Nichols, Devon

From: randvic@aol.com
Sent: Wednesday, August 17, 2011 7:33 PM
To: SenateWaysandMeans
Subject: State Liquor Warehousing & Distribution

Gentlemen and Women:

It is my opinion that the State has no business to be in the liquor business. Liquor distribution and sales should be conducted in the private sector and liquor sales should be duely taxed bt the State.

Randy J Gibson
Lynnwood

WASHINGTON WRA RESTAURANT
ASSOCIATION

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To: Susan Johnsen, Office of Financial Management

cc: Mr. Jim McIntire, Washington State Treasurer
Senator Joseph Zarelli
Senator Scott White
Representative Cary Condatta
Representative Ross Hunter
Senate Ways & Means Committee

From: Bruce Beckett
Washington Restaurant Association

RE: Comments on the Draft RFP for the Liquor Distribution and Warehousing System

The Washington Restaurant Association (WRA) appreciates the opportunity to provide comments on the draft RFP and supporting documents for the State Liquor Warehousing and Distribution system.

Background:

The WRA represents the interests of thousands of liquor licensee businesses across Washington State that collectively are the largest customer segment of state liquor stores. The draft RFP indicates that there are 4,945 licensees businesses served by Washington State liquor stores. Between 26 and 30% of sales from the state's liquor retail outlets are to these businesses that are entirely dependent on the state for their supply of liquor. These businesses employ tens of thousands of people and generate extraordinary economic activity in every community across the state. Because these businesses are dependent on their supply of liquor from the state, they will be impacted by the outcome of the RFP process.

The WRA engaged in the debate over the passage of ESSB 5942 from the standpoint of these customers and looks forward to working with OFM, the Liquor Distribution Advisory Committee, and the Legislature to resolve the following issues with the draft RFP.

1. **The draft RFP process to date has not adhered to the process outlined in ESSB 5942 to define and establish criteria on how to determine "positive financial benefit to the state and local government".**

   Section 2(2)(b)(ii) of ESSB 5942 states, "The office of financial management, in consultation with the liquor distribution advisory committee and interested stakeholders must develop a definition and criteria on how to determine "positive financial benefit to the state and local government".

This step in the process has not occurred, and the model included in the draft RFP reflects this oversight.

There are two reasons this stakeholder process was included in ESSB 5942:

a. To set a consistent standard for evaluating proposals. The concept of net financial benefit to the state and local government is intended as a threshold criterion for evaluating proposals. While the questionnaires and information required to respond to the draft RFP will provide important information on each bid, and on the respective bidders, the intent of ESSB 5942 was to establish, in advance, the criteria that each proposal would be evaluated against. In fairness to the bidders, those criteria should be fully disclosed in the RFP, thereby allowing each proposal to be evaluated against a consistent set of standards of what constitutes "positive financial benefit to the state and local government".

b. To ensure that all appropriate criteria are included in evaluating the financial benefit to state and local governments. What constitutes "positive financial benefit to the state and local government" is undoubtedly a complex issue. Accordingly, the WRA worked with lawmakers to include the stakeholder process in ESSB 5942 because the operation of the liquor distribution system will impact, either positively or negatively, jobs and economic activity generated by the thousands of businesses dependent on the state for their supply of liquor. The draft RFP failed to adhere to the process outlined in ESSB 5942 and only contains a simple "profit and loss" spreadsheet (Exhibit G) required of the bidders. That spreadsheet does not consider the jobs and employment impacts of a proposal because it does not examine the impact of the proposal on the end customers – both retail and licensee customers. WRA would envision that the criteria could be both quantitative (per Exhibit G), and qualitative (e.g. – answers to questions about how the bidder will improve customer service, availability, product offerings, delivery options, address short term spikes in demand, meet the needs for special events, etc.). Doing so ensures that state and local governments have a sense of whether or not the proposals would impact, either positively or negatively, jobs and economic activity in the businesses dependent on the state for their supply of liquor.

WRA suggests that the process requirement for defining benefit to state and local governments contained in ESSB 5942 be adhered to prior to issuing the final RFP.

2. The RFP should establish a set of specific performance measures instead of leaving it to the bidders to provide a set of performance measures.

Section 4.2.2 Performance Measures, states that bidder ….."Provide clear, measurable standards for the performance of the contract that the Offeror proposes to achieve as a result of the delivery of these services". The RFP further requests information on how these measures would be monitored and reported, and refers bidders to WSLCB reference materials. From an end customer standpoint, the WRA is interested in reliability of service to the stores, existing product availability, expansion of liquor selection availability, how to address short term, unexpected needs, etc. Accordingly, the WRA believes the RFP should, indeed, establish some baseline performance measures. Those performance measures should align closely with the definition and criteria for determining net financial benefit to state and local governments, as discussed earlier.

3. **The RFP fails to request information on potential deliveries to licensee customers of the state's retail stores.**

   The WRA recognizes that ESSB 5942 does not include specific requirements for bidders to present options for deliveries to licensee customers of state liquor stores; however, during the lengthy discussions over the bill, the WRA was repeatedly assured that the RFP would include a request that bidders to evaluate the opportunity to deliver directly to business customers. The WRA suggests that the final RFP include such a request of bidders.

The WRA recognizes the complexity of this RFP, and appreciates the opportunity to provide comments on the draft RFP. Again, we urge that the final RFP not be issued until the stakeholder process requirements for developing a definition and criteria for net benefit to state and local governments are adhered to.

August 19, 2011

To: Members of the Liquor Distribution Advisory Committee
Susan Johnsen, RFP Coordinator, OFM RFP NO. 12-200
Fr: Greg Hanon, on behalf of Costco Wholesale
Re: Public Input to RFP 12-200

Thank you for the opportunity to provide comments regarding the process for implementation of SB 5942. I have divided my comments into two segments; the first focuses on areas where the draft RFP does not comport with requirements spelled out in SB 5942. The second focuses on suggested changes and clarifications to the draft RFP, and related documents.

