

PENNSYLVANIA LIQUOR CONTROL BOARD

MEETING MINUTES

THURSDAY, OCTOBER 17, 2019

NORTHWEST OFFICE BUILDING, CONFERENCE ROOM 117, HARRISBURG, PA

Tim Holden, Chairman
Mike Negra, Board Member
Mary Isenhour, Board Member
Charlie Mooney, Executive Director
John Stark, Board Secretary

[Office of Chief Counsel](#)
[Bureau of Licensing](#)
[Bureau of Human Resources](#)
[Bureau of Accounting & Purchasing](#)

[Office of Retail Operations](#)
[Bureau of Product Selection](#)
[Financial Report](#)
[Other Issues](#)

PUBLIC MEETING – 11:00 A.M

Board Secretary John K. Stark indicated that a quorum of the Board was present and Chairman Holden called the meeting to order.

CALL TO ORDER.....*Chairman Holden*

Pledge of Allegiance to the Flag

OLD BUSINESS *Secretary Stark*

A. Motion to approve the previous Board Meeting Minutes of the October 9, 2019 meeting.

Motion Made: Board Member Negra
Seconded: Board Member Isenhour

Board Decision: Unanimously agreed (3-0 vote) to Approve Previous Board Minutes.

PUBLIC COMMENT ON AGENDA ITEMS

The Board has reserved 10 minutes for Public Comment on printed agenda items.

Andrew Giorgione from the law firm of Buchanan Ingersoll & Rooney introduced himself and stated that he represents XTL, Inc., and wished to provide comments regarding the Procurement #1 agenda item pertaining to the Southeastern PA Distribution Center Relocation. Mr. Giorgione referred to what he called “ a substantial no-bid 20-year contract for \$475,000,00.00, which he noted was publicly disclosed on October 8, 2019, via the PLCB’s website. According to Mr. Giorgione, the disclosure confusingly included a form provided by DGS but lacked details and supporting documentation with regard to the contract terms and an explanation as to why the contract could not be publicly bid. Mr. Giorgione then

Note: Board Minutes are not officially approved until all required signatures are affixed.

requested that a letter dated October 15, 2019, which he had sent electronically to Tammy McQuaid on behalf of XTL, be incorporated into the record.¹

Mr. Giorgione opined that sufficient time exists for an RFP process, since the current distribution center contract will expire in August 2020, and further that such a process is necessary to ensure competition and fairness. He stated that XTL has been planning for a new RFP for many years and would be among various providers competing for the agency’s business if the opportunity to bid were made available. Mr. Giorgione went on to say that his client has obtained approval of preliminary traffic and land development plans for a site in the southeastern part of the state, which he noted is the agency’s most important market, and has obtained preliminary financing commitments. He conceded that three prior warehouse RFPs were cancelled by the PLCB but expressed his opinion that this was not due to a lack of response from qualified 3PLs.

Mr. Giorgione indicated that he perceives the current process as rushed and confusing. He referred to the use of a DGS form which contained little information, prompting XTL to file what he referred to as a “protest” to both the process and the contract. He noted that his understanding is the Liquor Code prohibits entry into a contract with a transportation carrier which does not hold a PUC license and added that his firm has been unable to verify that such a license has been issued to KLS Logistics Inc. For these reasons, Mr. Giorgione requested that the matter be tabled and that a normal RFP process be put forth.

Chairman Holden responded to Mr. Giorgione by stating that his comments would be taken into consideration and included within the record. Chairman Holden then asked for guidance from Chief Counsel Rodrigo Diaz, who stated that Mr. Giorgione’s comments in response to the properly posted sole source justification notice were received by the PLCB. Chief Counsel Diaz further explained that the Procurement Code authorizes independent agencies such as the PLCB to procure services without approval by DGS, noting explicitly that DGS is not involved in the PLCB’s sole source procurement of these warehousing and transportation services.

NEW BUSINESS

From the Office of Executive DirectorCharlie Mooney

Transfer to General Fund:

The Office of Budget requests a transfer of one hundred million dollars (\$100,000,000) in the month of November 2019 from the State Stores Fund to the General Fund. The Finance team will schedule when this transfer will occur.

The transfer of this prescribed amount of \$100,000,000 will be processed as authorized in Expenditure Symbol Notification Number 19-026.

Motion Made: Board Member Negra
Seconded: Board Member Isenhour

Board Member Negra asked Bureau of Financial Management & Analysis Director Mike Freeman to confirm that this agenda item represents the first of two such transfers. Chairman

¹ The letter dated October 15, 2019 from Andrew Giorgione, Esquire, on behalf of client XTL, Inc., and consisting of comments in response to the PLCB’s public posting of its sole source justification for this procurement is attached hereto and incorporated by reference.

Note: Board Minutes are not officially approved until all required signatures are affixed.

Holden also asked Mr. Freeman to confirm that the amount of the subsequent transfer would be \$85,100,000.

Board Decision: Unanimously agreed (3-0 vote) to Approve Transfer to General Fund.

From the Office of Chief Counsel.....Rodrigo Diaz, Chief Counsel

- (1) **Big D Restaurants, LLC**
 7246 Kelly Street
 Pittsburgh, Pennsylvania 15208-1809
 Restaurant Liquor License No. R-7831
 LID 63180
 Citation No. 18-1963

Appeal of Adjudication and Order of Administrative Law Judge

Motion Made: Board Member Negra
Seconded: Board Member Isenhour

PLCB Assistant Counsel Allison Eberle-Lindemuth explained that on December 7, 2018, Licensee was cited by the Bureau of Liquor Control Enforcement for violating section 491(6) of the Liquor Code, which involved failure to provide food during a catered event. The Administrative Law Judge sustained the citation and Licensee subsequently filed an appeal, arguing that the incorrect section of the Liquor Code had been cited. The Bureau of Liquor Control Enforcement acknowledged the error and requested that the case be remanded. Attorney Eberle-Lindemuth then explained that Licensee did not have sufficient notice as to the charge in the original citation and that the Office of Chief Counsel was therefore recommending that the decision of the Administrative Law Judge be reversed and the case dismissed without prejudice with the knowledge that the Bureau of Liquor Control Enforcement has time to cite Licensee for a new violation under the proper section of the Liquor Code for the alleged conduct that occurred on December 7, 2018.

Board Decision: Unanimously agreed (3-0 vote) to Grant Licensee’s Appeal & Reverse Decision of Administrative Law Judge & Dismiss Citation.

*From the Bureau of Licensing.....Tisha Albert, Director of Regulatory Affairs
Barbara Peifer, Director, Bureau of Licensing*

- (1) **Acme Markets, Inc.**
t/a The Frosted Mug
 R-13691 (LID No. 96325)
 8200 Roosevelt Boulevard
 Philadelphia, Philadelphia County

Double Transfer & Request for Interior Connections with Another Business - Restaurant

Note: Board Minutes are not officially approved until all required signatures are affixed.

Motion Made: Board Member Negra
Seconded: Board Member Isenhour

Board Decision: Unanimously agreed (3-0 vote) to Approve Transfer & Request for Interior Connections with Another Business.

