

## *Independent Auditor's Report*

The Honorable Patrick J. Stapleton, III, Esquire  
Chairman  
Pennsylvania Liquor Control Board  
517 Northwest Office Building  
Harrisburg, PA 17124

Dear Chairman Stapleton:

At the request of the Pennsylvania Liquor Control Board (PLCB), we have examined the board's compliance with the requirements in the Commonwealth Procurement Code, the Commonwealth Procurement Handbook, other applicable PLCB policies and procedures, and state laws related to conflicts of interest with regard to the awarding of the Retail Staff Professional Development Program contract (Contract No. 20081103) to Solutions 21, executed on January 29, 2009. PLCB management is responsible for the PLCB's compliance with those requirements. Our responsibility is to express an opinion on the PLCB's compliance based on our examination.

Our examination was conducted in accordance with attestation standards established by the American Institute of Certified Public Accountants (AICPA) and, accordingly, included examining, on a test basis, evidence about the PLCB's compliance with those requirements and performing such other procedures as we considered necessary in the circumstances. We believe that our examination provides a reasonable basis for our opinion. In accordance with AICPA standards for attestation engagements, we are required to state that our examination does not provide a legal determination of the PLCB's compliance with specified requirements.

In our opinion, the PLCB complied, in material respects, with the aforementioned requirements.

In planning and performing our examination of the PLCB's compliance with the aforementioned requirements, we considered the PLCB's internal control over compliance (internal control) as a basis for designing our examination procedures for the purpose of expressing our opinion on the PLCB's compliance, but not for the purpose of expressing an opinion on the effectiveness of the PLCB's internal control. Accordingly, we do not express an opinion on the effectiveness of the PLCB's internal control.

Our consideration of internal control was for the limited purposes described in the preceding paragraph and would not necessarily identify all deficiencies in internal control that might be significant deficiencies or material weaknesses. However, as discussed below, we identified a deficiency in internal control that we consider to be a significant deficiency.

A control deficiency exists when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, to comply with the aforementioned requirements on a timely basis. A significant deficiency is a control deficiency, or combination of control deficiencies, that adversely affects the entity's ability to comply with the aforementioned requirements. We consider the following deficiency to be a significant deficiency in internal control and present five recommendations:

Finding No. 1 – The Pennsylvania Liquor Control Board's management controls, procurement policy, and operating procedures need to be improved.

We also present relevant information and three recommendations related to the prevention of conflicts of interest, as noted in Finding No. 2 below:

Finding No. 2 – The Pennsylvania Liquor Control Board properly dealt with potential conflicts of interest when they arose. However, we cannot conclude with certainty that a PLCB employee (an Alcohol Education Specialist) did not provide an unsuccessful offeror with confidential information that could have assisted that vendor in preparing its proposal. Such action would have violated the PLCB Code of Conduct and statutes dealing with conflicts of interest.

We also present a further insight drawn from all of the findings and recommendations in this report. In awarding a contract to the spouse of a PLCB regional manager, the PLCB should have anticipated the public questioning that would result over a potential conflict of interest, regardless of whether that conflict was an actual conflict or the appearance of a conflict. The PLCB was capable of evaluating this matter against available criteria, including law and policies, based on its questioning and its having caught and addressed other potential conflicts of interest. Pursuant to public interest, the PLCB should have reconsidered its decision to award this contract or at least exercised its discretion to reject all proposals received and issue a new and more detailed Request for Proposals if the requested services were truly deemed necessary.

This report is intended solely for the information and use of the PLCB and is not intended to be, and should not be, used by anyone other than the specified party.

