STATE OF MAINE
121st LEGISLATURE
FIRST REGULAR SESSION

Final Report
of the

COMMITTEE TO STUDY THE IMPLEMENTATION OF THE PRIVATIZATION OF THE STATE'S WHOLESALE LIQUOR BUSINESS

April 2004

Members:
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Representative Joseph E. Clark, Chair
Senator David L. Carpenter
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EXECUTIVE SUMMARY

FINDINGS

After conducting meetings and gathering information on the privatization of the State's spirits distribution business and the enforcement of the liquor laws in the time allowed, the committee makes the following findings.

- **The closure of the remaining State liquor stores ahead of schedule proved to be problematic for agents and warehouse operations but provided useful information to be used when considering leasing the spirits distribution business to a private entity about the service needs of agents and supply issues at the warehouse.** Although it is unfortunate that several agents were negatively impacted when the State liquor stores were closed ahead of schedule, in terms of shipping errors from the warehouse and the amount of inventory they were then required to maintain, the committee believes that this will provide the Department of Administration and Financial Services with useful information about the level of service required by agents and best way to operate a warehouse when considering bids for the lease of the spirits distribution business.

- **It is critical to carefully monitor the impact on agents and on-premises licensees during the transition to a privatized system and after the private entity takes over the spirits distribution business.** On-premises licensees and licensed retail agents have worked in partnership with the State in providing spirits to consumers in accordance with State policies. Privatizing the spirits distribution system should not negatively impact these businesses that have provided service to the State under its tightly controlled system.

- **The process used by the Department of Administrative and Financial Services in developing the RFP to solicit bids from a private entity for the spirits distribution business provided for input from members of the industry including spirits suppliers and brokers and on-premises licensees and agents.** The Department of Administrative and Financial Services followed a process prior to drafting the request for proposal that included an education phase. This stage in the process included touring the warehouse currently used by the State, meeting with interested parties in the industry to understand their concerns regarding privatization and holding advertised public meetings to provide agents, on-premises licensees, suppliers and brokers with an opportunity to express their concerns about the privatization of the business. The committee finds that this process served DAFS well when developing the RFP and will hopefully allow the department to carefully consider all involved in the system that brings spirits to consumers throughout the State when awarding the bid to a private entity.

- **The RFP developed by the Department of Administrative and Financial Services provides for State oversight when a private entity assumes the spirits distribution business.** Considering that the length of the lease for the spirits distribution system will be 10 years, committee finds that it is prudent that the State maintain an adequate level of oversight. DAFS is providing for that oversight by requiring annual financial reports from the successful bidder and instituting an auditing process. Such oversight is critical for maintaining the integrity of a business that has provided a continuing source of income to the General Fund of the State and will be resumed by State at the end of the term of the lease.

- **The elimination of the Bureau of Liquor Enforcement was too abrupt.** The committee respects the decision of the 121st Legislature to eliminate the Bureau of Liquor Enforcement in an effort to balance the State budget, but believes that there was not enough support and cooperation from local law enforcement authorities when the burden of enforcing the criminal provisions of the liquor laws was transferred to them. The committee remains concerned that enforcement of the liquor laws will not be conducted at the level that the Bureau once provided because of the loss of institutional memory with the elimination of the Bureau and potential unwillingness of local law enforcement to assume the criminal enforcement of the liquor laws once performed by the Bureau

- **Local law enforcement must now assume some of the duties once performed by the Bureau of Liquor Enforcement without additional resources.** Although the State will recognize a savings by eliminating the Bureau of Liquor Enforcement, the committee finds that local governments were not provided with additional resources to assume the criminal enforcement of the liquor laws once performed by the Bureau.

- **The role of the Department of Public Safety, Division of Licensing is to administer the licensing provisions and enforce civil violations of the liquor laws.** The committee recognizes that the Licensing Division of the Department of Public Safety is taking the steps that it deems necessary to effectively fulfill its role in enforcing the laws governing the manufacture, importation, storage and sale of liquor and to administer the laws governing the licensing and collection of taxes on malt liquor and wine. It is the committee's hope that the Licensing Division and local law enforcement can work together to administer and enforce the liquor laws together in a way that serves the best interests of the people of the State of Maine.

RECOMMENDATIONS

Privatization of the wholesale spirits business

- **The Joint Standing Committee on Legal and Veterans' Affairs should require regular updates from the Department of Administrative and Financial Services and the Bureau of Alcoholic Beverages and Lottery Operations regarding the performance of the successful bidder operating the spirits distribution system.** Since the State has decided to lease the rights to the spirits distribution business rather than sell it outright, it is in the best interest of the people of the State of Maine that the Legislature monitor the performance of the private distributor to ensure that the integrity of the business is maintained to continue to provide revenue to the State and to remain profitable at the end of the lease's term.

- **The Joint Standing Committee on Legal and Veterans' Affairs should regularly solicit input from agents, on-premises licensees and the Department of Public Safety on the impact of privatization on their businesses.** Agents and on-premises licensees are a vital part of the system that provides spirits to consumers throughout the State and income to the State's General Fund from taxes, revenue sharing with the successful bidder and from the sale of spirits in the future when the term of the lease issued to a successful bidder ends. The committee recommends that the Legal and Veterans' Affairs Committee stay informed regarding the impact that privatization is having on agents and on-premises licensees to prevent an undue burden on their businesses. The Department of Public Safety, Licensing Division can assist the Legal and Veterans' Affairs committee with this effort by keeping track of turn-over of existing agency licenses and lack of applications for existing licenses.

- **The Legislature should be careful in the future when amending the laws that govern the sale of spirits in the State.** When a successful bidder assumes the spirits distribution business from the State, it will do so based on the laws that are currently in statute governing the sale of spirits. If future Legislatures are to amend the laws governing the sale of spirits, the committee recommends that they be mindful of the private entity that will assume the State's spirits business for a ten-year term and any impacts such changes may have on agents and on-premises licensees.

- **The Joint Standing Committee of the Legislature that has had jurisdiction over the liquor laws should remain consistent.** With the elimination of the Bureau of Liquor Enforcement and a change in the way spirits are distributed in this State, it is important that the committee with the institutional memory on these matters remain the committee of jurisdiction. With liquor enforcement duties no longer assigned to a separate bureau but to a division within the Department of Public Safety that oversees other areas of law, the committee is concerned that the enforcement of the liquor laws will not receive the appropriate level of oversight. The State has policies that intend to discourage underage drinking and excessive consumption of alcohol while also generating revenue from the sale of spirits. This is complex policy issue that should remain with the committee that has had jurisdiction over it in the past.

I. INTRODUCTION

The Committee to Study the Implementation of the Privatization of the State's Wholesale Liquor Business was created pursuant to a Joint Order, Senate Paper 552 (Appendix A). The Committee was charged with reviewing the bidding process by which the State will lease the wholesale liquor distribution rights to a private distributor and explore issues associated with the responsibility for enforcing the laws governing the sale, possession and consumption of liquor and the licensing of those who sell or serve liquor in the State. The Joint Order required the committee to submit its report including any suggested legislation to the Second Regular Session of the Legislature.

The committee's membership included four members of the Senate appointed by the President; one member from the Joint Standing Committee on Appropriations and Financial Affairs, one member from the Joint Standing Committee on Criminal Justice and Public Safety and two members from the Joint Standing Committee on Legal and Veterans' Affairs. Five members of the committee were appointed from the House of Representatives by the Speaker of the House; two from the Joint Standing Committee on Appropriations and Financial Affairs, one from the Joint Standing Committee on Criminal Justice and Public Safety and two from the Joint Standing Committee on Legal and Veterans' Affairs.

The committee held a total of three meetings from September to November 2003. At their first meeting, the committee reviewed the legislation that established the study committee and discussed plans for achieving the study's objectives. At this meeting, they also received presentations from the Department of Administrative and Financial Services (DAFS) about the process of privatization and from the Department of Public Safety (DPS) regarding the enforcement of the liquor laws and their role in administering the licensing of on-premises and off-premises liquor establishments in the State. The second meeting was a public hearing advertised by the committee to solicit comments on the privatization of the wholesale spirits distribution system and the enforcement of the state's liquor laws in light of the elimination of the Bureau of Liquor Enforcement within the Department of Public Safety in June of 2003. At the final meeting, the committee received brief updates from DAFS and DPS and then reviewed materials and testimony in order to draft this report.

II. HISTORY

A.   Wholesale Distribution of Spirits and State Liquor Stores

The State's role in the distribution and retail sales of spirits has been almost completely transformed since the 1970's. After the repeal of prohibition in 1933, the only way one could purchase spirits in the State was from a State-operated liquor store. In the 1970's, private retailers were licensed as agents of the State for the purpose of selling spirits to the citizens of Maine. The State sold spirits to these agents at a discount and established a uniform retail price at which the spirits would be sold throughout Maine, providing equal access and pricing from York to Fort Kent.

Beginning in the mid 1990's, the State began to close some of its own stores as more and more private stores were licensed. State stores had not only been serving as a retail outlet for consumers but were also a wholesale outlet for private agents. Agents, particularly smaller ones, used the State stores to order "split" cases because the minimum order and full-case requirements of the State's contracted bailment warehouse were prohibitive in terms of cost or storage space. The State stores were also convenient for keeping an agent's shelves stocked in between deliveries from the warehouse or for keeping one or two bottles of a specialty item on hand.

By the end of 2002, more State liquor stores were closed in accordance with the Legislature's biennial budget process. Cutting the administrative costs of operating the State liquor stores proved to be a savings to the General Fund.

The Governor's budget presented to the First Regular Session of the 121st Legislature proposed to close the remaining State liquor stores and sell, transfer or lease the wholesaler operation run by the State's Department of Administrative and Financial Services, Bureau of Alcoholic Beverages and Lottery Operations to a private entity. The Legislature passed the budget and enacted Public Law 2003, chapter 20. The balanced budget booked income to the General Fund of $75 million by the end of Fiscal Year 2004 and projected an additional $50 million dollars from the lease of the wholesale business early in Fiscal Year 2005. This figure for the lease of the State's wholesale business factors the market price for the lease at an estimated $100 million and compensation for lost income from spirits sales by the State in Fiscal Year 2005 of approximately $25 million. Part LLL of this law provided for the development of an RFP to solicit bidders to take over the State's spirits distribution system (Appendix C). This private entity would take over the warehousing and delivery of spirits to agency stores in the State while the price of spirits would still be subject to state regulation.

B. Elimination of the Bureau of Liquor Enforcement

Another item proposed by the Governor's budget during the First Regular Session of the 121st Legislation was the elimination of the Bureau of Liquor Enforcement within the Department of Public Safety. LD 1319 that proposed the elimination of the bureau booked a savings to the General Fund of approximately $1.3 million.

The Bureau had been responsible for the enforcement of Maine's liquor laws and rules governing the manufacture, importation, storage, transportation and the sale of all liquor. Beginning in 1993, the bureau became responsible for all licensing and taxation of alcoholic beverages except for spirits distributed by the State. The Bureau enforced administrative violations of the liquor laws and actively pursued and enforced criminal violations.

With the Bureau's elimination pursuant to Public Law 2003, chapter 20, the Department of Public Safety's Licensing Division assumed the duties of licensing and taxation formerly conducted by the Bureau. The licensing division became responsible for enforcing the administrative provisions of the liquor laws while leaving enforcement of the criminal provisions to local law enforcement authorities.

III. SUMMARY OF MEETINGS

First Meeting – September 25, 2003

At its first meeting, the committee received presentations from staff providing them with an overview State's wholesale spirits distribution system and the functions of the Bureau of Liquor Enforcement and the changes to them as a result of Public Law 2003, chapter 20. The committee invited Rebecca Wyke, Commissioner of the Department of Administrative and Financial Services (DAFS) to brief them on the privatization process. The commissioner provided the committee with a schedule for the process for developing a request for proposals (RFP), issuing the RFP and awarding the bid to a private entity for a 10-year lease of the State's spirits distribution business (Appendix E). Also included in that presentation was a summary of testimony received at a forum held by DAFS for spirits suppliers and brokers to submit comments or express concerns regarding the privatization. Commissioner Wyke told the committee that information and concerns presented to them during that hearing would be helpful to them when drafting the RFP. Testimony at the hearing held by DAFS included concerns about the influence of the private partner on product pricing, loosening of marketing restrictions on spirits, criteria for awarding the bid and the impact on agency stores with regard to discounts, deliveries and product availability. The Department had scheduled two more forums for comment from liquor agents and licensees to be held on October 8th in Bangor and October 9th in Portland.

Another part of Commissioner Wyke's presentation focused on the State's efforts to provide for a smooth transition of the spirits distribution business to a private entity. Because the privatization process included the closure of State-operated liquor stores, agency liquor stores lost their outlet to purchase split cases of product. Thus, the bailment warehouse contracted by the State assumed a "picking" operation that would provide split cases to agents. Commissioner Wyke reported that they had several problems taking on this operation, particularly with regard to inventory management. Some of the most popular brands of spirits were unavailable during the summer months of 2003 because the warehouse operations and the manufacturers were not communicating enough to manage the proper maintenance of inventory. The commissioner stated that the wholesale spirits distribution business needed to be actively managed to provide for a seamless transition to the private system for consumers, agents and manufacturers. Part of that management would be assuming the same level services that the State stores had provided to agents, services that DAFS had previously underestimated.

Following Commissioner Wyke's presentation, members of the committee requested information regarding the frequency of delivery to agency stores from the warehouse in light of the closure of the State stores, whether or not there were enough agency stores licensed as reselling agents to adequately provide product to on-premises licensees and future updates on the picking operation at the warehouse.