- (2) **Echt, LLC** New & Requests for Interior
t/a Echt Liquor Lab Connections with Other
(LID No. 97042) Businesses & to Conduct Another
107 Penn Avenue Business on the Licensed
Mount Oliver, Allegheny County Premises – Limited Distillery

Motion Made: Board Member Negra
Seconded: Board Member Isenhour

Board Decision: Unanimously agreed (3-0 vote) to Approve New License & Requests for Interior Connections with Other Businesses & to Conduct Another Business on the Licensed Premises.

- (3) **Midnight Madness Distilling, LLC** Extension to Cover Additional
t/a T&O Premises & Request for Interior
A-36444 (LID No. 87873) Connections with Another
2300 Trumbauersville Road Business - Distillery
Quakertown, Bucks County

Motion Made: Board Member Negra
Seconded: Board Member Isenhour

Board Decision: Unanimously agreed (3-0 vote) to Approve Extension to Cover Additional Premises & Request for Interior Connections with Another Business.

- (4) **Sheetz, Inc.** Auction License - New &
t/a Sheetz #34 Request for Interior
(LID No. 100312) Connections with Another
1701 7th Avenue Business - Restaurant
Altoona, Blair County

Motion Made: Board Member Negra
Seconded: Board Member Isenhour

Board Decision: Unanimously agreed (3-0 vote) to Approve New License & Request for Interior Connections with Another Business.

Note: Board Minutes are not officially approved until all required signatures are affixed.

- (5) **TH Minit Markets, LLC**
t/a Turkey Hill Minit Market #330
R-2557 (LID No. 100108)
2 Race Street
Wolf Township
Hughesville, Lycoming County
- “Intermunicipal” Double
Transfer & Request for Interior
Connections with Other
Businesses - Restaurant

Motion Made: Board Member Negra
Seconded: Board Member Isenhour

Board Decision: Unanimously agreed (3-0 vote) to Approve Transfer & Request for Interior Connections with Another Businesses.

- (6) **Turkey Hill, LP**
t/a Turkey Hill Minit Market #247
R-19255 (LID No. 87745)
6113 York Road
Berwick Township
New Oxford, Adams County
- Extension of License &
Request for Interior Connections
with Another Business –
Restaurant

Motion Made: Board Member Negra
Seconded: Board Member Isenhour

Board Decision: Unanimously agreed (3-0 vote) to Approve Extension of License & Request for Interior Connections with Another Business.

- (7) **Unity Brewing, LLC**
t/a Unity Brewing
(LID No. 99653)
3862 US Route 30, Suite 2
Unity Township
Latrobe, Westmoreland County
- New & Requests for an Interior
Connection with Another
Business & Dual Employment -
Brewery

Motion Made: Board Member Negra
Seconded: Board Member Isenhour

Board Decision: Unanimously agreed (3-0 vote) to Approve New License & Requests for an Interior Connection with Another Business & Dual Employment.

- (8) **Wal-Mart Stores East, LP**
t/a Walmart #2019
(LID No. 99298)
355 Walmart Drive
South Union Township
Uniontown, Fayette County
- Auction License – New &
Requests for Interior
Connections with Another
Business & Dual Employment -
Restaurant

Note: Board Minutes are not officially approved until all required signatures are affixed.

Motion Made: Board Member Negra
Seconded: Board Member Isenhour

Board Decision: Unanimously agreed (3-0 vote) to Approve New License & Requests for Interior Connections with Another Business & Dual Employment.

- (9) **Wawa, Inc.** Request for Hearing After
t/a Wawa Administrative Cancellation –
R-456 (LID No. 93361) Case No. 19-9019 Double Transfer & Request for
2600 Penrose Ferry Road Interior Connections with
Philadelphia, Philadelphia County Another Business – Restaurant

Motion Made: Board Member Negra
Seconded: Board Member Isenhour

Chairman Holden asked if there was anyone present from Wawa, Inc. There was no response.

Board Decision: Unanimously agreed (3-0 vote) to Affirm Administrative Cancellation / Refuse Transfer.

- (10) **Amy 3241, Inc.** Renewal – District 10
R-1148 (LID No. 73002) Case No. 2018-73002
3241 Kensington Avenue
Philadelphia, Philadelphia County

Motion Made: Board Member Negra
Seconded: Board Member Isenhour

Board Decision: Hold for Conditional Licensing Agreement (Offer-in-Compromise).

- (11) **Ralph N. Cialella, Jr.** **REQUEST FOR**
R-15584 (LID No. 68465) Case No. 2018-68465 **RECONSIDERATION**
423 West Washington Street Conditional Licensing Agreement
New Castle, Lawrence County Renewal – District 6

Motion Made: Board Member Negra
Seconded: Board Member Isenhour

Board Decision: Unanimously agreed (3-0 vote) to Reconsider & Rescind Refusal & Approve Renewal with Conditional Licensing Agreement.

- (12) **Hao Wei Dao, LLC** Conditional Licensing Agreement
R-3392 (LID No. 67532) Case No. 2018-67532 Renewal – District 10
120 Chestnut Street
Philadelphia, Philadelphia County

Note: Board Minutes are not officially approved until all required signatures are affixed.

Motion Made: Board Member Negra
Seconded: Board Member Isenhour

Board Decision: Unanimously agreed (3-0 vote) to Approve Renewal with New Conditional Licensing Agreement.

- (13) **JFB Hospitality, Inc.** Renewal – District 5
R-9794 (LID No. 55750) Case No. 2019-55750
1401 East Carson Street
Pittsburgh, Allegheny County

Motion Made: Board Member Negra
Seconded: Board Member Isenhour

Board Decision: Hold for Conditional Licensing Agreement.

- (14) **Johnny's of Huntingdon, Inc.** Conditional Licensing Agreement
R-13070 (LID No. 53803) Case No. 2019-53803 Renewal – District 1
1301 Washington Street
Huntingdon, Huntingdon County **HOLD – 8/21/19 SESSION**

Motion Made: Board Member Negra
Seconded: Board Member Isenhour

Board Decision: Unanimously agreed (3-0 vote) to Approve Renewal with Conditional Licensing Agreement.

- (15) **William E. Zimmerman** Renewal – District 3
t/a Tiffany Lounge
R-9286 (LID No. 24990) Case No. 2019-24990
58-60 East Independence Street
Shamokin, Northumberland County

Motion Made: Board Member Negra
Seconded: Board Member Isenhour

Board Decision: Hold for an Amended Conditional Licensing Agreement (Offer-in-Compromise).

Note: Board Minutes are not officially approved until all required signatures are affixed.

*From the Bureau of Human Resources.....Jason Lutcavage, Director of Administration
Jennifer Haas, Director, Bureau of Human Resources*

Personnel Actions – There were 8 personnel actions presented for consideration.

