

WEST VIRGINIA ALCOHOL BEVERAGE CONTROL
ADMINISTRATION

2010 SUBSEQUENT LICENSE BIDDING PACKET –
EXTENDED PHASE III



JUNE 2010



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NOTE: **PRIOR TO BIDDING**, REVIEW THE FOLLOWING ADDITIONAL DOCUMENTS WHICH ARE AVAILABLE ON OUR WEBSITE AT WWW.ABCA.WV.GOV: SEE REBID 2010 – EXTENDED PHASE III.

- HOUSE BILL 105 (HB 105)
- LEGISLATIVE RULE 175 CSR 1
- LEGISLATIVE RULE 175 CSR 5
- APPLICATION FOR RETAIL STORE LICENSE
- ZONE MAPS
- ZONE INFORMATION AND DATA
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BACKGROUND AND OVERVIEW



BACKGROUND

The West Virginia Legislature created the West Virginia Alcohol Beverage Control Administration ("**WVABCA**") 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, Senate Bill 337 discontinued the retail sale of alcoholic beverages by the State. This legislation created the Retail Liquor Licensing Board ("**RLLB**" or "**Board**") to establish market zones and bid retail liquor outlets throughout West Virginia. Currently, the RLLB is comprised of five board members, two statutory members, the Chairman of the Board who is the Secretary of Revenue, and the Secretary of the Board who is the WVABCA Commissioner. The RLLB is also comprised of gubernatorial board appointments. No member of the board may hold a retail outlet license or have any financial interest, directly or indirectly, in any retail licensee.

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 revenue to the State's General Revenue Fund.

In 2000, the RLLB's license bid process utilized minimum bids which were calculated based on demographics, population and other factors. The bidding generated revenue from all issued licenses which was deposited into the General Revenue Fund based on the minimum bids and the Governor's official revenue estimate. The licenses were issued for a ten-year (10) period and expire June 30, 2010.

During the 2000 bid process, a few licenses were never issued and some licenses have been abandoned. In 2006, the RLLB approved an Interim Bid and splitting of certain licenses. The licenses were rebid on a pro-rated minimum bid basis and two licenses were awarded in 2007 for the remainder of the ten-year period or until June 30, 2010.

With the passage of House Bill No. 105 ("HB 105") during the First Special Session of 2009, effective from passage, the WVABCA and RLLB were authorized to initiate the 2010 Purchase Option and Bidding Process (See HB 105 and West Virginia §60-3A- 1, et seq., as amended in 2009).



BACKGROUND

Note: All Active Retail Licensees and Potential Bidders – Take note to carefully review the enclosed materials and HB 105 which adds many requirements and restrictions on newly defined terms of Class A licensees or freestanding retail outlets and Class B licensees or mixed retail outlets.

Also note that if you are awarded a retail outlet license during the Extended Phase III Subsequent License Bidding Process, you are required to complete and submit your regular “2010-2011 WVABCA Application for Retail Store License” within 5 business days from the date the successful bidder is determined. Further note, this is a “NEW” application, and not a renewal application. It is in your best interest to apply immediately after you receive notification that your bid was successful to ensure that you meet WVABCA licensure requirements.

*****If you intend to operate a Class A freestanding liquor retail outlet, it is your responsibility to ensure that you meet or will meet the requirements and restrictions of a Class A freestanding liquor retail outlet no later than ninety (90) days after July 1, 2010. If you intend to operate a Class B mixed retail liquor outlet, it is your responsibility to ensure that you meet or will meet the requirements and restrictions of a Class B mixed retail liquor outlet no later than ninety (90) days after July 1, 2010.*****

*****Additional Note:** The RLLB reserves the right to make any clarifications to the Extended Phase III Subsequent License Bidding Process and/or adjust the licenses available for bid based on RLLB decisions. Prior to bidding, you must check www.abca.wv.gov for clarifications and updates to the Extended Phase III Subsequent License Bidding Process.



2010 BIDDING PROCESS OVERVIEW

The 2010 Purchase Option and Bidding Process is comprised of three separate phases, two of which have been completed. The 2010 Purchase Option Process, or Phase I, commenced on December 21, 2009 and was completed on February 17, 2010. During Phase I, Active Retail Licensees exercised their Purchase Option on a total of forty-six (46) retail outlet licenses. The License Bidding Process, or Phase II, commenced on February 22, 2010 and was completed on April 30, 2010. During Phase II, bidders submitted successful bids on one hundred nineteen (119) retail outlet licenses. Phase III, or the Subsequent License Bidding process, commenced on May 14, 2010 and was completed on June 25, 2010. During Phase III, bidders submitted successful bids on ten (10) retail outlet licenses. Extended Phase III will now offer one (1) retail outlet license up for bid. A brief overview of each Phase is provided below:

PHASE I: During this phase, the WVABCA and RLLB offered a Purchase Option to all Active Retail Licensees. The Purchase Option, based on the minimum bid set by the RLLB, could be exercised by those Active Retail Licensees who were either currently operating a Class A freestanding liquor retail outlet, or agreed to meet the requirements of a Class A freestanding liquor retail outlet within 90 days of July 1, 2010, all subject to the requirements in WV Code §60-3A-1, et seq. and the amendments made by HB 105. A total of forty-six (46) Active Retail Licensees chose to exercise the Purchase Option on their existing retail outlet license.

PHASE II: For those Class A licenses where the Active Retail Licensee did not elect the Purchase Option, Class B mixed retail outlet licenses, and any additional inactive retail outlet licenses, including those added or moved by the RLLB, the WVABCA and RLLB established minimum bids and offered those retail outlet licenses to the highest bidder subject to the following preferences:

1. Current licensees will have a 5% current licensee preference for the retail outlets licensed and operated by them;
2. WV residents that meet the resident 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 WV Code §60-3A-1, et seq. and the amendments made by HB 105.

During Phase II, a total of one hundred nineteen (119) retail outlet licenses were awarded to successful bidders.

PHASE III: During Phase III, the WVABCA and RLLB offered up for bid those fifteen (15) retail outlet licenses which did not receive a bid during Phase II. A total of ten (10) licenses were awarded to successful bidders.



2010 BIDDING PROCESS OVERVIEW

EXTENDED PHASE III: During Extended Phase III, the WVABCA and RLLB will offer one (1) retail outlet license up for bid. This retail outlet is located in market zone number 38 (Retail Outlet #589). Prospective bidders will be eligible for the same preferences, including the right to match for the current licensee, which were available during Phases II and III.

Note: The preference percentages are only used to calculate the successful winning bidder, not to increase or decrease the actual bid payment that is due and payable to the State of West Virginia. If you are the successful winning bidder, the amount you will be required to remit to the State of West Virginia is your actual bid amount unless you are a current licensee who exercises the right to match the highest bid price.

Further Note: HB 105 made substantial changes to the definitions of both Class A and Class B licenses. A brief overview of these changes is provided in the sections that follow. As a potential bidder, it is your responsibility to thoroughly review the definitions, HB 105, the West Virginia Code and the Rules, and all of the requirements for both Class A and Class B retail licenses since this License Bidding Packet is only a summary that provides basic explanatory information.

Minimum Bid Formula:

For the ten-year (10) period beginning on July 1, 2010, and for every ten-year (10) license period beginning July 1st thereafter, the Commissioner shall determine the minimum bid based upon a review of the inflation data, demographic data, sales data at each retail outlet and such other factors that are relevant for the State to generate revenues.

The RLLB approved the following:

2010 Minimum Bid Formula:

The formula to calculate the minimum bids is as follows:

$$Z = X(B) + Y_a(B) + [.50(B) + .50(C)]$$

Notwithstanding the above formula to calculate minimum bids, in the event that a retail outlet's ten year minimum bid calculated by the formula is below the retail outlet's previous ten year period actual bid, the RLLB has directed the Commissioner to use the retail outlet's previous ten year period's actual successful bid as its current ten year period minimum bid.



2010 BIDDING PROCESS OVERVIEW

The Commissioner is authorized by the RLLB to make assumptions on the time periods, indexes and practical application of the formulas and methodology to determine the inflation factor and sales factor, and to make the necessary calculations.

In addition, 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.

If during the initial solicitation of bids for the current ten year license period no successful bids are received for a particular retail outlet, the board may adjust the minimum bid, in its statutory discretion, and rebid any such remaining retail outlets in subsequent bidding.

Methodology:

The methodology of the formula is: (i) Z = 2010 Minimum Bid; (ii) B = 2000 Minimum Bid; (iii) X = Inflation Factor; (iv) Y_a = Sales Factor; and (v) C = 2000 Actual Bid paid for a retail outlet in 2000 or the 2000 Minimum Bid, whichever is higher.