Next, the committee received a presentation from Lieutenant John Dyer, head of the Licensing Division of the Department of Public Safety (DPS)on the administration and enforcement of the liquor laws after the elimination of the Bureau of Liquor Enforcement. The licensing division of the DPS assumed the administrative and civil law enforcement duties of the former Bureau on June 9, 2003. Lieutenant Dyer cited to the committee that the licensing division had very little experience in the administration of the liquor laws so they made an effort to hire back a Bureau of Liquor Enforcement veteran with 11 years experience and two enforcement officers previously employed by the Bureau. In total, the division employed 5 liquor inspectors to assume the administrative and civil law enforcement duties once performed by the Bureau. At the time of the meeting, Lieutenant Dyer reported to the committee that there was a backlog of liquor license applications when the division took over in June that was cleaned up within 3 weeks. The division oversaw 35 court cases and issued 19 new agency store licenses to replace the closed State liquor stores. In addition, Licensing Division personnel met with members of the liquor industry to discuss current issues regarding licensing and enforcement and held one training program for law enforcement officers that will be enforcing the criminal provisions of the liquor laws at the local level.

Following the presentation from the Department of Public Safety, several members of the committee expressed their concern regarding the absence of law enforcement officers across the State dedicated to the purpose of enforcing the liquor laws. A central part of that concern pertained to the ability or willingness of local law enforcement to assume those duties considering strained municipal budgets and lack of expertise among local authorities. Other concerns focused on whether or not the Legislature itself failed in not providing for a smooth transition when the Department took over the functions of the Bureau. Lieutenant Dyer responded to those concerns by stating to the committee that they did attempt to bring some institutional memory into their division by hiring former Bureau employees, that the Police Academy had expanded its curriculum on the liquor laws and that the Department was offering training to local law enforcement, at no charge, on enforcement of the liquor laws.

Second Meeting – October 16, 2003

The second meeting of the Committee to Study the Implementation of the Privatization of the State’s Wholesale Liquor Distribution Business was a public hearing advertised to solicit comments on the privatization of the spirits business and the enforcement of the liquor laws after the elimination of the Bureau of Liquor Enforcement. Testimony on the privatization of the spirits business came mainly from members of the industry, including retail liquor agents and manufacturers.

At the hearing, retail agents (those who presented comments are also licensed to wholesale spirits to on-premises licensees) stated that they were concerned that retail agents and on-premises licensees had been overlooked in this process. They expressed that they had had faith that the privatization process would be seamless but were finding that it was not. Some testimony included that agents had been provided with a schedule early on in the privatization process that indicated when the state stores would be closed but that the closures actually occurred ahead of schedule. According to the comments made at the hearing, this accelerated schedule caused significant difficulty for agents, some of whom, had to borrow money in order to purchase enough inventory to adequately run their business because they could no longer use the State store to supplement their product supply. One agent expressed that many errors had been made in shipments from the warehouse after the state stores closed and the warehouse instituted its picking operation. Despite the errors, the agent was still required to pay for the order within 10 days, in essence, passing the costs of mishaps due to the transition on to the agents. In addition, the agent stated that orders for spirits were now required a full week in advance of delivery in an apparent change from past practice. According to his statements, this posed great difficulty to the agent by requiring him to maintain a huge inventory and had a negative impact on the cash flow of his business. Consistently, agents commented that the 8 to 12% discount on product was inadequate for agents to make a decent profit considering the labor put into unloading and stocking the product and the requirement to sell the product at the State's list price.

Testimony was also received from people representing manufacturers of distilled spirits sold in Maine. Some comments echoed those of agents, particularly those statements that expressed hope that the transition to a private wholesale entity would be seamless. One manufacturer's representative commented that the price of spirits should now go down to reflect the reduction in administrative costs with the closure of the state liquor stores and that the bailment warehouse system should be replaced with a warehouse where the manufacturer determines the level of inventory required using an integrated computer system. This representative also advocated for the liberalization of trade practices governing spirits to be more in line with those that govern beer and wine sales. Overall, comments received from those representing manufacturers expressed concern about maintaining competition among manufacturers and ensuring that the entity awarded the bid is not also awarded an unfair advantage along with it at the detriment of manufacturers who have been supplying spirits to the State for decades. Commissioner Wyke also presented copies of written testimony her department had received during its public input process, some of which was identical to written comments received by the committee (Appendix F)

The purpose of the public hearing was also to solicit comments on the enforcement of the liquor laws since the elimination of the Bureau of Liquor Enforcement. The committee received only limited testimony on this issue. One agency store licensee testified that the Bureau of Liquor Enforcement had been an invaluable resource, not just on criminal violations, but in assisting agents when they had questions about the laws and rules that governed them as licensees. This agent stated that his local law enforcement authorities were resistant to taking on the criminal enforcement role of the Bureau since its elimination. These factors, according to the testimony, left the agent unsure of who to call when he needed assistance. Other testimony suggested that the Department of Public Safety should establish an advisory council made up of agents and licensees to maintain open lines of communication and bridge any gaps created by dividing the former bureau's roles between the Department and local law enforcement authorities.

Third Meeting – November 20, 2003

The final meeting of the Committee to Study the Implementation of the Privatization of the State's Wholesale Liquor Business followed an agenda that assisted the committee in drafting this report. Representatives from the Department of Public Safety, the Department of Administrative and Financial Services and interested parties were there to provide any additional information the committee might need when formulating its findings and recommendations. In addition, Commissioner Wyke discussed the request for proposals document that had just been released publicly for the solicitation of bids (Appendix G). Commissioner Wyke responded to committee members' inquiries about where the bid process might allow for bidders to distinguish themselves as the better candidate for the wholesale contract. She responded that the following areas would be where a bidder could potentially distinguish themselves:

- Bottle picking operation – based on minimum standards which would be those standards currently in place;
- Delivery system – one delivery per week minimum to agents;
- Product ordering system;
- Revenue sharing with the State; and
- Product payment schedule – date that order is invoiced to agent.

The Commissioner added that, when considering the bids, generally speaking, those reviewing the bids will look to the overall plan provided by the bidder and their ability to implement that plan.

Commissioner of the Department of Public Safety, Michael Cantara, updated the committee on efforts being taken by the Department with regard to supporting enforcement of the State's liquor laws. The Department had applied for and received grants to support the enforcement of sobriety requirements required of persons by the Washington County Drug Court and for training instructors at the police academy to provide liquor enforcement training to county and municipal level enforcement authorities.

Before adjournment of the committee's third and final meeting they discussed the final findings and recommendations that would be included in their report to the Legislature.

IV. FINDINGS

After conducting meetings and gathering information on the privatization of the State's spirits distribution business and the enforcement of the liquor laws in the time allowed, the committee makes the following findings.

- **The closure of the remaining State liquor stores ahead of schedule proved to be problematic for agents and warehouse operations but provided useful information to be used when considering leasing the spirits distribution business to a private entity about the service needs of agents and supply issues at the warehouse.** Although it is unfortunate that several agents were negatively impacted when the State liquor stores were closed ahead of schedule, in terms of shipping errors from the warehouse and the amount of inventory they were then required to maintain, the committee believes that this will provide the Department of Administration and Financial Services with useful information about the level of service required by agents and best way to operate a warehouse when considering bids for the lease of the spirits distribution business.

- **It is critical to carefully monitor the impact on agents and on-premises licensees during the transition to a privatized system and after the private entity takes over the spirits distribution business.** On-premises licensees and licensed retail agents have worked in partnership with the State in providing spirits to consumers in accordance with State policies. Privatizing the spirits distribution system should not negatively impact these businesses that have provided service to the State under its tightly controlled system.

- **The process used by the Department of Administrative and Financial Services in developing the RFP to solicit bids from a private entity for the spirits distribution business provided for input from members of the industry including spirits suppliers and brokers and on-premises licensees and agents.** The Department of Administrative and Financial Services followed a process prior to drafting the request for proposal that included an education phase. This stage in the process included touring the warehouse currently used by the State, meeting with interested parties in the industry to understand their concerns regarding privatization and holding advertised public meetings to provide agents, on-premises licensees, suppliers and brokers with an opportunity to express their concerns about the privatization of the business. The committee finds that this process served DAFS well when developing the RFP and will hopefully allow the department to carefully consider all involved in the system that brings spirits to consumers throughout the state when awarding the bid to a private entity.

- **The RFP developed by the Department of Administrative and Financial Services provides for State oversight when a private entity assumes the spirits distribution business.** Considering that the length of the lease for the spirits distribution system will be 10 years, committee finds that it is prudent that the State maintain an adequate level of oversight. DAFS is providing for that oversight by requiring annual financial reports from the successful bidder and instituting an auditing process. Such oversight is critical for maintaining the integrity of a business that has provided a continuing source of income to the General Fund of the State and will be resumed by State at the end of the term of the lease.

- **The elimination of the Bureau of Liquor Enforcement was too abrupt.** The committee respects the decision of the 121st Legislature to eliminate the Bureau of Liquor Enforcement in an effort to balance the State budget but believes that there was not enough support and cooperation from local law enforcement authorities when the burden of enforcing the criminal provisions of the liquor laws was transferred to them. The committee remains concerned that enforcement of the liquor laws will not be conducted at the level that the Bureau once provided because of the loss of institutional memory with the elimination of the Bureau and potential unwillingness of local law enforcement assume the criminal enforcement of the liquor laws once performed by the Bureau.

- **Local law enforcement must now assume some of the duties once performed by the Bureau of Liquor Enforcement without additional resources.** Although the State will recognize a savings by eliminating the Bureau of Liquor Enforcement, the committee finds that local governments were not provided with additional resources to assume the criminal enforcement of the liquor laws once performed by the Bureau.

- **The role of the Department of Public Safety, Division of Licensing is to administer the licensing provisions and enforce civil violations of the liquor laws.** The committee recognizes that the Licensing Division of the Department of Public Safety is taking the steps that it deems necessary to effectively fulfill its role in enforcing the laws governing the manufacture, importation, storage and sale of liquor and to administer the laws governing the licensing and collection of taxes on malt liquor and wine. It is the committee's hope that the Licensing Division and local law enforcement can work together to administer and enforce the liquor laws together in a way that serves the best interests of the people of the State of Maine.

V. RECOMMENDATIONS

Privatization of the wholesale spirits business

- **The Joint Standing Committee on Legal and Veterans' Affairs should require regular updates from the Department of Administrative and Financial Services and the Bureau of Alcoholic Beverages and Lottery Operations regarding the performance of the successful bidder operating the spirits distribution system.** Since the State has decided to lease the rights to the spirits distribution business rather than sell it outright, it is in the best interest of the people of the State of Maine that the Legislature monitor the performance of the private distributor to ensure that the integrity of the business is maintained to continue to provide revenue to the State and to remain profitable at the end of the lease's term.

- **The Joint Standing Committee on Legal and Veterans' Affairs should regularly solicit input from agents, on-premises licensees and the Department of Public Safety on the impact of privatization on their businesses.** Agents and on-premises licensees are a vital part of the system that provides spirits to consumers throughout the State and income to the State's General Fund from taxes, revenue sharing with the successful bidder and from the sale of spirits in the future when the term of the lease issued to a successful bidder ends. The committee recommends that the Legal and Veterans' Affairs Committee stay informed regarding the impact that privatization is having on agents and on-premises licensees to prevent an undue burden on their businesses. The Department of Public Safety, Licensing Division can assist the Legal and Veterans' Affairs committee with this effort by keeping track of turn-over of existing agency licenses and lack of applications for existing licenses.

- **The Legislature should be careful in the future when amending the laws that govern the sale of spirits in the State.** When a successful bidder assumes the spirits distribution business from the State, it will do so based on the laws that are currently in statute governing the sale of spirits. If future Legislatures are to amend the laws governing the sale of spirits, the committee recommends that they be mindful of the private entity that will assume the State's spirits business for a ten-year term and any impacts such changes may have on agents and on-premises licensees.

- **The Joint Standing Committee of the Legislature that has had jurisdiction over the liquor laws should remain consistent.** With the elimination of the Bureau of Liquor Enforcement and a change in the way spirits are distributed in this State, it is important that the committee with the institutional memory on these matters remain the committee of jurisdiction. With liquor enforcement duties no longer assigned to a separate bureau but to a division within the Department of Public Safety that oversees other areas of law, the committee is concerned that the enforcement of the liquor laws will not receive the appropriate level of oversight. The State has policies that intend to discourage underage drinking and excessive consumption of alcohol while also generating revenue from the sale of spirits. This is complex policy issue that should remain with the committee that has had jurisdiction over it in the past.

APPENDIX A

Authorizing Legislation
Joint Order, Senate Paper 552

CORRECTED COPY 6-10-03
Please replace original Amendment S-264

S.P. 552

DATE: 6-9-03

(Filing No. S-264)

Reproduced and distributed under the direction of the Secretary of the Senate.

STATE OF MAINE
SENATE
121ST LEGISLATURE
FIRST REGULAR SESSION

SENATE AMENDMENT "A" to S.P. 552, "Joint Study Order To Study the Implementation of the Privatization of the State's Wholesale Liquor Business"

Amend the order by striking out everything from the first indented paragraph to the end and inserting in its place the following:

'**ORDERED,** the House concurring, that the Committee to Study the Implementation of the Privatization of the State's Wholesale Liquor Business is established as follows.

1. Committee established. The Committee to Study the Implementation of the Privatization of the State's Wholesale Liquor Business, referred to in this order as "the committee," is established.