- (1) **James Copeland – Affirm Removal**
- (2) **Shyanne Crone – Removal**
- (3) **Danielle Davis – Removal**
- (4) **Danielle Dellinger – Removal**
- (5) **Kiara Everett - Removal**
- (6) **Samuel Hohmann – Affirm Removal**
- (7) **Sophia Parker – Affirm Removal**
- (8) **Jamal Shaw – Removal**

Motion Made: Board Member Negra
Seconded: Board Member Isenhour

Board Decision: Unanimously agreed (3-0 vote) to Approve all Personnel Actions.

*From the Bureau of Accounting & PurchasingMichael Demko, Director of Finance
Koppolu Ravindraraj, Director, Bureau of Accounting & Purchasing
Mike Freeman, Director, Bureau of Financial Management & Analysis*

Procurement Actions:

- (1) **Southeastern PA Distribution Center Relocation** – Provision of warehousing and transportation services at a new location in Philadelphia beginning in Q1FY20/21.

Procured via Sole Source – VENDOR – **KLS Logistics Inc.** – TERM: Ten years – **Estimated 10-year cost not to exceed \$475,000,000.00.**

- (2) **Commerce Developer Professional Software Subscription and Support Renewal** – Provide Commerce Developer Professional software subscription and support for E-Commerce platform allowing the PLCB to obtain patches and updates to software with the ability to open a ticket with support.

Procured via Procurement Handbook Part I, Chapter 7 – VENDOR: **HCL Technologies Limited** – TERM: One year - **\$231,239.20 estimated cost.**

Note: Board Minutes are not officially approved until all required signatures are affixed.

Motion Made: Board Member Negra
Seconded: Board Member Isenhour

Board Decision: Unanimously agreed (3-0 vote) to Accept all Recommendations as Presented.

Inter-Agency Charges:

- (1) **Department of General Services (DGS) Property Costs (JOB 7)** – Billing of \$107,071.13 for FY 2018-19 fourth quarter for Commonwealth property costs. This is for the property costs for the Northwest Office Building (NWOB), which includes direct costs paid by DGS (electricity charges), as well as prorated expenses for Capital Police services, City of Harrisburg Fire Protection. The JOB 7 billings totaled to \$432,033.38 for FY 2018-19.
- (2) **Department of General Services (DGS) Real Estate MOU charge** – Billing of \$551,559.46 for July 1, 2019 through June 30, 2020. The Real Estate Memorandum of Understanding (MOU) billing amount reflects the projected FY 19-20 payroll and operating expenses for DGS Real Estate services and includes a credit adjustment for the true-up adjustment for FY 18-19’s actual expenses.

The Bureau of Financial Management and Analysis has reviewed these charges and determined that they are reasonable based on billing methodology and previous experience.

Motion Made: Board Member Negra
Seconded: Board Member Isenhour

Board Decision: Unanimously agreed (3-0 vote) to Accept all Recommendations as Presented.

From the Office of Retail Operations Carl Jolly, Director of Retail Operations

1. **#1103 – 910 Philadelphia Avenue, Northern Cambria
Amendment**
2. **#6503 – 925 Donner Avenue, Monessen
Amendment**
3. **#02XX – 1600 Smallman Street, Produce Terminal, C-308, Pittsburgh
New Store**
4. **#46XX – The Metroplex, Chemical Road at I-476, Plymouth Meeting
New Store (Relocation of #4628)**

Motion Made: Board Member Negra
Seconded: Board Member Isenhour

Board Decision: Unanimously agreed (3-0 vote) to Accept all Recommendations as Presented.

Note: Board Minutes are not officially approved until all required signatures are affixed.

*From the Bureau of Product Selection Dale Horst, Director of Marketing & Merchandising
Tom Bowman, Director, Bureau of Product Selection*

1. Regular New Items Accepted

<u>BRAND NAME AND SIZE</u>	<u>REASON</u>
<u>North Wales Wines</u>	
Barefoot Spritzer Moscato Cans 4x250 mL	1, 2, 3, 6
Barefoot Spritzer Pink Moscato Cans 4x250 mL	1, 2, 3, 6
Barefoot Spritzer Summer Red Cans 4x250 mL	1, 2, 3, 6
<u>Palm Bay Imports Inc</u>	
Roscato Moscato 750 mL	2, 3, 9, 19
<u>The Wine Group Inc</u>	
Franzia Rich and Buttery Chardonnay 5 L	2, 3, 9, 19
<u>The Wine Merchant LTD</u>	
Mazarini Prosecco DOC 750 mL	18
Mazarini Sparkling Rose 750 mL	18

RECOMMENDED ACTION: We recommend the Board approve this action

2. Regular PA Preferred New Items Accepted

<u>BRAND NAME AND SIZE</u>	<u>REASON</u>
<u>MLH Distillery</u>	
Forefathers Coffee Liqueur 80 Proof 375 mL	16
Forefathers Coffee Liqueur 80 Proof 750 mL	16
Forefathers Gin 80 Proof 750 mL	16
Forefathers Recipe NO. 5 Gin 80 Proof 750 mL	16

RECOMMENDED ACTION: We recommend the Board approve this action

New Items – Recommended Listings

Reason Codes

1. Strong marketing support
2. High brand recognition
3. Line/Size extension of successful brand
4. Trade up opportunity
5. Growing category
6. Growing segment
7. National rollout

Note: Board Minutes are not officially approved until all required signatures are affixed.

- 8. Niche item / Limited distribution
- 9. High dollar profit potential
- 10. Trade out
- 11. High quality for the value
- 12. Innovative product/flavor
- 13. High sales through other PLCB channels (Luxury, Online, SLO)
- 14. Underrepresented category/segment
- 15. Hole in selection – consumer/store requests
- 16. PA Spirits
- 17. PA Wines
- 18. Licensee only
- 19. Probationary listing

3. Regular Recommended Delist

<u>BRAND NAME AND SIZE</u>	<u>CODE</u>
<u>Bacardi USA Inc</u>	
Bacardi Rum Maestro Gran Reserva 80 Proof 750 mL	8835
<u>Naylor Wine Cellars Inc</u>	
Naylor Niagara Pennsylvania 750 mL	2319
<u>The Wine Group Inc</u>	
Pinot Evil Pinot Noir Chile 750 mL	9251
Trapiche Malbec Mendoza 1.5 L	7233

EFFECTIVE DATE: The transference to closeout will become effective November 26, 2019

Motion Made: Board Member Negra
Seconded: Board Member Isenhour

Board Decision: Unanimously agreed (3-0 vote) to Accept all Recommendations as Presented.

FINANCIAL REPORT..... *Michael J. Burns, Comptroller Operations, Office of Budget*

None

OTHER ISSUES

Transfer of Lottery Funds.....*Michael Demko, Director of Finance*

Requesting Board authorization to transfer from the State Stores Fund to the General Fund lottery commissions of \$352,901.13 earned during the 1st Quarter of fiscal year 2019-20.

Motion Made: Board Member Negra
Seconded: Board Member Isenhour

Note: Board Minutes are not officially approved until all required signatures are affixed.

Member Negra asked if these funds are part of the \$185,100,000.00 being transferred to the General Fund. Bureau of Financial Management & Analysis Director Mike Freeman confirmed that these funds are part of that transfer.