Inflation Factor:

The inflation factor was calculated by comparing the Average Annual 2000 CPI-Urban Index for sales of alcoholic beverages, which was 174.7 to the Seasonally Adjusted July 2009 CPI-Urban Index for sales of alcoholic beverages, which was 220.815. The resulting inflation factor was 26.4%, but was rounded down to 26%. This inflation factor was used for all minimum bid and Purchase Option calculations.

Sales Factor:

The sales factor was calculated by using actual purchase data from each retail location for the period of time covering 2000-2007 (i.e., all available data). This purchase data was used to calculate the average percentage increase (or decrease) in purchases by each retail location.



2010 BIDDING PROCESS OVERVIEW

The RLLB applied a sales factor as follows:

Sales Increase (Decrease)	Sales Factor
Retail outlet with sales increase in excess of 15%	0%
Retail outlet with sales increase in excess of 5%, but not greater than 14.99%	5% or .05
Retail outlet with sales increase of 4.99% or less, or retail outlet with sales decrease	10% or .10

Timeline:

Phase I:

Phase I commenced on December 21, 2009, and was completed on February 17, 2010. During this phase, Active Retail Licensees elected the Purchase Option on forty-six (46) retail outlet licenses.

Phase II:

Phase II commenced on February 22, 2010, and was completed on April 30, 2010. During this phase, one hundred nineteen (119) retail outlet licenses were awarded to successful bidders.

Phase III:

Phase III, or the Subsequent License Bidding process, commenced on May 14, 2010 and was completed on June 25, 2010. During Phase III, ten (10) retail outlet licenses were awarded to successful bidders.

Extended Phase III:

Extended Phase III will offer one (1) retail outlet up for bid, which will be awarded to the highest bidder subject to the various statutory preferences. The successful bidder may choose to operate a Class A freestanding liquor retail outlet or a Class B mixed retail liquor outlet subject to the requirements of the Code and the Rules. The available retail outlet is located in Market Zone 38 (Retail Outlet #589).

If you choose to participate in the Extended Phase III Subsequent License Bidding Process, your License Bid documents **must** be received by Smith, Cochran & Hicks, P.L.L.C. **on or before 4:00 PM E.S.T. on August 6, 2010 (postmarks will not be accepted).**

Note: All current and potential licensees **must** 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 “Code and the Rules”), to become familiar with the Bidding Process rules and requirements.

DEFINITIONS



DEFINITION OF CLASS A LICENSE

HB 105 adds many requirements and restrictions on newly defined terms of Class A licensees or freestanding retail outlets and Class B licensees or mixed retail outlets. The previous definitions of A and B licenses focused on multiple versus single licenses. This is not the case anymore. Current and potential licensees 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 “Code and the Rules”), to determine your compliance with the new requirements. A brief summary of each license type is provided below:

CLASS A LICENSE:

A “**Class A Retail License**” is a retail license permitting the retail sale of liquor at a freestanding retail outlet. A freestanding liquor retail outlet is a retail outlet that sells only liquor, beer, non-intoxicating beer and other alcohol-related products, including tobacco-related products.

Per §175-1-3.1.a, “A Class A retail license or freestanding liquor retail outlet shall **only** sell West Virginia product, wine, beer, non-intoxicating beer and other alcohol related products, including tobacco related products throughout the entire retail floor space and shelving of the retail outlet which shall, at minimum, be **750 square feet**, as measured by the Commissioner, and further shall maintain displayed inventory and inventory as required by 175 CSR 5, all subject to the requirements of the Code and the Rules”.

Per §175-5.5.2.b.1, a Class A freestanding liquor retail outlet **must** maintain a displayed inventory of **at least 4 brands** of each West Virginia product and sufficient quantities of displayed inventory and inventory to service consumer demand.

See also “Other Key Definitions”.



DEFINITION OF CLASS B LICENSE

CLASS B LICENSE:

A “**Class B Retail License**” is a retail license permitting the sale of West Virginia product or alcoholic liquors at a mixed retail outlet, subject to the requirements of the Code and the Rules. A mixed retail liquor outlet is defined as a retail outlet that sells liquor, beer, non-intoxicating beer and other alcohol-related products, in addition to convenience and other retail products.

Legislative Rule §175-1-5.2.5.c sets minimum standards for the display of inventory in retail outlets operating pursuant to a Class B retail license which includes, 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 (PDF format provided by WVABCA) identifying the area as a restricted area and stating that no one under the age of twenty-one (21) may purchase liquor, wine or beer; and that the area is separate and apart from other retail floor space and is not highly visible to persons outside of the restricted area.

A summary of the applicable **minimum requirements** are outlined below:

- A mixed retail liquor outlet may **only** sell West Virginia product, wine, beer, non-intoxicating beer, and other alcohol related products, including tobacco related products, in addition to convenience and other retail products. West Virginia product, wine beer, and non-intoxicating beer **must** only be sold in the restricted area retail floor space of the mixed retail liquor outlet and such products **cannot** be highly visible, viewable, displayed or available for sale outside the restricted area.
- All Class B retail licenses or mixed retail liquor outlets must have a minimum of 150 square feet of retail floor space, as measured by the Commissioner, devoted solely to the retail sale of West Virginia product and no limit on the amount of total retail floor space.
- Retail outlets with 150 square feet to 449 square feet of retail floor space, as measured by the Commissioner, devoted solely to the retail sale of West Virginia product, **must** maintain a displayed inventory of at least **2 brands** of each West Virginia product and sufficient quantities of displayed inventory and inventory to service consumer demand.
- Retail outlets with 450 square feet up to 749 square feet of retail floor space, as measured by the Commissioner, devoted solely to the retail sale of West Virginia product **must** maintain a displayed inventory of at least **3 brands** of each West Virginia product and sufficient quantities of displayed inventory and inventory to service consumer demand.



DEFINITION OF CLASS B LICENSE

- Retail outlets with 750 square feet and above of retail floor space as measured by the Commissioner, devoted solely to the retail sale of West Virginia product **must** maintain a displayed inventory of at least **4 brands** of each West Virginia product and sufficient quantities of displayed inventory and inventory to service consumer demand.
- All Class B retail licenses or mixed retail liquor outlets **must** restrict the view of the retail floor space devoted solely to the sale of West Virginia product and beer by constructing barriers, shelving or other apparatus of sufficient height and width, as approved by the Commissioner, that will prevent persons from viewing the items in the restricted area making such items not highly visible.
- Restricted Area is separate retail floor space devoted solely to the sale of West Virginia product, wine and non-intoxicating beer **must** be prominently marked with signage located in the retail floor space consisting of at least **six signs** sized at a **minimum of 24 inches in height by 24 inches in width** with prominent and highly visible uppercase and bold lettering indicating that persons are **entering a restricted liquor area**, and **“NO PERSON UNDER THE AGE OF 21 MAY PURCHASE LIQUOR, WINE OR BEER. BE PREPARED TO PRESENT PROPER IDENTIFICATION WHEN MAKING A PURCHASE”**, all in the form, color, lettering and with the WVABCA logo as provided in a format approved by the Commissioner (**examples of the approved signage are posted to WVABCA’s website**).

See also “Other Key Definitions”.



OTHER KEY DEFINITIONS

Provided below is a listing of other key definitions that you **must** be familiar with:

- An “**Active Retail License**” is a current license for a retail outlet that has been open and in continuous operation for a period of not less than 12 months prior to July 1, 2010, or July 1st for every ten-year (10) license period thereafter.
- An “**Active Retail Licensee**” is a person who holds an active retail license as of June 2, 2009, that person’s successor, or any person who holds and operates an active retail license when it expires at the end of a ten-year period.
- An “**Alcohol Related Product**” includes non-alcoholic beer or beverages; non-alcoholic mixers; decanters; glass or plastic cups; openers, corks or stoppers; gift bags; books, magazines or novelties; traditional West Virginia lottery products, such as: instant games, Keno, Powerball, Hot Lotto, daily games and Cash 25, but not limited video lottery; or such other alcohol related items as determined by the Commissioner, on a case by case basis, after receipt of a written request from an Active Retail Licensee which must be sent to the Commissioner’s office via certified mail.
- A “**Class A Retail License**” is a retail license permitting the retail sale of liquor at a freestanding liquor retail outlet.
- A “**Class B Retail License**” is a retail license permitting the retail sale of liquor at a mixed retail liquor outlet.
- “**Displayed Inventory**” is defined as the current inventory of West Virginia product in the quantity as required for a Class A retail license or a Class B retail license that is available for sale in the set square footage of retail floor space of a retail outlet as established for a freestanding liquor retail outlet or a mixed retail liquor outlet and in sufficient quantities to service consumer demand at the retail outlet.
- A “**Freestanding Liquor Retail Outlet**” is a retail outlet that only sells liquor, beer, non-intoxicating beer and other alcohol-related products, including tobacco and tobacco-related products.
- “**Inventory**” means the inventory of West Virginia product available at a retail outlet that is maintained in non-retail floor space of the retail outlet.
- A “**Licensed Retailer**” is the holder of a retail license.