1. The OFM process does not align with SB 5942

SB 5942 requires a successful applicant to demonstrate that the proposal will provide a net economic benefit to the state and local government. The bill requires OFM, in consultation with the liquor distribution advisory committee and interested stakeholders, to develop a <u>definition and criteria</u> on how to determine positive financial benefit to the state and local government (Section 2(b)(ii)). Yet there has been no visible consultation with the advisory committee or stakeholders on this issue, and the draft RFP contains no definition or criteria regarding a net economic analysis. Under SB 5942 a definition and criteria must be included in the RFP and there must be a stakeholder process to allow for input. The requirement of a positive financial benefit to the state and local governments and the definition thereof are threshold issues in the development of an RFP and the eventual evaluation of any proposals. Before the RFP is released it must contain this definition and criteria. I have included a proposed definition and criteria for net financial benefit at the end of this memo.

Consultation with stakeholders needs to occur prior to release of an RFP. Consultation with stakeholders requires more than simply the opportunity to provide comments to OFM, in particular when OFM states that it will not be responding to individual comments.

> From OFM Website:
> If you would like to submit feedback on the DRAFT RFP during the public review period, please email RFP.Comments@ofm.wa.gov by Aug. 25th. <u>Please note that we will not respond to each email received.</u>

Finally, the RFP violates the requirements of SB 5942 by failing to include "measurable standards for performance of the contract" (Section 2 (2) (b) (ix)). The legislation provides that the RFP include "without limitation" the performance standards, however, the RFP instead allows applicants to pick their own performance standards (4.2). This is clearly inconsistent with the requirements of SB 5942.

2. Suggestions for changes and clarification to Draft RFP 12-200

3.2 RFP Coordinator-Communication directed to parties other than the RFP Coordinator may result in Disqualification of the Offeror. What does this language mean? What kind of communication would result in a disqualification? Who are the parties covered by this prohibition?

3.3 Estimated Schedule-The schedule provides that OFM will release the fiscal impact analysis of each of the offers in the procurement prices. The analysis must include the various assumptions on which returns to the state are calculated, including any assumed increases in liquor volumes sold and increases in prices to LCB customers, as well as the split between returns anticipated from the wholesale function and the retail function. The data should also provide for a baseline that begins with only those functions that the LCB cannot already provide under their current authority.

3.6 Proprietary Information/Public Disclosure-The RFP requires that all proposals will become the property of the LCB and shall remain confidential until a contract resulting from this RFP, if any, is signed. What measures will OFM employ to make sure the proposals, or any part of the proposals, remain confidential and are not released to the public? Will public release of the confidential proposals or a part of the proposal disqualify a proposal? Will public release in violation of the RFP lead to a process of rebidding? What are the consequences of the release of a proposal or a part of a proposal before the contract is signed?

Clarity on this issue is necessary as OFM is already on notice of the intention of at least one stakeholder to publicly release the details of any proposal prior to the November election.

(Part of a July 26 e-mail from representative of Teamsters JC 28 to Marty Brown at OFM. Underlining added)

"Also, there is up to a 60-day window after the preferred package is presented within which WSLCB can enter into a contract with the selected bidder. This component isn't really germane to our discussion, since the concern isn't about the actual contract but about the preferred package itself being available for review before the general election. In other words, the key is getting the details of the preferred package in front of voters as quickly as possible, not the nuts and bolts of the contract itself."

6. Financial Section-50% of the evaluation of each proposal will be weighted to a proposals ability to show a positive financial benefit to the state. However, the RFP provides no guidance on how this critical component will be evaluated. SB 5942 is clear that the RFP must include the definition and criteria of net benefit to the state and local government to allow for the judging of the various proposals.

6.5 Commitment to Invest in Capital Improvements-SB 5942 requires a successful proposal to make a commitment to invest in quantified capitol improvements to the state's warehouse and distribution facilities. Will these capital improvements revert to the state at the end of the lease, or must the state purchase them from the private entity? What impact does this have on the net benefit analysis?

7.2 Financial section-add the word “Net”

Suggested New Section-The RFP should include language that the process will cease immediately without further obligation of the state to actual or potential participants if I-1183 is approved by the voters in November. In addition, if there is any scenario under which a contract might be awarded prior to the election, the RFP should specify that passage of the initiative voids the contract and gives rise to no claim by any actual or potential participant except for a return of any monies that have actually been tendered to the state.

Comments on Draft Contract

<u>Payment Procedures to State</u>-This section should be revised to clearly define the status of the capital improvements at the end of the lease period. Are they owned by the state, or does the state have to purchase them from the contractor?

Comments on Exhibit A to WSLCB Contract No.____

<u>Treatment of Assets</u>-This section entitles a contractor “to be reimbursed as a direct item of cost” for any property provided under the contract. As a reimbursement, will this be calculated separately from the net positive financial benefit analysis? Does the entitlement to reimbursement also include the capitol improvements that will be required by the legislation?

Comments on Property Management Lease

<u>Expenses</u>-The state is exempt from paying property taxes on the warehouse and distribution center. A private operator would be required to pay property taxes. Will property taxes apply to the warehouse and distribution center because the state will now be leasing the facility to a private tenant?

<u>Fixtures</u>-These sections would allow the lessor to remove all improvements made during the lease. Will the removal of these capital improvements be deducted from net benefit analyses? How does this reconcile with the Treatment of Assets clause in Exhibit A which passes title to the state of contractor property issued in performance of the contract?

<u>Tenant Improvements</u>-Why is the state obligated to provide tenant improvements as part of the lease? All references to the state providing and paying for tenant improvements should be deleted from the proposed lease.

Suggested Additional Terms and Conditions- The lease should be clear in this section on the status of the Capital Improvements made during the lease. Does the state own them outright, or will the state be obligated to pay for them at the end of the lease?