Board Decision: Unanimously agreed (3-0 vote) to Approve Authorization Request.

CITIZEN COMMENT/BUSINESS FROM THE FLOOR

None

NEXT BOARD MEETING

The next meeting of the PLCB will be a formal meeting on Wednesday, November 13, 2019 beginning at 11:00 A.M. Prior to the public meeting, there will be an Executive Session to discuss matters of personnel and to engage in non-deliberative informational discussions, some of which are regarding actions and matters which have been approved at previous public meetings.

ADJOURNMENT

On a motion by Board Member Negra, seconded by Board Member Isenhour, the meeting was adjourned.

The foregoing actions are hereby officially approved.

Chairman

Member

Member

ATTEST:

Secretary

Buchanan Ingersoll & Rooney PC

Andrew J. Giorgione
717 237 4863
andrew.giorgione@bipc.com

409 North Second Street, Suite 500
Harrisburg, PA 17101-1357
T 717 237 4800
F 717 233 0852

October 15, 2019

VIA HAND DELIVERY

NR
10:34 10/15/2019

10-15-19A10:21 RCVD

The Honorable Curtis Topper
Secretary
Department of General Services
Commonwealth of Pennsylvania
515 North Office Building
Harrisburg, PA 17125

Ken Hess
Deputy Secretary for Procurement
Department of General Services
Commonwealth of Pennsylvania
Forum Place, 6th Floor
555 Walnut Street
Harrisburg, PA 17125

Re: PLCB Application for Sole Source Contract
Comment Objections of XTL, Inc.

Dear Secretary Topper and Deputy Secretary Hess:

We represent XTL, Inc. ("XTL"), which has provided warehousing and logistic services to the Pennsylvania Liquor Control Board ("PLCB") under PLCB Contract #200550207, at its Region 1 Southeastern Distribution Center (the "Facility"), since April 1, 2006 (the "Contract"). Indeed, on July 9, 2019, the PLCB entered into Amendment No. 8 to the Contract, extending the term of the Contract until August 7, 2020.¹ A true and correct copy of Amendment No. 8 is attached hereto and incorporated herein as Exhibit "A". For the reasons set forth below, the purpose of this letter is to inform the PLCB and Pennsylvania Department of General Services ("DGS") that there is no justification for the PLCB's sole source contract award request submitted on October 8, 2019 (the "Request").

XTL only became aware of the PLCB's Request on October 13, 2019, when it searched the PLCB's website and saw the Request, which included no attachments. A true and correct copy of what was posted on the PLCB website is attached hereto and incorporated herein as Exhibit "B". At no time from the execution of Amendment No. 8 to this date has the PLCB expressed any concerns with XTL regarding the capacity or roof of the Facility. Further, at no time has the PLCB advised XTL that the matters resulting in XTL's need to reorganize under Chapter 11 of the Bankruptcy Code, of

¹ As the PLCB knows, by signing this one year extension, XTL was able to borrow \$4 Million to solve its short term cash flow issues brought on by the litigation in Iowa (explained more fully below) specifically to serve the PLCB under the Contract.

Secretary Curtis Topper
Deputy Secretary Ken Hess
October 15, 2019
Page - 2 -

which the PLCB has been fully made aware and has been involved in since July 1, 2019, would require the PLCB to seek a new vendor and terminate the Contract.²

Despite being in a Chapter 11 process, XTL is fiscally sound. XTL is not insolvent either from the standpoint of having insufficient assets to secure its liabilities, or is it insolvent on an operational cash flow basis. XTL has consistently met its obligations to its vendors, contractors, and employees throughout the pendency of its Chapter 11 and intends to shortly file a plan which is anticipated to pay 100% of its secured and unsecured indebtedness. Currently, XTL is negotiating with its secured creditors to resolve a payment schedule for their debts utilizing funds that the PLCB is holding specifically for those purposes which are expected to be sufficient to resolve and retire those secured liabilities in a Chapter 11 plan. XTL's outstanding obligations to its trade creditors and others at the time of its Chapter 11 petition were approximately \$2 million. XTL is current on its obligations in the bankruptcy and continues to fully service the Commonwealth's Contract without interruption.

XTL's Chapter 11 filing was not precipitated by any inherent problem with its warehousing and distribution business under the Contract. As the PLCB is fully aware, a special purpose entity controlled by XTL's principals had signed up contractors to build an automated distribution center in Council Bluffs, Iowa, though XTL itself was the actual contracting party. The project went bad and the contractors sued. For reasons we haven't figured out yet, XTL's Iowa attorneys completely failed to defend those lawsuits, and judgments in excess of \$10 million were entered in Iowa against XTL. Those judgments were transferred to Pennsylvania, and execution was issued against the PLCB, freezing a significant portion of XTL's cash flow under the Contract.³ Along with taking out a short term loan, XTL then had to file for Chapter 11 protection in order to get access to that cash and keep its business operating.

In its justification for sole source approval, the PLCB claims it is "clearly not feasible to award the contract on a competitive basis." That statement lacks credibility. Many logistic providers, including XTL and its subsidiaries, could serve under the terms of the contract given the contract size (not to exceed \$475,000,000) and term up to twenty (20) years. In fact, if XTL had been given the opportunity, it could have offered to build a new warehouse in the southeast along the Pennsylvania Turnpike that would be ready August 2020. As noted above, XTL was never solicited, which also raises the issue of what efforts were made by the PLCB to identify possible bidders.

² Thus, the PLCB was aware of the bankruptcy proceeding eight (8) days before it executed Amendment No 8 to the Contract

³ The PLCB was first made aware of the issues in Iowa based its participation in garnishment proceedings in Pennsylvania that were initiated in January 2019 and have been ongoing ever since that time.

Secretary Curtis Topper
Deputy Secretary Ken Hess
October 15, 2019
Page - 3 -

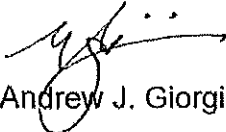
In its justification for sole source approval, the PLCB states that the current Facility is too small. This is the same Facility the PLCB has used since 2006, a Facility that can hold up to 925,000 cases of wine and spirits even though the Contract only requires capacity for 805,000 cases and a Facility for which the PLCB recently signed an extension through August 7, 2020.

In its justification for sole source approval, the PLCB also states that the current Facility "requires a new roof" that will cost \$10 million. The issue with the roof is not new and, with only ten (10) months left on the Contract, it makes no sense for the PLCB to use this as a justification to seek a sole source contract with another logistics provider in what appears to be an overly hasty manner. Even more curious is the fact that the PLCB has made significant investments in the Facility just in 2019 notwithstanding the purported "roof" and "capacity" issues the PLCB now cites as bases to seek a new provider. Those investments included over sixty (60) new security cameras, an upgraded conveyor system and upgrades to the computer networking system. If the roof or Facility capacity were such issues then logically, the PLCB would not have made these investments this year.

