



State of West Virginia
 Department of Administration
 Purchasing Division
 2019 Washington Street East
 Post Office Box 50130
 Charleston, WV 25305-0130

Request for Quotation

RFQ NUMBER
ABCA22

PAGE
1

ADDRESS CORRESPONDENCE TO ATTENTION OF
SHELLY MURRAY 304-558-8801

PURCHASING

RFQ COPY
 TYPE NAME/ADDRESS HERE

SHIP TO

ALCOHOL BEVERAGE CONTROL
 COMMISSION
 322 70TH STREET, S.E.
 CHARLESTON, WV
 25304-2900 558-2487

DATE PRINTED	TERMS OF SALE	SHIP VIA	F.O.B	FREIGHT TERMS
08/11/2009				

BID OPENING DATE: 08/20/2009 BID OPENING TIME 01:30PM

LINE	QUANTITY	UOP	CAT NO	ITEM NUMBER	UNIT PRICE	AMOUNT
0001	1	LS		961-20		
<p>**** REBID OF ABCA12</p> <p>THE WEST VIRGINIA PURCHASING DIVISION, FOR THE AGENCY, THE WEST VIRGINIA ALCOHOL BEVERAGE CONTROL ADMINISTRATION, IS SOLICITING BIDS FOR A PROFESSIONAL CONSULTANT TO ADVISE IN THE REBID OF THE RETAIL LIQUOR LICENSES FOR 2010-2020 PER THE ATTACHED SPECIFICATIONS.</p> <p>PROFESSIONAL CONSULTING</p> <p>EXHIBIT 3</p> <p>LIFE OF CONTRACT: THIS CONTRACT BECOMES EFFECTIVE UPON AWARD AND EXTENDS FOR A PERIOD OF ONE (1) YEAR OR UNTIL SUCH "REASONABLE TIME" THEREAFTER AS IS NECESSARY TO OBTAIN A NEW CONTRACT OR RENEW THE ORIGINAL CONTRACT. THE "REASONABLE TIME" PERIOD SHALL NOT EXCEED TWELVE (12) MONTHS. DURING THIS "REASONABLE TIME" THE VENDOR MAY TERMINATE THIS CONTRACT FOR ANY REASON UPON GIVING THE DIRECTOR OF PURCHASING 30 DAYS WRITTEN NOTICE.</p> <p>UNLESS SPECIFIC PROVISIONS ARE STIPULATED ELSEWHERE IN THIS CONTRACT DOCUMENT, THE TERMS, CONDITIONS AND PRICING SET HEREIN ARE FIRM FOR THE LIFE OF THE CONTRACT.</p> <p>RENEWAL: THIS CONTRACT MAY BE RENEWED UPON THE MUTUAL</p>						

SEE REVERSE SIDE FOR TERMS AND CONDITIONS		
SIGNATURE	TELEPHONE	DATE
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WHEN RESPONDING TO RFQ, INSERT NAME AND ADDRESS IN SPACE ABOVE LABELED 'VENDOR'

GENERAL TERMS & CONDITIONS PURCHASE ORDER/CONTRACT

1. **ACCEPTANCE:** Seller shall be bound by this order and its terms and conditions upon receipt of this order.
2. **APPLICABLE LAW:** The laws of the State of West Virginia and the *Legislative Rules* of the Purchasing Division shall govern all rights and duties under the Contract, including without limitation the validity of this Purchase Order/Contract.
3. **NON-FUNDING:** All services performed or goods delivered under State Purchase Orders/Contracts are to be continued for the terms of the Purchase Order/Contract, contingent upon funds being appropriated by the Legislature or otherwise being made available. In the event funds are not appropriated or otherwise available for these services or goods, this Purchase Order/Contract becomes void and of no effect after June 30.
4. **COMPLIANCE:** Seller shall comply with all Federal, State and local laws, regulations and ordinances including, but not limited to, the prevailing wage rates of the WV Division of Labor.
5. **MODIFICATIONS:** This writing is the parties final expression of intent. No modification of this order shall be binding unless agreed to in writing by the Buyer.
6. **ASSIGNMENT:** Neither this Order nor any monies due, or to become due hereunder may be assigned by the Seller without the Buyer's consent.
7. **WARRANTY:** The Seller expressly warrants that the goods and/or services covered by this order will: {a} conform to the specifications, drawings, samples or other description furnished or specified by the Buyer; {b} be merchantable and fit for the purpose intended; and/or {c} be free from defect in material and workmanship.
8. **CANCELLATION:** The Director of Purchasing may cancel any Purchase Order/Contract upon 30 days written notice to the seller.
9. **SHIPPING, BILLING & PRICES:** Prices are those stated in this order. No price increase will be accepted without written authority from the Buyer. All goods or services shall be shipped on or before the date specified in this Order.
10. **LATE PAYMENTS:** Payments may only be made after the delivery of goods or services. Interest may be paid on late payments in accordance with the *West Virginia Code*.
11. **TAXES:** The State of West Virginia is exempt from Federal and State taxes and will not pay or reimburse such taxes.
12. **RENEWAL:** Any reference to automatic renewal is hereby deleted. The Contract may be renewed only upon mutual written agreement of the parties.
13. **BANKRUPTCY:** In the event the vendor/contractor files for bankruptcy protection, the State may deem this contract null and void, and terminate such contract without further order.
14. **HIPAA BUSINESS ASSOCIATE ADDENDUM:** The West Virginia State Government HIPAA Business Associate Addendum (BAA), approved by the Attorney General, and available online at the Purchasing Division's web site (<http://www.state.wv.us/admin/purchase/vrc/hipaa.htm>) is hereby made part of the agreement. Provided that, the Agency meets the definition of a Cover Entity (45 CFR §160.103) and will be disclosing Protected Health Information (45 CFR §160.103) to the vendor.
15. **WEST VIRGINIA ALCOHOL & DRUG-FREE WORKPLACE ACT:** If this Contract constitutes a public improvement construction contract as set forth in Article 1D, Chapter 21 of the West Virginia Code ("The West Virginia Alcohol and Drug-Free Workplace Act"), then the following language shall hereby become part of this Contract: "The contractor and its subcontractors shall implement and maintain a written drug-free workplace policy in compliance with the West Virginia Alcohol and Drug-Free Workplace Act, as set forth in Article 1D, Chapter 21 of the West Virginia Code. The contractor and its subcontractors shall provide a sworn statement in writing, under the penalties of perjury, that they maintain a valid drug-free work place policy in compliance with the West Virginia and Drug-Free Workplace Act. It is understood and agreed that this Contract shall be cancelled by the awarding authority if the Contractor: 1) Fails to implement its drug-free workplace policy; 2) Fails to provide information regarding implementation of the contractor's drug-free workplace policy at the request of the public authority; or 3) Provides to the public authority false information regarding the contractor's drug-free workplace policy."