Business Questionnaire (Exhibit D)

4.2.1 (2)-An additional question should be included that requires the proposal to explain what services being proposed could not otherwise be provided by the state without entering into a contract with a private party. Alternatively, the OFM evaluation of the proposals should not provide points or weighting to any part of a proposal that could be implemented by the LCB under its existing authority.

Generally-The business questionnaire needs to include a section of questions for applicants to respond in detail regarding the net benefit to the state while utilizing the definitions and criteria required in SB 5942.

We reserve the right to submit additional comments.

Proposed Definition and Criteria “Net financial benefit to state and local government":

The value of qualifying cash payments to state and local government under the contract must exceed the direct and indirect costs that will be experienced by state and local government due to the contract, whether before, during or after the term of the contract. Qualifying cash payments shall be those resulting from changes in operations as caused by the contract but only to the extent that those changes in operations could not have been implemented by the LCB in the absence of the contract.

In considering those changes in operations, OFM shall consider the extent to which the LCB currently does not conduct its operations to maximize revenues and how the LCB would otherwise operate in the absence of the contract were it to have a revenue optimization goal similar to those contained in the bidders' proposals.

Qualifying cash payments shall not be deemed to include those that are an acceleration of revenues that the LCB would have generated in the absence of the contract.

In considering "net financial benefit" OFM and bidders shall distinguish between and among and quantify benefits arising from qualifying efficiencies in operations as distinct from increases in prices charged to LCB customers and as distinct from any increase in quantities of alcohol sold.

Indirect costs shall, without limitation, include social costs arising from increases in quantities sold. Indirect costs shall also include opportunity costs experienced as a result of the contract, including, without limitation, revenues foregone from the inability to privatize retail operations during the term of the contract.

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Michael Gonzales

Teamsters Local 174 and Teamsters Joint Council No. 28

Senate Ways & Means Committee

August 22, 2011

On behalf of more than 55,000 Teamsters in the State of Washington, the Joint Council No. 28 submits the following comments on OFM's Request for Proposal regarding the wholesale distribution and warehousing of spirits.

Teamsters Local 174, my local, currently represents dozens of drivers at Pozzi Brothers and Oak Harbor, two companies currently delivering hundreds of thousands of cases of spirits to the state run liquor stores. I drove a beer truck for 10 years and am very familiar with the ins and outs of the distribution system.

Since the voters soundly and resoundingly defeated the liquor privatization initiatives in 2010, the Teamsters have been supporting a compromise solution to find ways to improve customer service and efficiency while maintaining the general system the people voted for and protecting public safety and jobs related to the retail sector. We strongly supported the bipartisan passage of SB5942.

The Teamsters support the proposed RFP because it would lease out the liquor distribution system but not disrupt the state retail liquor stores or disturb the third party beer distribution system and therefore could:

- Provide sizeable revenue for the decimated state budget;
- Address customers complaints about delivery times in rural areas; and
- Create hundreds more potential jobs in truck driving and warehousing around the state.

The Teamsters have a few suggestions to improve the proposed RFP:

1. **Increase opportunities for public review by releasing bids to the public.** We would also ask for a clarification about how and which sections of the bids will be released to the public. In our view, the basic tenets of each bid should be made publicly available for review and to give the public the opportunities to provide input on revenue, jobs and public safety aspects of the bids.

2. **Increase opportunities for public review by streamlining process**. We also appreciate that the timeline for the entire process moved closer to what was in the statute but it would be better if the timeline followed law in order to give the most opportunity to the public to review choices and options. With the analysis by OFM for state and local governments projected release on November 2nd, there is not very much time for thoughtful consideration. We would suggest cutting 14 days out of the time between the release of the RFP on August 31st and when the bid is due to the state on September 29th and cutting 7 days out of the evaluation period between September 30th and October 28th.

3. **Increase flexibility during contract negotiations with bidders.** Specifically, OFM proposes to use, word for word, boilerplate state contract language. This standard contract is too simple for the complexities of a first-time, one-of-a-kind long term contract. OFM could provide this contract as a start for negotiations but allow considerable flexibility during the negotiation process.

4. **The RFP should give some guidance on how proposals will be judged**. Is there a scoring system or some description of criteria needed for approval? Without these guidelines, bidders may be shooting in the dark and the public won't know why OFM has made its decision.

5. **Encourage a longer contract**. A 10-year contract is probably not long enough to allow a bidder to get a return on investment or to maximize the return to the state, particularly in the form of a substantial initial payment. The legislature discussed at least a 20-year lease

to give businesses planning and financial certainty and an incentive to invest in system-wide capital improvements and infrastructure.

Thank you for the opportunity to provide our input. I would be happy to address any questions you have or for more information, please contact:

Michael Gonzales
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Heather Weiner
Teamster Joint Council No. 28
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heather.weiner@jc28.org.

From:	Jon Jurich
To:	Hunter, Rep. Ross; Alexander, Rep. Gary; SenateWaysandMeans; Murray, Sen. Edward; Zarelli, Sen. Joseph
Subject:	Comments to draft of OFM RFP 12-200
Date:	Thursday, August 25, 2011 4:42:52 PM
Attachments:	Request for Clarification on RFP Draft - Addendum 8-24-2011.pdf Request for Clarification on RFP Draft 8-22-2011.pdf ltr to OFM re Definition of Net Financial Gain 8-25-2011.PDF

Honorable Members of the Legislature:

We represent parties interested in the forthcoming Request for Proposal 12-200 (the "RFP") issued pursuant to Chap. 45, 2011 Session Laws 1st Special Session. As per the invitation of Representative Hunter during the public hearing held by the Washington State House Committee on Ways and Means, we have attached our comments regarding the public comment draft of the RFP made available by the Office of Financial Management on August 8, 2011. We are also providing a copy to the Washington State Senate Ways and Means Committee with this e-mail.