OTHER KEY DEFINITIONS

- A “**Mixed Retail Liquor Outlet**” is a retail outlet that sells liquor, beer, non-intoxicating beer and other alcohol-related products, including tobacco and tobacco-related products, **as well as** convenience and other retail products.
- A “**Retail Outlet**” is a specific location or store where West Virginia product may be lawfully sold by a retail licensee in the original package for consumption off the premises.
- A “**Tobacco Related Product**” means tobacco; snuff; chew tobacco; pipe tobacco, cigarettes, specialty cigarettes; cigars; pipes; hookahs; rolling papers; matches; lighters; lighter fluid; tobacco water; tobacco topical paste; cigar cutters or punches; humidors and products to maintain a humidor; nicotine gum; smoking prevention products; smoke cleaning products or smoke smell erasing products; other tobacco-related products or accessories; or such other tobacco-related items as determined by the Commissioner, on a case by case basis, after receipt of a written request from an Active Retail Licensee which must be sent to the Commissioner’s office via certified mail.
- A “**West Virginia Product**” includes all bourbon, brandy, cognac, cordials, gin, grain alcohol, rye, rum, scotch, tequila, vermouth, vodka, aperitifs, pre-mixed cocktails, fortified wines, spirit blends, marsala, sake, sherry and all other liquor types and classes as approved by the Commissioner on the WVABCA retail liquor product list.

LICENSE FACTS AND REQUIREMENTS



CLASS A LICENSE FACTS AND REQUIREMENTS

- Must be a freestanding liquor retail outlet and sell only West Virginia product, wine, beer, non-intoxicating beer, tobacco-related products, and alcohol-related products (See “Other Key Definitions”).
- No limit on the number of retail outlets that can become a freestanding liquor retail outlet.
- Must not have direct access to another business and must be separate and apart from other businesses.
- Annual license fee is \$2,000.
- Owner(s), officers, partners or members **must** all be U.S. citizens of good moral character.
- License will expire on June 30, 2020.
- Must have a minimum of **750 square feet** of retail floor space, as measured by the Commissioner, devoted to the retail sale of West Virginia product, wine and non-intoxicating beer.
- Must maintain a displayed inventory of at least **four (4)** brands of each West Virginia product and sufficient quantities of displayed inventory and inventory to service consumer demands (See “Other Key Definitions”).
- All orders placed by a licensed retailer for West Virginia product must be placed via the WVABCA’s web or other internet-based ordering system. Therefore, the licensed retailer must have compatible computer systems and reliable high speed internet access.
- Licensees must contact the WVABCA IT Department to set up an online ordering account.
- The WVABCA shall not deliver a regular or special order for fewer than twenty-five (25) cases of West Virginia product or alcoholic liquors to a licensed retailer. Therefore, a licensed retailer must order 25 cases or more to receive the order on its delivery day.
- Licensees shall verify the accuracy of all delivered orders and acknowledge the verification of the order.
- Retail licensees may **not** sell liquor on Sundays, Christmas, or Election Day, or between 12:00 midnight and eight o’clock a.m. on weekdays and Saturdays.
- Licensees must periodically browse the WVABCA’s website for the most up-to-date information (www.abca.wv.gov).



CLASS B LICENSE FACTS AND REQUIREMENTS

- May sell liquor, wine, beer, non-intoxicating beer, tobacco-related products, and alcohol-related products, convenience products as well as other retail products (See “Other Key Definitions”).
- Annual license is \$2,000.
- Owner(s), officers, partners or members **must** all be U.S. citizens of good moral character.
- License will expire on June 30, 2020.
- Must have a minimum of **150 square feet** of retail floor space, as measured by the commissioner, devoted solely to the retail sale of West Virginia product and no limit on the amount of total floor space.
- Must **restrict** the view of the retail floor space devoted solely to the sale of West Virginia product and beer by constructing barriers, shelving or other apparatus of sufficient height and width, as approved by the Commissioner, that would prevent persons who are outside the restricted area from viewing the items located inside the restricted area making such items not highly visible.
- Separate retail space must be prominently marked with signage which consists of at least six (6) signs sized at a minimum of 24 inches in height by 24 inches in width with prominent and highly visible uppercase and bold lettering indicating that persons are entering a restricted liquor, wine and beer area (i.e., “YOU ARE ENTERING A RESTRICTED LIQUOR AREA” “NO PERSON UNDER 21 MAY PURCHASE LIQUOR, WINE OR BEER. BE PREPARED TO PRESENT PROPER IDENTIFICATION WHEN MAKING A PURCHASE”). All signage must be displayed and be approved by the WVABCA. Examples of the approved signage will be posted to WVABCA’s website (www.abca.wv.gov) prior to June 30, 2010.
- Maintain minimum inventory amounts as specified in §175-CSR 5.2.5.c.1.a through §175-CSR 5.2.5.c.1.c.
- All orders placed by a licensed retailer for West Virginia product must be placed via the WVABCA’s web or other internet based ordering system. Therefore, the licensed retailer must have compatible computer systems and reliable high speed internet access.
- Licensees must contact the WVABCA IT Department to set up an online ordering account.
- The WVABCA shall not deliver a regular or special order for fewer than twenty-five (25) cases of West Virginia product or alcoholic liquors to a licensed retailer. Therefore, a licensed retailer must order 25 cases or more to receive the order on its delivery day.
- Licensees shall verify the accuracy of all delivered orders and acknowledge the verification of the order.
- Retail licensees may **not** sell liquor on Sundays, Christmas, or Election Day, or between 12:00 midnight and eight o’clock a.m. on weekdays and Saturdays.
- Licensees must periodically browse the WVABCA’s website for the most up-to-date information (www.abca.wv.gov).

FREQUENTLY ASKED QUESTIONS



FREQUENTLY ASKED QUESTIONS

GENERAL:

- 1. Where can I find the most up-to-date information about the 2010 Subsequent License Bidding Process?**

The most current information (supplemental updates, zone data, zone maps and other information) regarding the 2010 Subsequent License Bidding Process (Phase III) is available on our website at www.abca.wv.gov.

- 2. How long are retail outlet licenses valid?**

The 2010 licensing process will issue retail outlet licenses in market zones throughout West Virginia for the ten (10) year period beginning July 1, 2010, and expiring on June 30, 2020 (See WV Zone Map).

- 3. How much is the annual licensing fee for a Class A license?**

The annual fee for Class A license is \$2,000.

- 4. How much is the annual licensing fee for a Class B license?**

The annual fee for Class B license is \$2,000.

- 5. If I am a successful bidder, must I still complete a 2010-2011 WVABCA license application?**

Yes, all licensees must complete a "2010-2011 WVABCA Application for Retail Store License" within 5 business days from the date the successful bidder is determined. Please note that this is a "NEW" application and not a renewal application.

Important: The WVABCA licensing process is lengthy, involves background checks, retail outlet inspections and measurements. Therefore, as soon as you receive notice that you are a successful bidder, you must remit the remaining balance due on your successful bid and complete your annual license application, related documents and pay all annual fees.

- 6. What is a Class A retail license?**

A "Class A retail license" is a retail license permitting the retail sale of liquor at a freestanding liquor retail outlet.

- 7. What is a Class B retail license?**

A "Class B retail license" is a retail license permitting the retail sale of liquor at a mixed retail liquor outlet.



FREQUENTLY ASKED QUESTIONS

8. What is a “freestanding liquor retail outlet”?

A “freestanding liquor retail outlet” is a retail outlet that only sells liquor, beer, non-intoxicating beer and other alcohol-related products, including tobacco and tobacco-related products.

9. What is a “mixed retail liquor outlet”?

A “mixed retail liquor outlet” is a retail outlet that sells liquor, beer, non-intoxicating beer and other alcohol-related products, including tobacco and tobacco-related products, as well as convenience and other retail products.

10. What is an “alcohol-related product”?

“Alcohol-related products” include non-alcoholic beer or beverages; non-alcoholic mixers; decanters; glass or plastic cups; openers, corks or stoppers; gift bags; books, magazines or novelties; traditional West Virginia lottery products, such as: instant games, Keno, Powerball, Hot Lotto, daily games and Cash 25, but not limited video lottery; or such other alcohol related items as determined by the Commissioner, on a case-by-case basis, after receipt of a written request from an Active Retail Licensee which must be sent to the Commissioner’s office via certified mail.