2. Membership. The committee consists of the following 9 members:

A. Four members of the Senate, appointed by the President of the Senate, one of whom serves on the Joint Standing Committee on Appropriations and Financial Affairs, one of whom serves on the Joint Standing Committee on Criminal Justice and Public Safety and 2 of whom serve on the Joint Standing Committee on Legal and Veterans Affairs; and

B. Five members of the House of Representatives, appointed by the Speaker of the House, 2 of whom serve on the Joint Standing Committee on Appropriations and Financial Affairs, one of whom serves on the Joint Standing Committee on Criminal Justice and Public Safety and 2 of whom serve on the Joint Standing Committee on Legal and Veterans Affairs.

3. Committee chairs. The first-named Senator is the Senate chair of the committee and the first-named member of the House is the House chair of the committee.

4. Appointments; convening of committee. All appointments must be made no later than 30 days following passage of this order. The appointing authorities shall notify the Executive Director of the Legislative Council once all appointments have been made. When the appointment of all members has been completed, the chairs of the committee shall call and convene the first meeting of the committee, which must be no later than August 15, 2003.

5. Duties. The committee may hold up to 3 meetings, which must be held in Augusta. The committee shall gather information and request necessary data from public and private entities in order to review the progress of the implementation of the privatization of the State's wholesale liquor business. In conducting its study, the committee shall specifically:

A. Review the bidding process by which the State will lease the wholesale liquor distribution rights to a private distributor; and

B. Explore issues associated with the responsibility for enforcement of the laws governing the manufacture, importation, storage and sale of all liquor and with administering the laws relating to licensing and the collection of taxes on malt liquor and wine.

6. Staff assistance. Upon approval of the Legislative Council, the Office of Policy and Legal Analysis shall provide necessary staffing services to the committee.

7. Compensation. Members of the committee are entitled to receive the legislative per diem and reimbursement for travel and other necessary expenses related to their attendance at authorized meetings of the committee.

8. Report. No later than December 3, 2003, the committee shall submit a report that includes its findings and recommendations, including suggested legislation, for presentation to the Second Regular Session of the 121st Legislature. The committee is authorized to introduce a bill related to its report to the Second Regular Session of the 121st Legislature at the time of submission of its report.

9. Extension. If the committee requires a limited extension of time to complete its study and make its report, it may apply to the Legislative Council, which may grant an extension. Upon submission of its required report, the task force terminates.

10. Budget. The chairs of the committee, with assistance from the committee staff, shall administer the committee's budget. Within 10 days after its first meeting, the committee shall present a work plan and proposed budget to the Legislative Council for its approval. The committee may not incur expenses that would result in the committee's exceeding its approved budget. Upon request from the committee, the Executive Director of the Legislative Council shall promptly provide the committee chairs and staff with a status report on the committee's budget, expenditures incurred and paid and available funds.'

SUMMARY

This amendment provides that the Committee to Study the Implementation of the Privatization of the State's Wholesale Liquor Business may hold up to 3 meetings, which must be held in Augusta and may introduce a bill to the Second Regular Session of the 121st Legislature. It also incorporates provisions of the original joint study order.

SPONSORED BY: ______________________
(Senator GAGNON)

COUNTY: Kennebec

SENATE AMENDMENT

APPENDIX B

Membership list
Committee to Study the Implementation of the Privatization of the State's Wholesale Liquor Business

COMMITTEE TO STUDY THE IMPLEMENTATION OF THE PRIVATIZATION OF THE STATE'S WHOLESALE LIQUOR BUSINESS

Joint Order, SP 552, S-264

As Of Friday, April 09, 2004

Appointment(s) by the President

Sen. Kenneth T. Gagnon 10 First Rangeway Waterville, ME 04901 (207)-872-2338	**Chair**	Legal & Veterans Affairs Committee
Sen. David L. Carpenter 36 Belaire Drive Springvale, ME 04083		Criminal Justice & Public Safety Committee
Sen. Mary R. Cathcart 16 University Place Orono, ME 04473 (207)-866-3054		Appropriations & Financial Affairs Committee
Sen. Arthur F. Mayo, III 83 Green Street Bath, ME 04530 (207)-442-8053		Legal & Veterans Affairs Committee

Appointment(s) by the Speaker

Rep. Joseph E. Clark 299 Katahdin Ave. Millinocket, ME 04462 (207)-723-9262	**Chair**	Legal & Veterans Affairs Committee
Rep. Patricia A. Blanchette 2 Old Orchard Drive Bangor, ME. 04401 (207)-942-8692		Criminal Justice & Public Safety Committee
Rep. Richard H. Mailhot P.O. Box 2006 Lewiston, ME 04241 (207)-783-0841		Appropriations & Financial Affairs Committee
Rep. H. Sawin Millett, Jr. 37 Golden Guernsey Drive Waterford, ME 04088 (207)-583-4842		Appropriations & Financial Affairs Committee
Rep. Gary W. Moore 130 Oak Hill Road Standish, ME 04084		Legal & Veterans Affairs Committee

Staff: Danielle Fox - OPLA 287-1670
Darlene Shores Lynch 287-1670

APPENDIX C

Part SS and Part LL of Public Law 2003, c. 20

PAGE < TOC PAGE >

PL 2003
c. 20

PUBLIC LAWS OF MAINE
First Regular Session of the 121st

PART SS

Sec. SS-1. 28-A MRSA §453, sub-§2-A, as amended by PL 2001, c. 711, §2, is repealed and the following enacted in its place:

2-A. Replacement of state liquor stores or agency liquor stores. The bureau may license up to 6 agency liquor stores in a municipality with a population over 20,000 where a state liquor store has been closed and up to 3 agency liquor stores in a municipality with a population of 20,000 or less where a state liquor store has been closed. In addition, the bureau may establish one agency liquor store in a municipality where no state liquor store has operated, and, if the population is over 3,000, the bureau may locate 2 stores within the municipality. The bureau may consider the impact of seasonal population or tourism and other related information provided by the town requesting a 2nd agency liquor store location.

Sec. SS-2. 28-A MRSA §453, sub-§2-B is enacted to read:

2-B. Requirement of at least one replacement agency liquor store before closing. A state liquor store may not be closed unless at least one replacement agency liquor store with a federal wholesale registration and licensed as a reselling agent has been licensed within 10 miles of the state liquor store being closed or unless the director of the bureau determines that reasonable alternative access is available to persons who previously purchased spirits from the state liquor store being closed.

Sec. SS-3. 28-A MRSA §455, as amended by PL 1997, c. 373, §48, is repealed and the following enacted in its place:

§455. Liquor for agency liquor stores

1. Agency liquor store purchases. Agency liquor stores shall buy their liquor from the alcohol bureau under section 606.

2. Monthly specials. The alcohol bureau may establish monthly specials for all agency liquor stores. The issuance of an agency liquor store license and the operation of agency liquor stores licensed pursuant to this Part are governed by this chapter.

Sec. SS-4. 28-A MRSA c. 21 is enacted to read:

CHAPTER 21
WHOLESALE LIQUOR PROVIDER

§501. Wholesale liquor provider; definition

As used in this chapter, unless the context otherwise indicates, "wholesale liquor provider" means an entity or entities contracted by the State as an agent of the State for the purpose of providing wholesale spirits and fortified wine to establishments licensed by the State to sell spirits and fortified wine for off-premises consumption.

§502. Wholesale liquor provider prohibited from holding an agency liquor store license

A wholesale liquor provider is prohibited from holding a retail license to sell liquor for off-premises consumption.

§503. Sale to on-premises licensees prohibited

A wholesale liquor provider shall sell spirits and fortified wine to establishments licensed by the State to sell liquor for off-premises consumption. A wholesale liquor provider is prohibited from selling spirits and fortified wine directly to establishments licensed by the State to sell liquor for on-premises consumption.

Sec. SS-5. 28-A MRSA §606, sub-§1-A, as repealed and replaced by PL 1993, c. 276, §3, is amended to read:

1-A. On-premises licensees; purchase from agency store. A person licensed to sell spirits for consumption on the premises ~~may~~ shall purchase spirits from an agency liquor store only in accordance with this subsection.

A. The sale price of spirits sold to a licensee under this subsection must equal the price for which a licensee would purchase liquor at a state store. Beginning November 30, 2003, the sale price of spirits sold to an establishment licensed for on-premises consumption must equal the price established by the alcohol bureau.

B. Upon completion of a transaction, the agency liquor store and the on-premise licensee shall each retain a copy of the licensee order form.

Sec. SS-6. 28-A MRSA §606, sub-§4, as amended by PL 1997, c. 373, §58, is further amended to read:

4. Discount for agency liquor stores. The alcohol bureau shall sell spirits and fortified wines to agency liquor stores for a price of at least 8% less than the list price established for the state liquor stores. Beginning November 30, 2003, the alcohol bureau shall set the price of spirits and fortified wine at a minimum discount of 9% of the list price.

Sec. SS-7. Closure of 13 state liquor stores. Notwithstanding any other provision of law, the Department of Administrative and Financial Services, Bureau of Alcoholic Beverages and Lottery Operations is directed to implement the closure of 13 state liquor stores commencing on the effective date of this Act and completed by November 30, 2003 and replace the state liquor stores with agency liquor stores in accordance with the Maine Revised Statutes, Title 28-A, section 453.

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PART LLL

Sec. LLL-1. 28-A MRSA §83, sub-§§1 and 2, as amended by PL 1999, c. 535, §4, are further amended to read:

1. Bureau of Alcoholic Beverages and Lottery Operations; rules. ~~The~~ Until the effective date of the privatization of the entire wholesale liquor business authorized by section 88, the alcohol bureau shall manage the sale, distribution and merchandising of spirits and fortified wine through state liquor stores, agency liquor stores and licensees. The alcohol bureau may establish rules and procedures for the administration of the state liquor laws under its jurisdiction. The rules adopted under this section are routine technical rules pursuant to Title 5, chapter 375, subchapter ~~II-A~~ 2-A. The day-to-day activities of the alcohol bureau are under the supervision of the Commissioner of Administrative and Financial Services and the director of the alcohol bureau.

2. Purchase. ~~The~~ Until the effective date of the privatization of the wholesale liquor business authorized by section 88, the alcohol bureau may buy and have in its possession spirits and fortified wine for sale to the public. The alcohol bureau shall buy spirits directly and not through the State Purchasing Agent. All spirits and fortified wine must be free from adulteration and misbranding.

Sec. LLL-2. 28-A MRSA §88 is enacted to read:

§88. Transfer of wholesale liquor activities

1. Statement of purpose. The Legislature finds that it is in the public interest to seek efficiencies and cost savings from privatizing the State's wholesale liquor business. Privatization may include the grant of one or more exclusive service territories in which a private sector entity has the exclusive right to distribute certain spirits subject to price regulation by the alcohol bureau.

2. Authority. The Commissioner of Administrative and Financial Services may enter into a contract for the sale, franchise, license or lease of and may sell, franchise, license or lease the State's wholesale liquor activities associated with distributing and selling spirits and fortified wines sold by the State on January 1, 2003. The buyer, franchisee, licensee or lessee may sell and distribute to licensed agency liquor stores all spirits and fortified wines sold by the State on January 1, 2003.

3. Member of legislative committee of jurisdiction to participate. A member of the joint standing committee of the Legislature having jurisdiction over alcoholic beverages matters appointed by the committee's chairs must be included in meetings held by the Commissioner of Administrative and Financial Services regarding developing a request for proposal to transfer the wholesale liquor business, reviewing bids received and awarding the contract.

4. Bidding procedures. The Commissioner of Administrative and Financial Services shall adopt rules to effect the transfer of the State's wholesale liquor business to a private entity. The rules must include:

A. A finding by the Commissioner of Administrative and Financial Services setting forth the method of transfer that promotes the Legislature's intent in enacting this section;
B. Procedures designed to encourage vigorous bidding for the State's wholesale liquor

business;
C. Criteria for eligibility for service as a wholesale liquor provider. For purposes of this section, "wholesale liquor provider" means an entity or entities contracted by the State as an agent of the State for the purpose of providing wholesale spirits and fortified wine to establishments licensed by the State to sell spirits and fortified wine for off-premises consumption;
D. Criteria for eligibility as a wholesale liquor provider, which must include a commitment to offer split cases of spirits and fortified wine to licensed agents and a commitment to provide timely delivery of spirits and fortified wine to all agents, particularly those located in geographically remote areas of the State;
E. A plan for the continued employment of state employees in the wholesale liquor business in the State for a period of 2 years from the date of privatization; and
F. Any rules that the Commissioner of Administrative and Financial Services determines are consistent with the Legislature's intent.

5. Price regulation. The alcohol bureau shall regulate the wholesale and retail prices of all liquor sold by private entities under this section. The alcohol bureau shall adopt rules for the effective implementation of price regulation of the wholesale and retail liquor business by January 1, 2004. A private entity awarded the exclusive right to distribute liquor pursuant to this section is immune from antitrust action so long as the entity is in compliance with the alcohol bureau's rules and all other applicable laws and regulations.

6. Limitation on conveyences of rights. The State may not convey or assign to private entities any rights in the distilled spirits business that extend beyond June 30, 2014. Any renewal of such rights is subject to approval of the Legislature. This section does not affect the State's continuing right to collect the alcohol premium tax, sales taxes or income taxes arising from the sale of distilled spirits and fortified wines.