The attached comments include three files: (1) a request for clarification regarding the draft RFP; (2) an addendum to the request for clarification; and (3) a copy of a letter to Ms. Susan Johnsen, the RFP coordinator, regarding the proposed definition for net positive financial benefit. These comments have also been provided under separate cover to Ms. Johnsen and the Office of Financial Management.

Thank you for your time and consideration.

Kind regards,
Jon Jurich

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August 25, 2011

Washington State Office of Financial Management
Attn: Ms. Susan Johnsen
P.O. Box 43113
Olympia, Washington 98504-3113

Re: Definition of "Net Positive Financial Benefit to the State and Local Government" in Request for Proposal 12-200

Dear Ms. Johnsen:

We represent parties interested in the forthcoming Request for Proposal 12-200 (the "RFP"), a draft of which was released by your office on August 8, 2011, for public review and comment as required pursuant to Section 2(2)(c) of Chap. 45, 2011 Session Laws 1st Special Session (the "Act"). We write today with a proposed definition of "net positive financial benefit" which we believe provides clear, objective and readily quantifiable methods to measure the potential benefit of proposed payments in responses to the RFP against a clear baseline measure calculated on the current financial benefits of the State's liquor warehousing and distribution operations, as provided in the Act.

During the public hearing held by the Washington State House Committee on Ways and Means (the "Committee") on August 22, members of the Committee and testifying members of the public noted the need for a clear definition of "net positive financial benefit to the state and local government," as required by Section 2(2)(b)(ii) of the Act. As was made clear during the hearing, the Act requires the Office of Financial Management ("OFM") to take into account a variety of payment streams, including the up-front payment, proposed profit sharing payments, business and occupation and liquor tax revenues, and changes to retail profits resulting from the lease or contract.

We are only aware of one proposed method for defining a "net positive financial benefit," which was suggested by Mr. Greg Hanon on behalf of Costco Wholesale. It is our view that, taken as a whole, Mr. Hanon's proposed definition would limit the ability of potential respondents to the RFP to clearly demonstrate the benefits of their proposal and would hinder the ability of OFM, the Liquor Distribution Advisory Committee (the "LDAC"), and the Liquor Control Board (the "Board") to evaluate proposals on a consistent basis. Such limitations on potential respondents may reduce the number of bids received, potentially to the detriment of the State.

Mr. Hanon's proposed definition lacks clear, objective measures. The proposed definition would require an offeror to quantify hard-to-measure categories such as the social costs of a successful proposal and the opportunity cost to the State from forgoing future privatization of retail operations during an accepted contract. To the extent these costs are readily quantifiable, they will vary to reflect assumptions for each offeror's proposed contract; as a result, OFM, the LDAC and the Board will be forced to compare proposals with varied underlying assumptions.

Similarly, the proposed definition limits consideration of payments to include revenue increases "only to the extent that those changes in operations could not have been implemented by the [Board] in the absence of the contract." The proposed definition provides broad and vaguely defined exceptions to what an offeror could measure in demonstrating its benefit and what OFM, the LDAC and the Board could consider in evaluating responses to the RFP. Similarly, potential bidders, OFM, the LDAC and the Board will be forced to evaluate what changes the Board "could" have implemented without any clear guidance on how to measure those changes or to evaluate whether the Board has previously considered and elected not to make such changes for reasons which may include cost to the State.

The highly subjective valuations required by Mr. Hanon's proposed definition would place potential bidders, OFM, the LDAC and the Board, when evaluating any apparent winning bidder's proposal, in a difficult position and could effectively compromise the entire process. Our attached proposed definition provides a clear, objective, and readily quantified metric against which to measure each response to the RFP.

Thank you for your efforts in preparing the draft RFP. If you have any questions, please contact me at (206) 245-1717 or via e-mail at Jon.Jurich@pacificalawgroup.com.

Sincerely yours,

PACIFICA LAW GROUP LLP

By

Jon Jurich

Cc: Washington State House Committee on Ways and Means
Washington State Senate Ways & Means Committee

Encl: Proposed definition of "net positive financial benefit to the state and local government" for inclusion in RFP 12-200

Proposed Definition: "Net Positive Financial Benefit to the State and Local Government"

The net financial benefit is defined as the difference between (1) the estimated cash payments and future value of the State's liquor warehousing and distribution business to the state and local government provided under the Offeror contract, and (2) current liquor system profitability.

The estimated cash payments and future value of the State's liquor warehousing and distribution business to the state and local government provided under the Offeror contract may include, but are not limited to:

- Upfront payments;
- Profit sharing payments;
- WSLCB profits;
- State sales tax revenues;
- Liter tax revenues;
- B&O tax revenues;
- Eliminated operating expenses and capital investments currently paid for by the State;
- Additional capital investments made by the Offeror for the benefit of the State;
- Enhanced value of State's improved liquor business at the end of the contract; and
- Other items in the Offeror's proposal that OFM would find of value to the State.