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<p>WRITTEN CONSENT OF THE SPENDING UNIT AND VENDOR, SUBMITTED TO THE DIRECTOR OF PURCHASING THIRTY (30) DAYS PRIOR TO THE EXPIRATION DATE. SUCH RENEWAL SHALL BE IN ACCORDANCE WITH THE TERMS AND CONDITIONS OF THE ORIGINAL CONTRACT AND SHALL BE LIMITED TO TWO (2) ONE (1) YEAR PERIODS.</p> <p>CANCELLATION: THE DIRECTOR OF PURCHASING RESERVES THE RIGHT TO CANCEL THIS CONTRACT IMMEDIATELY UPON WRITTEN NOTICE TO THE VENDOR IF THE COMMODITIES AND/OR SERVICES SUPPLIED ARE OF AN INFERIOR QUALITY OR DO NOT CONFORM TO THE SPECIFICATIONS OF THE BID AND CONTRACT HEREIN.</p> <p>OPEN MARKET CLAUSE: THE DIRECTOR OF PURCHASING MAY AUTHORIZE A SPENDING UNIT TO PURCHASE ON THE OPEN MARKET, WITHOUT THE FILING OF A REQUISITION OR COST ESTIMATE, ITEMS SPECIFIED ON THIS CONTRACT FOR IMMEDIATE DELIVERY IN EMERGENCIES DUE TO UNFORESEEN CAUSES (INCLUDING BUT NOT LIMITED TO DELAYS IN TRANSPORTATION OR AN UNANTICIPATED INCREASE IN THE VOLUME OF WORK.)</p> <p>BANKRUPTCY: IN THE EVENT THE VENDOR/CONTRACTOR FILES FOR BANKRUPTCY PROTECTION, THE STATE MAY DEEM THE CONTRACT NULL AND VOID, AND TERMINATE SUCH CONTRACT WITHOUT FURTHER ORDER.</p> <p>THE TERMS AND CONDITIONS CONTAINED IN THIS CONTRACT SHALL SUPERSEDE ANY AND ALL SUBSEQUENT TERMS AND CONDITIONS WHICH MAY APPEAR ON ANY ATTACHED PRINTED DOCUMENTS SUCH AS PRICE LISTS, ORDER FORMS, SALES AGREEMENTS OR MAINTENANCE AGREEMENTS, INCLUDING ANY ELECTRONIC MEDIUM SUCH AS CD-ROM.</p> <p>REV. 05/26/2009</p>						

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01:30PM

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<p>NOTICE</p> <p>A SIGNED BID MUST BE SUBMITTED TO:</p> <p>DEPARTMENT OF ADMINISTRATION PURCHASING DIVISION BUILDING 15 2019 WASHINGTON STREET, EAST CHARLESTON, WV 25305-0130</p> <p>THE BID SHOULD CONTAIN THIS INFORMATION ON THE FACE OF THE ENVELOPE OR THE BID MAY NOT BE CONSIDERED:</p> <p>SEALED BID</p> <p>BUYER: SHELLY MURRAY</p> <p>RFQ. NO.: ABCA22</p> <p>BID OPENING DATE: 08/20/2009</p> <p>BID OPENING TIME: 1:30 PM</p> <p>PLEASE PROVIDE A FAX NUMBER IN CASE IT IS NECESSARY TO CONTACT YOU REGARDING YOUR BID:</p> <p>-----</p> <p>CONTACT PERSON (PLEASE PRINT CLEARLY):</p>						

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***** THIS IS THE END OF RFQ ABCA22 ***** TOTAL:						_____

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WEST VIRGINIA ALCOHOL BEVERAGE CONTROL ADMINISTRATION

REQUEST FOR QUOTATIONS

ABCA22

Background:

The West Virginia Legislature created the West Virginia Alcohol Beverage Control Administration in 1935 (See W.Va. Const. Art. IV '46 and W.Va. Code '60-1-1 et seq.) The WVABCA was organized to give effect to the mandate of the people expressed in the repeal of the state prohibition amendment, and to assure the greatest degree of personal freedom that is consistent with the health, safety, and good morals of the people of West Virginia. During the WVABCA's first 56 years of existence, the WVABCA functioned as the exclusive wholesaler and retailer of liquor in West Virginia: non fortified wines were "privatized" in 1981.

On February 27, 1990, with the passage of Senate Bill 337, legislative action was taken to discontinue the retail sale of alcoholic beverages by the State.

During fiscal year 1991, public bids were held in August 1990, January 1991, and May 1991. This resulted in the sale of retail liquor store licenses in all 98 zones offered and the possibility of 214 privately owned liquor stores being opened in West Virginia. The sale of state owned liquor stores and the conversion of state owned liquor inventories enabled the WVABCA to transfer profits of \$26,500,000 to the West Virginia general revenue fund.

In 2000, the Retail Liquor Licensing Board (RLLB) approved a license bid process and at the time minimum bids were calculated based on demographics, population and other factors. The re-bidding generated \$22,000,000 from all issued licenses for the West Virginia general revenue fund. The licenses were issued for a 10 year period and will expire June 30, 2010.

During the 2000 bid, a number of licenses were never issued and some licenses have been abandoned. In 2006, the RLLB approved an Interim Bid and splitting of certain licenses into 3 zones. The licenses were rebid and two licenses were awarded in 2007.

In early 2010, the WVABCA with the passage of House Bill No. 105 during the First Special Session of 2009, (See attached bullet points, bill available upon request and see also W.Va. Code §60-3A- 1 et seq.) is authorized to offer a purchase option to all current licensees who either currently operate a Class A freestanding retail liquor outlets or who will seek to operate a Class A retail liquor outlet with 90 days of July 1, 2010. Next, licensees not electing the purchase option, all Class B mixed retail outlets or any additional licenses added by the RLLB will then be bid. Preferences: (1) Current licenses will have a 5% current licensee preference for the retail outlets licensed and operated by them; (2) WV residents that meet the criteria will have a 5% resident preference; and (3) Unsuccessful current licensees will have the right to match the highest bidder for the retail outlets licensed and operated by them, all subject to the requirements in W.Va. Code §60-3A-1 et seq. and the amendments made by HB 105. HB 105 adds other restrictions and requirements upon all retail outlets and provides a deferred payment/financing option for Class A licensees electing the purchase option.

Specifications:

The WVABCA is seeking an accounting firm, financial consulting firm or law firm to review the methodology, formulae and rules for calculation of minimum bids; review the 2010 Class A deferred payment/financing agreement; and further conduct, receive, process and award, with WVABCA's approval, the 2010 purchase options and bids, and any additional bids for up to one year from the date of approval of this request for quotations.

The 2010 licensing process will issue approximately 180 licenses in zones throughout WV for 10 years beginning July 1, 2010, and the licensees electing the purchase option and the bidders must meet the new requirements set by HB 105. The firm will also assist in any future bids authorized by the RLLB for never issued, abandoned, or split licenses for up to one year from the date of approval of this request for quotations. The anticipated start of the 2010 license process is December 20, 2009, which will begin with the purchase option packets being sent to all current licensees.

The 2010 license process will consist of processing current licensees who select the purchase option and agree to meet the new Class A license requirements; bidding any licenses not electing to be Class A licenses, the Class B licenses, new licenses, moved licenses or licenses that have not been issued; applying preferences, and possibly bidding some Class B licenses at the discretion of the RLLB.

Firm duties and requirements:

- (1) The firm shall attend RLLB Meetings and meet and consult with the WVABCA Commissioner, General Counsel, and staff as needed;
- (2) The firm shall review the methodology and formula for calculating the minimum bids and the emergency and legislative rules per HB 105.
- (3) The firm shall assist the WVABCA in developing the purchase option and bid packets that meet the requirements of W.Va. Code §60-1-1 *et seq.* and specifically outlined W.Va. Code §60-3A-1 *et seq.*, mailing purchase option and license bid packets on the set dates, receiving the purchase option and license bid packets on the set return dates, opening the purchase options and licenses bids, and determining the license winner. As a part of this licensing process the firm will assist in calculating the ten year minimum bids for the 2010 licensing process and any subsequent interim bids for a period of one year from the date of approval of this request for quotations;
- (4) The firm must be a partnership, association, limited liability entity, or corporation whose business and offices are in Charleston, WV; and
- (5) The firm should list any experience it has with conducting a sealed bidding process for the State of West Virginia or for the WVABCA. The firm's experience with the State and the WVABCA shall each be given a 5% reduction to weigh in the consideration with the firm's quotation to determine the winning bidder but not actually reduce the firm's quoted price.

The 2010 license process is scheduled to have the firm mail all purchase option packets by December 21, 2009, have all purchase option packets returned by February 1, 2010, and have all licenses qualifying for the purchase option awarded on or before February 15, 2010. The 2010 license process is scheduled to have the firm advertise all licenses being bid (in the appropriate zone) for 1st publication on March 8, 2010 and 2nd publication on March 15, 2010. All licenses being bid will be mailed to current licensees on March 8, 2010, with all bids due by April 20, 2010, and all successful bids awarded on or before May 5, 2010.

