



**STATE OF WEST VIRGINIA
DEPARTMENT OF REVENUE
ALCOHOL BEVERAGE CONTROL ADMINISTRATION**

322 70th Street, SE
Charleston, West Virginia 25304-2900

JOE MANCHIN III
GOVERNOR

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COMMISSIONER

VIRGIL T. HELTON
CABINET SECRETARY

June 30, 2010

Subject: 2010 Subsequent License Bidding Process Notification – Extended Phase III

Dear Potential Bidder,

With the passage of House Bill No. 105 ("HB 105") during the First Special Session of 2009, the West Virginia Alcohol Beverage Control Administration ("WVABCA") and the Retail Liquor Licensing Board ("RLLB") are initiating Extended Phase III of the 2010 Purchase Option and License Bidding Process.

Phase I, or the Purchase Option Process, commenced on December 21, 2009 and was completed on February 17, 2010. During Phase I, Active Retail Licensees were given the opportunity to elect the Purchase Option on their existing retail outlet(s) provided they met the requirements to operate a Class A freestanding liquor retail outlet pursuant to the Rules and the Code. Phase II, or the License Bidding process, commenced on February 22, 2010 and was completed on April 30, 2010. During Phase II, all of the remaining retail outlets were available for bidding. Phase III, or the Subsequent License Bidding process, commenced on May 14, 2010 and was completed on June 25, 2010. During Phase III, those retail outlets for which a bid was not received during Phase II were available for bidding. Extended Phase III will now offer one (1) retail outlet up for bid. The available retail outlet is located in Market Zone 38 (Retail Outlet #589).

Before Extended Phase III is explained, there are some preliminary matters to understand:

1. All licenses are being offered as individual licenses. There are no multiple (A2, A3, A4 or A5) licenses.
2. You are bidding on a retail outlet located in a market zone and you may locate the retail outlet anywhere in the market zone, unless it is restricted to a Designated Area (DA) or is a Designated Retail Outlet (DRO).
3. If you are awarded a license during the Extended Phase III Subsequent License Bidding Process, you are still required to complete a **new** "2010-2011 WVABCA Application for Retail License", meet the WVABCA licensure requirements, and pay all applicable licensing fees prior to obtaining your WVABCA license. The "2010-2011 WVABCA Application for Retail License" should be completed after you receive notice that you have been awarded a license. Your bid payment and application is due within 5 business days from the date the successful bidder is determined but you should complete your application as soon as possible to avoid any possible licensing delays and to complete the inspection process.
4. Please be advised that the RLLB may, at any time during the ten year license period, add licenses, delete inactive licenses or move inactive licenses to, from or between market zones based on various factors, including but not limited to economic, demographic, sales and/or community demand.

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Page 2 of 2

5. The RLLB reserves the right to make clarifications to the Subsequent License Bidding Process and/or adjust the licenses available for bid based on RLLB decisions. Check www.abca.wv.gov for clarifications and updates to the bid process.

Extended Phase III: During Extended Phase III, the WVABCA and RLLB will offer one (1) additional retail outlet license up for bid. The RLLB has provided an enhanced description and explanation of this retail outlet for your benefit.

The retail outlet will be awarded to the highest bidder subject to the following preferences (Note: The winning bidder may choose to operate a Class A freestanding liquor retail outlet or a Class B mixed retail liquor outlet):

1. A current licensee will receive a 5% current licensee preference for a retail outlet licensed and operated by them;
2. A WV resident that meets the resident criteria will receive a 5% resident preference; and,
3. An unsuccessful current licensee will have the right to match the highest bidder for the retail outlet licensed and operated by them, all subject to the requirements in WV Code §60-3A-1, et seq. and the amendments made by HB 105.

(Note: The percentage preferences are only used to calculate the successful winning bidder. The amount you will be required to remit to the State of West Virginia if you are the successful winning bidder is your actual bid amount unless you are a current licensee who chooses the right to match.)