WASHINGTON OFFICE OF FINANCIAL MANAGEMENT

Question / Requests for Clarification on RFP Draft Released August 8, 2011

Section/Concept	Question/Request	Rationale/Detail
RFP Questions and Suggestions		
1.2 - Objectives and Scope of Work	• The language describing the Scope of Work is slightly different than the contract scope set forth in the statute.	• For clarity, State should use consistent description of the scope of work to include the two statutory components consisting of: o The lease of or other contract for the entire state liquor warehousing and distribution business, including the facilities, operations and other assets associated with the warehousing of liquor and the distribution of liquor; and o The exclusive right to warehouse spirits and to distribute spirits in the state.
	• Can you please clarify what is meant by, "Contractor shall be responsible for ensuring product is available to retail locations statewide at or above the State's current levels"? Based on the RFP and proposed contract, this does not appear to be in the Contractor's control.	• RFP (Section 3.11) and proposed contract (Exhibit B) state that the WSLCB maintains the exclusive authority to select products and determine which products will be carried in state and contract liquor stores.
	• Do certain stores not have access to certain products (e.g., as a result of minimum order sizes, etc.)? Is the State looking for private sector guidance on product listing? Please clarify.	• Statement as drafted is unclear.
1.3 - Mandatory Minimum Qualifications	• Minimum Qualifications section requires wholesale distribution experience with a private or public partner. The statute requires that the RFP be designed to encourage the participation of private sector entities with previous wholesale distribution experience with a public partner.	• It is unclear who / what party is required to have a minimum of 5 years' experience. • The statutory direction that the RFP be designed to encourage participation of entities with public partner experience can be addressed by requiring as a minimum qualification "previous wholesale distribution experience with a public partner" and/or by adding this experience to the scoring factors in section 5.2.
	• If an Offeror is a NewCo organized by parties that satisfy the minimum requirement of at least 5 years of relevant, wholesale distribution experience with a private or public partner, is the NewCo qualified to bid?	• Definition of "Offeror" should be expanded to include owners, members, representatives, employees, or subcontractors.
1.4 - Funding	• Can it be assumed that "net financial gain to the State" can come from numerous sources in addition to "payments from the Contractor" (e.g., upfront and profit share payments, increased retail revenues, increased tax revenues and operating cost savings, including disposition of unwanted assets), as opposed to solely from "payments from the Contractor"?	• Payments from the Contractor are likely to comprise only a portion of the total financial benefit to the State. The statute requires that the proposals show "net positive financial benefit" and specifically directs that this benefit take into account at least proposed profit sharing, business and occupation and liquor tax revenues and changes to retail profits, in addition to the up-front payment. Suggest revising Section 1.4 to be consistent with this framework for determining net positive financial benefit (as is done in Section 6).

Section/Concept	Question/Request	Rationale/Detail
	• Please clarify what is meant by "No payments will be made to the Contractor under a contract or lease awarded as a result of this RFP"	• The State currently owns and the WSLCB currently collects retail receipts from all retail stores. However, if the Contractor is required to collect and pay sales and use taxes (RFP Section 6.10) to the State the Contractor would need to receive payments from the WSLCB from their retail revenue collections. This appears to be impermissible under RFP Section 1.4. This concept is not clear as drafted.
	• Would the State be amenable to keeping the WSLCB as the repository for all receipts from retail stores and the Contractor would invoice WSLCB for products delivered to retail?	• Clarification will allow Offeror to optimize proposed work flows.
	• With respect to the "no payments" language, does the State mean in normal course as compensation to contractor?	• The proposed relationship is a risk and responsibility shift with shared opportunity for remuneration. Contractor will receive compensation for its efforts. Please clarify that such remuneration is not "payment." Also, the State may be liable for payments under this contract for consequences of its defaults or as a result of early termination for convenience.
1.5 – Contract Period of Performance	• How is the State defining the period of performance?	• Under the current proposed timeline, it will be very challenging to transition the business by December 1, 2011 if a contract is executed during the November 10-30 timeframe as provided in the RFP. However, it is likely not unreasonable for the Contractor to fund the upfront payment into escrow "on or about December 1, 2011" and commence operations following a reasonable transition period.
1.7 - Definitions	• In the definition of "Offeror or Firm or Private Sector Entity", please specify if owners, partners or members of the company are included in the definition (see Section 1.3 above).	• Offerors are likely to be in the form of a NewCo or partnership or subsidiary of an existing company (see Section 1.3 above).
	• Please define "Project Team" as referenced as a defined term in Section 5.3.	• Definition as drafted is unclear.
2.2 – Current Liquor Operations	• Please provide the calculation methodology and back up support for the 99.1% shelf in-stock rate. Are there products in a store other than "listed products"? • Is there a comparable out-of-stock calculation for the State's warehouse operation?	• Offeror must understand formula in order to comment on potential improvement.
2.3 – WSLCB's Current Information Technology Systems	• Will the Contractor be required to assume and use the current IT POS and WMS system? • Is the State expecting compensation for a license or use of the system? • Will a Contractor be able to change the system if desired?	• Further details will allow Offerors to determine their ability to incorporate existing IT platforms into the wholesale operation as well as understand any costs the Contractor will need to assume following the transition.

WASHINGTON OFFICE OF FINANCIAL MANAGEMENT

Section/Concept	Question/Request	Rationale/Detail
3.6 – Proprietary Information/Public Disclosure	• May an Offeror, if it chooses, release all or a portion (not including designated proprietary information, for instance) of its own proposal before a contract is signed?	
3.11 - Term	• The State should strongly consider fixing the term.	• A fixed term dictated in the RFP will allow all bidders to develop service plans, which include meaningful investments, assuming the same timeframe which will make for a more complete and meaningful comparison of bids by the State.
	• The State should consider an initial term of no less than 20 years plus the possibility for extensions. (Note: Statute only requires “long term” leaving determination of length to agency discretion).	• A longer term allows Contractor to continuously implement changes and make investments with a positive impact on the business which take several years to implement and a longer period for the State to see the financial benefits and for the Contractor to recoup its investment.
4.2.1 - Project Approach/Methodology	• Does the State plan on mandating that the Contractor lease the existing warehouse? • Would the State consider a warehouse lease during a transition period? • The State should allow Offeror to evaluate physical assets for lease from the State. Assets not needed can be auctioned off and should count toward net financial benefit to the State.	• Allows better understanding to develop service and business transition plan.
4.2.2 - Business Plan	• Please clarify what is meant by “improvements to improve margins?” The statute also requires that proposals demonstrate a commitment to expand liquor selection and ways to enable electronic funds transfer of payment. Consider adding to this section.	• An approach to improve the current warehousing and distribution operations could be more expensive to run than the current system but provide enhanced service to stakeholders and greater long-term revenue to the State.
	• To what degree can the Offeror influence purchasing?	• Ability to influence purchasing is directly related to Offeror’s ability to impact out-of-stocks.
	• What is the State’s current split case offering? What are the current requirements and prohibitions (e.g., not permitted on top 45)?	• Would the State consider allowing the Contractor to charge a split case fee for such service?
	• Would a Contractor be permitted to co-locate the bailment warehouse at an existing non-bailment facility? • What are the specific State regulations regarding bailment?	• It would be expected that the bailment warehouse would be fully separate from other operations and completely locked down and secure.
	• Regarding Stakeholder Relationships, what are the State’s current processes to formalize and implement stakeholder relationships?	• Background on current processes would be helpful for describing Offeror’s proposed approach.
5.2 Experience of the Offeror	• The statute requires that the RFP be designed to encourage the participation of private sector entities with previous wholesale distribution experience with a public partner.	• The statutory direction that the RFP be designed to encourage participation of entities with public partner experience could be addressed by adding this experience to the scoring factors in section 5.2.

