue to maximize growth in the State's wholesale spirits business while ensuring that growth in revenue from the business is achieved in a socially responsible manner. The contracting of the operations of the wholesale spirits business serves this purpose and provides the State's agency liquor store partners with effective and efficient services in order to responsibly serve consumers of spirits in the State. [PL 2021, c. 592, Pt. A, §1 (RPR).]

2. Contract for spirits administration and trade marketing. Upon the expiration or termination of all contracts for the operation of the State's wholesale spirits business in effect on January 1, 2022, the commissioner shall enter into a single 10-year contract for spirits administration and spirits trade marketing in accordance with the requirements in this section. [PL 2021, c. 592, Pt. A, §1 (RPR).]

3. Competitive bid process. A contract described in subsection 2 must be awarded pursuant to a competitive bid process in a manner consistent with the process described in Title 5, chapter 155, subchapter 1-A. [PL 2021, c. 592, Pt. A, §1 (RPR).]

4. Request for proposals. The commissioner shall develop a request for proposals for the competitive bid process required under subsection 3 designed to encourage vigorous bidding. The request for proposals must:

A. Inform potential bidders of the State's target gross revenue profit margin over the term of the contract; [PL 2021, c. 592, Pt. A, §1 (RPR).]

B. Instruct potential bidders to propose the scope of spirits administration and spirits trade marketing services that will be provided and the fee for those services expressed as a percentage of revenue generated by the wholesale business; [PL 2021, c. 592, Pt. A, §1 (RPR).]

C. Direct potential bidders to indicate whether subcontractors will be used for any portion of the services described in paragraph B and to identify those subcontractors; [PL 2021, c. 592, Pt. A, §1 (NEW).]

D. Inform potential bidders that they may propose incentives intended to encourage responsible growth of revenue and enhanced efficiencies in services provided; and [PL 2021, c. 592, Pt. A, §1 (NEW).]

E. Require each bidder to affirm that neither the bidder nor any of the principal officers of the bidder has a direct financial interest in a license or permit in this State or another state for the manufacture of spirits, other than a minor investment in not more than 1% of the securities of a business entity that holds such a license or permit. [PL 2021, c. 592, Pt. A, §1 (NEW).]

[PL 2021, c. 592, Pt. A, §1 (RPR).]

5. Information provided by bidder. A bidder seeking consideration of the award of a contract pursuant to this section shall:

A. Demonstrate the bidder's knowledge of the wholesale liquor business, the alcoholic beverage industry or a related field as well as the bidder's experience or knowledge, if any, of the responsible marketing of liquor; [PL 2021, c. 592, Pt. A, §1 (RPR).]

B. Propose the bidder's marketing strategies and the scope of the spirits administration services the bidder will provide as well as the fee for those strategies and services expressed as a percentage of revenue generated by the wholesale business; [PL 2021, c. 592, Pt. A, §1 (RPR).]

C. Identify the strategies and services proposed in paragraph B for which the bidder may use a subcontractor and identify those subcontractors; [PL 2021, c. 592, Pt. A, §1 (RPR).]

- D. Demonstrate the bidder's financial capacity and access to capital to maintain the strategies and services proposed in paragraph B; [PL 2021, c. 592, Pt. A, §1 (RPR).]
- E. Demonstrate the bidder's capabilities for providing transportation and distribution of spirits to agency liquor stores, which must include:
- (1) Delivery vehicles with the appropriate capacity to deliver spirits to the full range of agency liquor stores, including both large and small stores;
 - (2) Drivers with the requisite driver's license credentials to drive all sizes of delivery vehicles;
 - (3) The ability to make deliveries to agency liquor stores on at least 250 days per year; and
 - (4) The ability to provide the minimum number of deliveries established in the request for proposals per week to each store, which may not be less than 2; [PL 2021, c. 592, Pt. A, §1 (RPR).]
- F. Demonstrate the bidder's warehousing capacity and ability to expand its warehousing capacity over the term of the contract. The bidder shall propose bailment rates and related fees that the bidder proposes to charge spirits suppliers; [PL 2021, c. 592, Pt. A, §1 (RPR).]
- G. Describe the bidder's information technology capabilities, which must include methods for processing orders and invoices, inventory management and sales data analysis; [PL 2021, c. 592, Pt. A, §1 (NEW).]
- H. Describe the bidder's plan for enhancing services to spirits suppliers and agency liquor stores; [PL 2021, c. 592, Pt. A, §1 (NEW).]
- I. Describe the bidder's business plan to provide services in a manner that will assist the State in achieving a responsible growth rate for the wholesale spirits business; [PL 2021, c. 592, Pt. A, §1 (NEW).]
- J. Demonstrate the positive impact on the economy, employment and state revenues that the bidder's overall proposal will provide; [PL 2021, c. 592, Pt. A, §1 (NEW).]
- K. Demonstrate that the bidder, any principal officer of the bidder and any named subcontractor have not been found to have violated any state or federal law or rule governing the manufacture, distribution or sale of spirits; and [PL 2021, c. 592, Pt. A, §1 (NEW).]
- L. Affirm that neither the bidder nor any of the principal officers of the bidder has a direct financial interest in a license or permit in this State or another state for the manufacture of spirits, other than a minor investment in not more than 1% of the securities of a business entity that holds such a license or permit. [PL 2021, c. 592, Pt. A, §1 (NEW).]