Time is of the essence in the request for quotations! Please return your signed quotation to the WVABCA on or before August 5, 2009 to the WVABCA via fax at 304-558-0081 or delivered to our offices located at 322 70th St., S.E., Charleston, WV 25304-2900, Attn: WVABCA Commissioner, Dallas S. Staples. If you do not wish to provide a quotation please fax the WVABCA a note that you decline to provide a quotation.

Thank you for your prompt attention to this request. If you have any questions, please contact Anoop Bhasin, WVABCA General Counsel at 304-558-2481.

TENTATIVE RETAIL LIQUOR LICENSING SCHEDULE

JULY 2009							AUGUST 2009							SEPTEMBER 2009							OCTOBER 2009						
Sun	Mon	Tue	Wed	Thu	Fri	Sat	Sun	Mon	Tue	Wed	Thu	Fri	Sat	Sun	Mon	Tue	Wed	Thu	Fri	Sat	Sun	Mon	Tue	Wed	Thu	Fri	Sat
		1	2	3	4							1	2			1	2	3	4	5							
5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	

- July 17, 2009 **RLLB Meeting** – Meeting to approve RFQ for Consultant.
- Aug. 26, 2009 **RLLB Meeting** – Meet with Consultant; review formulas for minimum bid; review emergency rules 175 CSR 1 & 175 CSR 5 for filing on September 1, 2009, and Consultant & WVABCA to calculate all minimum bids.
- Sept. 1, 2009 **Statutory Deadline** to file Emergency & Legislative Rules with WVSOS & LRMC.
- Sept. 23, 2009 **Internal Deadline** to set Purchase Option Packet and documents.
- Sept. 29, 2009 **RLLB Meeting** - Meeting to approve all minimum bid calculations and purchase option amounts and mailing of Purchase Option Packets and License Bid Packets; authorize Commissioner to print Purchase Option Packets & License Bid Packets.
- Oct. 15, 2009 **Internal Deadline** to set Financing Agreement and documents.
- Oct. 15, 2009 **Internal Deadline** to set License Bid Packets and documents.
- Oct. 31, 2009 **Statutory Deadline** to be a current Licensee.

TENTATIVE RETAIL LIQUOR LICENSING SCHEDULE

NOVEMBER 2009							DECEMBER 2009							JANUARY 2010							FEBRUARY 2010																																									
Sun	Mon	Tue	Wed	Thu	Fri	Sat	Sun	Mon	Tue	Wed	Thu	Fri	Sat	Sun	Mon	Tue	Wed	Thu	Fri	Sat	Sun	Mon	Tue	Wed	Thu	Fri	Sat																																			
	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31

- Nov. 18, 2009 **RLLB Meeting** – Meeting to approve License Bid Packets and Financing Agreement.
- Dec. 21, 2009 Mail Purchase Option Packets to all Active/Current Licensees.
- Feb. 1, 2010 Due date for Purchase Option Packets
- Feb. 17, 2010 Purchase Options awarded to Active/Current Licensees for Class A Licenses.

TENTATIVE RETAIL LIQUOR LICENSING SCHEDULE

MARCH 2010							APRIL 2010							MAY 2010							JUNE 2010										
Sun	Mon	Tue	Wed	Thu	Fri	Sat	Sun	Mon	Tue	Wed	Thu	Fri	Sat	Sun	Mon	Tue	Wed	Thu	Fri	Sat	Sun	Mon	Tue	Wed	Thu	Fri	Sat				
	1	2	3	4	5	6			1	2	3	4	5							1	2	3	4	5							
7	8	9	10	11	12	13	4	5	6	7	8	9	10	2	3	4	5	6	7	8	9	10	11	12	1	2	3	4	5	6	7
14	15	16	17	18	19	20	11	12	13	14	15	16	17	9	10	11	12	13	14	15	16	17	18	19	8	9	10	11	12	13	14
21	22	23	24	25	26	27	18	19	20	21	22	23	24	16	17	18	19	20	21	22	23	24	25	26	21	22	23	24	25	26	27
28	29	30	31				25	26	27	28	29	30	23	24	25	26	27	28	29	30				28	29	30					

- March 8, 2010 First publication of License Bid.
- March 8, 2010 All license bid packets mailed to Current Licensees.
- March 15, 2010 Second publication of License Bid.
- March 17, 2010 Purchase option payment due in full or financing down payment due.
- March 17, 2010 Class A Retail Outlets with no construction or floor plan changes may start inspection process.
- April 20, 2010 License Bid Packets due
- May 5, 2010 Award all successful License Bids.
- June 30, 2010 All annual license fees (\$2000.00) due by retail liquor Licensees.
- June 30, 2010 All License Bid payments due in full.

TENTATIVE RETAIL LIQUOR LICENSING SCHEDULE

JULY 2010							AUGUST 2010							SEPTEMBER 2010							OCTOBER 2010																
Sun	Mon	Tue	Wed	Thu	Fri	Sat	Sun	Mon	Tue	Wed	Thu	Fri	Sat	Sun	Mon	Tue	Wed	Thu	Fri	Sat	Sun	Mon	Tue	Wed	Thu	Fri	Sat										
					1	2	3	4	5	6	7			8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31
4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31										
11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31																	
18	19	20	21	22	23	24	25	26	27	28	29	30	31																								
25	26	27	28	29	30	31																															

- July 1, 2010 2010 – 2020 retail liquor Licensee 10 year franchise licenses begins.
- July 15, 2010 **RLLB Meeting** – Meeting to review 2010 licensing process.
- Aug. 1, 2010 **Financing/deferred payments** - first payment due for Class A Licenses selecting monthly installment payments (due on 1st of the month for 60 months.)
- Sept. 30, 2010 **Statutory Deadline** (90 days from July 1, 2010) for all Class A and Class B Licensees to meet their respective requirements as to operating a Class A or Class B Retail Outlet.
- Oct. 1, 2010 **Financing/deferred payments** - first payment due for Class A Licenses selecting quarterly installment payments (and due every 3rd month thereafter for 60 months.)

2010 REBID LEGISLATION – HB 105

- State a legislative preference to provide opportunities for retail licensees to responsibly market and grow their existing licensed retail outlets:
 - Serve West Virginia consumers by providing free standing liquor retail outlets that focus on offering a wide variety of liquor and competitive prices.
 - Provide, at the discretion of the Retail Liquor Licensing Board if a market zone is not served or not adequately served by Class A licenses, alternative locations for West Virginia consumers to purchase liquor by providing for mixed retail liquor outlets.
- **Class A Licenses for Free Standing Liquor Retail Outlets** may sell only liquor, wine, beer, nonintoxicating beer, tobacco-related and alcohol-related products:
 - The Purchase Option is for Current Licensees who will get opportunity to choose the Purchase Option if they are able to meet the new Class A license and store requirements.
 - Current Licensees may only exercise the Purchase Option for up to 4 stores currently held and operated by a licensee and that meet or will meet the new requirements.
 - Current Licensee's choice is to: (1) pay a 10% premium above the minimum bid for the Class A License; or (2) choose to bid the license as a Class A or Class B and receive a current licensee preference and in-state preference.
 - Current Licensee's who are unsuccessful in the License Bid process have the right to match the highest bidder's bid.
 - Meet size, space, design, inventory, displayed inventory, order quantities, web/online ordering and other delivery and ordering requirements.
 - Increase annual license fee from \$1,000 to \$2,000.
 - Financing/deferred payment option for Class A licensee who selects the Purchase Option to utilize deferred payments with 50% of Purchase Option amount being paid as down payment and the balance due in 5 annual installment payments at an interest rate of the adjusted prime lending rate (June '09 approx. 3.26) minus 100 basis points (-1% or interest rate = 2.26). Failure to timely make payments within 30 days would result in forfeiture of all payments and revocation of license.
- **Class B Licenses for Mixed Retail Liquor Outlets** may sell liquor, wine, beer, nonintoxicating beer, tobacco-related products, alcohol-related products, convenience products and other retail products:
 - License issued at the discretion of the board when a market zone is not served or not adequately served by Class A Licenses, however all current licensees are offered either to convert to a Class A or may bid on a Class B license.
 - Meet size, space (retail outlet square footage), design, inventory, displayed inventory, order quantities, web/online ordering and other delivery and ordering requirements. Also must prominently display signage warning of a restricted liquor area and the liquor area is not highly visible to persons outside the liquor area.
 - Increase annual license fee from \$1,000 to \$2,000.
 - No purchase option and no financing/deferred payment plan.
- Code clean up – U.S. Citizenship Requirement, penalties for non-payment and increasing the total number of liquor retail outlets any one licensee could own from 25% to 30% of the total amount of retail outlet licenses issued.