Section/Concept	Question/Request	Rationale/Detail
6.1 - Upfront payment	• State should provide its desired minimum upfront payment consistent with the assumed profitability of the wholesale operations.	• Makes State preferences and needs transparent which will allow Offerors to tailor their bids. • With a large upfront payment, the partner has significant "skin in the game" and therefore is directly incentivized to run the business as a world-class organization and invest to grow it over time. • Allows State to compare bids on an apples-to-apples basis. • With no fixed contract term, upfront payment could differ widely based on Offeror's assumed contract term. It is important to note that a slightly larger upfront payment coupled with a longer term *could* provide the State a lower implied value than a smaller upfront payment with a shorter term.
	• Would the State provide value to an offer that includes an upfront payment plus a series of contractual payments for the next 3-5 years?	• The State could achieve a higher total upfront / contractually committed payment stream if it receives a series of payments over time as opposed to a payment all upfront. Since upfront payments greater than $100 million can only be used 1/6 per year, such a payment plan could allow the State to achieve a higher total dollar value.
6.2 - Profit Share:	• The upfront payment and profit share are directly linked (higher upfront payment, lower profit share and vice-versa). If no fixed upfront payment amount is provided in the final RFP, the State should consider providing guidance on metric or methodology for profit sharing or the scoring split between the upfront payment and profit sharing.	• Ensures State achieves both its desired upfront payment amount and a full market-based value for the business. • The State may value upfront payments and annual profit sharing payments differently and Offerors should have adequate guidance to provide the State the value and payment timing it desires. • Profit share is a direct way for bidders to distinguish themselves when coupled with a fixed upfront payment as it provides the State a direct means of comparing total value provided by an Offeror. • Aligns long-term incentives of the Contractor and State.
6.6 - Operational Cost	• Please clarify or define, "total cost of ownership".	• Provision as drafted is unclear.
6.7 - Improved Distribution	• Please clarify the commitment requested from the Offeror in Section 6.7 versus the commitment provided by the Offeror in Section 4.2.	• Distinction as drafted is unclear.
6.8 - Financial Records	• The State should be flexible in its review of financial documents and provide guidance to Offerors on the types of documents that are acceptable to the State.	• Audited financial statements of a private business are often considered highly confidential and proprietary information not to be shared with the public or competitors. Even if the audits are identified as "Proprietary Information" there is a high likelihood a competitor can get the information via a public records request. • State could leave methodology for validation open to contract negotiation process.

Section/Concept	Question/Request	Rationale/Detail
	• Would State consider an approach under which State officials and auditors would have access to (but not receive or retain) relevant information, review of which would enable independent validation of financial reporting?	• Contractor could respond to any specific concerns with additional information for similar "in camera" review.
6.11.3 - Financial Deficiencies or Losses	• State should consider providing the Offeror protections from the State's ability to take action to adversely impact the Offeror (see below section labeled "Guaranteed Gross Margin Percentage").	• State, in its sole authority, sets liquor prices and can make pricing decisions that are adverse to the Offeror but beneficial to the State. • Lack of clarity and protection in this area could likely materially impact the value an Offeror would provide to the State as well as Offerors' potential interest in responding to the RFP.
7.2 – Evaluation Weighting and Scoring	• State should consider providing additional guidance on how it will weight Sections 6.1-6.11 in the Financial Section scoring.	• A clear rubric for evaluation will allow for a higher quality of bid submissions. • Lack of clarity in this area could lead to the State achieving a financial proposal that is <u>not</u> in line with its near-term and long-term interests, expectations and needs.
7.6 - Debriefing of Unsuccessful Proposers	• State should have debrief period within 3 days of request to allow unsuccessful proposers to protest, if needed.	• Current timeframe may cause protest deadline to pass before debriefing occurs.
7.7 - Protest Procedure	• How can a bidder contest a recommendation or award if the proposals are not released until a contract is executed?	• Concept as drafted is unclear.
	• Statute requires that protest be filed within 5 days; this section states 5 business days.	• Consider changing five business days to five days to match statute.
	• Section states that WSLCB may not enter into contract prior to favorable Superior Court ruling.	• Clarify that WSLCB may enter into the contract in advance of a Superior Court ruling if there is no appeal or if the appeal is resolved prior to court decision.
Exhibits B and C (Forms of Personal Services Contract and Property Management Lease)	Exhibit B Contract for Personal Services: • On what basis has the State concluded that the business relationship authorized by the statute is for personal services provided by a consultant subject to the requirements of RCW 39.29?	• The statute speaks to a "lease of or other contract for the entire State liquor and distribution business" as well as a grant of the exclusive right to warehouse and distribute spirits. This is clearly a one-of-a-kind business relationship that does not fall within the ambit of the State's conventional procurement statutes or procedures. While it is appropriate for the State to undertake this procurement with reference to other analogous processes, it is unique and requires a more flexible approach.
	• The forms attached appear to be very substantially based on standard State forms in which the State is paying an entity to perform professional or expert services for it. • The State could consider another approach by providing the form contract, but also indicate which provisions are compelled by generally	• With respect, these forms seem too simplistic for this transaction which involves a much more complex long-term business relationship. While the selected contractor may be providing some services, this is essentially a business partnership for which the State is soliciting proposals. The forms convey useful information about the State's