Sincerely,

April 22, 2009

JACK WAGNER  
Auditor General

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**Results  
In  
Brief**

The Department of the Auditor General conducted an examination of the Pennsylvania Liquor Control Board's compliance with applicable laws and policies with regard to the awarding of Contract No. 20081103. Before summarizing the results of our examination, we want to commend the PLCB for having taken the following actions:

- Recognizing the value of an independent review of this matter, asking the Department of the Auditor General to conduct that review and cooperating fully with this engagement;
- Providing immediate and complete access to all necessary documents, information, and personnel;
- Granting interviews with PLCB personnel in a timely manner;
- Entering into the contract at issue following an open and competitive process; and
- Recognizing potential conflicts of interest and seeking to address them in a timely and appropriate manner consistent with applicable laws and policies.

Our examination found the following:

- PLCB's management controls, procurement policy, and operating procedures need to be improved; and
- PLCB properly dealt with potential conflicts of interest when they arose. However, we cannot conclude with certainty that a PLCB employee did not provide an unsuccessful offeror with confidential information that could have assisted that vendor in preparing its proposal. Such action would have violated the PLCB Code of Conduct and statutes dealing with conflicts of interest.

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This report includes eight recommendations to address these findings. In addition, we present here an overall conclusion drawn from all of the findings and recommendations:

- In awarding a contract to the spouse of a PLCB regional manager, the PLCB should have anticipated the significant and reasonable public questioning that would result over a potential conflict of interest, regardless of whether that conflict was an actual conflict or the appearance of a conflict. The PLCB was capable of evaluating this matter against available criteria, including law and policies, based on its questioning and its having caught and addressed other potential conflicts of interest. Furthermore, the PLCB could see numerous other red flags, such as the large disparities in the cost proposals received from prospective vendors. Overall, the PLCB should have seriously reconsidered its decision to award this contract in the first place or at least appropriately exercised its discretion to reject all proposals received and issue a new and more detailed Request for Proposals if the requested services were truly needed.

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**Introduction  
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Background**

This report by the Department of the Auditor General presents the results of our examination of Pennsylvania Liquor Control Board's procurement process in awarding the Retail Staff Professional Development Program contract (Contract No. 20081103). We undertook this engagement at the request of the Chairman of the PLCB. Concerns were raised about the new program from various parties, after allegations surfaced regarding potential conflicts of interest in the awarding of the contract and the perception that a lack of transparency exists in the PLCB's procurement process.

**Pennsylvania Liquor Control Board**

The Pennsylvania General Assembly officially organized the PLCB on December 1, 1933, following the repeal of National Prohibition in the United States and four days before the sale of liquor became legal in Pennsylvania. The PLCB was created as a self-supporting entity that does not rely on taxpayer dollars for its funding source. The Pennsylvania Liquor Code (Act 21 of 1951, as amended, 47 P.S. § 1-101 *et seq.*) serves as the legal foundation for the operations of the PLCB. The PLCB is comprised of three members, serving staggered four-year terms; one member serves as chair and presides over all meetings of the board. All members are appointed by the Governor and must be confirmed by a two-thirds vote in the state Senate, with no more than two board members being from the same political party as the Governor. Members are required to establish and adopt rules regulating Pennsylvania's beverage-alcohol industry for the efficient administration of the Pennsylvania Liquor Code. The Pennsylvania State Police's Bureau of Liquor Control Enforcement is responsible for the enforcement of the Pennsylvania Liquor Code, an undertaking that is funded in full by the PLCB out of its operational revenues.

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Businesses in Pennsylvania involved in the handling of beverage alcohol must be licensed by the PLCB. While the PLCB does impose a transfer fee on licenses, it does not regulate the prices of liquor licenses. The PLCB allows the marketplace to govern such prices. It issues, renews, or validates approximately 21,000 different types of licenses annually, including licenses for restaurants, taverns, clubs, hotels, as well as distributors and import distributors of malt and brewed beverages.

The purchase of wine and spirits for home consumption may be made only through one of the Pennsylvania Liquor Control Board's Wine & Spirits Stores. The PLCB operates 620 Wine & Spirits Stores throughout the Commonwealth and outsources warehousing services to three distribution centers in Pennsylvania. It also employs approximately 4,000 employees either full- or part-time. As part of its duties, the PLCB fixes the retail and wholesale prices at which wine and spirits are sold in its aforementioned stores. During the 2007-08 fiscal year, PLCB Wine & Spirits Stores had sales totaling more than \$1.7 billion.