11. What is a “tobacco-related product”?

A “tobacco-related product” is defined as tobacco; snuff; chew tobacco; pipe tobacco; cigarettes, specialty cigarettes; cigars; pipes; hookahs; rolling papers; matches; lighters; lighter fluid; tobacco water; tobacco topical paste; cigar cutters or punches; humidors and products to maintain a humidor; nicotine gum; smoking prevention products; smoke cleaning products or smoke smell erasing products; other tobacco-related products or accessories; or such other tobacco-related products as determined by the Commissioner, on a case-by-case basis, after receipt of a written request from an Active Retail Licensee which must be sent to the Commissioner’s office via certified mail.

12. What is a “West Virginia product”?

A “West Virginia product” includes all bourbon, brandy, cognac, cordials, gin, grain alcohol, rye, rum, scotch, tequila, vermouth, vodka, aperitifs, pre-mixed cocktails, fortified wines, spirit blends, marsala, sake, sherry and all other liquor types and classes as approved by the Commissioner on the WVABCA retail liquor product list.

13. May a Class A licensee sell West Virginia Lottery products?

Yes, refer to Question #10 above.



FREQUENTLY ASKED QUESTIONS

14. May a Class A licensee sell mixers, soft drinks, etc.?

Yes, refer to Question #10 above.

15. May a Class A licensee sell gasoline?

No, gasoline is not included in the definition of an alcohol-related product (see FAQ #10 above). You may also refer to the definition of a Class A license, which is included at page 7 of your License Bidding Packet.

16. Is there a more complete listing of the permitted “alcohol-related products” than the one listed above? For example, would salty snacks, potato chips, candy and gum items be permitted?

No additional list of alcohol-related products is available. Salty snacks, potato chips, candy and gum are not currently permitted if you operate a Class A license. Refer to the definitions of an alcohol-related product (see FAQ #10 above) and a Class A license (see page 7 of your License Bidding Packet).

17. What if I want to sell an item not listed in the definitions?

Prior to selling an item not listed in the definitions, you must contact the WVABCA in writing, via certified mail, and obtain the Commissioner’s approval.

18. Must all orders be placed via the WVABCA’s online ordering system?

Yes, orders for West Virginia product or alcoholic liquors must be made by licensed retailers utilizing the WVABCA’s web or other internet based ordering system. Only during emergency situations, as authorized by the Commissioner, are licensed retailers permitted to place telephone or fax orders with the WVABCA.

19. What are the computer or internet requirements?

The best results will be achieved with high speed internet access and with computers with faster processing speeds.

20. What if I do not have internet service available in my area?

If internet service is unavailable in your area, please contact the WVABCA to make alternate arrangements. This situation is the only scenario in which the Commissioner will waive the requirement that orders be placed via the WVABCA’s web based ordering system. Please note that prior to placing any order via telephone, fax or other means, authorization must be obtained from the Commissioner.



FREQUENTLY ASKED QUESTIONS

21. Do I need a password and a user account to place online orders?

Yes, please contact Randy Haynes with the WVABCA IT Department at Randy.L.Haynes@wv.gov if you need to have a user account set up.

22. Are there order minimums?

No, there are no order minimums. However, the WVABCA shall not deliver a regular or special order for fewer than twenty-five (25) cases of West Virginia product or alcoholic liquors to a licensed retailer. If your order is for less than 25 cases, it will be delivered when your combined orders total 25 cases or more. You are permitted to schedule a pick up for orders of less than 25 cases on a regular order day.

23. How can I remit payment to WVABCA?

The WVABCA can accept funds via cashier's check or money order for bid payments. All cashier's checks or money orders must be made payable to the WVABCA and include the applicable retail outlet number for which you are bidding. Once you have been notified that you are the winning bidder, all subsequent orders for retail product must be paid via electronic funds transfer (EFT). Please contact Frank Ciordia at Frank.A.Ciordia@wv.gov to set up an account if you are not a current licensee.

24. What is WVABCA's website address?

Go to www.abca.wv.gov. See also Rebid 2010 – Phase III on the website.

BIDDING PROCESS:

1. How many retail outlet licenses are authorized in the State of West Virginia?

A total of one-hundred-eighty-one (181) retail outlet licenses are authorized throughout the State of West Virginia.

2. How many retail outlet licenses are being offered during the Extended Phase III Subsequent License Bidding Process?

The Extended Phase III Subsequent License Bidding Process will offer one (1) retail outlet license up for bid for the ten (10) year period beginning July 1, 2010. This retail outlet license is located in market zone number 38 (Retail Outlet #589 - See also Zone Maps and Data).

During the Purchase Option Process, Active Retail Licensees exercised their Purchase Option on a total of forty-six (46) retail outlet licenses. During the License Bidding Process one hundred



FREQUENTLY ASKED QUESTIONS

nineteen (119) retail outlet licenses were awarded to successful bidders. During the Subsequent License Bidding Process, a total of ten (10) retail outlet licenses were awarded to successful bidders. Therefore, these licenses will not be offered during the Subsequent License Bidding Process.

3. What retail outlet licenses are available for bid during the Extended Phase III Subsequent License Bidding Process?

Included with this mailing, you will find a separate document entitled "**Retail Outlet Licenses Available for Bid**" which includes the single retail outlet license that is available for bid during the Extended Phase III Subsequent License Bidding Process

4. If I choose to bid on a retail outlet license, what documents do I need to complete and return to the WVABCA?

If you are bidding on a retail outlet license, you must complete and return the following documents:

- 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 in the amount of 25% of your actual license bid amount.

5. Where should I send my License Bid Packet?

All License Bidding Packets must be returned to the Consultant **on or before 4:00 P.M. E.S.T. on August 6, 2010 (postmarks will not be accepted)** at the following address:

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

6. Will you accept my bank's standard "Irrevocable Letter of Credit"?

If your bank's standard "Irrevocable Letter of Credit" contains the required provisions as outlined in Appendix E ("Approved Format for Irrevocable Letter of Credit"), it will be accepted.



FREQUENTLY ASKED QUESTIONS

7. What if my bank's standard "Irrevocable Letter of Credit" does not contain all of the required provisions as outlined in Appendix E?

If your bank's standard "Irrevocable Letter of Credit" does not contain all of the provisions as outlined in Appendix E ("Approved Format for Irrevocable Letter of Credit"), it will not be accepted by the WVABCA. As an alternative, you may submit a bid bond or cashier's check in the amount of 25% of your actual bid amount.

8. My bank's standard "Irrevocable Letter of Credit" does not contain all of the required provisions as outlined in Appendix E. Is it permissible for my bank to use the approved language included at Appendix E onto bank letterhead, provided the document is properly executed?

*Yes, your bank may use the language included at Appendix E ("Approved Format for Letter of Credit". The approved format **must** be placed on your bank's letterhead and it must name the West Virginia Alcohol Beverage Control Administration as the Beneficiary. In addition, your bank must clearly indicate the amount of credit and the expiration date.*

9. How long must my Irrevocable Letter of Credit be valid?

Your "Irrevocable Letter of Credit" must be valid through December 31, 2010.

10. Who should I make my cashier's check payable to?

Your cashier's check must be made payable to the "West Virginia Alcohol Beverage Control Administration", or the "WVABCA". In addition, you must also specify the number of the retail outlet for which you are placing a bid on the face of the cashier's check.

11. If I submit a cashier's check in lieu of a Bid Bond or Irrevocable Letter of Credit, and I am not the successful bidder, will my cashier's check be mailed back to me?

Yes, if you submit a cashier's check and you are not the successful bidder, your money will be returned to you.

12. On the "Release of Information and Waiver of Confidentiality of Records" form, what is the proper name (or names) to be placed on that form?

On the 1st page of the "Release of Information & Waiver of Confidentiality of Records" form, the form states that the Applicant/Entity Name should be listed. If you are completing the form on behalf of a business entity (i.e., corporation, partnership, etc.) you must list the name of your business, including a "dba" name, if applicable. If you are a sole proprietorship with an individual who is the owner, you must list the individual owner's name.



FREQUENTLY ASKED QUESTIONS

You must state that the information may be released to the WVABA as the licensing agency. WVABCA's address is 322 70th Street, S.E., Charleston, WV 25304-2900. Further, the effective period of this waiver should be June 30, 2020.

On the 2nd page, you must list the business entity or owner's (if a sole proprietorship) name as the "Name of Taxpayer".

13. Is there a limit on how many retail outlet licenses I may own?

Yes, a licensee is not permitted to own more than fifty-four (54) retail outlet licenses. A bidder may, however, submit bids on more than fifty-four (54) retail outlet licenses. In such an instance, the bidder should submit a prioritized list of the licenses in numerical order for which they are bidding. If the bidder is not successful on any of the retail outlet licenses listed, those retail outlet licenses will be removed from the list in descending order, and replaced (in ascending order) with any retail outlet license listed above number fifty-four (54) on their list for which they are the successful bidder.