It is unclear to XTL the true intent of this application to DGS, since there is little information in the public domain. If the PLCB's intent is to replace XTL now, or when the new facility is ready at 11601 Roosevelt Boulevard, then why did the PLCB invest so much in its current Facility and sign a one-year extension in July? More importantly, XTL justifiably relied on that extension to secure sufficient cash flow to service the Contract until August 7, 2020. Damages to XTL from an early termination of the Contract will be substantial. Conversely, if the PLCB's intent is to be prepared for the conclusion of the Contract in August 2020, it has ten (10) months to properly advertise and procure a new facility and service provider under the Commonwealth's Procurement Code. There is no justification for the sole source process it seeks DGS to approve.

For all of these reasons, XTL respectfully requests that DGS deny the PLCB's application for a sole source contract. XTL will make itself available to discuss these matters with DGS at its convenience. XTL reserves and does not waive the right to raise any further challenges to this application as new facts are provided consistent with its Right to Know request filed with the PLCB concurrently with this public comment letter.

Sincerely,



Andrew J. Giorgione

AJG/awk

Secretary Curtis Topper
Deputy Secretary Ken Hess
October 15, 2019
Page - 4 -

cc: Rodrigo Diaz via electronic mail (rdiaz@pa.gov)
Tammy McQuaid via electronic mail (tamcquaid@pa.gov)
Anthony Cerone
Louis Cerone
Allen Dubroff, Esquire via electronic mail (allen@dubrofflawllc.com)
William J. Levant, Esquire via electronic mail (WLevant@kaplaw.com)
John Thomas, Esquire via electronic mail (john@claritylawyer.com)



pennsylvania
LIQUOR CONTROL BOARD

July 9, 2019

Mr. Louis J. Cerone
President
XTL, Inc.
3200 South 70th Street
Philadelphia, PA 19153

Re: PLCB Contract #20050207
Southeastern Distribution Center

Dear Mr. Cerone,

Enclosed please find fully executed Amendment No. 8 to the Pennsylvania Liquor Control Board (PLCB) Contract 20050207, Southeastern Distribution Center.

You are authorized to proceed with the requirements of Amendment No. 8 effective July 8, 2019. The PLCB hereby extends the term of the above referenced contract through August 7, 2020, subject to the rates, terms and conditions contained in the contract and set forth in Amendment Nos. 1 through 8.

The PLCB's Project Manager for this contract is Jason Lucci, Director, Bureau of Distribution and Logistics, who can be contacted at 717-783-4563 or jlucci@pa.gov.

If you have any questions, please contact me at 717-772-2043 or melljohn@pa.gov.

Sincerely,

Melinda A. John

Melinda A. John, Manager
Purchasing & Contract Administration Division

Enclosure

cc: Jason Lucci, Director, Bureau of Distribution and Logistics
Stacy Rineer, Deputy Chief Counsel

**AMENDMENT NO. 8 TO CONTRACT NO. 20050207 BETWEEN THE
PENNSYLVANIA LIQUOR CONTROL BOARD AND XTL, INC.**

This AMENDMENT NO. 8 (the "Amendment") is made and agreed upon this 8th day of July, 2019, ("Effective Date") by and between the Commonwealth of Pennsylvania, Pennsylvania Liquor Control Board with offices at Capitol and Forster Streets, Harrisburg, Pennsylvania, 17124-0001 ("PLCB"), and XTL, Inc., with offices located at 3200 South 70th Street, Philadelphia, Pennsylvania 19153 ("XTL"), acting through its authorized officials. PLCB and XTL are hereinafter collectively referred to as "the Parties."

RECITALS

WHEREAS, the Parties entered into Contract No. 20050207 (the "Contract"), effective April 1, 2006, with an original expiration date of March 31, 2011. A copy of the Contract is attached hereto as Exhibit A;

WHEREAS, the Parties amended the Contract on February 18, 2011 to extend the term of the Contract by two twelve-month renewal periods, followed by two optional renewal periods of six months each. Thus, the expiration date of the Contract became March 31, 2014. A copy of the Amendment No. 1 is attached hereto as Exhibit B;

WHEREAS, the Parties had previously entered into an "Agreement" dated July 26, 2006 to include special services to be performed by XTL as anticipated in the original Contract and pertaining to maintenance of the Material Handling System at the Distribution Center #1 ("DC#1"). For purposes of clarity, this Agreement is known as "Amendment No. 2 (Material Handling System)." A copy of the Amendment No. 2 (Material Handling System) is attached hereto as Exhibit C;

WHEREAS, the Parties had also previously entered into a "Side Letter" dated December 19, 2009 to include fuel surcharges to be paid to XTL in accordance with a weekly Department of Energy rate publication, as enumerated. That Amendment No. 3 included an Exhibit A rate table dated October 4, 2005. For purposes of clarity, this Side Letter is known as "Amendment No. 3 (Fuel Surcharge)." A copy of the Amendment No. 3 (Fuel Surcharge) is attached hereto as Exhibit D;

WHEREAS, the Parties further amended the Contract on February 13, 2013 to extend the term of the Contract through March 31, 2015, with a 180-day optional renewal at the PLCB's sole discretion, along with other various amendments to rates, terms and conditions of the Contract to reflect certain updated operational practices, as reflected therein. A copy of the Amendment No. 4 is attached hereto as Exhibit E;

WHEREAS, the Parties further amended the Contract with an Effective Date of April 1, 2015, to extend the term of the Contract through May 31, 2017, with the same 180-day optional renewal provision as in Amendment No. 4, along with other various amendments to rates, terms and conditions of the Contract to reflect certain updated operational practices including the naming of PLCB Bailment Vendors as additional insureds of XTL, as reflected therein. A copy of the Amendment No. 5 is attached hereto as Exhibit F;

WHEREAS, the Parties further amended the Contract with an Effective Date of February 13, 2017, to add several new categories of accessorial charges occasioned by the passage of Act 39 of 2016 ("Act 39") and Act 166 of 2016 ("Act 166"), as reflected therein. A copy of the Amendment No. 6 is attached hereto as Exhibit G;

WHEREAS, the PLCB exercised its above-referenced 180-day renewal option by letter dated May 10, 2017, such that the term of the Contract is extended through November 30, 2017. A copy of that letter is attached hereto as Exhibit H;

WHEREAS, the Parties further amended the Contract with an Effective Date of August 7, 2017, to extend the term of the Contract for two additional years followed by two six-month optional renewal periods, as well as update various fees and costs associated with the operation of DC1. A copy of Amendment No. 7 is attached hereto as Exhibit I;

WHEREAS, the PLCB notified XTL via a letter dated May 6, 2019 that it did not intend to exercise any of the optional six-month term extensions provided for in Amendment No. 7 with the understanding that operations would continue after August 7, 2019 and that various legal and operational issues would be worked out between the Parties to be memorialized in a further Contract amendment prior to August 7, 2019. A copy of that letter is attached hereto as Exhibit J;

WHEREAS, on May 21, 2019, the PLCB and XTL met regarding an extension and certain amendments to the Contract which the parties intend to memorialize in this Amendment No. 8;

NOW THEREFORE, in consideration of the promises and agreements that follow, the Parties hereby agree as follows:

1. The Parties agree to extend the term of the Contract through August 7, 2020. There shall be no automatic renewals of any kind at the expiration of this term.
2. The Parties agree that (i) unless specifically detailed in this Amendment No. 8, no other rate elements, fees, charges, or other costs will be invoiced by XTL or paid by PLCB other than those rates detailed in paragraph 13 of Amendment No. 7 and (ii) any such rate elements, fees, charges, or other costs that are created by this Amendment No. 8 shall take effect on the Effective Date of this Amendment.
3. The Parties agree to amend paragraph 2 of the Contract as follows:
 - a. The definition of "Bottle Pick" in paragraph 2(B) of the Contract shall be deleted in its entirety and furthermore, as that terminology refers to an obsolete operational process and the physical space previously designated for this operation has been repurposed, all other references to "Bottle Pick" or "Bottle Pick area" within the Contract are hereby rendered moot.
 - b. The definition of "Stores" in paragraph 2(Z) shall be deleted in its entirety and replaced as follows:

"Store(s)- any delivery location from the Distribution Center, regardless of retail or wholesale status."
 - c. Two new definitions shall be added as follows, which definitions will not be in alphabetical order:

"EE. Pallet Drop Location – any delivery location that receives Merchandise on a pallet. The pallet is built, wrapped and loaded at Distribution Center. The Pallet Drop Location signs for the entire delivery

without breaking down the pallet and then receives individual cases of Merchandise into the receiving location within 24 hours.

FF. Trailer Drop – Contractor loads a licensee order for shipment directly onto licensee’s truck/trailer, then the truck/trailer is picked up and driven by licensee’s contracted transporter-for-hire.”

4. The Parties agree to amend paragraph 10 of the Contract as follows:
 - a. The first paragraph of paragraph 10 of the Contract shall be deleted in its entirety and replaced with the following:

“10. RECEIPT, STORAGE AND INSPECTION OF MERCHANDISE- The Contractor shall receive and store Merchandise delivered to the warehouse via trucks in various loading modes and unload and properly store said Merchandise in a timely fashion to ensure regular rotation of stock on a first-in, first-out basis and to ensure compliance with the terms under which the Merchandise was shipped to the PLCB. All Merchandise in the facility shall be stored on industry standard four-way entry pallets.

The normal schedule for receipt of Merchandise will be five days per week, Monday through Friday. In addition, Contractor shall, at its own cost and expense, ensure the availability of sufficient personnel between the hours of 7:00 A.M. and 3:00 P.M, Monday through Friday, to respond to telephonic and electronic delivery appointment scheduling requests. Any changes to this schedule must be approved in advance by the Contact Person. The PLCB reserves the right to establish, maintain and control all aspects of the scheduling of inbound deliveries at its discretion. Receiving and storage services to be performed by the Contractor include, but are not limited to the following:”

- b. Paragraph 10(E) of the Contract shall be deleted in its entirety and replaced with the following:

“E. Placing receipted Merchandise in proper storage areas designated for picking and distribution within 24 hours of receipt into the WMS (“put-away for picking”).”

c. A new paragraph 10(L) shall be added as follows:

“L. Contractor shall monitor the aging of fresh-dated or expiration-dated Merchandise. Contractor shall notify PLCB in writing (electronic) when fresh-dated Merchandise is within 60 days of its expiration date. PLCB may generate a Claim to Contractor for the PLCB cost of any expired inventory.”

d. A new paragraph 10(M) shall also be added as follows:

“M. Upon first receipt of all new Merchandise, excluding luxury and/or specialty merchandise, the Contractor shall weigh and measure cases and count and confirm all pallet configurations prior to put-away for picking. Such data shall be provided to PLCB by XTL so that the PLCB can enter it into RIMS.”

5. The Parties further agree to amend paragraph 12 of the Contract as follows:

a. The title of paragraph 12 and the entirety of paragraph 12A shall both be deleted and replaced, with the language identified below. For the avoidance of doubt, the language herein shall supersede any prior amendment to such portion of the Contract, including paragraph 7 of Amendment No. 4.

“12. PICKING AND DELIVERY OF ORDERS -

A. **General** – The Contractor receives orders one day prior to the scheduled delivery day; picks orders; merges them as appropriate with other orders such as add-ons, supplies, or non-conveyable Merchandise; and loads them onto delivery trucks in sufficient time to ensure transportation and delivery in accordance with the daily schedule established by the PLCB. Deliveries shall occur five days per week, Monday through Friday. Pick schedules must be set to ensure deliveries

are timely made, in accordance with the foregoing. The PLCB reserves the right to require picking to occur on Sundays at a flat premium case handling rate of \$2.00 per case. For the avoidance of doubt, this \$2.00 per case for cases handled on Sundays is the only case handling rate that may be paid for that work, but does not include cost for delivery.”

- b. The following sentence shall be added to paragraph 12(D):

“These pick-up loads may be live loads or Trailer Drops. In either case, Contractor shall pick, prepare and load orders for pick-up, and inspect and verify all loads prior to departure to reduce instances of over/short/damaged cases.”

- c. A new paragraph 12(F) shall be added as follows:

“F. PLCB reserves the right to hire a third-party delivery provider (i.e., a licensed transporter-for-hire) to pick up and deliver Merchandise or non-merchandise due to special circumstances. Contractor’s loading charges will apply to any such loads. Contractor must allow an appointment to be scheduled and the load to be put in staging until ready for pickup. Special circumstances include, but are not limited to: PLCB equipment, wine festival deliveries, high value Merchandise, or small quantity shipments to other locations.”

6. In accordance with paragraph 12(D) of the Contract, the Parties acknowledge and agree that XTL shall select and assist in loading specific full case, partial case, or pallet quantities of Merchandise for pick-up at the facility by the PLCB or others such as licensees. The Parties further acknowledge and agree that only the standard case handling rate plus the palletization fee may be invoiced to the PLCB for orders that are picked up at DC#1, as previously documented in paragraph 8 of Amendment No. 7.

7. The Parties agree to delete paragraph 13 of the Contract in its entirety and replace it as follows:

“13. PALLET ORDERS AND DELIVERIES- Contractor shall select and load pallet quantities of Merchandise onto delivery trucks and deliver to designated Pallet Drop Locations. The list of Pallet Drop Locations will be a living operational document managed by the PLCB’s Contact Person and will be updated from time to time as necessary by the PLCB with advance written (electronic) notice to Contractor.

Delivery to Pallet Drop Locations will require the driver to bring the pallets to the end of the truck or dock plate so that the recipient can access the pallet with its own pallet jack without entering the truck/trailer bed. Contractor shall provide at its sole cost and expense, in accordance with Paragraph 26, a pallet jack for each driver delivering to Pallet Drop Locations.”