2009X4006HA

ENROLLED**H. B. 105**

(By Mr. Speaker, (Mr. Thompson))

[By Request of the Executive]

[Passed June 2, 2009; in effect from passage.]

AN ACT to amend and reenact §60-3A-2, §60-3A-2a, §60-3A-4, §60-3A-6, §60-3A-7, §60-3A-8, §60-3A-10, §60-3A-10b, §60-3A-11 and §60-3A-12 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §60-3A-10d, all relating to the issuance of retail licenses for the sale of liquor; classifying retail licenses for the sale of liquor; setting forth legislative findings; defining certain terms; authorizing the Alcohol Beverage Control Commissioner to issue retail licenses for the sale of liquor; establishing certain standards for the issuance of licenses within market zones; limiting the issuance of retail licenses to operate mixed retail liquor outlets; authorizing the commissioner to adopt certain standards for retail outlets; authorizing the Retail Liquor Licensing Board to consider certain factors when authorizing additional retail outlets; increasing the maximum percentage of retail licenses a person may own; setting forth bidding procedures; setting license fees; adding citizenship and character requirements for license applicants; authorizing credit and

2009X4006HA

background checks on license applicants; providing a purchase option for active retail licensees seeking to operate a freestanding liquor retail outlet; providing for financing for the purchase of a retail license for a freestanding liquor retail outlet; and authorizing legislative and emergency rules.

Be it enacted by the Legislature of West Virginia:

That §60-3A-2, §60-3A-2a, §60-3A-4, §60-3A-6, §60-3A-7, §60-3A-8, §60-3A-10, §60-3A-10b, §60-3A-11 and §60-3A-12 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be amended by adding thereto a new section, designated §60-3A-10d, all to read as follows:

ARTICLE 3A. SALES BY RETAIL LIQUOR LICENSEES.

§60-3A-2. Legislative findings and declaration; legislative purpose.

(a) The Legislature hereby finds and declares that the sale of liquor at retail should no longer be by the state, but rather by retail licensees; that there is a need for the state to control the wholesale sales of liquor; that the health and welfare of the citizens of this state will be adequately protected by the licensing and control of such retail licensees; that the sale of liquor through retail licensees will satisfy reasonable consumer concerns of availability and price; and that the operation and efficiency of state government will be improved by removing the state from the retail sale of liquor and permitting sales of liquor by retail licensees under licenses issued by the state together with strict enforcement of laws and rules relating to the sale of liquor.

(b) It is the purpose of the Legislature in providing for the retail sale of liquor to:

(1) Continue revenue to the state from the wholesale sale of liquor by requiring

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all retail licensees to purchase all liquor (other than wine) from the commissioner and by further requiring all private clubs licensed under the provisions of article seven of this chapter to purchase all liquor (other than wine) from retail licensees;

(2) Provide a system of controls, through limitations on the numbers of retail outlets and application of the police power of the state, to discourage the intemperate use of liquor;

(3) Preserve and continue the tax base of counties and municipalities derived from the retail sale of liquor;

(4) Obtain revenue for the state from the issuance of retail licenses;

(5) Facilitate the responsible marketing and growth of existing retail outlets; and

(6) Encourage the sale of liquor in freestanding liquor retail outlets that offer a wide variety of liquor at competitive prices.

§60-3A-2a. Further legislative findings, declarations and purpose.

(a) In addition to the findings and declarations set forth in subsection (a), section two of this article, the Legislature hereby finds and declares that:

(1) The provisions of this article as enacted during the regular session of the Legislature in 1990 were intended to require that all licenses issued for the retail sale of liquor expire as of July 1, 2000, and that the issuance of retail licenses for the ten-year period beginning July 1, 2000, and for each ten-year period thereafter, be based on sealed competitive bids except as provided in section ten-b of this article;

(2) It is the intention of the Legislature to provide that all retail licenses issued beginning July 1, 2000, expire ten years from the date of issuance and that every ten

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years the issuance of retail licenses be based on competitive bids, except as provided in section ten-b of this article;

(3) The purposes set forth in subsection (b), section two of this article remain the purposes of the Legislature;

(4) Many of those persons who currently hold retail licenses have not only provided the services to the public contemplated by this article, but in many instances have provided employment, invested significant time and money into their businesses and otherwise made substantial contributions to the economic and civic development of the communities in which they conduct business, and therefore, current retail licensees should be afforded special consideration if their bids for the licenses issued for the ten-year period beginning July 1, 2000, and July 1 every ten years thereafter, be unsuccessful;

(5) Those persons who are issued a retail license for the ten-year period beginning on July 1, 2000, and for any ten-year period thereafter should also be afforded special consideration if they operate or seek to operate a freestanding liquor retail outlet or if their bids for a retail license are unsuccessful; and

(6) Further statutory changes are desirable to effect the purposes set forth in subsection (b), section two of this article.

(b) It is, therefore, the further purposes of the Legislature in providing for the retail sale of liquor to:

(1) Require that all licenses issued for the ten-year period beginning July 1, 2000, and for each ten-year period thereafter be based on sealed competitive bids

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except as provided in section ten-b of this article;

(2) Provide active retail licensees who operate or seek to operate a freestanding liquor retail outlet the opportunity to pay a purchase option for a Class A retail license or licenses for the ten-year period beginning July 1, 2010, and for each ten-year period thereafter;

(3) Provide current retail licensees who, having bid in a manner consistent with the provisions of this article, fail to submit the highest bid for licenses issued for the ten-year period beginning July 1, 2010, and for each ten-year period thereafter an additional opportunity to obtain the license; and

(4) Effect statutory changes to further the purposes provided in this section and section two of this article.

§60-3A-4. Definitions.

(a) "Active retail license" means a current license for a retail outlet that has been open and in continuous operation for a period of not less than twelve months prior to July 1, 2010, or July 1 every ten years thereafter.

(b) "Active retail licensee" means a person who holds an active retail license at the time of the effective date of the amendments to this section during the first extraordinary session of the Legislature in 2009 or that person's successor or any person who holds an active retail license when it expires at the end of a ten-year period.

(c) "Applicant" means any person who elects to pay a purchase option for a Class A retail license, who bids for a retail license or who seeks the commissioner's approval to purchase or otherwise acquire a retail license from a retail licensee, in

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accordance with the provisions of this article.

(d) "Application" means the form prescribed by the commissioner which must be filed with the commissioner by any person bidding for a retail license.

(e) "Board" means the Retail Liquor Licensing Board created by this article.

(f) "Class A retail license" means a retail license permitting the retail sale of liquor at a freestanding liquor retail outlet.

(g) "Class B retail license" means a retail license permitting the sale of liquor at a mixed retail liquor outlet.

(h) "Current retail licensee" means a person who holds a retail license at the time of the effective date of the amendments to this section during the first extraordinary session of the Legislature in 2009 or that person's successor or any person who holds a retail license when it expires at the end of a ten-year period.

