

STATE OF MAINE

IN THE YEAR OF OUR LORD
TWO THOUSAND TWENTY-TWO

S.P. 608 - L.D. 1750

An Act To Create a Framework for Maine's Spirits Contract

Be it enacted by the People of the State of Maine as follows:

PART A

Sec. A-1. 28-A MRSA §90, as enacted by PL 2013, c. 269, Pt. A, §4 and amended by c. 368, Pt. V, §61, is repealed and the following enacted in its place:

§90. Contract for wholesale spirits activities and marketing

1. Statement of purpose. The Legislature finds that it is in the public interest to continue to maximize growth in the State's wholesale spirits business while ensuring that growth in revenue from the business is achieved in a socially responsible manner. The contracting of the operations of the wholesale spirits business serves this purpose and provides the State's agency liquor store partners with effective and efficient services in order to responsibly serve consumers of spirits in the State.

2. Contract for spirits administration and trade marketing. Upon the expiration or termination of all contracts for the operation of the State's wholesale spirits business in effect on January 1, 2022, the commissioner shall enter into a single 10-year contract for spirits administration and spirits trade marketing in accordance with the requirements in this section.

3. Competitive bid process. A contract described in subsection 2 must be awarded pursuant to a competitive bid process in a manner consistent with the process described in Title 5, chapter 155, subchapter 1-A.

4. Request for proposals. The commissioner shall develop a request for proposals for the competitive bid process required under subsection 3 designed to encourage vigorous bidding. The request for proposals must:

A. Inform potential bidders of the State's target gross revenue profit margin over the term of the contract;

B. Instruct potential bidders to propose the scope of spirits administration and spirits trade marketing services that will be provided and the fee for those services expressed as a percentage of revenue generated by the wholesale business;

C. Direct potential bidders to indicate whether subcontractors will be used for any portion of the services described in paragraph B and to identify those subcontractors;

D. Inform potential bidders that they may propose incentives intended to encourage responsible growth of revenue and enhanced efficiencies in services provided; and

E. Require each bidder to affirm that neither the bidder nor any of the principal officers of the bidder has a direct financial interest in a license or permit in this State or another state for the manufacture of spirits, other than a minor investment in not more than 1% of the securities of a business entity that holds such a license or permit.

5. Information provided by bidder. A bidder seeking consideration of the award of a contract pursuant to this section shall:

A. Demonstrate the bidder's knowledge of the wholesale liquor business, the alcoholic beverage industry or a related field as well as the bidder's experience or knowledge, if any, of the responsible marketing of liquor;

B. Propose the bidder's marketing strategies and the scope of the spirits administration services the bidder will provide as well as the fee for those strategies and services expressed as a percentage of revenue generated by the wholesale business;

C. Identify the strategies and services proposed in paragraph B for which the bidder may use a subcontractor and identify those subcontractors;

D. Demonstrate the bidder's financial capacity and access to capital to maintain the strategies and services proposed in paragraph B;

E. Demonstrate the bidder's capabilities for providing transportation and distribution of spirits to agency liquor stores, which must include:

(1) Delivery vehicles with the appropriate capacity to deliver spirits to the full range of agency liquor stores, including both large and small stores;

(2) Drivers with the requisite driver's license credentials to drive all sizes of delivery vehicles;

(3) The ability to make deliveries to agency liquor stores on at least 250 days per year; and

(4) The ability to provide the minimum number of deliveries established in the request for proposals per week to each store, which may not be less than 2;

F. Demonstrate the bidder's warehousing capacity and ability to expand its warehousing capacity over the term of the contract. The bidder shall propose bailment rates and related fees that the bidder proposes to charge spirits suppliers;

G. Describe the bidder's information technology capabilities, which must include methods for processing orders and invoices, inventory management and sales data analysis;

H. Describe the bidder's plan for enhancing services to spirits suppliers and agency liquor stores;

I. Describe the bidder's business plan to provide services in a manner that will assist the State in achieving a responsible growth rate for the wholesale spirits business;