8. The Parties agree that the cycle counting requirements set forth in paragraph 11 of Amendment No. 4 shall continue to be performed and documented as needed. Additionally, and in furtherance thereof, the Parties agree that paragraph 24 of the Contract shall be amended as follows:

a. The following sentence shall be added to the end of the first paragraph:

“Contractor shall, at its own cost and expense, ensure the availability of at least one resource between the hours of 7:00 A.M. and 4:00 P.M., Monday through Friday, to answer inventory control questions from the PLCB and to make any necessary inventory control adjustments at the PLCB’s request.”

b. Paragraph 24(B) shall be deleted and replaced as follows:

“Contractor will furnish the necessary employees and equipment to enable the Commonwealth, or a third-party vendor of the Commonwealth’s choosing, to conduct one full physical inventory per year. The cost of such physical inventory shall be paid by the Commonwealth.

c. The following paragraph shall be added after the first paragraph of 24(D):

“Target accuracy metrics are hereby set at 99% of total cases, based upon the counts completed during the annual full physical inventory process.

Accuracy percent will be calculated as the absolute value of the number of cases adjusted divided by the total cases in the inventory. In addition to the Type 7- Inventory Shortage Claim provided herein, PLCB reserves the right to impose a penalty of \$8.00 per case for each case falling below the 99% count accuracy threshold. This penalty is in addition to the PLCB cost of the lost Merchandise, to be billed to Contractor as set forth in this paragraph 24(D) as amended.”

9. The Parties agree to amend the Contract by adding a new paragraph 29(E) as follows:

“E. Pick cancellations that are a result of Contractor’s failure to place receipted Merchandise in the proper storage area within 24 hours of receipt into the WMS as defined in paragraph 10(E) as amended herein may, at the PLCB’s sole discretion, result in a penalty of \$8.00 per case on orders intended for PLCB’s wine and spirits Stores and \$25.00 per case on orders intended for licensees. The PLCB reserves the right to deduct penalty amounts from monies due to the Contractor subject to paragraph 42(B).”

10. The Parties further agree to delete and replace the first sentence of paragraph 30 of the Contract, as well as its subsections A and B, with the language identified below. For the avoidance of doubt, the language herein shall supersede any prior amendment to such portion of the Contract, including paragraph 9 of Amendment No. 4.

“**30. PERFORMANCE LEVEL- PICKING-** The Contractor shall pick Merchandise in volumes set in both SKUs and cases up to the following anticipated maximum levels:

A. During Non-Build-Up Periods- Up to 39,100 cases per day and up to 3,500 SKUs per day.

B. During Build-Up Periods: up to 46,500 cases per day and 3,500 SKUs per day. The Build-Up Period shall be the months of October, November, and December.”

11. The Parties agree to amend paragraph 31 of the Contract as follows:

- a. The first sentence of the first paragraph of paragraph 31 shall be deleted and replaced with the following:

“Deliveries to PLCB wine and spirits Stores must arrive on the calendar day stated on the WMS order, no later than two hours prior to each Store’s closing time and deliveries to licensee locations must conform to the specific dock times arranged with each such location (each, a “scheduled delivery”).”

- b. The second paragraph of paragraph 31 shall be deleted and replaced with the following:

“The PLCB reserves the right to impose a \$500.00 penalty for each missed scheduled delivery, which includes any incomplete loads delivered to any location, when the missed scheduled delivery is due to the fault of the Contractor, including but not limited to failing to complete a load for next-day deliveries in accordance with the pick schedule identified in paragraph 12 as amended herein. Any outbound loads not completed prior to an established cutoff target to support Store or licensee receiving will be considered incomplete loads. Load times will be collected using ship confirmation timestamps from WMS.”

- c. The third paragraph of paragraph 31 shall be deleted in its entirety and replaced with the following:

“The PLCB shall be credited for all PLCB costs associated with the delivery of incorrect and or incomplete orders to PLCB wine and spirits Store and/or licensees. All Merchandise physically received by a PLCB Store and/or licensee must match the items and quantities identified on the bill of lading and arrive in saleable condition (“Order Accuracy”). Contractor is expected to achieve an Order Accuracy rate of 99%. Failure to meet the 99% Order Accuracy rate may, at the PLCB’s sole discretion, result in a penalty of \$8.00 per case for PLCB Store orders, and \$25.00 per case for orders

delivered to Licensees. Furthermore, in the event that Merchandise not included in the original order was picked and shipped due to Contractor's error, the Contractor shall return such excess Merchandise to the facility and the facility's inventory, at its sole cost and expense."

12. The PLCB reserves the right to require picking and delivery to occur on the minor holidays of Dr. Martin Luther King, Jr. Day, Presidents' Day, and Columbus Day. XTL shall be paid a flat premium case handling rate of \$2.00 per case handled on these three minor holidays. For the avoidance of doubt, this \$2.00 per case for cases handled on these three minor holidays is the only case handling rate that may be paid for that work, but does not include cost for delivery. Except as explicitly set forth in this paragraph 12, the Holiday schedule set forth in Appendix B to Amendment 5 remains unchanged.

13. The Parties agree that Amendment No. 2, and all of the rates, terms, and provisions therein, shall be deleted in its entirety. The parties further agree that all porter and/or custodial services will continue to be provided at no additional cost to the PLCB as part of the normal operation of the facility in accordance with paragraph 36(E) of the Contract and not as "special services." Such services include but are not limited to: a) provision of support and expertise in truck loading, efficient maintenance of movement of Merchandise within the Distribution Center and particularly on the MHS, and customer deliveries; and b) janitorial duties within the facility, including office cleaning, floor scrubbing, control of damaged Merchandise, and maintaining cleanliness on and around the MHS. The provision of staff, cleaning supplies, and equipment to accomplish these porter and custodial services shall be at the sole cost and expense of XTL.

14. The Parties agree that the 90-day notice requirement created in paragraph 4 of Amendment No. 5, shall be null and void.

15. Pursuant to paragraph 10(F) of the Contract, XTL is responsible for the filing of reports in a timely manner as the PLCB may require. The Parties thereby agree that XTL shall provide all necessary reports required to enable PLCB to accurately measure the following performance metrics:

a. Count Accuracy

- b. Shipment Cancellations
- c. Recoup Recovery Items
- d. Receiving Productivity
- e. Receiving Accuracy
- f. Dock Door Utilization
- g. Receiving Cycle Time
- h. Putaway Productivity
- i. Putaway Accuracy
- j. Labor and Equipment Utilization
- k. Putaway Cycle Time
- l. Storage Productivity
- m. Space Utilization
- n. Picking Productivity
- o. Picking Accuracy
- p. Picking Cycle Time
- q. Perfect Order Rate


16. Except as expressly set forth herein, all other Contract terms and conditions shall remain unchanged and in full force and effect.

[signatures on following page]

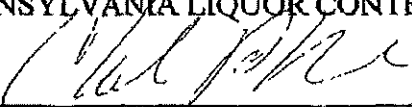
IN WITNESS WHEREOF, intending to be bound, the Parties to this Amendment have executed it through their respective duly authorized officers. This Amendment shall not be fully effective and will not be binding on the Parties unless and until all signatures required below are affixed hereto.

XTL, INC.