(i) "Designated areas" means one or more geographic areas within a market zone designated as such by the board.

(j) "Executive officer" means the president or other principal officer, partner or member of an applicant or retail licensee, any vice president or other principal officer, partner or member of an applicant or retail licensee in charge of a principal business unit or division, or any other officer, partner or member of an applicant or retail licensee who performs a policy-making function.

(k) "Freestanding liquor retail outlet" means a retail outlet that sells only liquor, beer, nonintoxicating beer and other alcohol-related products, including tobacco-related products.

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(l) "Liquor" means alcoholic liquor as defined in section five, article one of this chapter and also includes both wine and fortified wines as those terms are defined in section two, article eight of this chapter.

(m) "Market zone" means a geographic area designated as such by the board for the purpose of issuing retail licenses.

(n) "Mixed retail liquor outlet" means a retail outlet that sells liquor, beer, nonintoxicating beer and other alcohol-related products, including tobacco-related products, in addition to convenience and other retail products.

(o) "Person" means an individual, firm, corporation, association, partnership, limited partnership, limited liability company or other entity, regardless of its form, structure or nature.

(p) "Retail license" means a license issued under the provisions of this article permitting the sale of liquor at retail.

(q) "Retail licensee" means the holder of a retail license.

(r) "Retail outlet" means a specific location where liquor may be lawfully sold by a retail licensee under the provisions of this article.

§60-3A-6. General powers and duties of board and commissioner.

(a) The board shall create, based on economic and demographic factors, market zones within the state for the issuance of Class A and Class B retail licenses.

(b) The commissioner shall:

(1) Prescribe application forms for persons desiring to acquire retail licenses and adopt an orderly procedure and timetable for investigating, processing and approving

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applications;

(2) Develop a form of retail license to be issued to each retail licensee under the provisions of this article;

(3) Disseminate to the public information relating to the issuance of retail licenses;

(4) Promulgate standards for advertising the sale, availability, price and selection of liquor;

(5) Set minimum standards for retail outlets regarding the amount and variety of liquor a licensee must offer for sale at each retail outlet; the size, space and design of each retail outlet; the amount of inventory and displayed inventory of liquor in each retail outlet; order quantities sufficient to qualify for delivery to each retail outlet; phone, computer and Internet requirements for each retail outlet; the verification of liquor orders; liquor delivery dates and routes for each retail outlet; and such other requirements the commissioner deems necessary;

(6) Set minimum standards for the display of inventory in retail outlets operating pursuant to a Class A retail license which shall include, without limitation, the requirement that a minimum square footage of displayed inventory available for retail purchase at the retail outlet be composed of liquor, beer and nonintoxicating beer products and that liquor, beer and nonintoxicating beer products available for sale are placed for sale throughout the entire retail area of the retail outlet including the retail floor space and shelving;

(7) Set minimum standards for the display of inventory in retail outlets operating

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pursuant to a Class B retail license which shall include, without limitation, the requirements that a minimum square footage of the displayed inventory available for purchase at the retail outlet be composed of liquor products; that liquor available for sale in the retail outlet is placed only in an area of the retail outlet that prominently displays signage identifying the area as a restricted liquor area and stating that no one under the age of twenty-one may purchase liquor; and that the area is separate from and not highly visible to persons outside of the restricted liquor area.

(8) Enforce the provisions of this article;

(9) Impose civil penalties upon retail licensees;

(10) Enter the retail outlet of any retail licensee at reasonable times for the purpose of inspecting the same, and determining the compliance of such retail licensee with the provisions of this article and any rules promulgated by the board or the commissioner pursuant to the provisions of this article; and

(11) Issue subpoenas and subpoenas duces tecum for the purpose of conducting hearings under the provisions of section twenty-six or section twenty-eight of this article, which subpoenas and subpoenas duces tecum shall be issued in the time, for the fees, and shall be enforced in the manner specified in section one, article five, chapter twenty-nine-a of this code with like effect as if such section was set forth in extenso herein.

(c) The board and the commissioner shall each:

(1) Engage accounting, legal and other necessary professional consultants to assist them in carrying out their respective duties under this article;

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(2) Adopt, promulgate, amend or repeal such procedural, interpretive and legislative rules, consistent with the policy and objectives of this article, as they may deem necessary or desirable for the public interest in carrying out the provisions of this article. Such rules shall be adopted, amended and repealed in accordance with the provisions of chapter twenty-nine-a of this code; and

(3) Notwithstanding any other provision of this code to the contrary, proposed legislative rules for this article filed in the State Register by September 1, 2009, may be filed as emergency rules. Such emergency rules shall include the standards, criteria and formulae or methodology utilized by the board when establishing the minimum bid for each license pursuant to section ten-b of this article.

§60-3A-7. Market zones; Class A and Class B retail licenses.

(a) The market zones established by the board for the retail sale of liquor within this state under the enactment of this section in 1990 may not be modified by the board unless authorized by the Legislature. For each market zone established by the board, the commissioner may issue one or more Class A retail licenses and one or more Class B retail licenses within the market zone: *Provided*, That the number of Class B retail licenses to be issued by the commissioner within a market zone shall not exceed one hundred fifty percent of the number of Class A retail outlets authorized for that market zone, except as otherwise authorized by subsection (d) of this section or section twenty-seven-a of this article: *Provided, however*, That, except as authorized by subsection (d) of this section or section twenty-seven-a of this article, in a market zone where the number of Class A retail licenses issued by the commissioner is an odd

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number, the number of Class B retail licenses which may be issued in that market zone shall be rounded up to the next highest whole number following that number which is equal to one hundred fifty percent of the number of Class A retail licenses issued by the commissioner: Provided that, for the ten-year period beginning July 1, 2010, the number of Class B retail licenses which are available for bid in a market zone shall not be less than the number of mixed retail outlets located in that market zone as of October 31, 2009.

(b) When authorizing Class B retail licenses for a market zone, the board may create one or more designated areas within the market zone and authorize one Class B retail license for each designated area. For each market zone, the commissioner may issue additional Class B retail licenses for retail outlets to be located outside any designated area, but the number of additional Class B retail licenses, when added to the total number of Class B retail licenses issued for all designated areas within the market zone, shall not exceed the maximum number of Class B retail licenses permitted under subsection (a) of this section for that market zone, except as authorized by subsection (d) of this section or section twenty-seven-a of this article.

(c) A person may hold one or more Class A retail licenses and one or more Class B retail licenses in a market zone or zones.

(d) Notwithstanding any provision of subsection (a) or (b) of this section, no later than thirty days prior to the receipt of the bids described in section ten-b of this article, the board may authorize the commissioner to issue additional Class B retail licenses in a market zone for the ten-year period which begins next following July 1, where the

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board determines that:

(1) Each retail outlet authorized to operate in the market zone has been open and in operation for not less than one year;

(2) Economic and demographic factors clearly demonstrate the need for an additional retail outlet or outlets within the market zone to meet consumer demand; and

(3) The issuance of an additional Class B license in the market zone will not significantly impair the efforts to procure the revenues described in subsection (b), section ten-b of this article.

(e) The board shall establish the minimum bid for any additional Class B retail licenses authorized under subsection (d) of this section.

(f) No person may hold a combination of Class A or Class B retail licenses that, in the aggregate, authorizes the operation of more than thirty percent of the total number of retail outlets authorized under the provisions of this article to operate in this state.

§60-3A-8. Retail license application requirements; retail licensee qualifications.