In order to make a meaningful bid, you need to review the Extended Phase III Subsequent License Bidding Packet (“Packet”) available at www.abca.wv.gov (see Rebid 2010 – Extended Phase III). This Packet contains the necessary information regarding the Extended Phase III Subsequent License Bidding process, as well as the required forms and documents that **must be completed and submitted** to Smith, Cochran & Hicks, P.L.L.C. (“Consultant”) if you choose to participate in the Extended Phase III Subsequent License Bidding process. Additional information is available on our website at www.abca.wv.gov, and it is your responsibility to continually check for updates. Information on the website that would be beneficial to bidders includes zone maps, zone data, retail outlet information/description and other supplemental information.

The deadline to return the required forms and documents (the License Bid Form and Proof of Residency, if applicable; Statement of Understanding, Release of Information & Waiver of Confidentiality of Records; Authorization to Release Information; and, Cashier’s Check or Money Order, Bid Surety Bond or Irrevocable Letter of Credit) to the Consultant is **4:00 P.M. E.S.T. on August 6, 2010 (postmarks will not be accepted)**. Any late forms will be rejected and your Packet will not be considered during the bid evaluation process.

In addition to the enclosed information, you should thoroughly review WV Code §60-3A-1, et seq. and the amendments made by HB 105, and the related Legislative Rules 175 CSR 1 and 175 CSR 5 (the “rules and the code”), to determine your compliance with the new requirements. The most complete, up-to-date and supplemental information is available on our website at www.abca.wv.gov.

Should you have any questions, or need assistance, please do not hesitate to contact A. Keith Wagner, WVABCA Deputy Commissioner, at (304) 558-2481. Please understand that limited information may be available since this is a bid process and certain information could jeopardize your status as a bidder.

Sincerely,

Dallas Staples

Dallas Staples
Commissioner

DISCLAIMER: THE WVABCA AND THE WV RLLB CANNOT GUARANTEE THAT THE LIQUOR LICENSING PROCESS WILL RESULT IN PROFITABLE VENTURES FOR ALL LICENSEES AS THE LICENSEE MUST DETERMINE MANY OF THE FACTORS INFLUENCING THE SUCCESS OF THE INVESTMENT IN THE LICENSE SUCH AS RETAIL PRICES, STORE HOURS, PRODUCT MIX, ADMINISTRATIVE EXPENSES AND MANY OTHER FACTORS. AS A RESULT, ACTIVE RETAIL LICENSEES AND POTENTIAL BIDDERS SHOULD CONSIDER THE INHERENT RISKS ASSOCIATED WITH THIS INVESTMENT AND BID AT THEIR OWN RISK.



INSTRUCTIONS – EXTENDED PHASE III

IMPORTANT: You must review WV Code §60-3A-1, et seq. and the amendments made by HB 105, and the related Legislative Rules 175 CSR 1 and 175 CSR 5 (the “Code and the Rules”). HB 105 made substantial changes to the definitions of both Class A and Class B licenses. Potential bidders must be familiar with the new Class A and Class B license requirements. You must visit our website at www.abca.wv.gov to download and review these documents and additional information prior to proceeding.

If you choose to participate in the Extended Phase III Subsequent License Bidding Process, please follow the instructions below:

1. Complete, sign and date the **“License Bid Form – EXTENDED PHASE III”** included in the License Bidding Packet. To be considered during the evaluation process, your 2010 actual bid amount **must** be at or above the minimum bid amount established by the RLLB.
2. Proof of residency, if applicable
3. Complete, sign and date the **“Statement of Understanding – EXTENDED PHASE III”** included in the License Bidding Packet.
4. Complete, sign and date the **“Release of Information & Waiver of Confidentiality of Records”** and **“Authorization to Release Information”** included in the License Bidding Packet.
5. Enclose a **“Cashier’s Check”** or **“Money Order”** (payable to the WVABCA), **“Bid Surety Bond”** or **“Irrevocable Letter of Credit”** (see Forms in Packet), in the amount of 25% of your actual License Bid amount.
6. Check the WVABCA website at www.abca.wv.gov for any clarifications, zone data and/or any supplemental information.
7. Place all required documents in an envelope and return to the following address **no later than 4:00 P.M. E.S.T. on August 6, 2010 (postmarks will not be accepted):**

