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Subject: Evaluation of Proposals Submitted in Response to
Requests for Proposals (RFP) 20080318
WINE KIOSKS

To:

From: Matthew Bembenick on behalf of the
Evaluation Committee for Wine Kiosks RFP 20080318

Date: July 8, 2008

PART I

The Evaluation Committee has completed its evaluation of the Wine Kiosks procurement using approved evaluation criteria, in accordance with Commonwealth policies and procedures. Based upon the approved criteria, the Evaluation Committee has found the proposer's response to be deficient. As such, the Evaluation Committee recommends that the Board not enter into contract negotiations with the sole proposer, Simple Brands, LP, for Wine Kiosks.

This memorandum also documents that all of the necessary steps were taken in conducting the procurement in accordance with the provisions of the Commonwealth Procurement Code. To the extent that written determinations are required under the Code for any of the following steps and no attached record exists, this memorandum shall serve as written confirmation that such steps occurred.

PART II

A. DETERMINATION TO USE COMPETITIVE SEALED PROPOSAL METHOD:

1. This Request for Proposals ("RFP") provided interested parties with sufficient information to enable them to prepare and submit proposals for consideration by the Commonwealth of Pennsylvania ("Commonwealth"), Pennsylvania Liquor Control Board ("PLCB"), to lease, provide, maintain and service fully functional wine kiosks for the PLCB to place in locations throughout the Commonwealth designated by the PLCB as satellite wine store locations, at no cost to the Commonwealth/PLCB. The kiosks will be monitored via a PLCB-staffed customer service support center.

2. Consistent with the Department of General Services' ("DGS") strategic procurement objectives and the Governor's policies to evaluate contractor technical capabilities, disadvantaged and enterprise zone small business participation, along with cost in awarding Commonwealth contracts, it was

determined that the competitive sealed bidding method was not practicable or advantageous to the Commonwealth/PLCB to use to award this contract. Thus, the PLCB issued an RFP to institute the competitive sealed proposal method of award for this procurement.

B. PUBLIC NOTICE: Public notice of the RFP was given through posting on the DGS and PLCB websites on March 24, 2008.

C. EVALUATION COMMITTEE: An evaluation committee was established consisting of agency representatives from the PLCB and DGS. Representatives from the Comptroller's Office and Office of Chief Counsel were invited and participated in the committee.

D. PRE-PROPOSAL CONFERENCE: A mandatory pre-proposal conference was held on April 16, 2008 at 10:00 a.m. EDT in the Northwest Office Building.

E. ADDENDA TO THE RFP: Potential proposers were given the opportunity in accordance with Section I-9 of the RFP to submit questions concerning the procurement to the Issuing Office. The official responses to the questions were incorporated into the RFP by addenda per Section I-10 of the RFP.

PART III

A. EVALUATION CRITERIA: The Evaluation Committee established the relative importance of the major evaluation criteria prior to opening the proposals, consisting of technical (82%), Domestic Workforce Utilization Certification (3%) and Disadvantaged Business participation (15%).

B. PROPOSAL OPENING: Proposals were opened in a manner to avoid disclosure of their contents to competing proposers. The sealed technical proposals were distributed to the evaluation committee and the disadvantaged business ("DB") proposals were forwarded to the Bureau of Minority and Women Business Opportunities ("BMWBO") for its review and scoring.

Proposers were afforded approximately forty-five (45) days to respond to the RFP. One (1) proposal was received on or before the due date of May 8, 2008.

C. CLARIFICATIONS/ORAL PRESENTATIONS: In accordance with Section I-16 of the RFP, written clarifications and an oral presentation was requested from the proposer based on the initial technical evaluation to assure full understanding and responsiveness to the RFP requirements. The oral presentation was held on **June 16, 2008**.

D. RESULTS OF EVALUATION:

1. The Evaluation Committee reported the results of its technical evaluation to the Issuing Office.

2. The Issuing Office combined the final technical scores, the Domestic Workforce Utilization Certification score, and the preliminary DB score received from BMWBO.

3. BEST AND FINAL OFFERS PHASE: As authorized by Section I-20 of the RFP, the proposer was selected to proceed to a "Best and Final Offers" phase of the evaluation process.