(a) Prior to or simultaneously with the submission of a bid for a retail license or the payment of a purchase option for a Class A retail license, each applicant shall file an application with the commissioner, stating under oath, the following:

(1) If the applicant is an individual, his or her name and residence address;

(2) If the applicant is other than an individual, the name and business address of the applicant; the state of its incorporation or organization; the names and residence addresses of each executive officer and other principal officer, partner or member of

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the entity; a copy of the entity's charter or other agreement under which the entity operates; and the names and residence addresses of any person owning, directly or indirectly, at least twenty percent of the outstanding stock, partnership or other interests in the applicant;

(3) That the applicant has never been convicted in this state or any other state of any felony or other crime involving moral turpitude or convicted of any felony in this or any other state court or any federal court for a violation of any state or federal liquor law, and if the applicant is other than an individual, that none of its executive officers, other principal officers, partners or members, or any person owning, directly or indirectly, at least twenty percent of the outstanding stock, partnership or other interests in the applicant, has been convicted; and

(4) That the applicant is a United States citizen of good moral character and, if a naturalized citizen, when and where naturalized; and, if a corporation organized and authorized to do business under the laws of this state, when and where incorporated, with the name and address of each officer; that each officer is a citizen of the United States and a person of good moral character; and if a firm, association, partnership or limited partnership, that each member is a citizen of the United States and, if a naturalized citizen, when and where naturalized, each of whom must sign the application.

(b) An applicant shall provide the commissioner any additional information requested by the commissioner including, but not limited to, authorization to conduct a criminal background and credit records check.

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(c) Whenever a change occurs in any information provided to the commissioner, the change shall immediately be reported to the commissioner in the same manner as originally provided.

(d) The commissioner shall disqualify each bid submitted by an applicant under section ten of this article and no applicant shall be issued or eligible to hold a retail license under this article, if:

(1) The applicant has been convicted in this state of any felony or other crime involving moral turpitude or convicted of any felony in this or any other state court or any federal court for a violation of any state or federal liquor law; or

(2) Any executive officer or other principal officer, partner or member of the applicant, or any person owning, directly or indirectly, at least twenty percent of the outstanding stock, partnership, or other interests in the applicant, has been convicted in this state of any felony or other crime involving moral turpitude or convicted of any felony in this or any other state court or any federal court for a violation of any state or federal liquor law.

(e) The commissioner shall not issue a retail license to an applicant which does not hold a license issued pursuant to federal law to sell liquor at wholesale.

§60-3A-10. Bidding procedure.

(a) Except as provided in section ten-b of this article, bids for licenses shall be governed by the provisions of this section.

(b) The issuance of retail licenses shall be based on sealed competitive bids in accordance with the provisions of this section. Bids for the issuance of retail licenses

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shall be obtained by public notice published as a Class II-0 legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for the publication shall be each market zone within which a retail outlet shall be located. The second publication of the notice shall appear more than thirty days next preceding the final day for submitting bids.

(c) Each bid shall indicate the market zone for which the retail license is sought, whether the bid is for a Class A retail license or Class B retail license, and, if the board has created one or more designated areas for the market zone, whether the bid is for a Class A or Class B retail license to be issued for any designated area. No bid shall be altered or withdrawn after the appointed hour for the opening of the bids. Subject to the provisions of section ten-b of this article, each retail license shall be awarded to the highest bidder. No bid shall be considered unless the bond required under section eleven of this article is submitted to the commissioner. All bids for a retail license may be rejected by the board if the board determines that the highest bid is inadequate, in which event the commissioner shall begin anew the bidding process for that retail license.

(d) Each person desiring to submit a bid shall file the bid with the commissioner prior to the specified date and hour for the bid openings. The failure to deliver or the nonreceipt of a bid prior to the appointed date and hour constitutes sufficient reason for the rejection of a bid. After the award of the retail license, the commissioner shall indicate upon the successful bid that it was the successful bid. Thereafter, a copy of the bid and the bidder's application shall be maintained as a public record, shall be

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open to public inspection in the commissioner's office and shall not be destroyed without the written consent of the Legislative Auditor.

(e) Prior to the issuance of the retail license to the successful bidder, the bid price and the annual retail license fee, as specified in section twelve of this article, shall be paid to the commissioner by money order, certified check or cashier's check. All retail licenses shall be signed by the commissioner in the name of the state.

(f) If the successful bidder fails to pay to the commissioner the bid price and the annual retail license fee, at the time specified by the commissioner, the bond provided in section eleven of this article shall be forfeited and the bidder shall not be issued the retail license. The commissioner shall then issue the retail license to the next highest bidder for the retail license or reject all bids and start anew the bidding procedure for the retail license.

§60-3A-10b. Bidding procedure for licenses issued for the ten-year period beginning July 1, 2010; purchase options for bids beginning July 1, 2010; and licenses issued for each ten-year period thereafter.

(a) The issuance of retail licenses for the ten-year period beginning July 1, 2010, and for each ten-year period thereafter, shall be based upon sealed competitive bid in accordance with the provisions of section ten of this article except as provided in this section.

(b) Prior to accepting bids for retail licenses to be issued for the ten-year period beginning July 1, 2010, the board shall determine the minimum bid for each license

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based upon a review of inflation data, demographic data, the sales at each retail outlet permitted to operate under the license and such other factors as the board may determine to generate the revenues from liquor license renewal projected by the Governor's official revenue estimates for fiscal year 2009-2010 as presented to the regular session of the Legislature in 2009.

(c) Prior to accepting bids for retail licenses to be issued for the ten-year periods beginning July 1, 2010, and July 1 every ten years thereafter, the board shall determine the minimum bid for each retail license based upon a review of the sales at each retail outlet permitted to operate under the retail license and such other factors as the board may determine to generate the revenues from retail license renewal projected by the Governor's official revenue estimates for the fiscal year preceding the expiration of the retail licenses.

(d)(1) Notwithstanding any provision of this article to the contrary, prior to accepting bids for retail licenses to be issued for the ten-year period beginning July 1, 2010, and every ten-year period thereafter, each active retail licensee operating or seeking to operate a freestanding liquor retail outlet shall be eligible to purchase a Class A retail license or licenses as provided in this subsection.

(2) At least sixty days prior to accepting bids for retail licenses to be issued for the ten-year period beginning July 1, 2010, and July 1 every ten years thereafter, the board shall provide notice to each eligible retail licensee of his or her option to purchase a Class A retail license or licenses as provided in this subsection. The board shall include with this notice an explanation of the financing option provided in section ten-d

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of this article and a financing application form prepared by the commissioner.

(3) An eligible retail licensee may elect to pay a purchase option or options for each retail outlet operating under an active retail license currently held by the licensee. A retail licensee may only exercise a purchase option for the lesser of four Class A retail licenses or the number of active retail licenses currently held by the licensee.

(4) Each eligible retail licensee who elects to pay a purchase option shall, within thirty days prior to the acceptance of bids for the ten-year period beginning July 1, 2010, and July 1 every ten years thereafter, pay to the commissioner an amount equal to ten percent over and above the minimum bid as determined by the board for each Class A retail license the retail licensee wishes to purchase or, if the retail licensee elects to take the financing option provided in section ten-d of this article, a down payment, the amount of which shall be calculated in accordance with the provisions of that section. A retail licensee shall be awarded a Class A retail license or licenses upon the commissioner's receipt of his or her payment or down payment: *Provided*, That the commissioner determines that the retail licensee is in good standing with the state and meets all other requirements imposed by the provisions of this article for the issuance of a Class A retail license.

(5) A Class A retail license purchased in accordance with this subsection shall be issued for the ten-year period beginning July 1, 2010, or July 1 every ten years thereafter, and shall expire on June 30, 2020, or on June 30 every ten years thereafter.

(6) Nothing in this subsection may be interpreted as affecting the ability of a retail licensee to bid for a retail license or licenses as otherwise provided in this article:

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Provided, That the retail licensee meets all other requirements imposed by the provisions of this article for the submission of bids.