**Procurement Process**

The Commonwealth Procurement Code (Act 57 of 1998, as amended, 62 Pa. C.S. § 101 *et seq.*) and the Department of General Services' (DGS) Procurement Handbook (handbook) establish the procurement process to be followed by most Commonwealth agencies, including the PLCB. Before procuring services through a Request for Proposals (RFP) process, agencies should first determine that there is a need for contractual services. This determination should include consideration of the purchasing agency's in-house capability to perform the services and an assessment which finds this capability to be inadequate or unavailable because of higher priorities.



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The handbook requires that agencies are to appoint a committee that prepares the RFP. The RFP is forwarded to the Department of General Services' Bureau of Minority and Women Business Opportunities (BMWBO), which assigns the weight for Disadvantaged Business (DB) participation. Once required approvals of the RFP are obtained, the RFP is advertised and proposals are solicited. The handbook states that normally no fewer than 30 days should be allowed for submission of proposals. During this period, the agency may hold a pre-proposal conference with prospective offerors. The purpose of the pre-proposal conference is to explain the background of the RFP, emphasize portions of the RFP considered especially important, answer any written questions previously submitted by potential offerors, and provide potential offerors with an opportunity to ask additional questions.

An evaluation committee is then appointed by the agency contracting for the goods or services. The handbook states that the evaluation committee should be composed of a minimum of three (five or seven recommended) Commonwealth employees who possess technical and managerial expertise in the appropriate field. As appropriate, individuals from other agencies of the Commonwealth may be given the opportunity to participate as voting or non-voting members on all committees. The comptroller of the soliciting agency must be invited to participate as a non-voting member. Once appointed to the committee, no member may meet or discuss the RFP or related matters with offerors or other committee members, except in formal, scheduled meetings of the committee or as the issuing office may direct and arrange. The evaluation committee establishes maximum point values for each major evaluation criterion prior to opening the proposals.

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Once the proposals are received, any proposals received after the time and date established for receipt of proposals or proposals not complying with mandatory requirements established in the RFP are rejected. For those proposals which meet mandatory requirements, the technical submittals are evaluated by the evaluation committee. The portion of the proposal related to DB participation is forwarded to BMWBO for review, which assigns a rating. The evaluation committee may ask the issuing office to seek clarification from the offeror to assure full understanding of, and responsiveness to, the RFP.

The evaluation committee scores and ranks the responsive technical submittals based on criteria listed in the RFP. To ensure that each voting member of the evaluation committee applies reasonably consistent judgment to each proposal with respect to all other proposals and voting members of the evaluation committee, all evaluators must use the uniform evaluation score sheet prepared by the issuing office.

The cost submittals are opened, evaluated, and scored. The issuing office may then conduct discussions and negotiations with these offerors for purpose of clarification and of obtaining best and final offers. In order for proposals to be considered for selection for best and final offers or contract negotiations, the technical submittal of the proposals must be greater than or equal to 70 percent of the highest scoring technical submittal.

After best and final offer negotiations are complete, the final scores are determined for the technical, cost, and DB participation. Based on this final evaluation, the agency selects for contract negotiation an offeror whose proposal is determined to be the most advantageous to the agency, taking into consideration price and all evaluation factors. After determining the offeror to be responsible, in accordance with Management Directive 215.9 ("Contractor Responsibility Program"), a written contractor selection recommendation is prepared and forwarded to the responsible agency management for approval.

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The agency notifies the selected and non-selected offerors. Non-selected offerors are debriefed on why their proposals were unsuccessful.

An RFP may be cancelled, or any or all proposals may be rejected, at any time before a contract is fully executed when it is determined to be in the best interests of the Commonwealth.