14. Can I bid on a retail outlet if myself, my business partner(s) or my family partner(s) own, operate or are involved with the liquor, wine or beer industry on the wholesale level, supplier level, broker level or manufacturer/producer/importer levels of the "3 Tier System"?

No, you may not cross tiers in the "3 Tier System". This would be a violation of federal law, including the Tied House laws. If you are involved at the retail level in beer and/or wine, then you may participate in a liquor retail outlet. However, any non-retailers who are involved in the liquor, wine or beer industry at different tier levels may not bid on a retail outlet. Such bids will be rejected.

15. What is the deadline to submit bids?

*The deadline to submit your Subsequent License Bidding documents is **on or before 4:00 P.M. E.S.T. on August 6, 2010 (postmarks will not be accepted)**. Refer to the Instructions included in the Subsequent License Bidding Packet for a listing of those items required to be submitted to the Consultant.*

16. When will I be notified if I am a successful bidder?

Retail outlet licenses are scheduled to be awarded after August 6, 2010.

17. If I am a successful bidder, what is the deadline to remit payment in full for my retail outlet license?



FREQUENTLY ASKED QUESTIONS

You must remit payment in full for your retail outlet license within five (5) business days from the date the successful bidder is determined. In addition, you must complete your 2010-2011 license application, pay all fees and meet all licensure requirements within five (5) business days from the date the successful bidder is determined.

18. What happens if I do not remit payment in full for my retail outlet license within five (5) business days from the date the successful bidder is determined?

If a successful bidder fails to remit payment in full for their retail outlet license within five (5) business days from the date the successful bidder is determined, the cashier's check/money order, bid bond or the letter of credit provided for in W.Va. Code §60-3A-11 and 175 CSR 5-12 will be forfeited and the bidder will not be issued the retail outlet license. In addition, the bidder will be prohibited from bidding on or purchasing a retail outlet license in the future. The WVABCA may also sanction or revoke any additional retail outlet licenses won or held by such bidder.

19. Is there a "minimum" bid?

Yes, all retail outlet licenses will be subject to a minimum bid (See "Bidding Process" for more details regarding minimum bids). Failure to submit at least the minimum bid amount will result in that bid being disqualified.

20. How were minimum bid amounts calculated?

The minimum bids were calculated based upon a review of the inflation data, demographic data, sales data at each retail outlet and such other factors that are relevant for the State to generate revenues as required by the West Virginia Legislature in HB 105.

21. What is the formula for calculating minimum bids?

The formula to calculate the minimum bids, as approved by the RLLB is as follows:

$$Z = X(B) + Y_a(B) + [.50(B) + .50(C)]$$

The methodology of the formula is: (i) Z = 2010 Minimum Bid; (ii) B = 2000 Minimum Bid; (iii) X = Inflation Factor; (iv) Y_a = Sales Factor; and (v) C = 2000 Actual Bid paid for a retail outlet in 2000 or the 2000 Minimum Bid, whichever is higher (Refer to the section titled "2010 Purchase Option and Bidding Process Overview" for additional information).

Notwithstanding the above formula to calculate minimum bids, in the event that a retail outlet's ten year minimum bid calculated by the formula is below the retail outlet's previous ten year



FREQUENTLY ASKED QUESTIONS

period actual bid, the RLLB has directed the Commissioner to use the retail outlet's previous ten year period's actual successful bid as its current ten year period minimum bid.

22. Who selected the formula?

The RLLB selected the formula that is used to determine minimum bids.

23. How was the Inflation Factor calculated?

The Inflation Factor was calculated by comparing the Average Annual 2000 CPI-Urban Index for sales of alcoholic beverages, which was 174.7 to the Seasonally Adjusted July 2009 CPI-Urban Index for sales of alcoholic beverages, which was 220.815. The resulting inflation factor was 26.4%, but was rounded down to 26%.

24. How was the Sales Factor calculated?

The Sales Factor was calculated by using actual purchase data from each retail location for the period of time covering 2000-2007 (i.e., all available data). This purchase data was used to calculate the average percentage increase (or decrease) in purchases by each retail location during the time period.

25. Does a licensee have to be a West Virginia resident in order to bid on a retail outlet license?

No, persons residing in West Virginia or any other state are permitted to hold a license. However, please note that West Virginia residents are eligible for a 5% residential bid preference. All bidders must be US citizens.

26. Is the State of West Virginia offering a deferred payment financing option?

No, a deferred payment financing option is not available during the Subsequent License Bidding Process.

27. I am an Active Retail Licensee but chose not to exercise my Purchase Option. Do I receive any bid preferences?

Yes, as a current licensee who owns and operates all of your retail outlets, you will receive a 5% current licensee's preference and you will have the right to match the highest bidder's bid amount if you are unsuccessful and you bid at or above the minimum bid (See section 13 of 175 CSR 5). A current licensee must bid, at least the minimum bid, in order to qualify for the right to match for a retail outlet that it currently owns and operates. If a current licensee fails to submit a bid, or if you are bidding on an inactive or moved retail outlet, the current licensee preference and the right to match do not apply to that retail outlet.



FREQUENTLY ASKED QUESTIONS

28. Are there any additional bidder preferences?

Yes, there is a 5% residential preference (See Section 12 of 175 CSR 5) for bidders who establish they are WV residents subject to the requirements of the Code and the Rules.

29. If I am eligible for the residential preference, what do I need to submit as “proof of residency”?

Please refer to Appendix C (“Residential Bid Preferences”).

30. How is the “current licensee” preference calculated?

The 5% current licensee preference is only available to a current licensee who is an unsuccessful bidder and shall be computed by subtracting 5% of the highest bidder’s price from that bid price. The current licensee preference is only available for retail outlets currently owned and operated by such a licensee.

Example: The minimum bid for a retail outlet license is \$300,000. Two (2) bids are received. A current licensee submits a bid of \$305,000 and a second party submits a bid of \$310,000 for that license. The bid is awarded to the current licensee. The second party’s bid of \$310,000 less \$15,500, or 5% of \$310,000 equals \$294,500, which is less than the \$305,000 bid submitted by the current licensee. The successful current licensee bidder would remit \$305,000.

Note: The 5% current licensee preference percentage is only used to calculate the successful winning bidder, not to reduce any actual bid payment due and payable to the State of West Virginia.

31. How is the “residential” preference calculated?

The 5% residential preference shall be computed by adding 5% of the bid price to the bid price submitted by the West Virginia resident bidder for that retail outlet license. Please refer to Appendix C for additional information on the residential bid preference.

Example: The minimum bid for a retail outlet license is \$300,000. Two (2) bids are received. A West Virginia resident bidder submits a bid of \$305,000 and a nonresident submits a bid of \$310,000 for that retail outlet license. The bid is awarded to the West Virginia resident bidder. The West Virginia resident’s bid of \$305,000 plus \$15,250, or 5% of \$305,000 equals \$320,250, which is greater than the \$310,000 bid submitted by the nonresident bidder. The West Virginia resident would remit \$305,000.



FREQUENTLY ASKED QUESTIONS

Note: The 5% residential preference percentage is only used to calculate the successful winning bidder, not to increase any actual bid payment due and payable to the State of West Virginia.

32. If I am awarded a retail outlet license as a result of one or both of the percentage bid preferences being applied, does it affect the amount I am required to pay for the retail outlet license?

No, the preference percentages are only used to calculate the successful winning bidder, not to increase or decrease the actual bid payment that is due and payable to the State of West Virginia. If you are the successful winning bidder, the amount you will be required to remit to the State of West Virginia is your actual bid amount unless you are a current licensee who exercises the right to match the highest bid price.

Example: The minimum bid for a retail outlet license is \$300,000. Two (2) bids are received. Both bidders are West Virginia residents. A current licensee submits a bid of \$305,000 and a second party submits a bid of \$310,000 for that retail outlet license. The bid is awarded to the current licensee. The current licensee's bid of \$300,000 plus \$15,000, or 5% of \$300,000 (residential bid preference), equals \$315,000. The current licensee's bid is greater than the second party's bid of \$310,000 which is calculated as follows: \$310,000 actual bid amount less \$15,500, or 5% of \$310,000 (current licensee preference available to current licensee), plus \$15,500, or 5% of \$310,000 (residential preference), equals \$310,000. The successful current licensee bidder would remit \$305,000.

Note: The preference percentages are only used to calculate the successful winning bidder, not to increase or decrease any actual bid payment due and payable to the State of West Virginia.

33. If I am a current licensee who, after application of one or both bidder preferences, is not the high bidder, do I still have the right to match the highest bid?

Yes, a current licensee who submits a bid at or above the minimum bid amount and remains an unsuccessful bidder after application of the above bid preferences shall have the right to match the highest bid for its active retail outlet license subject to complying with the requirements of the Code and the Rules.