(e) All bids for a retail license for the ten-year period beginning July 1, 2010, or for any ten-year period thereafter may be rejected by the board if the board determines that the highest bid fails to meet the minimum bid. The board may also reject any or all bids for a market zone where, in the aggregate, the bids for all of the retail licenses in the market zone fail to meet the minimum aggregate bid for that market zone. Where the board determines the highest bid meets or exceeds the minimum bid, the board shall determine whether, at the time of the bid, the same retail license was held for the period ending June 30, 2010, or for any ten-year period thereafter, on June 30 preceding the expiration of the license. If the current retail licensee holding the same retail license at the time of submission of the bid for the period ending June 30, 2010, or for any ten-year period thereafter, on June 30 preceding the expiration of the retail license, submitted a bid that was not less than the minimum bid and is, after considering any preference applicable under the provisions of section ten-a of this article, an unsuccessful bidder for the retail license for the period beginning July 1, 2010, or for any ten-year period thereafter, on July 1 when the retail license expires, the commissioner shall notify the person that upon paying the amount of the highest bid, subject to the provisions of subsection (f) of this section, and upon compliance with all other requirements imposed by the provisions of this article for the issuance of the license, the retail license for the ten-year period beginning July 1, 2010, or for any ten-year period thereafter, shall be issued to the current retail licensee. If, within the

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time determined by the commissioner, the current retail licensee pays the amount to the commissioner and complies with all other requirements imposed by the provisions of this article for the issuance of the retail license, the retail license for the ten-year period beginning July 1, 2010, or for any ten-year period thereafter, shall be issued to the current retail licensee.

(f) The board shall, in determining the amount a current retail licensee who is an unsuccessful bidder shall pay as described in subsection (e) of this section, afford the unsuccessful bidder a preference. If the unsuccessful bidder is a West Virginia resident as defined in section ten-a of this article, the board shall afford the unsuccessful bidder a five percent preference in addition to the five percent preference afforded under section ten-a of this article. If the unsuccessful bidder is not a West Virginia resident, the board shall afford the unsuccessful bidder a five percent preference. The preference shall be computed by subtracting the preference percentage of the highest bid price from the highest bid price: *Provided*, That under no circumstances may the preference bring the price of the bid below the minimum bid established by the board: *Provided, however*, That a current retail licensee who is not operating any of the retail outlets for which he or she is authorized under the license is not eligible for the preference provided for under this section.

(g) In the event all bids submitted for a retail license fail to meet the minimum bid amount for the license as determined by the board, the board may offer the license for bid again after it determines a new minimum bid amount for the retail license.

§60-3A-10d. Financing option for retail licensees purchasing Class A retail

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licenses.

(a) The commissioner shall offer financing to each retail licensee who elects to pay the purchase option for a Class A retail license or licenses as provided in section ten-b of this article: *Provided*, That the retail licensee is approved by the commissioner for financing and otherwise complies with the requirements of this section: *Provided, however*, That the retail licensee agrees to enter a financing agreement with the commissioner as provided in subsection (d) of this section.

(b) The commissioner shall prepare an application form for retail licensees who desire to elect the financing option provided in this section. The commissioner shall make the form available to retail licensees in paper or electronic format at least sixty days prior to the acceptance of bids for the ten-year period beginning July 1, 2010, and July 1 every ten years thereafter. At a minimum, the application form shall require the following information:

(1) Certification that the applicant elects to pay the purchase option for a Class A retail license or licenses as provided in section ten-b of this article;

(2) Certification that the applicant is the current holder and operator of an active retail license issued by the board;

(3) A description of the retail license or licenses currently held by the applicant;

(4) Any information the commissioner requires to evaluate the creditworthiness of the applicant, including without limitation the applicant's authorization to perform a criminal background and credit check; and

(5) Any additional information the commissioner requires to effectuate the

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purposes of this section.

(c) For an applicant to be considered for financing, the application required under subsection (b) of this section must be submitted to the commissioner with a down payment of fifty percent of the total amount due under the financing agreement provided in subsection (d) of this section no later than May 1, 2010, or, for subsequent retail license periods, May 1 every ten years thereafter. The commissioner shall make a determination as to the eligibility of an applicant for financing and the issuance of a Class A retail license within fifteen days of his or her receipt of the application. If the commissioner determines that an applicant is ineligible for financing, is not in good standing with the state or does not otherwise meet the requirements of this article for the issuance of a Class A retail license, the commissioner shall notify the applicant that his or her application for financing is denied and shall refund in full any moneys paid to the commissioner as a down payment. If the applicant's application for financing is denied for any reason other than the fact that the applicant is not in good standing with the state or is not otherwise eligible for the issuance of a Class A retail license, the commissioner shall provide the applicant the option of paying the full amount of a purchase option for a Class A retail license or licenses as provided in subsection (d), section ten-b of this article. At the request of the applicant, the commissioner may credit any moneys received as a down payment towards payment of the full amount of a purchase option for a Class A retail license or licenses.

(d) The commissioner is hereby authorized to enter into a financing agreement with each retail licensee meeting the requirements of this section. The financing

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agreement shall contain such terms and conditions as prescribed by the commissioner, but at a minimum shall contain the following:

(1) The total amount due, including the required down payment, which shall equal ten percent over and above the minimum bid as determined by the board for each Class A retail license the retail licensee wishes to purchase;

(2) The interest to be charged on the total amount due at a rate of the adjusted prime lending rate minus one hundred basis points. The interest rate shall be set on the date the financing is approved by the commissioner;

(3) The total amount due, not including the required down payment, to be payable to the commissioner in monthly or quarterly installments over a period of sixty months. If a retail licensee elects to pay in monthly installments, his or her first payment is due on August 1 and successive payments are due on the first day of each month thereafter until the debt is retired. If a retail licensee elects to pay in quarterly installments, his or her first payment is due on October 1 and successive payments are due on the first day of every third month thereafter until the debt is retired;

(4) The failure of a retail licensee to make a payment in accordance with the terms of the financing agreement shall result in the entire balance of the amount due becoming immediately due and payable to the commissioner and shall result in the forfeiture of the down payment and any moneys paid to the commissioner in accordance with this section; and

(5) The failure of a retail licensee to make a payment in accordance with the terms of the financing agreement within thirty days of the day on which the payment

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was due shall result in the immediate revocation of the Class A retail license held by the licensee and the commissioner shall reissue the license by sealed competitive bid in accordance with section ten of this article. A retail licensee whose retail license is revoked for failure to make payments as provided in the financing agreement is deemed an unsuitable retail licensee and shall be permanently prohibited from bidding on a retail license under this article.

§60-3A-11. Bonding requirements.

Each applicant submitting a bid under section ten of this article or electing to pay a purchase option for a Class A license or licenses as provided in section ten-b of this article shall furnish to the commissioner a bond at the time of bidding, which bond shall guarantee the payment of twenty-five percent of the price bid or paid for the retail license. The bond required by this section shall be furnished in cash or negotiable securities or shall be a surety bond issued by a surety company authorized to do business with the state or an irrevocable letter of credit issued by a financial institution acceptable to the commissioner. If furnished in cash or negotiable securities, the principal shall be deposited without restriction in the State Treasurer's office and credited to the commissioner, but any income shall inure to the benefit of the applicant. For applicants bidding on a retail license, the bond shall be returned to an applicant following the bidding if such applicant is not the successful bidder for the retail license, and, if an applicant is the successful bidder, the bond shall be released after issuance of the retail license.

§60-3A-12. Annual retail license fee; expiration and renewal of retail licenses.

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(a) The annual retail license period is from July 1 to June 30 of the following year. The annual retail license fee for a Class A or Class B retail license is \$2,000. The annual retail license fee for the initial year of issuance shall be prorated based on the number of days remaining between the date of issuance and the following June 30.

(b) All retail licenses expire on June 30 of each year and may be renewed only upon the submission to the commissioner of the same information required for the issuance of the license and any additional information requested by the commissioner on the forms and by the date prescribed by the commissioner, together with the payment to the commissioner of the applicable annual retail license fee required under this section.

(c) No person may sell liquor at any retail outlet if the retail license applicable to the outlet has been suspended or revoked, or has expired.