In addition to the requirements of paragraphs A to L, the commissioner, in order to ensure that the objective of maximizing growth in the State's wholesale spirits business is achieved, may require a bidder to provide additional information, including disclosure of the potential of a bidder's direct and substantial conflict of interest with the State's financial interest.
[PL 2021, c. 592, Pt. A, §1 (RPR).]

6. Award criteria and issuance of contract. The commissioner shall choose the best-value bidder in conformity with Title 5, section 1825-B, subsection 7 and shall consider as criteria for award the information required to be provided in subsection 5. The commissioner may not award the contract to a bidder that holds or has a direct financial interest in, or that has a principal officer that holds or has a direct financial interest in, a license or permit in this State or another state to manufacture spirits. A minor investment in not more than 1% of the securities of a business entity that holds a license or permit in this State or another state to manufacture spirits does not constitute a financial interest prohibited by this subsection.

The commissioner shall ensure that the following criteria are met before entering into a contract:

- A. That revenue to the State from the sale of spirits is predictable over the term of the contract; [PL 2021, c. 592, Pt. A, §1 (RPR).]
- B. That revenue from the sale of spirits will be maximized by the issuance of the contract and achieved through efficiency of services; [PL 2021, c. 592, Pt. A, §1 (RPR).]
- C. That the bidder has demonstrated that services provided to agency liquor stores will be enhanced; and [PL 2021, c. 592, Pt. A, §1 (RPR).]
- D. That, upon execution of the contract, the disruption of services to agency liquor stores and spirits suppliers will be minimal or absent. [PL 2021, c. 592, Pt. A, §1 (NEW).]
[PL 2021, c. 592, Pt. A, §1 (RPR).]

7. Mandatory contract provisions. A contract entered into with a successful bidder in accordance with this section must:

- A. Require that the person awarded the contract submit to the bureau, in a manner determined by the bureau, an annual report audited by an independent 3rd party. The bureau, following receipt of the report, shall provide the report annually to the joint standing committees of the Legislature having jurisdiction over appropriations and financial affairs and alcoholic beverages matters; [PL 2021, c. 592, Pt. A, §1 (NEW).]
- B. Prohibit the person awarded the contract from engaging in activities reserved for agency liquor stores licensed as reselling agents to provide spirits to establishments licensed for on-premises consumption; [PL 2021, c. 592, Pt. A, §1 (NEW).]
- C. Include provisions that allow for ongoing performance standards review so that deficiencies in such standards may result in amendments to the contract or nullification. Performance standards subject to contract amendments or nullification include:
 - (1) Working in partnership with the State to achieve the goal of a responsible growth rate for the wholesale spirits business as negotiated with the successful bidder at the time of award;
 - (2) Transparency in annual reporting and conformance to the reporting requirements established in consultation with the successful bidder throughout the term of the contract by the bureau; and
 - (3) Responsiveness to the service needs of agency liquor stores; [PL 2021, c. 592, Pt. A, §1 (NEW).]
- D. Include provisions establishing standards of efficiency and quality of operations; and [PL 2021, c. 592, Pt. A, §1 (NEW).]
- E. Require that the bureau approve all bailment rates and related fees. [PL 2021, c. 592, Pt. A, §1 (NEW).]
[PL 2021, c. 592, Pt. A, §1 (RPR).]

8. Extension. The commissioner and a successful bidder awarded a contract under this section may agree to a single extension of the existing terms of the contract for a period of no more than 3 years following the end of the original 10-year contract term.
[PL 2021, c. 592, Pt. A, §1 (NEW).]

9. Price regulation. Notwithstanding any other provision of this section to the contrary, the State shall regulate the wholesale and retail prices of all spirits sold in the State.
[PL 2021, c. 592, Pt. A, §1 (NEW).]

SECTION HISTORY

PL 2013, c. 269, Pt. A, §4 (NEW). PL 2013, c. 368, Pt. V, §61 (REV). PL 2021, c. 592, Pt. A, §1 (RPR).

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