FED ID # 23-3058279

By: 
Name: LOUIS J. CERONE
Title: PRESIDENT

COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA LIQUOR CONTROL BOARD


By: 
Name: CHARLES MOONEY
Title: EXECUTIVE DIRECTOR

APPROVED FOR FORM AND LEGALITY:

 6-7-19
OFFICE OF CHIEF COUNSEL (PLCB) DATE

 6/24/19
OFFICE OF ATTORNEY GENERAL DATE

Approved as to Fiscal Responsibility and Budgetary Appropriateness

 7/8/19
COMPTROLLER DATE

2019 JUN 10 11:11 AM

RECEIVED
Office of Attorney General

JUN 10 2019

Legal Research Services

SOURCE JUSTIFICATION FORM

Bureau Of Procurement

The objective of this form is to capture all relevant documentation an Agency may have to assist the Department of General Services ("DGS"), Bureau of Procurement, in expediting the source justification review process. This form must be completed electronically, signed, and submitted with all relevant documentation to DGS. If a question is neither mandatory nor applicable, please indicate "N/A". Please use standard terminology and define acronyms.

*NOTE: A number of the shaded response areas are character-limited

SECTION A

1. Agency Name:		Pennsylvania Liquor Control Board	
2. Procurement Description:		Third Party Logistics Services for Region 1	
Check One	<input type="checkbox"/> Materials Description:		
	<input checked="" type="checkbox"/> Services Description:	Warehousing and Delivery services for PLCB's Region 1 serving the 5 county Philadelphia area.	
3. Materials/Services Shopping Cart # or SAP Requisition #:		Estimated Cost:	not to exceed \$475,000,000.00
		Initial Contract Term:	10 years
		Renewals:	2, 5-year
4. Supplier - Name:		KLS Logistics, Inc.	
Full Address:		360 Westar Blvd. Westerville, OH 43092	
Contact Name:		Jeff Gosline	
Telephone #:		Fax #:	
Email:			
SRM Supplier #:			
5. Delivery or service location:		11601 Roosevelt Blvd. Philadelphia, PA	

SECTION B

Check the appropriate reasons for this source justification:

<input type="checkbox"/>	1. Sole Source: Only known source – Not available from another supplier.
<input type="checkbox"/>	2. Single Source (Material/Repair/Maintenance): Material or service MUST be compatible with existing equipment Documentation must be provided from the manufacturer. (May be posted on DGS website for 7 days.)
<input type="checkbox"/>	3. Single Source (Used Equipment): Value set by 2 independent 3 rd party appraisals. (May be posted on DGS website for 7 days.)
<input type="checkbox"/>	4. Single Source (Professional Expert): Describe in detail in Section C. (May be posted on DGS website for 7 days.)
<input type="checkbox"/>	5. Exempt (Law): A federal or state statute or regulation exempts the procurement from the competitive procedure. Any applicable information precluding the procurement from competitive procedures must be attached.
<input checked="" type="checkbox"/>	6. Feasibility: Clearly not feasible to award the contract on a competitive basis.
<input type="checkbox"/>	7. No Substitute: Require OEM material but may be competitively bid, i.e. distributors

SOURCE JUSTIFICATION FORM

Bureau Of Procurement

SECTION C (Unlimited Character Fields)

<p>1. Describe the unique features of this procurement that prohibit a competitive environment. If applicable, attach a Statement Of Work ("SOW").</p>	<p>The incumbent service provider, XTL, Inc., is in Chapter 11 bankruptcy and has indicated to the PLCB its dire financial situation. Payments are being made to the debtor-in-possession pursuant to serial Court Orders. The present facility is too small for current operations and it also requires a new roof, estimated to cost up to \$10M.</p>
<p>2. Document and attach the research that has been conducted to date to verify the supplier is the only known source?</p>	<p>Three prior RFPs were issued with no contracts awarded. The size and complexity of the PLCB's Region 1 operation requires a large and highly experienced vendor. When the PLCB became aware of XTL's then-impending bankruptcy filing, the PLCB solicited quotes from approximately ten potentially qualified vendors, including two vendors currently contracted for similar services in other parts of the state as well as several bidders from the prior RFPs. No vendor besides KLS Logistics was willing to engage in discussions with the PLCB.</p>
<p>3. Does the supplier utilize distributors, dealers, resellers, etc.? If "Yes" please identify.</p>	<p>no</p>
<p>4. Are there compatibility requirements or compliance requirements with a warranty or service agreement? If yes, please explain.</p>	<p>no</p>
<p>5. How has the material or service been procured in the past? Please provide previous source justifications, contracts, & PO's for this material or service.</p>	<p>The current provider was initially engaged via an emergency procurement nearly 20 years ago when the prior provider abruptly closed down operations with no notice. A formal RFP was then conducted (RFP # 20050207) and the current contract was awarded to XTL, Inc. with an effective date of April 1, 2006.</p>
<p>6. If procured through the IT ITQ process, please provide original \$ amount and contract period of order. Is this the final phase of the project?</p>	<p>N/A</p>
<p>7. If this is an upgrade, addition, alteration, etc., to an earlier procurement, please describe in detail.</p>	<p>N/A</p>
<p>8. What are the consequences of not approving this procurement?</p>	<p>PLCB's Region 1 distribution center handles the receipt and distribution of 12.5 million cases of alcohol per year, nearly half of all alcohol volume in Pennsylvania. Failing to timely secure this replacement vendor greatly jeopardizes PLCB's continuity of operations and could result in severe disruptions to the market, adversely impacting consumers, licensees and the</p>

SOURCE JUSTIFICATION FORM

Bureau Of Procurement

	agency's ability to sustain its contributions to the General Fund.
<p>9. If timing is a factor, what is the time factor and why?</p>	Current provider is in severe financial crisis. Additionally, a new building must be secured as the current site is in critical disrepair and has become insufficient to meet the capacity demands.
<p>10. List any other information relevant to the acquisition of this procurement here or as an attachment.</p>	n/a
<p>11. For requests > \$100,000, has the supplier signed cost or pricing data certification and is the pricing breakdown attached?</p>	yes

SECTION D

IMPORTANT: The printed names on this form shall constitute the signatures of these individuals. Agencies must insure that these individuals review the completed form and give their consent to apply their printed name on this form. No handwritten signatures shall be required in order for the form to be considered "signed" by those individuals whose names appear in the signature section of the form.

SPR Contact Name (Person to whom DGS will return the SPR):

Name:	P-Group:	Date:
Title:	Tel #:	Fax #:

Agency Contact Person: Person in your Agency that DGS can contact for additional information, etc

Name:	Clifford McFarland	Title:	Director, Supply Chain	Date:
Tel #:		Fax #:		

Approving Authority* (Agency Head or Deputy reviewing and approving this request):

Approving Authority connotes approval of the source justification and the cost or pricing data certification.

Name:	Charlie Mooney	Title:	Executive Director	Date:
Tel #:		Fax #:		

Additional Approvals* (if required by Agency):

Name:	Rodrigo Diaz	Title:	Chief Counsel	Date:
Tel #:		Fax #:		
Name:	Michael Demko	Title:	Chief Financial Officer	Date:
Tel #:		Fax #:		