(d) All retail licenses issued or renewed under the provisions of this article for the period ending June 30, 2010, or on June 30 for any ten-year period thereafter, expire and are of no further force or effect as of July 1, 2010, or as of July 1 every ten years thereafter.

(e) Notwithstanding any provision of section eighteen, article four of this chapter to the contrary, a municipality may invoke the authority granted by section four, article thirteen, chapter eight of this code to require an annual license from each retail licensee and require payment for the license in amounts not to exceed the amounts provided in subsection (a) of this section.

State of West Virginia
VENDOR PREFERENCE CERTIFICATE

Certification and application* is hereby made for Preference in accordance with *West Virginia Code*, §5A-3-37. (Does not apply to construction contracts). *West Virginia Code*, §5A-3-37, provides an opportunity for qualifying vendors to request (at the time of bid) preference for their residency status. Such preference is an evaluation method only and will be applied only to the cost bid in accordance with the *West Virginia Code*. This certificate for application is to be used to request such preference. The Purchasing Division will make the determination of the Resident Vendor Preference, if applicable.

1. Application is made for 2.5% resident vendor preference for the reason checked:

- _____ Bidder is an individual resident vendor and has resided continuously in West Virginia for four (4) years immediately preceding the date of this certification; **or**,
 _____ Bidder is a partnership, association or corporation resident vendor and has maintained its headquarters or principal place of business continuously in West Virginia for four (4) years immediately preceding the date of this certification; or 80% of the ownership interest of Bidder is held by another individual, partnership, association or corporation resident vendor who has maintained its headquarters or principal place of business continuously in West Virginia for four (4) years immediately preceding the date of this certification; **or**,
 _____ Bidder is a nonresident vendor which has an affiliate or subsidiary which employs a minimum of one hundred state residents and which has maintained its headquarters or principal place of business within West Virginia continuously for the four (4) years immediately preceding the date of this certification; **or**,

2. Application is made for 2.5% resident vendor preference for the reason checked:

- _____ Bidder is a resident vendor who certifies that, during the life of the contract, on average at least 75% of the employees working on the project being bid are residents of West Virginia who have resided in the state continuously for the two years immediately preceding submission of this bid; **or**,

3. Application is made for 2.5% resident vendor preference for the reason checked:

- _____ Bidder is a nonresident vendor employing a minimum of one hundred state residents or is a nonresident vendor with an affiliate or subsidiary which maintains its headquarters or principal place of business within West Virginia employing a minimum of one hundred state residents who certifies that, during the life of the contract, on average at least 75% of the employees or Bidder's affiliate's or subsidiary's employees are residents of West Virginia who have resided in the state continuously for the two years immediately preceding submission of this bid; **or**,

4. Application is made for 5% resident vendor preference for the reason checked:

- _____ Bidder meets either the requirement of both subdivisions (1) and (2) or subdivision (1) and (3) as stated above; **or**,

5. Application is made for 3.5% resident vendor preference who is a veteran for the reason checked:

- _____ Bidder is an individual resident vendor who is a veteran of the United States armed forces, the reserves or the National Guard and has resided in West Virginia continuously for the four years immediately preceding the date on which the bid is submitted; **or**,

6. Application is made for 3.5% resident vendor preference who is a veteran for the reason checked:

- _____ Bidder is a resident vendor who is a veteran of the United States armed forces, the reserves or the National Guard, if, for purposes of producing or distributing the commodities or completing the project which is the subject of the vendor's bid and continuously over the entire term of the project, on average at least seventy-five percent of the vendor's employees are residents of West Virginia who have resided in the state continuously for the two immediately preceding years.

Bidder understands if the Secretary of Revenue determines that a Bidder receiving preference has failed to continue to meet the requirements for such preference, the Secretary may order the Director of Purchasing to: (a) reject the bid; or (b) assess a penalty against such Bidder in an amount not to exceed 5% of the bid amount and that such penalty will be paid to the contracting agency or deducted from any unpaid balance on the contract or purchase order.

By submission of this certificate, Bidder agrees to disclose any reasonably requested information to the Purchasing Division and authorizes the Department of Revenue to disclose to the Director of Purchasing appropriate information verifying that Bidder has paid the required business taxes, provided that such information does not contain the amounts of taxes paid nor any other information deemed by the Tax Commissioner to be confidential.

Under penalty of law for false swearing (West Virginia Code, §61-5-3), Bidder hereby certifies that this certificate is true and accurate in all respects; and that if a contract is issued to Bidder and if anything contained within this certificate changes during the term of the contract, Bidder will notify the Purchasing Division in writing immediately.

Bidder: _____ Signed: _____

Date: _____ Title: _____

*Check any combination of preference consideration(s) indicated above, which you are entitled to receive.

RFQ No. _____

STATE OF WEST VIRGINIA
Purchasing Division

PURCHASING AFFIDAVIT

VENDOR OWING A DEBT TO THE STATE:

West Virginia Code §5A-3-10a provides that: No contract or renewal of any contract may be awarded by the state or any of its political subdivisions to any vendor or prospective vendor when the vendor or prospective vendor or a related party to the vendor or prospective vendor is a debtor and the debt owed is an amount greater than one thousand dollars in the aggregate.

PUBLIC IMPROVEMENT CONTRACTS & DRUG-FREE WORKPLACE ACT:

If this is a solicitation for a public improvement construction contract, the vendor, by its signature below, affirms that it has a written plan for a drug-free workplace policy in compliance with Article 1D, Chapter 21 of the **West Virginia Code**. The vendor **must** make said affirmation with its bid submission. Further, public improvement construction contract may not be awarded to a vendor who does not have a written plan for a drug-free workplace policy in compliance with Article 1D, Chapter 21 of the **West Virginia Code** and who has not submitted that plan to the appropriate contracting authority in timely fashion. For a vendor who is a subcontractor, compliance with Section 5, Article 1D, Chapter 21 of the **West Virginia Code** may take place before their work on the public improvement is begun.

ANTITRUST:

In submitting a bid to any agency for the state of West Virginia, the bidder offers and agrees that if the bid is accepted the bidder will convey, sell, assign or transfer to the state of West Virginia all rights, title and interest in and to all causes of action it may now or hereafter acquire under the antitrust laws of the United States and the state of West Virginia for price fixing and/or unreasonable restraints of trade relating to the particular commodities or services purchased or acquired by the state of West Virginia. Such assignment shall be made and become effective at the time the purchasing agency tenders the initial payment to the bidder.

I certify that this bid is made without prior understanding, agreement, or connection with any corporation, firm, limited liability company, partnership or person or entity submitting a bid for the same materials, supplies, equipment or services and is in all respects fair and without collusion or fraud. I further certify that I am authorized to sign the certification on behalf of the bidder or this bid.

LICENSING:

Vendors must be licensed and in good standing in accordance with any and all state and local laws and requirements by any state or local agency of West Virginia, including, but not limited to, the West Virginia Secretary of State's Office, the West Virginia Tax Department, West Virginia Insurance Commission, or any other state agencies or political subdivision. Furthermore, the vendor must provide all necessary releases to obtain information to enable the Director or spending unit to verify that the vendor is licensed and in good standing with the above entities.

CONFIDENTIALITY:

The vendor agrees that he or she will not disclose to anyone, directly or indirectly, any such personally identifiable information or other confidential information gained from the agency, unless the individual who is the subject of the information consents to the disclosure in writing or the disclosure is made pursuant to the agency's policies, procedures and rules. Vendor further agrees to comply with the Confidentiality Policies and Information Security Accountability Requirements, set forth in <http://www.state.wv.us/admin/purchase/privacy/noticeConfidentiality.pdf>.

Under penalty of law for false swearing (**West Virginia Code §61-5-3**), it is hereby certified that the vendor affirms and acknowledges the information in this affidavit and is in compliance with the requirements as stated.

Vendor's Name: _____

Authorized Signature: _____ Date: _____