4. OVERALL SCORING: After combining the final technical scores, the Domestic Workforce Utilization Certification scores, and the final disadvantaged business scores, in accordance with the relative weights assigned to these areas and fixed prior to the opening of the proposals, the proposal submitted by **Simple Brands, LP.** received a total of 305.57 points out of 1,000. If applicable, any bonus points for Enterprise Zone Small Business Participation have also been included in the final overall scores.

The overall scoring for this procurement concluded as follows:

<i>Proposer</i>	<i>Technical Score</i>	<i>DB Score</i>	<i>Domestic Workforce Score</i>	<i>Overall Score</i>
Simple Brands, LP.	275.57	0	30	305.57

5. DISADVANTAGED BUSINESS COMMITMENTS: The selected Proposer made no commitments to disadvantaged businesses for subcontracts or supplies. The DGS BMWBO will be invited to participate in any contract negotiations, if applicable, with the purpose of increasing contractor commitments to disadvantaged businesses.

6. CONTRACTOR RESPONSIBILITY: Simple Brands, LP. and its respective proposed subcontractors were verified as responsible contractors in accordance with Management Directive 215.9, *Contractor Responsibility Program* on May 29, 2008 and will be verified as responsible contractors in accordance with Management Directive 215.9, *Contractor Responsibility Program*, prior to contract execution.

PART IV

RECOMMENDATION:

The Evaluation Committee has reviewed the proposer's response using approved evaluation criteria. Based upon these criteria, the Evaluation Committee has found the proposer's response to be deficient. As such, the Committee recommends that the Board not enter into contract negotiations with Simple Brands, L.P. for Wine Kiosks. This recommendation is based upon the following reasons:

1. The proposal presented by Simple Brands does not comply with the requirements established in RFP 20080318.

- a. As per Section(s) I-4 and IV-2 of the RFP,

“there will be no cost to the Commonwealth for services, hardware and/or software provided by the selected contractor. Costs incurred by the PLCB related to merchandise stocking and restocking (except PLCB personnel salaries), networking and customer service support center set-up are to be borne by the selected contractor.”

Simple Brands has not addressed this requirement of the RFP in its response to the PLCB. More specifically, Simple Brands has indicated that the PLCB will be responsible for transportation and IT-related costs associated with the Wine Kiosk project.

- b. As per Section IV-3 (e) of the RFP, Simple Brands has not addressed the Commonwealth's interface requirements associated with connection to the PLCB's Oracle Retail Management System (RMS).

2. As per Part II-3 of the RFP, the PLCB asked the proposer to include written approval or evidence of a request for approval by the U. S. Alcohol and Tobacco Tax and Trade Bureau (TTB) that this contractual arrangement complies with all applicable federal laws. Despite numerous requests, the proposer has merely provided an Opinion Letter/Federal Alcohol Beverage Law Analysis prepared by the law firm of Gray/Robinson (copy attached). In footnote 4 of that letter Simple Brands agreed to waive any entitlement to lost profits or other consequential damages that would result from the PLCB's termination of the contract should the TTB issue a decision indicating that such a contract violates federal beverage laws.

The PLCB's Office of Chief Counsel has advised the committee that this provision can allow Simple Brands to submit its letter to TTB after the contract execution. However, the Committee has reservations with this approach. The Committee believes that entering into a contract with Simple Brands without a

- TTB decision would subject the Board to operational and IT-development costs that could be undone by an adverse TTB decision.
3. Simple Brands has continued to shift its approach regarding the assessment of supplier fees. More recently, Simple Brands has stated in its BAFO response that it would “collect fees for providing certain technical, operational and promotional services for every wine supplier that contract with the PLCB to have its wines marketed through an ADAM kiosk.” Simple Brands has **not** specified what this fee structure will consist of. As a result, the Committee has reservations that these fees could adversely affect the willingness of suppliers to participate in the Kiosk project. More importantly, if the Board is to undertake significant IT-related development costs in entering into a contract with Simple Brands, it is important that Simple Brands’ fee structure be brought to light before a contract would be pursued.
 4. The Committee is of the opinion that the proposer has not presented a well-founded business plan. The proposer has continued to change its business plan “on the fly” as the Committee has broached operational issues and concerns. The Committee is concerned that the lack of a coherent business plan will open the PLCB up to public criticism and could contribute to a potential project failure.
 5. The Committee has a general concern that the proposed process for purchasing products via the kiosk machine is cumbersome and may meet with public criticism for not being “user-friendly”. Specific areas of concern include: 1) public angst over blood-alcohol level scanning, 2) excessive credit card “hold” amounts, and 3) general distrust over having to register with the government to use the kiosk machine.