Smith, Cochran & Hicks, P.L.L.C.
Attn: Patrick C. Smith, CPA – Rebid 2010 – Extended Phase III
405 Capitol Street, Suite 908
Charleston, WV 25301

NOTE: Under no circumstance will the required License Bidding documents be accepted after **4:00 P.M. E.S.T. on August 6, 2010 (postmarks will not be accepted)**. You must submit a **separate** packet of License Bidding documents for each retail outlet for which you are submitting a bid. Failure to return **all required information** by the above-referenced deadline **will** result in the disqualification of your bid. Should you have any questions or need further assistance, please contact A. Keith Wagner, WVABCA Deputy Commissioner, at (304) 558-2481, who will provide limited information due to the bid process.

WARNING: YOU MUST INDICATE ON YOUR LICENSE BID FORM WHETHER YOU INTEND TO OPERATE A CLASS A OR CLASS B RETAIL LIQUOR OUTLET. YOU MUST CAREFULLY REVIEW THE NEW CLASS A AND CLASS B LICENSE REQUIREMENTS. FAILURE TO MEET THE REQUIREMENTS APPLICABLE TO YOUR LICENSE TYPE COULD RESULT IN THE REVOCATION OF YOUR LICENSE.



CHECKLIST – EXTENDED PHASE III

REMINDER: YOU MUST COMPLETE AND RETURN THE FOLLOWING DOCUMENTS TO THE CONSULTANT NO LATER THAN 4:00 P.M. E.S.T. ON AUGUST 6, 2010 (POSTMARKS WILL NOT BE ACCEPTED):

- LICENSE BID FORM – EXTENDED PHASE III
- PROOF OF RESIDENCY (IF APPLICABLE)
- STATEMENT OF UNDERSTANDING – EXTENDED PHASE III
- RELEASE OF INFORMATION & WAIVER OF CONFIDENTIALITY OF RECORDS
- AUTHORIZATION TO RELEASE INFORMATION
- CASHIER’S CHECK/MONEY ORDER, BID SURETY BOND, OR IRREVOCABLE LETTER OF CREDIT

NOTE: PRIOR TO BIDDING, CHECK WWW.ABCA.WV.GOV FOR **ANY CLARIFICATIONS, ZONE MAPS, ZONE DATA AND SUPPLEMENTAL INFORMATION**. RETAIL OUTLETS MAY BE LOCATED ANYWHERE WITHIN ITS ZONE, UNLESS IT IS RESTRICTED TO A DESIGNATED AREA (DA) OR IS A DESIGNATED RETAIL OUTLET (DRO). IF YOU HAVE ANY QUESTIONS OR NEED ADDITIONAL ASSISTANCE, PLEASE CONTACT A. KEITH WAGNER, WVABCA DEPUTY COMMISSIONER, AT (304) 558-2481, WHO WILL ONLY PROVIDE LIMITED INFORMATION SINCE THIS IS A BID PROCESS.

IMPORTANT: TO BE CONSIDERED DURING THE EVALUATION PROCESS, YOUR 2010 ACTUAL BID AMOUNT MUST BE AT OR ABOVE THE MINIMUM BID AMOUNT ESTABLISHED BY THE RLLB.