7. Rules. Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

Sec. LLL-3. Effect of negotiation; legislation required. Upon the successful negotiation of a contract pursuant to the Maine Revised Statutes, Title 28-A, section 88, and notwithstanding any other provision of Title 28-A, the Commissioner of Administrative and Financial Services may adopt any emergency rules necessary to ensure the safety, health and welfare of the people of the State concerning activities associated with distributing and selling spirits and fortified wines. The commissioner shall prepare and submit legislation to the session of the Legislature during which the contract is successfully negotiated or, if the Legislature is not in session, to the next immediately following session, making the necessary changes to the Maine Revised Statutes to fully implement this Part.

Sec. LLL-4. Effective date. This Part takes effect 90 days after adjournment of the First Regular Session of the 121st Legislature.

APPENDIX D

Study Committee Agenda and Meeting Materials

COMMITTEE TO STUDY THE IMPLEMENTATION OF THE PRIVATIZATION OF THE WHOLESALE LIQUOR BUSINESS

121ST LEGISLATURE – INTERIM 2003

A G E N D A

September 25, 2003

I. **Welcome and Introductions**

II. **Overview**

A. Study Legislation

B. Wholesale liquor distribution system and liquor enforcement function overview – changes as a result of Public Law 2003 chapter 20 (Part I Budget)

III. **Presentations**

A. Department of Administrative and Financial Services
Commissioner Rebecca Wyke
Update on the privatization process

B. Department of Public Safety
Lt. John Dyer or Roland Leach
Update on the transition of the enforcement duties once performed by the Bureau of Liquor Enforcement

IV. **Planning for Future Meetings**

A. Dates and times

B. Agenda items, information requests

C. Report writing process

V. **Adjourn**

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PUBLIC HEARING NOTICE

Committee to Study the Implementation of the Privatization of the State's Wholesale Liquor Business

The Committee to Study the Implementation of the Privatization of the State's Wholesale Liquor Business will hold a public hearing on Thursday, October 16, 2003 at 1 p.m. in Room 436 of the State House in Augusta, Maine. The Committee was created by the Legislature in 2003 and is comprised of nine legislators. The Committee will be soliciting comments on the following issues:

1 p.m. to 3 p.m.:	The privatization of the State's spirits distribution business
3 p.m. to 5 p.m.:	Enforcement and Administration of liquor laws by the Department of Public Safety and local authorities since the elimination of the Bureau of Liquor Enforcement

The committee will accept written testimony from those unable to testify at the public hearing. If you wish to submit written testimony, please send <u>20 copies</u> to:

The Committee to Study the Implementation of the Privatization of
the State's Wholesale Liquor Business
C/O: Office of Policy and Legal Analysis
Maine State Legislature
13 State House Station
Augusta, Maine 04333

COMMITTEE TO STUDY THE IMPLEMENTATION OF THE PRIVATIZATION OF THE WHOLESALE LIQUOR BUSINESS

121ST LEGISLATURE – INTERIM 2003

A G E N D A

I. Review of Draft Report Outline

II. Report Discussion -
   A. Study Findings – Highlighting the Issues
      1. Privatization
         a. Impact on Agents – relationship with private wholesaler, delivery and payment schedules
         b. Role of DAFS/BABLO
         c. Transitioning
         d. "*The business*" – marketing, pricing, competition, discounts for agents, bailment, the RFP
         e. Revenue projections
      2. Liquor Enforcement
         a. Role of Dept. of Public Safety – Role of Local Enforcement
         b. Issues for municipalities, agents, licensees, general public
         c. Advisory Council

   B. Study Recommendations and Proposed Legislation

III. Process for drafting/reviewing the report

IV. Adjourn

BRIEF OVERVIEW OF THE SYSTEM FOR SELLING AND DISTRIBUTING ALCOHOLIC BEVERAGES IN MAINE
–Changes as a result of Public Law 2003 chapter 20 noted in italicized print-

Prepared by the Office of Policy and Legal Analysis for the Committee to Study the Implementation of the Privatization of the Wholesale Liquor Business
121st Legislature – Interim 2003

It's important to note that "liquor" refers to all alcoholic beverages. "Spirits" are defined as distilled liquor or hard liquor and "malt beverage" is beer.

CONTROL

SPIRITS- The sale of spirits is controlled entirely by the State Bureau of Alcoholic Beverages and Lottery Operations (BABLO) within the Department of Administrative and Financial Services (DAFS). *As a result of Public Law 2003 chapter 20, DAFS may enter into a contract to sell, lease of franchise the wholesale operation to a private entity.*

The price of spirits is set by BABLO *and will continue to be set by BABLO if the wholesale liquor business is leased to a private entity.* Spirits are sold to consumers via licensed private agents, state-operated liquor stores and licensed on-premise establishments like bars and restaurants. *As a result of Public Law 2003 chapter 20, the private wholesaler would be prohibited from selling spirits to on-premises licensees (bars and restaurants). Agency stores will distribute to on-premises licensees.*

Private agents purchase spirits at a discount ranging from 8-12% for retail sale at a price set by BABLO. *Agents will continue to purchase at a discount – the minimum by law will be 9%.*

BEER/WINE- Beer and wine are distributed to licensed agents and on-premise establishments by private wholesalers licensed by the state. There are exclusive territories for distribution.

**Fortified wine is considered a "cross-over" product. It is sold by the state as well as by private licensed wholesalers.*

BABLO - Bureau of Alcoholic Beverages and Lottery Operations within the Department of Administrative and Financial Services – Operate the sale and distribution of spirits in the state. BABLO operates the 13 remaining state stores. *As a result of Public Law 2003 chapter 20 all of the remaining state stores will be closed by November 30, 2003. After the state stores are closed -towns with a population over 20,000 may have up to 6 agency stores, towns with a population under 20,000 may have up to 3 agency stores and those towns that never had a state store and have a population of over 3,000 may have up to 2 state stores.*

BLE- Bureau of Liquor Enforcement within the Department of Public Safety

- License all establishments that sell alcoholic beverages (including beer and wine wholesalers, small breweries and farm wineries – involved in suspensions, revocations and appeal procedures
- Investigate, enforce and educate re: liquor laws- state and federal
- Collect taxes on sale of beer and wine
- Provide seller/server education and training

In accordance with Public Law 2003, chapter 20 the enforcement branch of the Bureau of Liquor Enforcement was eliminated and the Department of Public Safety has assumed all of the administrative functions of the bureau and the enforcement of civil violations. Local law enforcement authorities will enforce criminal violations of the liquor laws.

DISTRIBUTION TO LICENSED AGENTS FOR OFF-PREMISE CONSUMPTION

SPIRITS- All spirits originate from a bailment warehouse in Portland that is contracted by BABLO. Manufacturers of spirits own the inventory in the warehouse until it is ordered for sale. BABLO purchases the spirits at the warehouse based on orders received by agents and the needs of the state-operated stores. *With privatization, the wholesaler may have to purchase inventory for distribution – this will be a point to be clarified during the course of the study committee's work.*

WAREHOUSE: Licensed agents may order directly from the warehouse – minimum orders required and there is a requirement that product be ordered in full-cases. Agents may pick up the product directly from the warehouse or receive delivery via a trucking outfit contracted by BABLO. *The committee will want to clarify what the process will be for distributing spirits to agents – and whether that is described specifically in the RFP sent out by DAFS.*

STATE STORES: Licensed agents my purchase spirits from the 13 remaining state-operated stores. There is no minimum order and no full-case requirement. Product is available by pick-up only. *State stores will no longer exist.*

BEER/WINE- Beer and wine are distributed via the private wholesaler network.

DISTRIBUTION TO LICENSEES FOR ON-PREMISE CONSUMPTION

Bars, restaurants, taverns

SPIRITS-	On-premise licensees may purchase spirits from state operated stores or from off-premise agents specially licensed as wholesalers of spirits. Off-premise agents may not sell spirits to other off-premise agents. *In accordance with Public Law 2003 chapter 20, on-premise licensees will receive their spirits from agency stores with a state and federal wholesale license.*
BEER/WINE-	Beer and wine are distributed to on-premise licensees via the private wholesaler network.

MEMORANDUM

Date: October 16, 2003

To: Members, Committee to Study the Privatization of the State's Wholesale Liquor Business

From: Danielle Fox, Legislative Analyst

RE: Issues for consideration – prior to final meeting

After our September meeting several members of the study committee asked that I put down on paper some of the issues surrounding the privatization of the spirits distribution business. These issues were either only touched upon briefly or time did not allow for them to be discussed at that meeting.

1. Five year history of the General Fund revenue recognized from the spirits distribution business and the future impact on the General Fund with privatization. *Some members want to discuss that this effort will bring us an estimated $100 million now at the cost of $25-27 million annually for the next 10 years (likely term of the lease).*

2. Bottle picking issues – offering of split cases of spirits from the warehouse. *With the state stores closed smaller agency stores and those located in geographically remote areas will no longer be able to purchase small amounts of inventory and will be required to use the warehouse and shipping agent.* What is the cost to the state for the picking operation and will these smaller and remote agents be able to provide the same level of service to their customers. *In the past, when state stores have been closed, the LVA committee has understood that a bottle picking operation would be very expensive – was the cost of the picking operation that is taking place now budgeted for?*

3. Distribution schedule - *How often will agents be able to receive delivery from the warehouse. Will the frequency of delivery vary due to location or the amount of inventory an agent carries?*

APPENDIX E

Privatization of the Wholesale Liquor Business
RFP Timeline

DRAFT
WHOLESALE LIQUIOR PRIVATIZATION
Proposed RFP Timeline

DEADLINES:

Draft RFP for Review	October 31, 2003
Advertise and Release Final RFP	November 07, 2003
Bidders Written Questions by	November 19, 2003
Bidder's Conference	November 21, 2003
Conference Record to Bidder's	November 26, 2003
Proposal Response Date	December 18, 2003
Initial Scoring Complete	January 14, 2004
Finalist Interview's/Presentations	January 21/22, 2004
Complete Scoring	January 29, 2004
Notification of Award	February 04, 2004
Request for Stay Deadline	February 16, 2004
Request for Appeal Deadline	February 19, 2004

Appeal Process, 4 weeks if needed

Execute Final Contract	March 19, 2004
Contractor to Begin Work	April 15, 2004

APPENDIX F

Written Testimony

Privatization of the State's Wholesale Liquor Business
Proposed Timeline

September/October 2003

Education Phase

- tour warehouse, trucking company and BABLO operations
- meet with interested parties in the industry to understand their concerns regarding privatization
- hold public meetings to provide agents and licensees an opportunity to apprise us of their concerns regarding privatization

Thursday, September 25
10:00am - 12:00pm
Transportation Committee Room
Suppliers/Brokers

Wednesday, October 8
11:00am - 2:00pm
Bangor Civic Center
Licensees and Agents

Thursday, October 9
9:00am - 12:00pm
Verrillo's - Portland (off Exit 8)
Licensees and Agents

October/November 2003

Draft and Issue Request for Proposal

December/January 2004

Review and Evaluate Proposals

January/February/March 2004

Award Bid and Negotiate Contract

discount beverage and redemption center inc.

Dear Commissioner Wyke, and members of the RFP committee::

Please see for your review and for the RFP committee what we at RSVP view as crucial to the 10 year success of this plan.

We believe in the interest of complete transparency where agent discounts must be determined as part of the R F P. Otherwise, the R F P will set a process where the entity will be at odds with the agents in the future.

Agents will be seeking an increase legislatively or administratively while the entity will be completely motivated to oppose such a change.

Thanking your for your consideration, I remain,

Peter M. Cleveland

Peter M Cleveland

Treasurer, RSVP

TO: REBECCA WYKE AND THE OVERSIGHT COMMITTEE OF THE STATE LIQUOR R F P.

10/30/03

- 1. In the state system of distributing spirits, the agents are an integral partner of the entity which finally succeeds in the bid of the state liquor R F P
- 2. The distributing system of spirits has evolved from a number of state run, state controlled liquor stores, and a small number of agents to a system that utilizes no state stores and hundreds of agents, throughout the state. These agents are the front line of interaction with the buying public and essential to the growth of the spirits business.
- 3. To further enhance the relationship between AGENT and the successful bidding entity; we strongly urge the committee to address the question of agent discounts within the RFP process. Particularly, at the time of the bids, in order for the bidding entity to have such discounts incorporated in the bidding.

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- 4. The present discount to agents is the following: 0-$14.99 9%: $15.00- $24.99 10%: $25.00 up 12%.. This does not present enough incentive for the AGENT tier. The distillers, brokers and distributors have a clear incentive to sell their products and for making profits on their products. That remains whether the state runs the system or, a purchaser under the RFP, runs the system. The successful bidder in the RFP similarly has singular control over the liquor sales and distribution system as incentive for continued effort. THE AGENT ARM OF THE PARTNERSHIP NEEDS INCREASED INCENTIVE , AS WELL. Because the agents are the front line in the chain of effort from distillery to consumer,THEY SHOULD BE ENCOURAGED TO PERFORM WITH ADDITIONAL INCENTIVE.

- **We strongly urge the committee to address further incentive for the agent in the following manner:**
  Spirits selling for 0-$14.99 11% $15.00- $24.99 12% and $25.00 and above at 15%.The following are some the supporting reasons for this move:

  - With the state stores gone agents are forced and encouraged to carry more and more diverse inventory, thus increasing their costs.

  - Agents represent 100% of the distribution system

  - In open markets the discounts run between 20% and 25% plus shelf stocking service and 24 ordering
    Maine is moving toward a template of an open market.

  - Puts spirits more nearly competitive with other adult drinks ie. Wine with discount of 23% and beer of 18%

  - This would piggy-back the current known system of discounts, and trade up policy. Utilized by the state presently.