**Contract Selection**

The Pennsylvania Liquor Control Board's Procurement Division, within the Bureau of Support Services, coordinates the procurement of all commodities and services required to operate the agency's offices, stores, and distribution centers. The PLCB's Chief Counsel stated that the agency utilizes the Department of General Services' Procurement Handbook when procuring goods and services.

In May 2008, the PLCB publicly announced a new initiative to enhance the shopping experience of its customers at its Wine & Spirits Stores. As part of the new initiative, the PLCB intended to provide additional training for its retail store staff. In November 2008, the PLCB issued a Request for Proposals (RFP) to solicit proposals for a contract that would provide professional development training for its retail store employees. Specifically, according to the RFP, the program was intended to provide the following outcomes for PLCB store employees:

1. Improve basic customer service skills, such as greeting customers appropriately, servicing customers, and completing sales with professionalism and courtesy.

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2. Promote a positive atmosphere and attitude towards customer service in the PLCB stores; one in which providing excellent, knowledgeable customer service is celebrated and encouraged.
3. Improve sales skills, including the ability to translate product knowledge into relevant and effective conversations with customers that result in increased sales and increased satisfaction among customers.
4. Improve complaint-resolution skills and techniques for managing difficult customers, including the ability to direct these experiences into the most positive outcomes possible.
5. Improve internal communication between PLCB headquarters, managers, and all store employees.
6. Increase the willingness to manage and embrace organizational change, especially change that has a direct impact on PLCB store operations.
7. Encourage engagement with the PLCB current agency-wide initiatives, instilling a desire and ability to support these initiatives in interaction with customers and in merchandising techniques.

The PLCB received five proposals in response to the RFP. After an evaluation committee scored the technical proposals, three of the five proposals had technical scores greater than or equal to 70 percent of the highest scoring technical submittal and, therefore, had cost submittals reviewed. The final cost for these three proposals after the best and final offers were:

- Solutions 21, Inc. - \$173,820
- Alutiiq Business Services, LLC - \$453,522
- Achieve Global, Inc. - \$1,212,175

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The evaluation committee, after reviewing separately the technical and cost submissions of each proposal, selected the winning proposal. Solutions 21, Inc., the winning offeror, is a national organization and strategic consulting firm that provides business solutions to various entities. The company has offices in Pittsburgh, Pennsylvania, and Phoenix, Arizona.

Effective January 29, 2009, Contract No. 20081103 required Solutions 21 to develop, describe, and provide a detailed plan to implement a comprehensive professional development program for PLCB retail staff. Solutions 21 would deliver such services, through classroom instruction, to approximately 670 regional, district, and general managers by February 2009. In addition, the company would ensure that managerial staff was able to accurately duplicate this training for the 3,250 full-time and part-time store employees by monitoring the effectiveness of the training program for the contract period of one year. Solutions 21 would provide all content, materials, and support for the contractor-trained PLCB managers to facilitate the training for store employees. All content for trainings and facilitations was to be customized to address situations that apply specifically to the PLCB. The company was to provide all content to the PLCB for approval at least two weeks prior to such materials being used or disseminated.

**Laws and Policies that Prohibit Activities by Commonwealth  
and/or PLCB employees**

The following laws and policies disallow: (1) employees/board members or a member of their immediate family benefiting financially from certain Commonwealth contracts, (2) employees/board members participating in the negotiation of or decision to award contracts with or for any entity in which he or she has an interest, (3) employees/board members representing a private interest in any transaction with the Commonwealth that could reasonably result in a conflict between a private interest of the official or employee and his/her official state responsibility, and (4) employees/board members using for

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personal gain or for the gain of others any information obtained as a result of service or employment with the board.<sup>1</sup>

Section 2-210 of the Liquor Code, "Restrictions on Members of the Board and Certain Employes of Commonwealth,"<sup>2</sup> states, in relevant part:

(a) A member or employe of the board or enforcement bureau, or a member of the immediate family of a member or employe of the board or enforcement bureau shall not be directly or indirectly interested or engaged in any other business or undertaking within the Commonwealth dealing in liquor, alcohol, or malt or brewed beverages, whether as owner, part owner, partner, member of syndicate, holder of stock exceeding five percent (5%) of the equity at fair market value of the business, independent contractor or manager of a licensed establishment required under 40 Pa. Code § 5.23 (relating to appointment of managers), and whether for his own benefit or in a fiduciary capacity for some other person. For the purpose of this subsection only, "employe of the board or Enforcement Bureau" shall mean any individual employed by the board or Enforcement Bureau who is responsible for taking or recommending official action of a nonministerial nature with regard to:

- (1) contracting or procurement;
- (2) administering or monitoring grants or subsidies;
- (3) planning or zoning;
- (4) inspecting, licensing, regulating or auditing any person; or
- (5) any other activity where the official action has an economic impact of greater than a de minimis nature on the interests of any person.

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<sup>1</sup> These concepts are also included in the Chapter 23 of the Commonwealth Procurement Code, 62 Pa. C.S. § 2301 et seq.

<sup>2</sup> 47 P.S. § 2-210.

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(g) No former member or employe of the board or enforcement bureau may represent a person, with or without compensation, on any matter before the board or enforcement bureau for one year after leaving the board or enforcement bureau.

Section 1103 of The Public Official and Employee Ethics Act ("Ethics Act"), "Restricted Activities,"<sup>3</sup> states, in relevant part:

(a) No public official or public employee shall engage in conduct that constitutes a conflict of interest.<sup>4</sup>

\* \* \*

(f) No public official or public employee or his spouse or child or any business in which the person or his spouse or child is associated shall enter into any contract valued at \$500 or more with the governmental body with which the public official or public employee is associated or any subcontract valued at \$500 or more with any person who has been awarded a contract with the governmental body with which the public official or public employee is associated, unless the contract has been awarded through an open and public process, including prior public notice and subsequent public disclosure of all proposals considered and contracts awarded. In such a case, a public official or public employee shall not have any supervisory or overall responsibility for the implementation or administration of the contract. Any contract or subcontract made in violation of this subsection shall be voidable by a court of competent jurisdiction if the suit is

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<sup>3</sup> 65 Pa. C.S.A. § 1103.

<sup>4</sup> A "conflict of interest" is defined as: Use by a public official or public employee of the authority of his office or employment or any confidential information received through his holding public office or employment for the private pecuniary benefit of himself, a member of his immediate family, or a business with which he or a member of his immediate family is associated. "Conflict" or "conflict of interest" does not include an action having a de minimis economic impact or which affects to the same degree a class consisting of the general public or a subclass of an industry, occupation, or other group which includes the public official or public employee, a member of his immediate family, or a business with which he or a member of his immediate family is associated. 65 Pa. C.S. § 1102.

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commenced within 90 days of the making of the contract or subcontract.

(g) No former public official or public employee shall represent a person, with promised or actual compensation, on any matter before the governmental body with which he has been associated for one year after he leaves that body.

The State Adverse Interest Act<sup>5</sup> provides, in relevant part:

"Have an Adverse Interest" - Be the party to a contract, as herein defined, other than the Commonwealth or a State agency or be a stockholder, partner, member, agent, representative or employe of such party. (§ 776.2(4))

No State employe shall influence, or attempt to influence, the making of or supervise or in any manner deal with any contract in which he has an adverse interest. (§ 776.4)

No State employe shall have an adverse interest in any contract with the State agency by which he is employed. (§ 776.5)

The Pennsylvania Liquor Control Board's Official Code of Conduct<sup>6</sup> states, in relevant part:

B. No member or employee of the Board shall:

1. Solicit or receive, even if for another, and whether directly or indirectly, any gift, gratuity, favor, entertainment, loan, or any other thing of economic or monetary value from any person who:

I. Is seeking to obtain business from or has financial relations with the Board;

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<sup>5</sup> 71 P.S. § 776.1 *et seq.*

<sup>6</sup> Part 1 of the Pennsylvania Liquor Control Board Official Code of Conduct, adopted April 27, 1988, revised January 2004.