LICENSE BID FORM – EXTENDED PHASE III

Bidder Information:

Full Name *(Current information so that WVABCA may contact you)*: _____

Business/DBA Name: _____

Street Address: _____

City, State and Zip Code: _____

Phone Number w/ Area Code *(Must be active for immediate contact)*: _____

Are you claiming the current licensee preference? Yes No *(If yes, please indicate your current WVABCA Retail Outlet Number: _____)*

Are you claiming the residency preference *(If yes, proof of residency must be attached)*? Yes No

License Bid Information:

Market Zone	Retail Outlet Number	2010 Minimum Bid	My 2010 Actual Bid*	Amount Included (25% of 2010 Actual Bid)**
38	589	\$119,121.00		

*To be considered during the evaluation process, your 2010 actual bid amount must be at or above the minimum bid amount established by the RLLB. You must also carefully review the listing of available licenses, zone data and related 2010 Minimum Bid amounts. If you indicate an incorrect market zone, retail outlet number, 2010 minimum or actual bid amount, your bid will be disqualified.

**You must include a Cashier's Check or Money Order, Bid Surety Bond or Irrevocable Letter of Credit in the amount of 25% of your actual bid amount.

Type of Bond: Cashier's Check/Money Order Bid Surety Bond Letter of Credit

Please check the applicable box below:

I intend to operate a Class A freestanding liquor retail outlet. I have read the requirements of the West Virginia Code and Rules pertaining to the License Bidding process and understand that I shall meet the applicable Class A license requirements pursuant to the code and rules. I further understand that if my bid is successful, I am required to remit payment in full for my license on or before June 30, 2010.

I intend to operate a Class B mixed retail liquor outlet. I have read the requirements of the West Virginia Code and Rules pertaining to the License Bidding process and understand that I shall meet the applicable Class B license requirements pursuant to the code and rules. I further understand that if my bid is successful, I am required to remit payment in full for my license within 5 business days from the date the successful bidder is determined.

Signature of Bidder: _____

Title: _____

Date: _____



STATEMENT OF UNDERSTANDING – EXTENDED PHASE III

Date: _____, 2010

I, _____, do hereby agree that I have read and understood the requirements of the West Virginia Code and Rules (“code and rules”) pertaining to the Subsequent License Bidding Process and I shall meet the applicable Class A or Class B license requirements pursuant to the code and rules.

I further understand that failure to meet the requirements of the code and rules will result in the immediate revocation of this license and the forfeiture of all moneys paid toward this license.

I intend to operate a (check the box): Class A License Class B License

By checking the box above and signing below, I understand and agree that if I am the successful high bidder, I am required to pay the total amount of my actual 2010 bid for Retail Outlet # _____ which is \$_____.

I understand that **payment in full is due within 5 business days from the date the successful bidder is determined**. I further understand that I must submit my annual license application and required documentation within 5 business days from the date the successful bidder is determined in order to complete my WVABCA licensing requirements and inspection.

I am also enclosing a Cashier’s Check or Money Order made payable to the WVABCA, a Bid Surety Bond issued by a surety bond company authorized to do business with the State, or an Irrevocable Letter of Credit (see examples included in License Bidding Packet), equal to 25% of my License Bid amount.

The signature below indicates that I have read, understood and agree with all the information in the Subsequent License Bidding Packet, the West Virginia Code and Rules, and further that I am fully aware and understand the penalties associated with failure to meet the requirements in my Statement of Understanding. This Statement of Understanding is bound by the laws of the State of West Virginia.

(Signature)

Name: _____

WVABCA Retail Outlet #: _____

Date:



RELEASE OF INFORMATION AND WAIVER OF CONFIDENTIALITY OF RECORDS

Applicant/Entity Name: _____

Doing Business As (DBA) Name: _____

I (or we), having made application with the West Virginia Alcohol Beverage Control Administration ("WVABCA") for issuance of a license to sell alcoholic beverages within the State of West Virginia, hereby waive the benefit of any municipal, county, state, or federal statute, rule, ordinance, regulation or other law prescribing the confidentiality of any records or documents, whether formal or informal, pending or closed, maintained by any public or private agency or organization as those records or documents pertain to residency, business location, business activities, education and/or training, employment, criminal history, civil litigation, or law enforcement investigation.