  - Agents are Maine businesses employing thousands of people and paying Maine State taxes

  - The tiered increases would help both the low priced goods and the high priced goods in the system. Because the low-priced goods are at the lowest tier discount, there is a reluctance to present a variety of goods.
  - .An increase in margin would help present more shelf space devoted to lower priced goods. The high end products are expensive for some smaller agents to stock. If the discount is increased more of those products will appear on shelves increasing sales.

- Please consider this format for inclusion in the RFP to both enhance sales and give further incentive to agents in the state of Maine.. In a true partnership as is the case of the distribution system in Maine each partner needs to have a fair incentive to make the whole succeed

- MOST IMPORTANT; THE INCREASED DISCOUNTS SHOULD BE IN THE BID PROCESS, TRANSPARENT TO THE BIDDERS AND BEFORE THE RFP IS AWARDED. THE INCENTIVE FOR THE ENTITY IS DIMINISHED AFTER THE AWARD. AGENTS ASKING FOR INCREASED DISCOUNTS WOULD THEN BE MET WITH NO, NO NO.

discount
beverage
and
redemption
center inc.

October 9, 2003

Commissioner Rebecca Wyke
Department of Administrative & Financial Services
78 State House Station
Augusta, ME 04333-0078

RE: Privatization Contract
State's Wholesale Liquor Activities and R.F.P. construction

Dear Commissioner Wyke,

My name is Peter Welch and I represent R.S.V.P. Discount Beverage, agent # 186 located in Portland.

I welcome the opportunity to present our concerns, as an agent, regarding the RFP for the "wholesale contract". I will refer to this contractor as the "entity". I will refer to BABLO and the state as one and the same. Clearly, our livelihood and business will be impacted by the addition of a new business partner. Agents will soon represent **100%** of the **primary customer base** of liquor sales in Maine. Without agents there is no spirits business. Without motivated agents there is less spirits business.

Agents need to know that this evolution will produce a brighter or similar business relationship versus a dimmer scenario. As an agent, R.S.V.P. hopes to be viewed as a responsible and engaged **customer** of the "entity". R.S.V.P. aspires to be a business partner of the "entity" for the public good.

Agents need a positive working relationship with the entity in all aspects of the entity role, as you will outline in the RFP and contract. Agents should be equally motivated to make investments in the spirits category with the entity, as opposed to other business alternatives.

Last year, as this idea was hatched, the administration indicated two over-arching philosophical parameters beyond the financial goals.

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1. First, the hope and goal was enumerated to make this evolution **SEAMLESS.** As if, the "entity" would simply slip into BABLO's shoes.
2. Second, the "entity" would be contracting for the same BABLO business as **existed** or was enunciated last spring by the administration. (This could be negatively impacted by the current view of Sunday agent closures.)

With these two guidelines as a compass, please let me outline characteristics that we, R.S.V.P., believe are important to be stated in the RFP and the subsequent contract.

1. The State of Maine must continue to project ultimate authority and CONTROL over the system.
2. The "entity" must have the responsibility to honor and abide under the State authority. Further, the "entity" must be evenhanded with agents, vendors and other stakeholders.
3. The state must insure safeguards are in place to negate the potentials of "undue influence".
4. The state should insure itself and its business partners from potential and unforeseen entity pitfalls be they social or legal.

The details of the RFP can be expressed in light of minimum performance and criteria requirements certainly with the opportunity allowed for the entity to exceed the minimum performance and status quo.

Bailment

The state should continue this practice within the boundaries of Maine for practical and legal purposes. Bailment in Maine means Maine jobs. Bailment in Maine means better and more timely access to inventory and less transportation costs. Bailment in Maine means vendors are responsible to store goods at their expense under criteria established and contracted by BABLO. Bailment in Maine provides safeguards for the vendors and the entity from undue influence. Bailment in Maine equals BABLO CONTROL and authority which will minimize "entity" monopolistic practices and subsequent legal challenges. Bailment in Maine acts as an insurance policy for BABLO should the entity falter. BABLO could promptly and **SEAMLESSLY** step back into its administration role should the entity fail. Bailment in Maine is or can be **SEAMLESS** with no new costs to "entity".

List/ Delist

The state should continue its ultimate authority within BABLO. All listings and delisting (within the above bailment system) should be the prerogative of the vendor subject to enumerated criteria established by BABLO. BABLO should have the ultimate authority to refuse a product for reasons unforeseen or not in the public good beyond established criteria.

An example of criteria could be - no 200 proof alcohol products, no products with packaging or promotion that is vile, derogatory or clearly marketed to minors.

A fee structure for the expense of listing/delisting could be maintained, as exists presently, to be garnered by BABLO and the entity proportionately. This would be **SEAMLESS** and similar to current practices.

Inventory Levels

Globally, BABLO should oversee the maintenance of bailment inventories by vendors through and with the "entity". It is in the best interest of BABLO and its contracted entity to do so. The entity, because of the bailment status, will have no authority to compel inventory from a vendor nor should the entity have that authority. Obviously, criteria in concert with vendors and vendor input could be fairly structured. The entity may or should have the ability to purchase goods itself. However, inventory to be held in bailment by the entity for subsequent sale must be available to agents and not denied.

Pricing / Costs to Agents

This is a very complex piece of the puzzle. To meet the philosophical parameters of **SEAMLESS** while also meeting the goal of transferring the business, as it existed or was enumerated to exist, requires serious consideration and detail outlined in the RFP and contract.

Please know, when I use the words "exist or was enumerated to exist" I refer to the then impending state store closures, I refer to expense and supplying of splits to agents and the public by BABLO or its heirs as promised, budgeted and implemented. I refer to the statutory language of agents sales to on-premise solely. I refer to the transport of products to agents at the expense of BABLO and its assignee. I refer to the minimum agent discounts and tier system specifically existing at 9%, 10% and 12%. I refer to the 3-day invoice payment timeline. **I refer to the existing list prices. Any significant diminishment will seriously and negatively impact agents revenue.** This is as important to agents as the discounts. Do not be fooled by pronouncements of the recapture of New Hampshire liquor sales. There is no plan and no data to support this concept. Unless Maine can geographically switch with New Hampshire this will continue to exist. If Maine drops prices won't New Hampshire do so and create a spiral? Who loses? Agents, the entity and the State of Maine. Marketing and Finance 101 will indicate that it defies logic.

All these above considerations are of extreme importance to agents. These considerations in fact did exist or were specifically added to the public law. They were commitments made by the administration to the public and the legislature upon which good faith was established.

As such, these policy objectives must be adhered to by the entity and specifically embodied within the RFP as criteria to be incorporated as the minimum

performance standard. To do otherwise would not be SEAMLESS and place agents in a position of undue influence by the entity.

The RFP should allow for and promote enhancement of these minimums within the proposed business plan of qualified entity bidders.

The RFP reviewing committee should weigh thoughtfully and seriously these constituent factors along with the qualities, ideas and innovation that a qualified bidder proposes. The RFP is about public policy and the public good before it's about the bid exclusively in dollar and cents.

Should a qualified or successful entity bidder within its business plan and within the RFP guidelines decide today or in the future to implement the following:

a) enhance the splits procedure
b) further promote agent partnerships with a discount enhancement
c) motivate agent inventories by extending invoice payment days
d) other innovations

The bidder should not be precluded from doing so subject to state oversight. The bidder should be allowed to elucidate these opportunities within their bid and it should carry weight in the RFP selection.

It is for these reasons that these suggestions should be within the criteria and clearly enunciated within the RFP and contract.

These minimum standards reflected in the RFP criteria also will enhance the thoughtfulness and detail, we all hope, of a serious bid.

This proposal leaves the state with the necessary CONTROL opportunity going forward as exists today while providing a qualified entity to innovate upon the administration practices of BABLO. This is SEAMLESS.

Ultimately, the legislature and subsequent legislators have the people's authority and prerogative to amend the laws or propositions under which we operate and live by. Thankfully that is **SEAMLESS.**

Pricing Authority & Process

Of huge concern is this pricing process. Like bailment it has practical, social and legal ramifications.

Of public policy and good concern is whether or not the state should install a private pricing monopoly. Forget if it can. That's a legal question. Should it? I submit no.

Pricing to the public should be uniform statewide. The list price is the list price as defined by statute. This quality should remain ultimately within the preview of BABLO to alter.

Pricing as guided by the RFP and the contract should not be allowed to stray to far from the recent historical norm. Too high could represent a gouge by the entity. Too low could create unwanted consumption and severe negative financial impacts for agents. Therefore, a framework overseen by BABLO with ultimate authority and flexibility meets many goals.

Should BABLO exercise day to day, item by item pricing? I think not. The entity should be responsible within criteria for the actual pricing and the timely communication and dissemination of the same. There needs to be a uniform pricing formula.

Vendors need to know within uniform ranges what to expect as the result of their F.O.B. costs to the entity. The entity needs to know its flexibility and mandated criteria.

This is important to eliminating "undue influence" among other pitfalls.

Using the historical BABLO COG's (cost of goods) and determining the (BABLO and SPA's - vendor promotional allowances) an historic COGS spread could be determined going forward.

The RFP criteria should provide a COG's goal of for example between 50% - 70% as is currently arrived at via the BABLO financial statements or use the current 63.27 COGS. If the state purveys to the entity the business "as it existed" then the entity COG's should be 61.86%.

The weighted average for any and all vendors must be alike. For example, the price to the public on all $9.00 FOB vodka L75's must be 50% COGS +/- 2%. The weighted list price must be $18.00 +/- .36¢. For marketing purposes, price points could have a rounding criteria of .49¢ to .99¢ price points.

The entity would have the prerogative to price in between the range as long as it did so for all vendors within a predetermined standard of deviation.

Criteria could include the SPA's offered by the vendor including amounts and frequency as a pricing factor. The key is equal application to suppliers as determined by the criteria. This will give flexibility to the entity and the vendors. An overall weighted mark-up / COGS value could be scored to a vendor. The entity's pricing of a vendor's portfolio will be the guiding light and must be equally applied.

In regard to BABLO's most recent COG's of 63.27 in 2003 fiscal year, it would be helpful to know how that came to pass versus 61.86 in 2002. The factors involved are mathematical and can be viewed on a month to month versus prior year analysis.

The current state store closures resulting with an additional 10 million dollars of agents sales adds about 1 million to the COG's in 2003 over 2002. This is less than 28% of the COG's increase.

Did BABLO receive more discounts in 2002 versus 2003? Did BABLO have FOB price increases that is absorbed? How much did state store closure inventory depletion impact the COG's?

These may well be some of the considerations for determining a COG range.

In the end, the ultimate authority for the state to develop pricing criteria and ranges within periodic revisiting is similar to now and **SEAMLESS**.

The crisper, the cleaner and the more distinctly clear the RFP, the higher the probability the State will garner its public policy and financial goals now and going forward.

Similarly, the entity will be able to adjudge its ROI based on sales, store closures, COG's and the administrative acumen it may bring to Maine as the new entity.

In the end, this transition can be made **SEAMLESS** while being flexible for all.

DIAGEO

94 Old Colony Road
Monroe, CT 06468
203-261-0943
203-261-0946 (fax)
joseph.luppino@diageo.com

October 13, 2003

Honorable Rebecca M. Wyke
Commissioner, Department of Administrative and Financial Services
State Of Maine
78 State House Station
Augusta, ME 04333-0078

Dear Commissioner Wyke:

It was a pleasure to meet you after the public meeting held at the State House in Augusta several weeks ago to discuss the privatization of the state's wholesale operations for distilled spirits and fortified wines.

As the largest supplier of distilled spirits in the United States, Diageo wanted to be sure and share some of our observations and concerns with you in the hope that they will be considered as you continue to move forward with the Legislature's and Governor's directive to implement Part LLL of Chapter 20 of the Public Laws of Maine, as enacted by the 121st Legislature.

First and foremost, we agree with the suggestion offered to you by the Distilled Spirits Council of the United States that you avail yourself to the resources of the industry by empanelling an advisory group of supplier representatives, brokers and retail licensees who will not be actively participating in the RFP process to assure that your work is as reflective of the legitimate needs and concerns of the industry as it is of the needs and concerns of the State of Maine. We understand that the Department has been proactively reaching out to some brokers for input. We thank you for that and encourage you to take advantage of all parts of the industry that may be able to provide additional assistance as you move forward.

I believe that you will agree that this is an extremely complex industry and it is critically important to all of those involved that Part LLL be implemented in a manner that results in the least disruption possible for Maine's legal drinking-age consumers and those of us engaged in the day-to-day business as suppliers, brokers or retailers.

The myriad of concerns raised during the public meeting reflect the desire of all of us in the industry to assure an orderly transition and outcome which both serves the best interests of the State of Maine and strengthens the system by which distilled spirits are sold, distributed and merchandised within the state.

Further, we are equally interested in learning more about the Bureau of Alcoholic Beverages and Lottery Operations (BABLO) plans for implementing Part LLL, section LLL-2.28-A MRSA subsection 88, part 5. As directed by Chapter 20, the bureau shall adopt by January 1, 2004 rules for the effective implementation of price regulation for wholesale and retail sales. Again, as raised by several parties during the meeting, revisions to the present pricing system should assure a more stable and predictable structure is in place once wholesale operations have been moved to a private system. Suppliers and brokers must have a greater ability to prospectively understand how retail prices are established and what the attributes are of each component that makes up the final retail cost of a bottle of distilled spirits.

Ultimately, we believe adopting such a system will better serve the long-term revenue objectives of the state and also provide a more solid platform from which you can fairly serve consumers and improve your competitive position vis-à-vis surrounding jurisdictions.