Section/Concept	Question/Request	Rationale/Detail
	applicable State law and which are informational for purposes of signaling usual and customary State positions in contract negotiations for more routine procurements. For instance, our assessment of the form provided and the general conditions suggests that the following provisions may be mandatory: Access to Data, Conflict of Interest, Americans with Disability Act, Industrial Insurance Coverage. • Similarly, the following provisions could remain open as the RFP process and contract negotiations further define the relationship: Assignment, Attorney's Fees, ownership of intellectual property, disputes, subcontracting, etc.	approach to conventional transactions, but would it instead be possible to simply acknowledge that a "Master Agreement regarding Liquor Warehousing and Distribution" will be negotiated between the State and the apparent successful Proposer? This transaction is still very much subject to definition through the RFP and the contract negotiation process. It is hard to imagine how it tucks neatly into a conventional contract form for a different type of relationship than what is contemplated here. • Prescribing a take it or leave it form that basically does not work will discourage bidders and constrain negotiations.
	• Purpose. The Purpose section includes a slightly modified description of the scope of the contract compared to what is specified in the statute.	• For clarity, suggest consistent description of the Purpose/Scope to include the two statutory components consisting of: o The lease of or other contract for the entire state liquor warehousing and distribution business, including the facilities, operations and other assets associated with the warehousing of liquor and the distribution of liquor; and o The exclusive right to warehouse spirits and to distribute spirits in the state.
	• Scope of Work. The key obligation of the state under this contract is the grant of the exclusive right to warehouse spirits and to distribute spirits in the state.	• Contract should specifically grant to the Contractor the exclusive license or other right to warehouse spirits and to distribute spirits in the state.
	• Compensation and Payment. Under the statute, the contractor is to be responsible solely for its own losses and financial deficiencies.	• Revise sentence regarding Contractor financial deficiencies and losses to match statute.
	• Access to Data. See comparable comment to section 6.8 of RFP.	
	• Conflict of Interest. See comments regarding Termination(s) generally and availability of liquidated damages.	
	• Disputes. Would the State consider a more refined process that, particularly for major disputes, could start with the Agent but then also include a step in which either the Contractor or the Agency could refer the matter to a State official other than a WSLCB official for additional consideration before third party dispute resolution were triggered? Would it be appropriate for the eventual contract to also provide for more commercially conventional third party dispute resolution procedures (mediation and or arbitration) as preconditions to judicial action?	
	• Indemnification. See comments regarding Termination(s) generally	

Section/Concept	Question/Request	Rationale/Detail
	and availability of liquidated damages. Why is only Contractor's indemnification required? This is a one-of-a-kind commercial relationship in which both the State and the Contractor will have substantial stakes and mutual interests. Contractor will expect appropriate mutual indemnifications (to the extent permitted by law).	
	• <u>Records Maintenance</u>. Contract negotiations should refine the nature of records to be maintained that will be subject to this provision.	
	• <u>Termination for Cause and for Convenience, Termination Procedures and Treatment of Assets</u>. For a business relationship of this nature and complexity, all of these termination-related provisions must remain subject to negotiation. Termination for Convenience is simply inappropriate for such a relationship, particularly one in which a substantial up-front payment is contemplated. Termination provisions also need to be discussed in the context of the full scope of damages and consequences to both parties that may flow from any form of termination. For instance, liquidated damages awarded to Contractor following termination should compensate at least for unamortized amount of upfront payment and unamortized value of capital improvements that revert to State ownership. This was clearly contemplated by the statute (Section 3(1)): "…(T)he contract must provide for a reasonable termination process as well as financial terms of termination should termination take place." In addition, depending on the relationship between the Contractor and the State with regard to the use of current State assets, the Treatment of Assets upon termination will need to mirror more closely the reality of the relationship.	(Liquidated Damages Rationale) • Protects State from more significant damages. • Protects Contractor against State terminating the contract without reasonable cause after the Contractor has made a significant upfront payment to the State as well as a commitment of significant business investments and resources. • Current termination provision would likely materially impact the value an Offeror would provide to the State as well as Offerors' potential interest in responding to the RFP.
	• <u>Enforceability</u>. Will State Attorney General provide an opinion that the agreement and any lease(s) are enforceable against the State and State will waive defenses such as ultra vires or sovereign immunity?	
	• <u>Representations and Warranties</u>. Negotiations should provide for commercially reasonable representations and warranties by both parties.	
	• To extent Exhibit C (Lease) contains provisions comparable to provisions in Exhibit B, comments provided herein also would apply to related Exhibit C provisions.	• The statue permits a contract or lease of the state liquor warehousing and distribution business. Consider whether the form of lease is necessary and, if so, make clear that it applies only to the extent that assets actually are leased. Contractor should have flexibility to choose