J. Demonstrate the positive impact on the economy, employment and state revenues that the bidder's overall proposal will provide;

K. Demonstrate that the bidder, any principal officer of the bidder and any named subcontractor have not been found to have violated any state or federal law or rule governing the manufacture, distribution or sale of spirits; and

L. Affirm that neither the bidder nor any of the principal officers of the bidder has a direct financial interest in a license or permit in this State or another state for the manufacture of spirits, other than a minor investment in not more than 1% of the securities of a business entity that holds such a license or permit.

In addition to the requirements of paragraphs A to L, the commissioner, in order to ensure that the objective of maximizing growth in the State's wholesale spirits business is achieved, may require a bidder to provide additional information, including disclosure of the potential of a bidder's direct and substantial conflict of interest with the State's financial interest.

6. Award criteria and issuance of contract. The commissioner shall choose the best-value bidder in conformity with Title 5, section 1825-B, subsection 7 and shall consider as criteria for award the information required to be provided in subsection 5. The commissioner may not award the contract to a bidder that holds or has a direct financial interest in, or that has a principal officer that holds or has a direct financial interest in, a license or permit in this State or another state to manufacture spirits. A minor investment in not more than 1% of the securities of a business entity that holds a license or permit in this State or another state to manufacture spirits does not constitute a financial interest prohibited by this subsection.

The commissioner shall ensure that the following criteria are met before entering into a contract:

A. That revenue to the State from the sale of spirits is predictable over the term of the contract;

B. That revenue from the sale of spirits will be maximized by the issuance of the contract and achieved through efficiency of services;

C. That the bidder has demonstrated that services provided to agency liquor stores will be enhanced; and

D. That, upon execution of the contract, the disruption of services to agency liquor stores and spirits suppliers will be minimal or absent.

7. Mandatory contract provisions. A contract entered into with a successful bidder in accordance with this section must:

A. Require that the person awarded the contract submit to the bureau, in a manner determined by the bureau, an annual report audited by an independent 3rd party. The bureau, following receipt of the report, shall provide the report annually to the joint standing committees of the Legislature having jurisdiction over appropriations and financial affairs and alcoholic beverages matters;

B. Prohibit the person awarded the contract from engaging in activities reserved for agency liquor stores licensed as reselling agents to provide spirits to establishments licensed for on-premises consumption;

C. Include provisions that allow for ongoing performance standards review so that deficiencies in such standards may result in amendments to the contract or nullification. Performance standards subject to contract amendments or nullification include:

(1) Working in partnership with the State to achieve the goal of a responsible growth rate for the wholesale spirits business as negotiated with the successful bidder at the time of award;

(2) Transparency in annual reporting and conformance to the reporting requirements established in consultation with the successful bidder throughout the term of the contract by the bureau; and

(3) Responsiveness to the service needs of agency liquor stores;

D. Include provisions establishing standards of efficiency and quality of operations; and

E. Require that the bureau approve all bailment rates and related fees.

8. Extension. The commissioner and a successful bidder awarded a contract under this section may agree to a single extension of the existing terms of the contract for a period of no more than 3 years following the end of the original 10-year contract term.

9. Price regulation. Notwithstanding any other provision of this section to the contrary, the State shall regulate the wholesale and retail prices of all spirits sold in the State.

Sec. A-2. No effect on existing contracts. Nothing in this Act is intended to affect the validity of or cause a premature termination of the spirits administration and spirits trade marketing contracts under the Maine Revised Statutes, Title 28-A, section 90 that were in effect on the day prior to the effective date of this Act.

PART B

Sec. B-1. 28-A MRSA §83-C, sub-§5, as enacted by PL 2013, c. 476, Pt. A, §9, is repealed.