Further, we would like to express our hope that as the state removes itself from wholesale/warehousing it will look very closely at eliminating the current bailment and warehouse handling fees that have been in place. As you know, of the 13 jurisdictions that have mandatory bailment a significant majority charge no bailment fees whatsoever. Also, many either have substantially lower charges or charge nothing for various warehouse handling activities that are currently on a fee basis in Maine. As these costs will no longer be incurred by the state we do not believe they should be charged to suppliers under the new warehousing system.

Also, we would respectfully suggest that the state consider implementing a system whereby agency stores will be extended credit for a reasonable period of time (i.e. 30 days) before they must pay for goods purchased through the new "wholesale" operation. This will encourage agency stores to maintain more adequate in-stock supplies (therefore putting less of a burden on the warehouse and delivery operations) and will also encourage more regular buying schedules. As you know this is a common practice in other states with private wholesale and retail operations. It is also reflective of the credit terms provided to the state by suppliers.

Finally, with respect to the role of merchandising product and displays within agency stores, we believe that as the state completes its withdrawal from the retail sale and warehousing and delivery of distilled spirits it should also allow for merchandising activities that more closely align distilled spirits merchandising with other forms of beverage alcohol that are sold through these same outlets. Co-branded products and joint product sales and promotions often make sense commercially (i.e. Smirnoff vodka displays with tonic water, Jose Cuervo tequila and Cuervo margarita mix) and would certainly be well-received by consumers.

We would welcome the opportunity to discuss any of these matters with you in further detail at your convenience.

Sincerely,

Joseph S. Luppino
Director, State Government Relations

M.W. SEWALL & CO.
259 Front St., Bath, ME 04530
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Bath, ME 04530

Rebecca Wyke, Commissioner
Department of Administrative and Financial Services
78 State House Station
Augusta, ME 04333-0078
October 14, 2003

Dear Ms. Wyke:

I appreciate the fact that the law permits liquor agents and licensees the opportunity to express concerns regarding the laws applicable to our business. A representative from our company was unable to attend the forums held recently. I would like to share our concerns regarding this matter.

The biggest concern for us as an agency liquor store is the fact that State regulates our retails. Agents should have the ability to price the product according to what the market will bear in their area. We should be allowed to factor into the retail some of our costs associated with the product.

I understand that the State controls retail pricing to keep liquor prices in the State of Maine competitive with New Hampshire's. Having spent a considerable amount of time in our agency liquor store in West Bath, I would wager we loose a minimum of sales to New Hampshire. I'm sure that some agency stores would set their retail lower than what is now required. Most business people are intelligent individuals and are not going to price themselves out of the market. Those business that are going to survive, pay attention to what competitors are doing.

An eight to twelve percent margin on an item is meager. I compared the dollar profit and inventory levels of liquor with some other categories in our agency store in West Bath. We made $85 more on liquor than we did on soda for the month of September. At months end, we had $22,279 in inventory of liquor compared to $1288 in soda. We made over $2000 more on beer products with under $5200 in inventory at the end of the month. Liquor represents a big investment for it's return.

Other beverage vendors are more cooperative in delivering product to our location. Product is taken off the truck, brought into the walk-in cooler and put on the shelves in some instances. I am sure you are aware of the delivery process for alcohol. Something less than full service shall we say. With the exception of fast food which has an average margin of 65%, liquor is our most labor intensive product. It requires additional labor to unload, stock and ensure proper receiving.

The above mentioned issues in addition to the $850 in license fees for liquor are a sound argument for allowing liquor agents to set their own retails. I am aware that liquor is a draw to a location and generates incremental sales. It is a profitable addition to our business. As I look forward to generating additional funds to cover our rising business costs, it would be helpful to be able to set margins on liquor as we do with other merchandise Thank you for your consideration in this matter.

Sincerely,

Charon Curtis
Director of Convenience Stores

RECEIVED
OCT 15 2003
By

RALPH BUCHANAN PEARS

dba **Pan-Atlantic Associates**

Government Relations/Communications

MEMORANDUM

To: Rebecca Wyke, Commissioner
Department of Administrative & Financial Services
From: Ralph B. Pears
Date: September 25, 2003
Re: Maine Wholesale Liquor "Privatization" Initiative

I welcome this opportunity to submit testimony on behalf of the Distilled Spirits Council of the United States, Inc. (DISCUS) regarding the proposed "privatization" of the State's wholesale liquor distribution system. DISCUS is a national trade association representing manufacturers and marketers of distilled spirits sold in the United States.

DISCUS takes no position regarding whether a Control State should privatize. If a State considers privatization, DISCUS will make recommendations to ensure that privatization serves the interests of both the State and industry by permitting the cost effective and competitive distribution of distilled spirits.

It is DISCUS' understanding that Maine's current proposed course of action is not actual "privatization" of the wholesale function, but predominately is to contract out the wholesale distribution functions currently performed by the Bureau of Alcoholic Beverages & Lottery Operations (BABLO) to the successful bidder from the private sector. The successful bidder would be required to pay the State an advance fee for the exclusive rights to distribute liquor for approximately a ten-year period, and the State would reduce its net revenue receipts from the sale of spirits in Maine.

Further, it is DISCUS' understanding that the State of Maine intends to maintain its exclusive control over listing and delisting procedures, wholesale and retail pricing of spirits products, and control over all aspects of the importation and sale of spirits products within the State.

Critical Necessity of Review and Analysis of RFPs

DISCUS believes that an early and detailed planning process for the transition is essential, as is the need for clear operational guidelines and a collaborative approach. This hearing and previous stakeholder meetings are good indications that this process has begun. DISCUS also believes that the State would be well served by the creation of an advisory panel of industry experts (precluded from the formal bidding process) to review details of the State's draft Request for Proposals (RFP), for contracting out the wholesale function to ensure that the terms and elements of the RFP do not overlook any critical issues in the distribution system mechanics, as well as to ensure that unanticipated problems are not created by the language of the RFP or its process and the continuation of a smooth, uninterrupted flow of goods.

As the State seeks to select a private operator for the wholesale distribution of spirits in Maine, DISCUS suggests that potential bidders should be screened preliminarily to ensure that they are legally qualified and that the bidders are not tied to competing elements of the beverage alcohol industry, with differing priorities and loyalties. Without such due care, the spirits industry in Maine could be placed at a significant marketing disadvantage vis-à-vis other States and/or competing types of beverage alcohol products, and/or there could be competitive disadvantages between spirits suppliers. These suggested procedures also will ensure that Maine consumers will continue to be served in terms of, for example, the availability of a wide array of distilled spirits products.

DISCUS also recommends that an initial contract for wholesale operations should be resubmitted for competitive tender following an introductory phase-in period. This action would ensure that the private sector operator has the necessary security of tenure and stability to bid, while providing the State with the opportunity to restructure its contracted operations down the road through a second-stage bidding process.

Marketplace Impacts

Both the industry and the State are interested in ensuring that the wholesale market environment for distilled spirits will be cost-effective and competitive. For the benefit of Maine's consumers, the State must recognize that there are current built-in competitive disadvantages between the marketing of spirits versus the marketing of beer and wine as manifested by, for example, the tax burden applied to spirits, the number of retail outlets, and assorted other factors. "Privatization" should not worsen this disadvantage, but rather should ameliorate these marketplace facts.

To that end, the State's markup should be reduced following "privatization" to reflect the decline in the State's administrative costs for wholesale operations contracted to the private sector and to avoid charging consumers for services no longer provided by the State. Additionally, no "disguised" taxes, warehouse fees, or storage charges should be levied as a result of "privatization."

Further, since Maine will continue to be the purchaser of distilled spirits, pricing decisions should remain under State control in Maine in order to avoid indiscriminate price changes or price increases simply for the sake of increasing profits of the contracted wholesale distribution agent.

Conversely, suppliers should not be financially penalized for any inefficiencies of the private

PAN-ATLANTIC ASSOCIATES
P.O. Box 249 ◊ Bath, Maine 04530-0249 ◊ 207-468-1165 ◊ Fax 207-389-1647

entity. For example, the current State profitability is estimated to be $27 million annually. It is entirely possible that the State-approved private entity could make poor business decisions in warehousing, trucking, manpower, etc., which could negatively affect the projected annual profitability. Under these circumstances, the Maine consumer should not be made to pay higher prices due to the inefficiencies of the private entity, nor should the industry be penalized.

Procompetitive Trade Practices

Trade practices should be liberalized under "privatization" to reflect modern marketing practices and technological changes, and to help level the playing field among all types of beverage alcohol. We believe that BABLO can update its trade practice rules, enhance efficiencies for both government and industry, and promote opportunities for fairer and more effective competition -- without eroding any policy of the State -- by utilizing as guidance the trade practices permitted by the U.S. Department of Treasury's Tax and Trade Bureau (TTB) (formerly the Bureau of Alcohol, Tobacco and Firearms) in Subpart D of 27 C.F.R. Part 6 of its regulations. These trade practice regulations implement the provisions of the Federal Alcohol Administration Act and also have been adopted by many States.

Subject to the terms of the federal "safe harbor" provisions, beverage alcohol industry members are allowed to furnish retailers with, inter alia, product displays, point-of-sale advertising, consumer advertising materials, items and services to temporary retailers, equipment and supplies, samples, combination packaging, educational materials, advertising which lists the names and addresses of retailers, stocking/rotation/pricing services regarding the suppliers' products, schematics, and outside signs. These provisions also, inter alia, allow industry members to participate in retailer association activities, and to provide merchandise to retailers when the industry member is engaged in a non-beverage alcohol business.

BABLO's current rules allow many but not all of these activities. Certain federal "safe harbor" provisions, such as those allowing industry members to furnish advertising that lists the names and addresses of retailers and to furnish samples to retailers, are not included in the BABLO rules. Even where BABLO and the federal rules allow the same trade practices, BABLO's terms and conditions are not the same as those under the federal rules.

For example, BABLO requires prior approval for certain permitted trade practices and imposes dollar limits for inside signs/other point-of-sale advertising materials and advertising specialties; no federal "safe harbor" provision requires prior approval and no dollar limits are included in the federal rules allowing inside signs/other point-of-sale advertising materials and advertising specialties.

Recognizing that there is no justification for discriminating between or among different kinds of beverage alcohol products, the federal trade practice rules also provide a level playing field for beer, wine and distilled spirits. In contrast, the Maine scheme permits certain trade practices only for wine and/or beer. These include, inter alia, furnishing product displays, selling dispensing equipment (except furnishing knobs for dispensers that designate the brand on tap is allowed for all beverage alcohol products) and servicing and repairing draught equipment, and conducting consumer product tastings. Eliminating this unequal treatment in Maine's trade practice scheme would ensure that beer, wine and distilled spirits can compete fairly and effectively.

In sum, we urge BABLO to utilize the federal "safe harbor" provisions as guidance to update and streamline the State trade practice scheme. In most cases, BABLO can accomplish this simply by revising its own rules. Other changes consistent with the federal rules and the trade practice provisions of many States -- such as extending the consumer tastings provisions to apply to distilled spirits, as well as beer and wine, and allowing industry members to furnish outside signs -- may require statutory change. We stand ready to provide a complete list of suggested regulatory and/or statutory changes and to work together with you in other efforts to achieve effective trade practice reform.

Business Efficiencies

Further, timely and accurate exchanges of information between suppliers and the State's private wholesale contractor -- using an integrated, compatible computer system -- will save money for consumers, the State and suppliers. The State should also examine the issue of its current bailment practices for spirits products to ensure that the future wholesale distribution mechanism established for Maine is as cost effective and efficient as possible and does not create unnecessary or artificial costs either for the State's contracted wholesale distribution and its retail sales systems, or for suppliers' individual, market-driven needs to maintain adequate and appropriate inventory levels within the State.

In that regard, DISCUS is opposed to bailment in any State and urges Maine to eliminate the bailment system. Each of the objectives set forth above can be accomplished by eliminating the bailment system and thereby provide more cost effective, more flexible, more marketplace driven, and more competitive conditions, which will inure to the benefit of the State, suppliers and, ultimately, the consumers of spirits products in Maine.

If, however, Maine determines to continue its bailment practices, DISCUS would strongly recommend that the bailment system provide optimum flexibility, efficiency and cost effectiveness. For example, payments to suppliers based upon depletions should be electronically transferred or, at least, mailed daily or weekly in order to maintain lower working capital costs associated with transporting and financing the cost of goods held in any in-State warehouse.

The State should direct that any wholesale distribution contractor for spirits work closely with suppliers to establish a demand projection system to set, manage and physically verify inventories at levels that reflect current best management practices.

Warehouse depletions also should be reported to suppliers daily and via electronic data transfer if requested by the supplier. The use of e-commerce by the private wholesale distribution contractor and suppliers will save time, improve efficiency of operations and reduce costs for both suppliers and the wholesale contractor.

Conclusion

In short, DISCUS is committed to working toward minimal disruption of sales and distribution services in Maine. Under ideal circumstances, the transition to a contract wholesale distribution system should be sufficiently smooth so that none of the parties involved -- including suppliers, the State, agency stores, and consumers -- notice any change in the flow of goods from the supplier to the ultimate consumer.

DISCUS appreciates this opportunity to share its views and stands ready to provide any additional data, information or expertise that may assist the State of Maine in its efforts to effectively and efficiently achieve the desired changes to its current system.

Thank You.

APPENDIX G

Privatization of the Wholesale Liquor Business RFP

STATE OF MAINE

REQUEST FOR PROPOSAL

Privatization of the Wholesale Liquor Business

Issued by:
Department of Administrative and Financial Services
State House Station 79
Augusta, ME 04333-0079

Table of Contents

1 INSTRUCTIONS TO OFFERORS

1.1 INTRODUCTION:

1.1.1 Overview of Scope

The State of Maine, Department of Administrative and Financial Services is seeking proposals from bidders to grant one exclusive service territory in which a private sector entity has the exclusive right to distribute certain spirits (alcoholic beverages and fortified wines) subject to price regulation by the Bureau of Alcoholic Beverages and Lottery Operations.