Section/Concept	Question/Request	Rationale/Detail
		what, if any, assets it will lease. Minor edit to form of lease: remove language specifying that the lease is for office space purposes only.
Exhibit G (6.3 and 6.4)	• Please provide figures in Exhibit G that tie to the 2010 annual report as well as the State's 2011 estimate (including assumptions for volume, markups, surcharges and taxes). • Please provide a detailed calculation of cost of goods sold (i.e., is freight out included in cost of goods sold?). • Please explain the decline in retail expenses from $75m in the 2010 annual report to $51m in Exhibit G.	• Offeror must understand State's status quo in order to prepare a comparable set of projected financials.
Primary Suggested Additions to RFP		
Gross Profit Markup	• RFP should include the wholesale markup on cost of goods sold it intends to provide the Offeror. • Define specifically how cost of goods sold will be calculated for purposes of the wholesale gross profit markup. Same as the State's current definition?	• Liquor business does not currently distinguish wholesale and retail profits. • Will be critical in assisting bidders to assess the pro forma wholesale business and its ability to create a viable service plan, determine the upfront payment amount and put forth an attractive profit sharing mechanism and proposal.
Guaranteed Gross Margin Percentage	• State should explicitly provide that its product pricing shall guarantee a minimum gross margin percentage to the Contractor. • Any deficiency would be offset against future profit share payments (6.11.3 to be amended accordingly).	• State will continue to set pricing, so a gross margin guarantee ensures State will not set pricing that adversely impacts the Contractor and keeps interests between the State and Contractor aligned throughout the term.
WSLCB Authority Regarding Product Selection and Pricing	• While WSLCB responsibility for product selection and pricing is a given, the contract should provide for specific procedures and a process through which the Contractor could propose changes to both and the WSLCB would evaluate and formally consider them and publicly act on them. Information and justification requirements for both requests and decisions should be included, along with statements of anticipated implications for the State's return on this business.	
Secondary Suggested Additions to RFP		
Product Pricing and Listing	• Please discuss frequency of product pricing and listing meetings, forum for meetings and potential for Contractor to provide input at such meetings. • Does the State plan to reduce the markup from its current 51.9%	• Allows Offeror to align its sales and marketing activities and optimize product selection. • Allows Offeror to assess the long-term revenue and profitability of the

Section/Concept	Question/Request	Rationale/Detail
	level? Does keeping the current markup beyond a specific date require legislative approval?	business.
Merchandising	• Please discuss rules, expectations and receptivity to Contractor assisting with merchandising in State and contract retail stores, to the extent not included in current legislation.	• Allows alignment in sales and marketing activities.
Store Changes	• Please discuss rules, expectations and receptivity to Contractor providing capital and working alongside the State to: ○ Consider upgrading, refurbishing or relocating State stores. ○ Proposing changes to the current State and contract store footprint.	• Potential driver of enhanced service levels and business growth. • It is assumed 100% of the cost and investment burden will be placed on the Contractor, <u>not</u> the State.
Product Title	• Confirm the following title chain: warehouse/supplier, truck/State, jobber/State, State, contract, military or tribal store/State.	• Allows better understanding to develop service plan.
On-Premise	• Please discuss rules and requirements related to on-premise accounts: ○ Direct deliveries to on-premise accounts from warehouse. ○ Orders for on-premise accounts palletized at warehouse and delivered to pre-determined retail location. ○ Warehouse pick-ups for on-premise accounts.	• Allows better understanding to develop service plan. • Meaningful enhancement to on-premise stakeholders.
Mixed Loads	• Please confirm the Contractor's ability to include spirits on trucks with wine, beer, soft drinks, etc.	• Allows better understanding to develop service plan.
Bailment	• Please specify whether the Contractor will receive bailment fees on spirits, wine, cider and other products from suppliers, targeted bailment rates and any exceptions to the bailment arrangement. • Please provide any other details regarding the bailment arrangement as it relates to inventory management (e.g., inventory levels, stocking, etc.) or demand management (e.g., inbound and out-bound logistics, out-of-stocks, etc.). • Please provide the existing bailment contract or agreement as part of the final RFP.	• Allows better understanding to develop service plan.
Taxes	• What payment term does the State require for the payment of taxes?	• Allows the Offeror to better understand the pro forma cash flow of the business.
Payment Terms	• What payment terms will State and contract stores provide to Contractor? • Will the State allow netting of tax payments and payments to the State against product invoices owed to the Contractor?	• Allows the Offeror to better understand the pro forma cash flow of the business.

WASHINGTON OFFICE OF FINANCIAL MANAGEMENT

Addendum – Question / Requests for Clarification on RFP Draft Released August 8, 2011

Section/Concept	Question/Request	Rationale/Detail
RFP Questions and Suggestions		
2.2 Demand Management	• Please clarify concept that proposed solutions should address the ability to support current inventory turns/expectations (8-12 turns per year). • Do State store managers have incentives or penalties to ensure they maintain inventory turn levels?	• It is our understanding that contract stores are required to maintain minimum levels of inventory turns per year in order to keep their licenses. While the Contractor should be required to implement policies to drive an optimal level of inventory turns, the State should also consider implementing incentives or penalties on State store managers to achieve desired inventory turns.
5.3 Project Team	• In section 5.3, does the State want detail on the transition team or the long-term management team?	• Transition team, while likely a subset of the permanent management team, will only be involved initially whereas the management team will be responsible for the operations long-term. • Definition of Project Team and required qualifications and resumes are not clear as drafted in RFP.
Tribal and Military Stores	• Please provide an overview of Tribal and Military retail operations. • Are policies for the title of goods, ordering and payments the same for Tribal and Military stores as they are for State or Contract stores (i.e. State maintains ownership of product in the store)?	• Detail will be important for formulating bid. Current treatment isn't clear.
State Payments	• How often does the State pay employees (e.g. bi-monthly)? • What are the other payment terms for the State's other retail operating expenses?	• Detail will be important for understanding work and payment flows.
Federal Taxes	• Who is responsible for payment of federal taxes? • Is a federal tax component included in the bottle cost charged by suppliers? • If the State is responsible for these taxes, what is the timing of payment?	• Detail will be important for formulating bid.
Bonding	• What portion of the State distribution center is bonded?	• Detail will be important for formulating bid.
Business Stakeholders / Relationships	• In Exhibit D, Sections 4.2.2, for questions 19, 20 and 22, please clarify the requests.	• Requests aren't clear as drafted. What type of stakeholders is the State interested in learning about in each question? Is there a distinction between stakeholders and business stakeholders? What detail would the State like to know?
Performance Metrics	• What performance metrics does the State currently use to measure performance standards? Please provide a detailed calculation for each metric for 2008 – 2010.	• Understanding current performance metrics of business will be helpful in thinking about service enhancements.