34. If I am awarded a retail outlet license during the Bidding Process, may I sell, lease or transfer my retail outlet license at a later date?

Yes, provided you have obtained the Commissioner's prior written approval, you are permitted to sell, lease or transfer your retail outlet license to a qualified individual or entity at a later date. The transferee may then elect to operate either a Class A license or a Class B license.



FREQUENTLY ASKED QUESTIONS

35. Can a successful bidder change the title of their retail liquor operation or its business name after the bidding procedure has been completed?

Yes, a successful bidder may change the title of their retail liquor store or business name at a later date provided the principal owners of the business remain the same. If you desire to make such a change, you must notify the WVABCA Licensing Division in writing and submit all required documentation.

36. Is the RLLB permitted to add or move retail outlet licenses at a later date?

Yes, the RLLB may, at any time during the ten year license period, add retail outlet licenses, delete inactive retail outlet licenses or move inactive retail outlet licenses to, from or between market zones based on various factors, including but not limited to economic, demographic, sales and/or community demand.



DISCLAIMER

THE WVABCA AND THE 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 RETAIL OUTLET 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 ELECT THE PURCHASE OPTION, ELECT THE DEFERRED PAYMENT FINANCING OPTION OR BID AT THEIR OWN RISK.

APPENDIX A



RETAIL OUTLET LICENSES AUTHORIZED

Provided below is a listing of all liquor licenses (181) that are authorized in the State of West Virginia. Please note that this listing **does not** represent those licenses that are available for bid. Please refer to the “Retail Outlet Licenses Available for Bid” section of this packet (Appendix B) for a listing of those licenses that are available for bid (also see “Zone Maps”).

Zone	County	Number of Licenses	Zone	County	Number of Licenses
1	Barbour	1	33	Jackson	1
2	Barbour	1	34	Jefferson	3
3	Berkeley	5	35	Jefferson	2
4	Berkeley	2	36	Kanawha	7
5	Boone	1	37	Kanawha	7
6	Boone	1	38	Kanawha	6
7	Braxton	2	39	Lewis	2
8	Brooke	2	40	Lincoln	1
9	Brooke	1	41	Logan	3
10	Cabell	7	42	Logan	1
11	Cabell	2	43	Marion	2
12	Calhoun	0	44	Marion	1
13	Clay	1	45	Marion	1
14	Doddridge	1	46	Marshall	2
15	Fayette	2	47	Mason	2
16	Fayette	2	48	Mason	1
17	Gilmer	1	49	McDowell	1
18	Grant	2	50	McDowell	1
19	Greenbrier	2	51	McDowell	0
20	Greenbrier	2	52	Mercer	3
21	Greenbrier	1	53	Mercer	3
22	Hampshire	2	54	Mineral	2
23	Hancock	1	55	Mineral	1
24	Hancock	1	56	Mingo	1
25	Hancock	2	57	Mingo	1
26	Hardy	1	58	Mingo	1
27	Hardy	1	59	Mingo	1
28	Harrison	3	60	Monongalia	2
29	Harrison	1	61	Monongalia	3
30	Harrison	2	62	Monongalia	3
31	Harrison	1	63	Monroe/Greenbrier	2
32	Jackson	1	64	Morgan	2



RETAIL OUTLET LICENSES AUTHORIZED

Zone	County	Number of Licenses
65	Nicholas	1
66	Nicholas	2
67	Ohio	5
68	Pendleton	1
69	Pleasants	1
70	Pocahontas	1
71	Pocahontas	1
72	Preston	1
73	Preston	2
74	Putnam	3
75	Putnam	2
76	Raleigh	5
77	Raleigh	2
78	Raleigh	2
79	Randolph	2
80	Randolph	1
81	Ritchie	1
82	Roane	1
83	Summers	1
84	Taylor	1
85	Tucker	1
86	Tucker	2
87	Tyler	1
88	Upshur	1
89	Wayne	2
90	Webster	1
91	Wetzel	1
92	Wetzel	1
93	Wirt	1
94	Wood	6
95	Wood	1
96	Wyoming	1
97	Wyoming	1
98	Wyoming	1

APPENDIX B



RETAIL OUTLET LICENSES AVAILABLE FOR BID

There are a total of one-hundred-eighty-one (181) retail outlet licenses authorized in the State of West Virginia (see Appendix A for a complete listing). During Phase I, the Purchase Option process, forty-six (46) active retail licensees exercised the Purchase Option on previously licensed retail outlets. During Phase II, the License Bidding Process, one hundred nineteen (119) retail outlet licenses were awarded to successful bidders. During Phase III, ten (10) retail outlets were awarded to successful bidders.

Provided below is a listing of one (1) retail outlet that will be offered during the Extended Phase III Subsequent License Bidding Process. Note that the retail outlets highlighted in **red** are **“Designated Retail Outlets,”** meaning they are designated for a specific geographic area within the market zone. Note that any retail outlet (including IA’s) may be located anywhere within its market Zone, unless it is a Designated Retail Outlet.

For additional information on Retail Outlets, Designated Retail Outlets, their location and other details, prior to bidding review the “Zone Maps” available at www.abca.wv.gov (See Rebid 2010 – Phase III). Those Retail Outlets numbered IA-__ are not currently licensed or are inactive retail outlets and as such, are not subject to the current licensee preference or right to match.

For additional information and descriptions of all retail outlets go to www.abca.wv.gov.

<u>Market Zone</u>	<u>Retail Outlet Number</u>	<u>Minimum Bid</u>
38	589	\$119,121.00

APPENDIX C



DRY MARKET AREAS

The market zones represent the market areas within which successful bidders may locate their stores. In certain areas of the State, however, there are “dry” areas in which the retail sale of liquor is prohibited by local municipality or county ordinance. The market zones established by the Board encompass these areas. As a result, it is important that interested bidders be familiar with the market zones which are affected by local and/or county ordinances. A list of the dry areas of the State of West Virginia is presented below in alphabetical order by county.

<u>COUNTY</u>	<u>“DRY” MARKET AREAS</u>
Brooke	Only the Town of Bethany
Calhoun	Entire county
Grant	Entire county, except the City of Petersburg
Hampshire	Only the Town of Capon Bridge
Jackson	Entire county, except the Cities of Ripley and Ravenswood
Kanawha	Only the Town of East Bank
Lincoln	Entire county, except the Town of Hamlin
Marion	Only the Town of Worthington
Pocahontas	Entire county, except the Town of Durbin and the City of Marlinton
Roane	Entire county, except the City of Spencer
Upshur	Entire county, except the City of Buckhannon
Wayne	Only the Towns of Wayne and Fort Gay
Wetzel	Entire county, except the City of New Martinsville and the Town of Hundred

If any of these counties include market zones which are of interest, please be advised to verify the boundaries of the “dry” versus “wet” status (i.e. permits the lawful retail sale of liquor) with local government officials as well as the procedures necessary to convert a “dry” area to a “wet” area.

APPENDIX D



RESIDENTIAL BID PREFERENCES

Preference for Resident Bidders

1. In determining the highest bidder for retail liquor store licenses, a five percent (5%) preference for West Virginia resident bidders, shall be computed by adding five percent (5%) of the bid price to the bid price submitted by the resident bidder for a retail license. This preference shall be forfeited by any resident bidder who fails to submit the minimum bid amount specified by the Board for a particular retail license.
2. This preference shall not be added to the amount of any bid that is less than the minimum amount specified by the Board for that retail license.
3. A bidder shall be considered a West Virginia resident if the bidder:
 - a. Being an individual, has resided in West Virginia for at least four (4) years during the forty-eight (48) consecutive month period immediately prior to the date on which the bid is opened; or:
 - b. Being a person other than an individual, has had its headquarters or principal place of business in this state for at least four (4) years during the forty-eight (48) consecutive months immediately prior to the date on which the bid is opened.
4. "Headquarters" or "principal place of business" means the place where the majority of the governing power of a bidder resides and is executed.
5. In order to qualify as a resident bidder, a person other than an individual, means a bidder who in each year of the four (4) year period during the forty-eight (48) consecutive months immediately prior to the date on which the bid is opened, did as follows:
 - a. Had registered in accordance with W. Va. Code §11-12-1 et seq., ("Business Registration Tax") to transact business within the State of West Virginia;
 - b. Maintained its headquarters or principal place of business in this State; this can be certified by the chief operating officer, by whatever name called, of the person certifying, under penalty of perjury, the period of time the person's headquarters or principal place of business was continuously located in this state, as of the date the affidavit is signed, and stating that the address will remain the same as of the date on which the bids are opened;