The entity shall be responsible for securing appropriate warehouse facilities to accept supplier's product in sufficient quantity to assure order fulfillment. The entity shall be responsible for receiving orders from Agency stores as licensed by the Department of Public Safety, filling and delivering their orders as described in this RFP, and accepting payment for product as an agent of the state as fully detailed under section 2, Scope of Services/Requirements.

This request for proposal (RFP) describes the operating parameters of this privatization effort and the minimum level of service to be provided to stakeholders. The evaluation process has been designed to determine the best value proposal, considering areas of enhanced service offering where reasonable.

1.1.2 Offeror Responsibilities

It is the responsibility of the offeror to fully understand the requirements in this RFP and to seek clarification or explanation in order to make a firm commitment within its proposal. Department of Administrative and Financial Services reserves the right to accept a proposal without further negotiation. The offeror must state within its letter of transmittal that it understands and accepts the terms of the RFP. Any exceptions must be specifically defined in the Offeror's proposal. The Department of Administrative and Financial Services reserves the right to reject any proposal which fails to meet this requirement or which includes exceptions which are not in the reasonable interests of the state. Exceptions to terms and conditions should be identified within the question/answer process defined in section 1.2.2.

1.1.3 Offeror Review of RFP

Offeror shall carefully review the RFP and any bidder's conference summary, addendum, amendment or other advisory. Electronic versions shall be posted on the Department of Administrative and Financial Services web site at **http://www.state.me.us/dafs/** . Hard copy will be forwarded to all offeror's who register with the RFP Coordinator. Offeror bears the responsibility to be certain all documents are complete.

Each Offeror will be presumed to have fully and carefully read and understood this RFP in all respects and to be thoroughly knowledgeable regarding its contents. The failure or omission of any Offeror to become fully familiar with any part of this RFP shall in no way relieve the Offeror from any obligations with respect to the RFP, the Offeror's Proposal or the resulting Agreement. It is also the obligation of each Offeror to ensure that its Proposal complies both in form and substance with the requirements of this RFP. Department of Administrative and Financial Services reserves the right, at its sole and exclusive discretion, to reject any Proposal that does not conform to these requirements.

1.1.4 Offeror Preparation of Proposal.

Offerors should not assume that they will be given an opportunity to improve or otherwise revise their Proposals. Offerors shall be solely responsible for any and all Proposal Preparation Costs they incur. Offerors must also agree to comply with all local, state and federal statutes, regulations, and executive orders applicable to this procurement and any resulting agreement. The Offeror shall require the same of all subcontractors proposed to provide service under this RFP.

1.1.5 Single Point of Contact.

Except as described below, all communications regarding or related to this RFP shall be with the RFP Coordinator listed below:

Richard Thompson
Office of the Chief Information Officer
173 State House Station
Augusta, Maine 04333
Richard.B.Thompson@Maine.gov

This restriction begins once the RFP is published and runs until notification of award. Nothing within this requirement is intended to restrict offeror communications with the Division of Purchases regarding the competitive bidding process.

1.2 SCHEDULE OF EVENTS

1.2.1 Release of Request for Proposal

The RFP will be released on November 07, 2003 and will be managed to the following schedule:

Advertise and Release Final RFP	November 07, 2003
Bidders' Written Questions by	November 19, 2003
Bidders' Conference	November 21, 2003
Conference Record to Bidders'	November 26, 2003
Proposal Response Date	December 18, 2003
Initial Scoring Complete	January 14, 2004
Finalist Interview's/Presentations	January 21/22, 2004
Complete Scoring	January 29, 2004
Notification of Award	TBD
Request for Stay Deadline	TBD
Request for Appeal Deadline	TBD
Approval of Final Contract (tentative)	March 19, 2004

1.2.2 Bidder's Written Questions

By no later than 5:00 p.m. (Local time) on November 19, 2003, Prospective Offerors must submit to RFP Coordinator both in writing and in electronic format using Microsoft Word or rich text format: (1) questions concerning the RFP; and (2) Exceptions requests to any term or condition of the RFP. Because Offerors will not be permitted to take Exceptions to the minimum requirements in Section 2 of the RFP, it is critical that the Department of Administrative and Financial Services be given advance notice of any Exception requests to allow it to amend the RFP, if DAFS deems it necessary. DAFS reserves the right to make no changes to the RFP in response to exception requests.

1.2.3 Bidder's Conference

On November 21, 2003, Department of Administrative and Financial Services will be holding a Bidder's Conference at 2:00 p.m. (Local time) in the Embassy Room of the Senator Inn, 284 Western Avenue, Augusta, Maine. This conference is open to all potential Offerors, stakeholders and the public. Participants will be permitted to raise questions and exception requests at the conference.

1.2.4 Response to Questions/Amendment of RFP

By no later than 5:00 p.m. (Local time) on November 26, 2003, Department of Administrative and Financial Services shall provide each Prospective Offeror with written answers to questions received under section 1.2.2 or posed at the Bidder's Conference. Along with the written questions and answers, Department of Administrative and Financial Services will also distribute copies of all written requests for Exceptions provided by Prospective Offerors under section 1.2.2 or at the Bidder's Conference. As in the case of questions and answers, Department of Administrative and Financial Services will not identify the Prospective Offerors who presented the requests for Exceptions. DAFS shall issue a document that will be the final and governing response to questions. In the event of conflict with comments made at the conference, this document shall govern.

The provisions of this RFP cannot be changed except by a formal written amendment issued by DAFS. Clarifications regarding the RFP shall only be by formal written answers to questions issued by Department of Administrative and Financial Services. Aside from such formal, written amendments and answers, Offerors may not rely on any statements, oral or otherwise, not expressly contained in this RFP. Department of Administrative and Financial Services reserves the right to amend, modify, or clarify, at its discretion and at any time on or before December 11, 2003, the terms, conditions, specifications, deadlines, or other requirements of any kind set forth in this RFP. Offerors and Prospective Offerors shall have no right to recover damages, costs, or other expenses of any kind, including, but not limited to, Proposal Preparation Costs, which result directly or indirectly from any such amendment, modification, or clarification.

1.2.5 Proposal Delivery Point and Response Date

Proposals must be delivered to and received by the Division of Purchases, Burton M. Cross Bldg. 4th Floor, 111 Sewall Street, 9 State House Station, Augusta, Maine 04333-0009, by no later than 2:00 p.m. (EST) on December 18, 2003. It is each Offeror's sole responsibility to ensure that its Proposal is delivered in a timely fashion. **Late Proposals will be rejected.**

1.2.6 Opening of Proposals

All proposals which are received in a timely fashion will be opened at the Division of Purchases. The name of the Offeror will be read aloud, but no other information will be made available to the public prior to completion of the evaluation process and award notification.

1.2.7 Interview of Finalist(s)

Department of Administrative and Financial Services reserves the right to interview one or more of the highest ranked Offerors. This process, if used, will occur on January 21 and/or 22, 2004. Offerors invited to interview will have an opportunity to discuss their proposal and clarify specific questions. There will be **NO** opportunity to alter the original proposal or to submit a best and final offer.

Any travel or other expense of the Offeror shall be the responsibility of the Offeror.

1.2.8 Notification of Award

All Offerors will be notified, in writing; of any award decision by correspondence delivered or postmarked a minimum of fourteen (14) calendar days prior to the Effective Date of any Agreement. This notice will include a statement that the award is conditional pending State Contract Review Committee approval and successful negotiation of contract.

1.2.9 Cancellation of Procurement

Department of Administrative and Financial Services reserves the right to cancel this procurement at any time and not to enter into an Agreement with any Offeror. Offerors and Prospective Offerors shall have no right to recover damages, costs, or other expenses of any kind, including, but not limited to, procurement or the decision not to enter into any Agreement with any Offeror.

1.2.10 Deadlines

DAFS reserves the right to alter deadlines as necessary to accommodate necessary schedules, with reasonable notice when appropriate.

1.2.11 Negotiations

DAFS reserves the option to negotiate certain points within the awardee's proposal, but is not required to do so. Any negotiation shall be limited in scope and shall not significantly vary the RFP, amendments, clarifications, or the awardee's proposal.

1.3 GENERAL INSTRUCTIONS

1.3.1 Submission Requirements

Proposal must be submitted in hard copy, one (1) original and four (4) duplicate copies (**total of five [5]**) of the entire proposal must be submitted on or before December 18, 2003 at 2:00 p.m. local time to:

Division of Purchases
Burton M. Cross Office Building, 4th Floor
111 Sewall Street
9 State House Station
Augusta, ME 04333-0009

Proposals that arrive after 2:00 p.m. on December 18, 2003 will be rejected.

Emphasis should be concentrated on conformance to the RFP instructions, responsiveness to requirements, and completeness and clarity of content. Elaborate proposals are neither necessary nor desirable. If the bidder's proposal is presented in a fashion that makes evaluation difficult or overly time-consuming, it is likely that points will be sacrificed in the evaluation process.

The proposal must be bound on standard 8½" by 11" paper, except that charts, diagrams, and the like, which may be on foldouts when folded fit into the 8½" by 11" format. All pages must be consecutively numbered, starting with page 1. Figures and tables must be numbered and referenced in the text by that number. They should be placed as close as possible to the referencing text.

An official authorized to legally bind the bidder must sign the cover letter.

A package containing the one (1) original and four (4) duplicate copies (**total of five [5]**) of the Proposal must be delivered by the date and time specified in this RFP to the Division of Purchases at the address above. The face of the package, whether mailed or hand delivered must include the bidders name and address and bear the following legend, "Privatization of the Wholesale Liquor Business".

The original copy of the Proposal (original signature required) will be marked "Original".

1.3.2 Form of Proposals

Proposals must include the following Components:

Cover Letter – The cover letter must commit the Offeror to the terms and conditions of the RFP, the services described in the proposal and identifying any exceptions requested. It must be signed by an official authorized to bind the Offeror to its proposal.

Proposal – The proposal shall contain an Executive Summary; Offeror Responsibility (as defined in 1.3.3); a response to the scope of services requirements; subcontracting relationships; references; and vendor must describe its commitment and approach in detail to accomplish or furnish the requirements defined in each of these categories. Offeror must fashion its response (proposal) to include a list of each numbered requirement under Section 2, Scope of Services and provide a narrative demonstrating agreement to provide and its approach to the required services. Enhanced services should be identified in conjunction with the appropriate requirement. The proposal must also include the financial commitment, a financial business plan including a budget for the first two years, and detailed plan for assumption of the service provision.

1.3.3 Offeror Responsibility Submission

Offeror must provide detailed information of the qualifications, facility capacity, financial background and corporate structure of the entity and its partners and investors. Offeror must commit to achieving all appropriate federal licensure to operate an Alcoholic Beverage warehouse and distribution facility. The awardee will be required to furnish proof of this licensure prior to contract execution.

1.3.3.1 Bonds/Letters of Credit

Offeror must submit by a bond, irrevocable letter of credit or some other assurance that guarantees the State of the full payment of the franchise fee plus an additional one year operating costs as calculated by the Offeror. DAFS reserves the right to reject any proposal which fails to present sufficient acceptable surety. The surety may be reduced by the amount of payment made for the franchise fee upon completion of the funds transfer.

1.3.3.2 Identify Subcontractors

Offeror shall disclose the name, addresses and anticipated responsibilities of all known subcontractors who will provide continuing service through the franchise period. Acceptance by DAFS of any subcontractor does not alter the entity's responsibility for all services, terms and conditions of this RFP and resulting agreement.

1.3.4 Exceptions

Offeror must identify any term or condition to which an exception is taken. DAFS reserves the right to reject any proposal which presents an unacceptable exception in its proposal. Exceptions can and should be presented for consideration at the bidders' conference and written responses will be provided.

1.3.5 Proposals to Remain Open

Offeror must commit to its proposal remaining valid for a period of six months from date of submission.

1.4 EVALUATION PROCEDURE

The Evaluation Procedure will be conducted as defined below and in conformance with Bureau of General Services Rules, Chapter 110.

1.4.1 Evaluation Criteria

The following weighted evaluation criteria are as follows:

Quality of Service Plan	40%
Financial Capacity/Financial Plan	30%
Financial Commitment Base	20%
Additional Revenue	5%
References	5%

1.4.1.1 Minimum Qualification

DAFS shall review each proposal to determine that the Offeror is an eligible bidder. The Offeror is prohibited from holding a retail license to sell liquor for off-premises consumption and Offeror must make an unqualified commitment to the franchise fee payments described in 2.7.1.

DAFS shall review all exceptions and reserves the right to reject any proposal where exceptions are not in the reasonable interests of the State.

1.4.2 Selection of Finalist(s)

The evaluation team shall review each proposal against the identified criteria. The proposals will be scored and ranked to determine one or more finalists. This RFP identifies specific areas where an offeror can distinguish themselves from other entities by proposing services greater than the minimum required. The raters will also carefully review all aspects of an offeror's response to assign scores and ranking.

1.4.3 Clarifications

The evaluation team reserves the option to request clarifications or additional information from all offerors prior to completion of the evaluation process. This process will not include an opportunity to alter any proposal.