Sec. B-2. 28-A MRSA §606, sub-§4-A, as amended by PL 2019, c. 404, §10, is repealed and the following enacted in its place:

4-A. Discount rates for agency liquor stores; rulemaking. Beginning July 1, 2014, the bureau shall set the wholesale price of spirits, which is the price an agency liquor store pays to purchase spirits, at a minimum discount of 12% off the retail price. Upon the expiration or termination of all contracts for the operation of the State's wholesale spirits business in effect on January 1, 2022, the bureau shall set the wholesale price of spirits, which is the price an agency liquor store pays to purchase spirits, at a minimum discount of 18% off of the retail price.

The bureau by rule may establish discount rates greater than the minimum discount rates established in this subsection, including:

A. Graduated discount rates, which must be structured in a way that does not adversely affect agency liquor stores that stock a low level of inventory; and

B. Increased discount rates to be awarded as part of a sales incentive program for agency liquor stores. In adopting a sales incentive program under this paragraph, the

bureau shall consider the effect of the sales incentive program on state revenue and on any pending or existing contracts awarded under section 90.

Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

Sec. B-3. Report on discount rate rulemaking. The Department of Administrative and Financial Services, Bureau of Alcoholic Beverages and Lottery Operations shall submit a report to the joint standing committee of the Legislature having jurisdiction over alcoholic beverages matters no later than February 1, 2023 describing the steps taken by the bureau after the effective date of this Act to adopt or amend or to propose to adopt or amend rules governing the wholesale prices of spirits under the Maine Revised Statutes, Title 28-A, section 606, subsection 4-A, including rules establishing graduated discount rates or a sales incentive program for agency liquor stores. The report must include a copy of any rules finally adopted after the effective date of this Act or a description of the substance of the rules that the bureau has proposed or intends to propose for adoption after the effective date of this Act. The joint standing committee of the Legislature having jurisdiction over alcoholic beverages matters may report out legislation based upon the report to any session of the 131st Legislature.

Sec. B-4. Bureau of Alcoholic Beverages and Lottery Operations to convene stakeholder group regarding sale and distribution of certain spirits products; report. The Department of Administrative and Financial Services, Bureau of Alcoholic Beverages and Lottery Operations shall convene a stakeholder group to consider changes to the law that would allow the importation and sale of spirits products containing between 8% and 15% alcohol by volume by certificate of approval holders under the Maine Revised Statutes, Title 28-A, section 1361 and that would allow the production and sale of such spirits products by in-state manufacturers of malt liquor or wine licensed under Title 28-A, section 1355-A. The stakeholder group must include, at a minimum, agency liquor stores; on-premises and off-premises retail licensees; certificate of approval holders under Title 28-A, sections 1361 and 1381; in-state manufacturers licensed under Title 28-A, section 1355-A, including small breweries and small distilleries; and wholesale licensees.

The stakeholder group shall hold at least 3 meetings for the purpose of considering the following:

1. Changes to current law that would allow retailers licensed to sell malt liquor or wine for on-premises or off-premises consumption that are not agency liquor stores to sell spirits products containing between 8% and 15% alcohol by volume, including but not limited to amending the definition of "low-alcohol spirits products" and creating a new category of spirits product that includes products commonly known as "ready-to-drink" cocktails; and
2. Changes to current law that would establish the category of the spirits products identified in subsection 1 that certificate of approval holders under Title 28-A, section 1361 should be authorized to import and sell and that manufacturers of malt liquor or wine licensed under Title 28-A, section 1355-A should be authorized to produce and sell; the categories of the spirits products identified in subsection 1 that wholesale licensees should be authorized to distribute for resale; and the categories of spirits products identified in subsection 1 that the State should continue to distribute to agency liquor stores.

No later than March 1, 2023, the bureau shall submit a report summarizing any conclusions reached and proposals supported by the stakeholder group, which may include suggested legislation, to the joint standing committee of the Legislature having jurisdiction over alcoholic beverages matters. The committee may report out legislation related to the report to the 131st Legislature in 2023.