RESIDENTIAL BID PREFERENCES

- c. Had actually paid, and not just applied to pay, county personal property taxes on the equipment used in the regular course of its business activity;
 - d. Had actually paid, and not just applied to pay, required business taxes imposed by W. Va. Code §11-1-1 et seq.; a resident bidder shall give written consent to the Tax Commissioner authorizing disclosure to the ABCA Commissioner of appropriate information which will verify that the bidder has paid the required business taxes, but such information shall not contain the amounts of taxes paid nor any other information deemed by the Tax Commissioner to be confidential. An "Authorization to Release Information" form is attached which has been prepared by the West Virginia State Tax Commissioner for this purpose. Bidders shall complete this form and mail it to the West Virginia State Tax Commissioner, Building 1, Room W-300, 1900 Kanawha Boulevard, East, Charleston, WV 25305-0842; and
 - e. A bidder who is other than an individual and is claiming a preference for residential bidders, shall submit documents in its bid package which prove its entitlement to this preferential treatment. Such documents will have to indicate that the requirements stated in this subsection have been satisfied.
6. A bidder who is an individual may prove that he or she continuously resided in this state during the forty-eight (48) month period immediately preceding the opening of his bid by submitting with his or her bid form an affidavit signed, under penalty of perjury, certifying the period of time the individual continuously resided in this state, as of the date the affidavit is signed, stating that he or she intends to be a resident of this state on the day his or her bid is opened and true copies of any two (2) of the following documents:
- a. Copies of receipts from the sheriff of a county indicating payment of personal property taxes and/or real estate taxes for each of the four (4) years which indicate a West Virginia address for the bidder;
 - b. Copies of Department of Motor Vehicle documents such as a driver's license, registration card, or certificate of title of a motor vehicle indicating a West Virginia address for the bidder during those four (4) years;
 - c. Certification from the Tax Commissioner that the bidder had filed West Virginia Resident Income Tax Returns for the previous four (4) year period prior to the bid which indicated a West Virginia residence address for the bidder;



RESIDENTIAL BID PREFERENCES

- d. Copies of insurance policies on the person's primary residence, whether owned or rented, showing its location for each of the four (4) years immediately preceding the day the person's bid is opened;
 - e. A letter signed by the clerk of the individual's county of residence certifying the date on which the individual registered to vote in that county and that the individual is still eligible to vote in that county and that the individual has remained eligible to vote in any election held in the forty-eight (48) month period immediately preceding the opening of the bids; and if during such four (4) year period the individual resided in two (2) or more West Virginia counties, the separate certificates from the clerk of each county in which the individual resided will be accepted; and
 - f. Copies of any documents mentioned above shall be submitted with the bid form by any individual bidder who desires to be granted a Preference for Residence Bidders;
7. A bidder who believes he meets the requirements for residency must affirmatively assert their claim on the License Bid Form to receive this preferential treatment.

APPENDIX E



APPROVED FORMAT FOR IRREVOCABLE LETTER OF CREDIT

Agreement

West Virginia Alcohol Beverage Administration
322 70th Street, S.E.
Charleston, WV 25304-2900

In consideration of your issuing the standby letter of credit applied for therein called the "credit", we hereby agree as follows:

1. We agree to pay to you on demand, at your above address and in United States currency, the amount of each draft payable in United States currency and drawn under the credit, or purporting to be drawn.
2. We agree to pay to you on demand, at your above address and in United States currency, the equivalent (at your then selling rate for cable transfers to the place where and in the currency in which such draft or instrument is payable) of the amount of each draft payable in other than United States currency and drawn under the credit, or purporting to be drawn.
3. We agree to pay to you on demand a commission for the credit at such rate as you have quoted to us, together with the amount of any and all charges and expenses paid or incurred by you or by any of your agents or correspondents in connection with the credit. In addition to such commission and any such charges and expenses, we agree that if at any time any applicable law, rule or regulation or the interpretation or administration thereof by any governmental authority:
 - a. Shall subject you to any tax, duty or other charge with respect to this agreement, or shall materially change the basis of taxation of payments to you of the principal of or interest on any amounts payable by us under this agreement (except for the imposition of or changes in respect of the rate of tax on your overall net income); or
 - b. Shall impose or deem applicable or increase any reserve, special deposit or similar requirement against assets of, deposits with or for the account of, or credit extended by you because of this agreement or the credit; or
 - c. Shall require you to include the credit in your calculations relating to your capitalization, and if the result is to increase the cost to you of maintaining the credit, or to reduce the amount of any sum received or receivable by you under this agreement, then within 30 days after demand we agree to pay you such additional amount or amounts as will compensate you for such increased cost or reduction. Your certificate in reasonable detail setting forth the basis for the determination of such additional amount or amounts shall be conclusive evidence of such amount or amounts.



APPROVED FORMAT FOR IRREVOCABLE LETTER OF CREDIT

4. All amounts payable by us under paragraphs 1 and 2 of this agreement shall, if unpaid, bear interest from the date of demand; all other amounts payable by us under any provision of this agreement, except this paragraph 4, shall, if unpaid, bear interest from the date you are first entitled to demand payment thereon, regardless of whether you actually do make demand. In all cases, such indebtedness shall bear interest at an annual rate equal to the highest rate or rates of interest payable by us (for periods of time such indebtedness is outstanding) pursuant to the provisions of any promissory note issued or endorsed by us and held by you, or, for periods of time during which no such promissory note is outstanding at (check one): (13) ___ the annual rate of ___%, ___ an annual rate that shall be ___ % in excess of the base rate in effect from time to time, and that shall change when and as the base rate changes. "Base rate" means the rate of interest established by _____ from time to time as its "base" or "prime" rate. We agree to pay such interest to you, on a monthly basis and also on demand, based on a 360 day year.
5. Except to the extent we may hereafter give you contrary instructions in writing:
 - a. Your duty and that of your correspondents to examine certificates and other documents received by you or them under, or purporting to be under, the credit, shall be fully discharged if you or they exercise reasonable care to ascertain that they appear on their face to be in accordance with the terms of the credit.
 - b. Your liabilities and responsibilities and those of your correspondents shall be strictly limited in accordance with the most current revision of the Uniform Customs and Practice for Documentary Credits (2007 Revision), ICC Publication Number 600 ("UCP600"), effective July 1, 2007.
 - c. You and your correspondents may receive and accept or pay as complying with the terms of the credit any drafts, documents or statements, otherwise in order, which may be signed by the administrator, executor, trustee in bankruptcy or receiver of any of the property of (or any similar representative or trustee for), the person in whose name the credit provides that any such drafts, documents or statements must be drawn or issued.
6. You shall assume no liability or responsibility:
 - a. For the form, sufficiency, accuracy, genuineness, falsification or legal effect of any documents or statements;
 - b. For the consequences arising out of any delay and/or loss in transit of any messages, letters or documents, or the delay, mutilation or other errors arising from the transmission of cables, emails, wires, faxes, telegrams or telex; or



APPROVED FORMAT FOR IRREVOCABLE LETTER OF CREDIT

- c. For consequences arising out of the interruption of your business by acts of God, riots, civil commotions, insurrections, wars or other causes beyond your control or by any strikes or walkouts.
 - d. None of the foregoing acts or things shall in any way affect or impair any of our obligations or any of your rights and powers specified in or arising under this agreement. In furtherance and extension and not in limitation of the specific provisions set forth above, we agree that any action taken or omitted by you or by your correspondents under or in connection with the credit, if taken or omitted with honesty in fact, shall be binding on us and shall not put you or your correspondents under any resulting liability to us. We further agree that we will indemnify you and your correspondents, and also your and their officers, employees and agents, and hold you and all of them harmless from and against each and every claim, demand, action, or suit which may arise against you or them by reason of any action taken or omitted (from and against each and every claim, demand, action or suit which may arise against you or them by reason of any action taken or omitted) pursuant to this agreement.
7. We agree to pay to you on demand any and all expenses, including reasonable attorneys' fees and legal expenses, incurred or paid by you in protecting or collecting our indebtedness to you under this agreement or in protecting, exercising or enforcing any or all of your rights and remedies against us.
8. Should any of the following events of default occur, and if at the time of any such event there remains any portion of the Credit undisbursed, we shall, upon your demand, pay to you for application to drawings under the Credit the entire amount which has not been drawn: (i) we default in respect of any payment due you under this agreement; (ii) we default in the payment of any indebtedness which we may have for the repayment of borrowed monies; (iii) we become insolvent, fail to pay our debts generally as they become due, make any assignment for the benefit of creditors, file or suffer the filing of any petition or action for relief under the provisions of the United States Bankruptcy Code or other similar laws for the relief of or relating to, debtors; (iv) there is a voluntary or involuntary appointment of a receiver, trustee, custodian or similar official to take possession of any of our property; (v) there is an attachment of any material involuntary lien of any kind to our property or assets; or (vi) any representation made in any financial statement or in any other statement or document presented to you by or on our behalf is, in any material respect, false or misleading when made. Any amount so paid which has not been drawn on the expiry date of the Credit shall be repaid to us.
9. We further agree that:
 - a. This agreement and your rights hereunder shall continue unimpaired and shall be binding upon us notwithstanding any delay, extension of time, increase in amount, renewal, compromise or other indulgence or modification granted or agreed to by you, with or without notice to or approval by us (or any of us) in respect of the credit or any of our indebtedness to you under this agreement.