1.4.4 Interview/Oral Presentation

DAFS reserves the right to require the highest rated Offeror(s) to participate in an interview. DAFS shall define the scope of the presentation and any specific questions to be addressed at the interview. A one week notice shall be provided. All expenses of the Offeror shall borne by the Offeror. This interview shall be scheduled on either January 21 or 22, 2004. The evaluation team may adjust scores as appropriate based on the results of the interview process.

1.4.5 Final Selection

The highest rated proposal(s) shall be conditionally awarded the contract. The award is conditional based upon successful negotiation of a contract and approval by the State Purchases Review Committee.

1.4.6 Notification of Award

Upon identification of the awardee, all participants shall be notified by written communication. This notification shall include rights to appeal as defined in 5 MRSA §1825E and the Bureau of General Services Rules, Chapter 120.

1.4.7 Rejection of Proposals

The State reserves the right to reject any or all proposals and to make no contract award as a result of this RFP.

2 SCOPE OF SERVICES/REQUIREMENTS

2.1 BASIC SERVICES OVERVIEW

2.1.1 Scope of Services

The State of Maine, Department of Administrative and Financial Services (DAFS) is seeking proposals from bidders to grant an exclusive service territory in which a private sector entity has the exclusive right to distribute certain spirits (alcoholic beverages and fortified wines) subject to price regulation by the Bureau of Alcoholic Beverages and Lottery Operations.

The entity shall be responsible for securing appropriate warehouse facilities to accept supplier's product to be held in sufficient quantity to assure order fulfillment. The product shall remain the property of the supplier while stored at the facility on a bailment basis. The entity will be required to provide uniform services and pricing to suppliers related to the receipt, storage and ancillary services offered under the bailment relationship. This pricing must be made available for review by DAFS upon request.

The entity shall be responsible for receiving orders from Agency stores as licensed by the Department of Public Safety, stickering bottles for appropriate bottle redemption, filling and delivering their orders as described in this RFP, paying associated supplier invoices, paying appropriate alcohol premium taxes, and collecting agency store payments on behalf of the DAFS for product delivered. DAFS shall pay no other fee or make any subsidy payments of any kind.

The entity shall also be responsible for providing or contracting for transportation and recycling services related to bottle redemption.

The entity shall develop a plan to employ remaining wholesale liquor business state employees (DAFS continues to work with these employees to find suitable jobs within state government) for a period of two years from the date of privatization. Additional detail shall be provided at the bidder's conference.

2.1.2 Term of Agreement

The initial term of agreement shall be ten years from the date of commencement of services. DAFS reserves the option to negotiate up to two renewals for periods of five years each, or one renewal for a period of ten years, subject to Legislative approval. Nothing within this paragraph shall prevent DAFS from choosing to competitively bid for services beyond ten years or competitively bid for a new service provider in less than ten years in the event of default by the entity during performance of the initial ten year agreement.

In the event of early termination, or at a change in contractor at the end of any contract period, the entity shall work cooperatively with DAFS and its new service provider(s) to provide a smooth transition and uninterrupted services.

The actual commencement of services and transition process will be negotiated with the awardee prior to execution of the final contract. It is anticipated that the start date will be July 1, 2004, but DAFS reserves the option to negotiate provision of services prior to commencement under separate agreement if necessary to provide a smooth transition.

2.2 *WAREHOUSING*

Offeror must describe its plan to provide warehouse space to maintain sufficient product inventory and to prepare/dispatch orders. This plan must include a detailed floor plan identifying locations for product, bottle pick, shipping/receiving and other key locations within the facility. The attached appendices describe the volume of product sold annually and the sales by agent. The existing warehouse occupies approximately 80,000 square feet. Offeror must define its expectations for staffing, all security measures to be employed, and its plan for operation including days, hours and management approach. DAFS reserves the right to inspect this facility with reasonable notice throughout the life of the contract.

2.2.1 Suppliers' Product

The entity shall receive suppliers' product in sufficient quantity to fill agency store orders as needed. A list of current authorized products is attached as Appendix 4 .

The State Liquor Commission is responsible for authorized product listing and delisting. Any stakeholder may request review of a product, either new or recommended to be delisted. The Commission meets monthly and these requests will be placed on the first available agenda.

2.2.2 Inventory Control

The entity must have an automated inventory management and information system to control inventory. This system will be subject to audit by DAFS, other State entities or contracted audit firms as delegated by DAFS.

It is the entity's responsibility to work with suppliers to maintain adequate inventory. The system must include a direct mechanism to allow review of inventories by suppliers, BABLO or agency stores on a real time basis. A notification system must immediately notify suppliers and BABLO when reorder points are reached (currently a six week supply).

2.2.3 Product Ownership

Supplier product will be received and stored in the warehouse. It will remain the property of the supplier until an order is shipped. The product shall become the property of the State of Maine at the point of shipment and shall become the property of the agent upon receipt. The entity shall provide sufficient property insurance to cover inventory at all times to protect the interests of the suppliers and the State.

2.2.3.1 Insurance/Bonding

The entity shall maintain at the entity's expense such insurance as will protect it from claims resulting from its business operations or activities, including insurance to protect the property of the State.

The entity shall provide proof of insurance for general liability, fire and extended coverage, Warehouseman's Legal Liability, Cargo Legal Liability and shall maintain bonds as required by the Federal Bureau of Alcohol, Tobacco and Firearms in amounts satisfactory to DAFS.

The entity must obtain and maintain a performance Bond in an amount to be determined by DAFS, issued by a company authorized to do business in the State of Maine. The bond shall be payable to the State of Maine in case of default.

The entity is at all times responsible for securing and maintaining adequate insurances to protect itself and DAFS makes no warranty as to the adequacy or sufficiency of the insurance required or identified in this section.

2.2.4 Payment for Product

The entity shall maintain records of orders and provide summaries of product distributed to each supplier and to BABLO twice monthly. Each supplier shall invoice the entity for product distributed from the warehouse. The entity shall pay these invoices in 10 calendar days or less.

Agency stores shall be invoiced by the entity no sooner than the day of order delivery. Agency stores must pay the entity for product within three business days of receipt of product and receipt of valid invoice.

The entity shall pay all premium taxes as directed in 2.6.2.

Offerors may propose streamlined or automated processes exceeding the minimum requirements, which will provide an opportunity to differentiate itself from competitors. This includes, but is not limited, to invoicing at a time other than the day of delivery, allowing more time for agency store payment.

2.3 ORDERING SYSTEM

2.3.1 Minimum Requirements

The entity must provide multiple options for agent order entry. Systems which provide real time inventory and order status are a minimum requirement.

The accounting system (and ordering system if separate from the accounting system) must operate based on generally accepted accounting principles. The entity shall make available, for inspection by DAFS or its representatives, the systems and all financial and accounting records pertinent to the operation of the entity.

The entity shall submit to the Commissioner of DAFS within 120 days of the close of its fiscal year, an annual financial report and audit certified by an independent certified public accountant, who may be an accountant or member of a firm of accountants that regularly audit the books and accounts of the entity. The audit information forwarded to the Commissioner must include, but is not limited to, the audited financial statements, auditor opinions, reports on internal control, findings and recommendations and management letters. This process is at the expense of the entity and considered a portion of its overhead costs. The entity is subject to further audit and review determined necessary by the Commissioner.

2.3.2 Access

The system used by the entity must allow access by BABLO personnel or their representatives to review product inventory and delivery performance electronically, from BABLO offices at any time.

2.3.3 Product Allocation

The system used by the entity must have capacity to allocate product in short supply fairly amongst all agency stores.

2.4 ORDER FULFILLMENT

2.4.1 Ordering Deadline Requirements

The entity must take agency store orders directly allowing multiple options for submission. The maximum time period for order delivery must be no greater than seven calendar days from receipt of order. Each agency store must be eligible to receive at least one delivery per week. Offerors may propose a delivering commitment of less than one week from order placement and/or more often than one time per week for some or all stores based on reasonable parameters. Proposed improved services in this area are an opportunity for an Offeror to distinguish themselves from their competitors.

2.4.2 Bottle Pick/Minimum Order

The top 45 products (SKU's) (see enclosed list in appendix 5) are currently restricted to ordering by full case lots only. This list may change over time, with approval of BABLO. It is the responsibility of the entity to monitor and notify agency stores of any changes. The following bottle pick parameters are in place today:

Bottle Sizes:

50 ML are to be ordered by the package or sleeve.

100-150-200-300 ML can only be ordered in full cases.

Fortified Wines can only be ordered in full cases.

The top 45 brands are restricted to full cases only.

A minimum order for delivery will consist of 15 cases, with or without splits.

Offerors may propose expanded bottle pick and/or lower minimum orders as an opportunity to enhance services and differentiate itself from other competitors.

2.4.3 Agency Store Contact

The entity must demonstrate a coordinated approach to communicating with agency stores of all types and sizes. This should include notification of deliveries, stock outages, and allocation of product in short supply. This is an area where service approach is an opportunity to distinguish an Offeror from other competitors.

2.4.4 Delivery/Receiving

The entity shall provide tailgate delivery services to each agency store at a minimum. Packing list documentation shall be presented to receiver and sufficient time allowed to count cases prior to signature. Offerors may propose systems or process to allow verification of case contents by agency stores.

2.4.4.1 Agency Store Pick up

Agency Store shall be allowed to pick up at least one order per week at the warehouse location. Offeror must define the parameters for this process in their proposals

2.4.5 Error Rate/Correction

The entity must operate efficiently and keep errors to a minimum. A system must be in place to report errors identified at the agency store and correct errors in a timely fashion.

2.4.6 Credits

The entity must provide a credit system which will authorize agency stores to reduce invoices for any properly authorized credit. In the event of an error identified within one business day of receipt of product, the agency store must be able to reduce the resulting invoice for that amount.

2.4.7 Bottle Redemption

The entity shall arrange to pick up cases containing empty liquor bottles at various agency liquor stores, licensed redemption centers, on premise accounts and military installations on a regular basis as determined by the volume and space requirements. It is understood that these outlets will be provided with empty boxes when available at the time of pick up.

The entity shall reimburse the agency store, redemption center or other authorized collection point the refund value (currently $.15 per bottle) plus a $.03 handling fee prescribed in 32 MRSA § 1866, paragraph 4.

The entity shall charge agency stores a $.15 fee per bottle, itemized separately on invoices for delivered product. The entity shall manage these funds as required under Maine's Bottle Redemption law. Any costs above the revenue collected by the entity shall be considered overhead of the entity.

2.5 AGENCY PAYMENT PROCESS

2.5.1 Payment for product

Agency stores shall be invoiced by the entity no sooner than the first business day following the day of delivery, but no later than five business days after order delivery. Agency stores must pay the entity for product within three business days of receipt of product and receipt of valid invoice as defined in 2.2.4.

The entity shall charge agency stores a $.15 fee per bottle, itemized separately on invoices for delivered product.

Offerors may propose streamlined or automated processes exceeding the minimum requirements, which will provide an opportunity to differentiate itself from competitors. This includes, but is not limited, to invoicing on the fifth business day, allowing more time for agency store payment.

2.6 PRODUCT PRICING

2.6.1 Price Setting Process

Review of pricing will be conducted on a quarterly basis with input from the suppliers, entity, and other interested parties. Price adjustments may be proposed by any stakeholder, but must be documented prior to the quarterly meeting to allow analysis. DAFS intends to consider a brand's competitive position in Maine and the region, a brand's profit potential and history, the desired price level, the landed cost of the product and promotional support for the brand.

DAFS will establish rules for the setting of prices for products, formalizing this process with input from all stakeholders. During this rulemaking process, stakeholders may provide input. The rules will be completed prior to execution of a contract.

DAFS will consider a more frequent pricing process if proposed. An offeror proposing frequency changes, shall describe its approach and mechanism to communicate with agency stores to minimize disruption and insure compliance.

2.6.2 Premium Tax on Product

The entity shall be responsible for calculating and paying appropriate taxes related to products distributed to Agency Stores. The entity shall pay premium taxes on product delivered during the previous calendar month on the third day of the following month to DAFS for deposit in the general fund. Tax calculation is defined in statute, 28A MRSA, subsection 1703. DAFS shall consider this cost as a component of the entity's overhead in the product pricing process.

2.6.3 Stickering

The entity is responsible for application of appropriate redemption stickers on all individual bottles and repacking either in case lots or picked bottles as described above, prior to distribution to agents.

2.6.4 Specials

The supplier and/or entity may propose products for special pricing to BABLO. All requests for specials must be presented to BABLO for prior approval. BABLO will promptly notify entity of approved specials to assure adequate supply is available and distribution is fairly implemented. Any match required by a supplier shall be the sole responsibility of the entity and not the agency stores or the State. Nothing in this section is intended to prohibit the entity from preparing specials or unique short term pricing for promotional purposes, subject to BABLO approval.

2.6.5 Marketing

Marketing of alcoholic beverages is allowed, subject to regulations promulgated by the Department of Public Safety and BABLO. There is no anticipated change to these regulations as a result of this RFP.

2.7 OFFEROR COMMITMENT

2.7.1 Payment of Franchise Fee

The entity must make initial franchise fee payment of $75,000,000 within seven (7) days of execution of the contract. The entity must make a $50,000,000 payment to the State Treasurer on July 01, 2004.

2.7.2 Other Payments

Offerors may propose a revenue sharing mechanism to benefit the State to differentiate itself from other competitors. There is no specified format for this mechanism. Up to five of the 25 points available for the financial commitment will be awarded for this portion of the offer.

2.7.3 Expanded/Enhanced Services

Offerors are free to identify additional services that will improve the existing system, consistent with the requirements of this RFP. Improvements in services that are in the best interests of the state, agency stores, suppliers and the entity will be considered in the quality of service portion of the RFP.