In light of the approved evaluation criteria and the reasons outlined above, the Evaluation Committee reiterates its recommendation that the Board not enter into contract negotiations with Simple Brands, L.P. for Wine Kiosks. However, the Committee recognizes the Board’s authority to make a final determination on this matter, such that other factors representing the best interests of the Commonwealth are considered.

2



From: Plakans, Kristine
Sent: Wednesday, July 09, 2008 9:45 AM
To: Mayer, Dee; Bembenick, Matthew; Mowery, Allan; Couch, Giles; Scheib, Kelly; Jones, Anthony; Hannon, Joseph P; Skelly, Kenneth; Miller, Raegene; Brinser, Debra
Cc: Plank, Michael; Diehl, Faith; Diaz, Rodrigo
Subject: RE: Wine Kiosks

Sensitivity: Confidential

Please also delete all electronic copies of the recommendation to the Board.

-----Original Message-----

From: Mayer, Dee
Sent: Wednesday, July 09, 2008 9:29 AM
To: Plakans, Kristine
Subject: RE: Wine Kiosks
Sensitivity: Confidential

Kristine,

I do not have hard copies of these documents. All my copies are electronic and you were copied on all of them. Do you want me to send you what I have in email and attachments?

Thanks, Dee.

-----Original Message-----

From: Plakans, Kristine
Sent: Wednesday, July 09, 2008 9:23 AM
To: Bembenick, Matthew; Mowery, Allan; Couch, Giles; Mayer, Dee; Scheib, Kelly; Jones, Anthony; Hannon, Joseph P; Skelly, Kenneth; Miller, Raegene
Cc: Plank, Michael; Diehl, Faith; Diaz, Rodrigo
Subject: RE: Wine Kiosks
Importance: High
Sensitivity: Confidential

This matter will be visited by the Board today...

In the meantime, ASAP, please provide me with any and all hard copies of any and all versions of the wine kiosks RFP Board Recommendation each of you may have in your possession.

-----Original Appointment-----

From: Plakans, Kristine
Sent: Wednesday, July 09, 2008 8:58 AM
To: Bembenick, Matthew; Plank, Michael; Diehl, Faith; Diaz, Rodrigo; Mowery, Allan; Couch, Giles; Mayer, Dee; Scheib, Kelly; Jones, Anthony; Hannon, Joseph P; Skelly, Kenneth; Miller, Raegene; Conti, Joseph
Subject: Wine Kiosks
When: Thursday, July 10, 2008 2:30 PM-3:30 PM (GMT-05:00) Eastern Time (US & Canada).
Where: 401 Library
Importance: High

I was told that the Committee's recommendation will not be going to today's Board meeting after all. The Committee will meet with Joe Conti tomorrow afternoon at 2:30 to discuss.

#3

Subject: Auditor General Special Performance Audit

Importance: High

Please be advised that on December 30, 2010, the PLCB was formally notified that the Office of the Auditor General will be conducting a special performance audit regarding the wine kiosk program. The period covered by the audit will be January 1, 2008 to the present, and the audit will focus on the contracting of the kiosk project, mechanical issues that have occurred and the circumstances surrounding the closing of the kiosks.

As a result of the Auditor General's notification this office respectfully requests that during the pendency of the special performance audit each of you preserve and maintain any and all documents and materials (including e-mails, notes and internal memoranda) related to the kiosk project. Please do not delete, shred, destroy, modify or otherwise dispose of any materials related to the kiosk project until further notice. This office would also ask that each of you inform any subordinates within your division who may have participated in the kiosk project to similarly preserve any materials related to this matter.

Please be advised that a careful review of all materials will be conducted to assure that privileged and/or proprietary information is not released without proper authorization or waiver of any existing privilege.

Thank you for your cooperation. If you have any questions regarding this issue please do not hesitate to contact me directly.

Jason P. Lutcavage

Deputy Chief Counsel

Office of Chief Counsel

Pennsylvania Liquor Control Board

401 Northwest Office Building, Harrisburg, PA 17124

Phone: 717.783.9454 – Fax: 717.787.8820

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1/7/2011