APPROVED FORMAT FOR IRREVOCABLE LETTER OF CREDIT

- b. You shall not be deemed to have waived or released any of your rights or remedies (whether specified in or arising under this agreement or otherwise available to you by law or agreement) unless you have signed a written waiver or release. Delay or failure to act on your part shall not constitute a waiver of or otherwise preclude enforcement of any of your rights and remedies. All of your rights and remedies shall be cumulative and may be exercised singularly or concurrently. You need not resort to any particular right or remedy before exercising or enforcing any other, and your resort to any right or remedy shall not preclude the exercise of enforcement of each other's right and remedy.
- c. This agreement shall be governed by the laws of the state where your main banking office is located.
- d. If any provision or clause of this agreement or the application thereof to any person or circumstance is invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect other provisions, clauses or applications of this agreement which can be given effect, and this agreement shall be construed as if the invalid or illegal or unenforceable provision, clause or application has never been contained herein.
- e. If the application is signed by or on behalf of several of us, this agreement shall be construed and interpreted so as to establish in all instances the joint and several obligations of each of us and this agreement shall be fully binding upon and enforceable against either, any or all of us. Each of us shall be deemed to be the agent of any others, and except as expressly provided otherwise herein, you may act at the direction or request of any one or more of us and you may give a notice or notices (whether or not required to be given), to any one or more of us, all as you may from time to time elect, without notice to or approval by the others. You may terminate this agreement with respect to, or release or discharge, any one or more of us without affecting or impairing the obligations of the rest of us. The death, incompetence or dissolution of any of us or any change in the composition of any partnership or any other firm which may be a party hereto shall not affect in any way the credit or any rights with respect to indebtedness incurred under this agreement or with respect to transactions theretofore initiated. In this agreement, the terms "we," "us," and "our" refer to any one or more applicants and correspondent banks that have executed the application, and the terms "you" and "your" refer to the bank to which such application is directed.
- f. This agreement is without limitation as to duration or amount and shall be binding upon our respective heirs, legal representatives, successors and assigns and shall inure to the benefit of and be enforceable by you, your successors and assigns. You may assign or transfer this agreement and you shall thereafter be forever relieved and fully discharged from any liability or responsibility with respect thereto, but you shall retain all of your rights and remedies specified in or arising under this agreement with respect to any and all instruments and rights not so assigned or transferred.



APPROVED FORMAT FOR IRREVOCABLE LETTER OF CREDIT

- g. Unless you agree otherwise, the credit shall be subject to Uniform Customs and Practice for Documentary Credits (2007 revision), ICC Publication number 600 effective July 1, 2007, but all of your rights arising under said Customs and Practice shall be in addition to, and not in limitation of, your rights under this agreement.
- h. The minimum bid on this retail outlet # _____ is \$ _____. My bid is \$ _____. Twenty-five percent (25%) of my bid secured by this document and the undersigned is \$ _____. This document expires on December 31, 2010.

We waive notice of your acceptance of this agreement.

Dated this _____ day of _____, 20____

APPLICANT

Company or individual name

Authorized signature

Title

CORRESPONDENT BANK

Bank name

Authorized signature

Title

Address:

Phone Number:

APPENDIX F



APPROVED FORMAT FOR BID SURETY BOND

Bid Surety Bond

KNOW ALL MEN BY THESE PRESENTS, That we, the undersigned, _____ **(A)** _____ of, _____ **(B)** _____, _____ **(C)** _____, as an Active Retail Licensee ("Licensee"), and _____ **(D)** _____ of _____ **(E)** _____, _____ **(F)** _____, a corporation organized and existing under the laws of the State of _____ **(G)** _____ with its principal office in the City of _____ **(H)** _____, as Surety, are held and firmly bound unto The State of West Virginia, as Obligee, in the penal sum of _____ **(I)** _____ (\$ _____ **(J)** _____) for the payment of which, well and truly to be made, we jointly and severally bind ourselves, our heirs, administrators, executors, successors and assigns.

The Condition of the above obligation is such that the Licensee has submitted to the West Virginia Alcohol Beverage Control Administration an executed Statement of Understanding indicating their clear intent to bid on a retail outlet license for the ten (10) year period beginning July 1, 2010, and if successful in their bid, pay in full the amount bid or have this bond secure the payment as noted above.

NOW THEREFORE.

(a) If the Bid is rejected, or
(b) If the Bid is accepted, the Licensee shall complete an application and be approved for licensure in accordance with the terms outlined in the Statement of Understanding attached hereto, and shall in all other respects perform the agreement created by the execution of said Statement of Understanding then this obligation shall be null and void, otherwise this obligation shall remain in full force and effect. It is expressly understood and agreed that the liability of the Surety for any and all claims, violations of Chapter 60 of the West Virginia Code or the applicable Rules shall, in no event, exceed the penal amount of this obligation as herein stated

The Surety for value received, hereby stipulates and agrees that the obligations of said Surety and its bond shall be in no way impaired or affected by any extension of time within which the Obligee may accept such bid: and said Surety does hereby waive notice of any such extension.

IN WITNESS WHEREOF, Licensee and Surety have hereunto set their hands and seals, and such of them as are corporations have caused their corporate seals to be affixed hereto and these presents to be signed by their proper officers, this _____ **(K)** _____ day of _____ **(L)** _____, 20____ **(M)** _____.



APPROVED FORMAT FOR BID SURETY BOND

Licensee Corporate Seal (if applicable)

(O)

(R)
Surety Corporate Seal

(N)

(Name of Licensee)

By: (P)

(Must be President or
Principal/Managing Owner)

(Q)

Title

(S)

(Name of Surety)

(T)

Attorney-in-Fact

IMPORTANT – Surety executing bonds must be licensed in West Virginia to transact surety insurance. Raised Corporate Seals must be affixed and a Power of Attorney must be attached.

- (A) Your Company Name
- (B) City, Location of your Company
- (C) State, Location of your Company
- (D) Surety Corporate Name
- (E) City, Location of Surety
- (F) State, Location of Surety
- (G) State of Surety Incorporation
- (H) City of Surety Incorporation
- (I) Minimum amount of acceptable bid bond is 25% of the Purchase Option amount.
- (J) Amount of bond in figures
- (K) Day of the month

- (L) Month
 - (M) Year
 - (N) Name of Corporation
 - (O) Raised Corporate Seal of Principal
 - (P) Signature of President or Vice President
 - (Q) Title of person signing
 - (R) Raised Corporate Seal of Surety
 - (S) Corporate Name of Surety
 - (T) Signature of Attorney in Fact of the Surety
- NOTE:** Dated, Power of Attorney with Raised Surety Seal must accompany this bid bond.

APPENDIX G



NOTICE TO ALL BIDDERS FOR RETAIL LICENSES REGARDING FEDERAL LIQUOR DEALER PERMITS AND TAX STAMPS

On August 10, 2005, the “Safe, Accountable, Flexible, Efficient, Transportation Equity Act: A Legacy for Users,” Public Law 159 was signed into effect. Section 11125 of that act repeals the Special (Occupational) Tax (SOT) on alcohol beverage producers and dealers, effective July 1, 2008.

Although the tax has been repealed, recordkeeping and registration requirements remain in effect for producers and dealers of alcoholic beverages. Regulations will require marketers of alcoholic beverages to register in the following circumstances:

- Before beginning business;
- On or before each subsequent July 1, but **only** if there has been a change in the existing registration information;
- Upon going out of business; and
- A transition rule will require the registration of existing businesses that have not registered on or after January 1, 2007.

Any past-due tax liabilities that were incurred for the periods before the effective date of the repeal remain and will be collected.

IMPORTANT: YOU ARE NO LONGER REQUIRED TO REMIT COPIES OF YOUR TAX STAMPS TO THE WVABCA. HOWEVER, IT IS YOUR RESPONSIBILITY TO PROPERLY REGISTER YOUR BUSINESS WITH THE TOBACCO TAX AND TRADE BUREAU (TTB). ON AN ANNUAL BASIS, THE TOBACCO TAX AND TRADE BUREAU WILL PROVIDE THE WVABCA WITH A LISTING OF THOSE PRODUCERS AND DEALERS THAT ARE CURRENTLY REGISTERED IN WEST VIRGINIA.

For additional information, please visit www.ttb.gov.