I (or we), hereby authorize and request every public or private agency, organization, or person maintaining such records to furnish to the WVABCA, or their agents or representatives, any information contained therein and to permit them to inspect and make copies of such records and documents.

I (or we), hereby authorize the WVABCA to disclose any information pertaining to the licensure to any municipal, county, state, federal or private agency or organization that has any interest in the licensing of said applicant.

I (or we), hereby release the WVABCA, their agents and representatives, and any agency, organization, or person furnishing information from all liability arising out of any investigation concerning the applicant. I or we further agree that a copy of this Release and Waiver shall function as an original.

I (or we) acknowledge that by affixing a signature(s) below gives this document full force and upon this date all aforementioned information may be received and shared as prescribed.

Name (Must include owner's, officer's, member's and manager's printed and written signature)	Title	Date



AUTHORIZATION TO RELEASE INFORMATION

Name of taxpayer: _____ Date: _____

Address: _____

City: _____ State: _____ Zip Code: _____

West Virginia Identification Number or Social Security Number: _____

The above named taxpayer does hereby waive the confidentiality provisions of the West Virginia Code §11-10-5d and/or §11-1A-23 to the following extent:

1. Persons to whom information may be released:

Name: _____ Capacity: _____

Address: _____

2. Effective period of this waiver:

Authorization terminates: _____
Month Day Year

Until my liability for West Virginia taxes is liquidated

Other (explain): _____

3. Taxes and/or credits to which this waiver applies:

	W. Va. Code Art.		W. Va. Code Art.
___ Beer Barrel Tax	11-16	___ Severance Tax	11-13A
___ Business and Occupation Tax	11-13	___ Soft Drink Tax	11-19
___ Business Franchise Tax	11-23	___ Telecommunications Tax	11-13B
___ Business Investment and Jobs Expansion Credit (Super Credit)	11-13C	___ Use Tax	11-15A
___ Business Registration Tax	11-12	___ Wine Liter Tax	60-8
___ Cigarette Tax	11-17	___ Charitable Raffle Boards and Games	47-23
___ Consumer Sales and Service Tax	11-15	___ Solid Waste Fee	20-5F
___ Corporate Net Income Tax	11-24	___ Corporate License Tax	11-12C
___ Employers Withholding Tax	11-10	___ Minimum Severance Tax on Coal	11-12B
___ Estate Tax	11-11	___ Health Care Provider Taxes	11-27
___ Gasoline & Special Fuel Excise Tax	11-14	___ All of the above applicable to the taxpayer	
___ Inheritance Tax	11-11	___ Property Taxes	
___ Motor Carrier Road Tax	11-14A	___ OTHER	
___ Personal Income Tax	11-21		



AUTHORIZATION TO RELEASE INFORMATION

4. Information to be released: (describe specifically): _____

5. Reason(s) why information is to be released: _____

This waiver will be effective only to the extent explained above and any other release of information is not permitted without additional authorization. Additionally, information will be released only to the extent necessary to comply with this request for information, and will not be disclosed if the Tax Commissioner determines that such disclosure would seriously impair administration of this State's tax laws.

This waiver must be signed by the taxpayer. If this waiver is by a corporation, it must be signed by the president, vice president, treasurer, assistant treasurer, chief accounting officer or any other officer duly authorized so to act. In the case of a partnership, as defined for federal income tax purposes, this waiver shall be signed by a partner or any employee of the partnership duly authorized so to act. The fact that an individual's name is signed on the waiver shall be prima facie evidence that such individual is authorized to sign the waiver on behalf of the corporation or partnership.

Signature: _____

Capacity: _____

Date: _____

State of West Virginia,
County of, _____,
To-wit, _____

This day appeared before me the undersigned notary public, who acknowledge under the oath the signature above.

Notary Public: _____

Date: _____

My commission expires: _____