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2. Use for personal gain or for the gain of others any information obtained as a result of service or employment with the Board, and not available to the public at large, or divulge such information in advance of the time prescribed for its authorized release.

\* \* \*

4. Engage in or accept private employment or render services for a private interest unless such employment or service is approved in advance by the Director of Human Resource Management. Supplementary employment may be undertaken only when not in conflict with the conditions of employment, regulations, or the Code of Conduct adopted by the Board, and, if applicable, the Civil Service Commission.

*Finding One*

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**Finding One**

**The Pennsylvania Liquor Control Board's management controls, procurement policy, and operating procedures need to be improved.**

To improve the shopping experience for its retail customers in its Pennsylvania wine and spirits stores, the Pennsylvania Liquor Control Board developed a Request for Proposals for a vendor to create a retail staff professional development program encompassing basic customer service skills, creating a positive atmosphere, sales skills, complaint resolution, internal communications, and change management. The PLCB received five proposals. Of the five, three had high enough technical scores to qualify for a review of costs. The final costs for these three proposals after the best and final offers ranged from \$173,820 to \$1,212,175. PLCB management, through an evaluation committee, selected the offeror with the highest total points, which was also the lowest offeror, Solutions 21, to perform these services. Contract No. 20081103 was executed on January 29, 2009.

In order to determine whether the contract was let in accordance with the Commonwealth Procurement Code, Procurement Handbook, and other applicable PLCB policy and procedures, we conducted interviews with PLCB management and reviewed the RFP, contract, proposals, evaluation committee scoring sheets, management e-mails, and other related contract and procurement documentation. We found that PLCB lacked adequate management controls, as well as a written procurement policy and operating procedures. Additionally, with respect to Contract No. 20081103, we found the following deficiencies: lack of documentation establishing the need to contract, weaknesses with regard to the proposal evaluation committee, and weaknesses in the RFP process:

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**Lack of Documentation Establishing the Need to Contract.**

The need for retail staff professional development training was identified by the PLCB through a customer survey conducted by Management Science Associates, Inc. (MSA) in October 2007 and through customer comments received through the PLCB website and comment cards. One of MSA's conclusions was that "continued personnel training efforts are clearly warranted." Additionally, PLCB received 857 comments during the 2008 calendar year. Of those, 305 (36 percent) were negative complaints about customer service.

Although PLCB management indicated that some consideration was given as to whether this retail staff training could have been conducted in-house, no detailed analysis was documented. PLCB's Chief Executive Officer (CEO) explained that it was a quick decision discussed generically at meetings involving the board and the executive committee. According to the handbook, Part 1, Chapter 4, Section A.3., a contract may be used once the "purchasing or using agency in-house capability was considered and assessed and found to be inadequate or unavailable because of higher priorities."

The Director of Administration stated that PLCB could not use in-house employees for the training because its trainers did not have the proper skills and PLCB as a whole was not using the best practices in the training industry. According to management, the goal was for PLCB to adopt the practices of an expert training organization to serve as a foundation for the future. The Director of Marketing also felt that PLCB training managers did not possess the skill sets required for this type of training.

Furthermore, the Director of Human Resource Management and the CEO both emphasized that PLCB did not have the staffing resources to perform the training. According to the Director of Human Resource Management, during this time period, the five trainers within PLCB were either dedicated to a special project or involved with other personnel trainings.

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Based on the lack of documentation, we were unable to corroborate the above testimonial evidence and consequently determine if a lack of in-house capability existed.

Although PLCB management indicated that in-house consideration was discussed, no documentation was available to confirm this comment. Furthermore, failing to perform and document a comprehensive cost analysis on whether a service should be performed in-house or by a contractor may result in the agency spending an excessive amount for the services provided. Additionally, significant cost savings may be achieved by utilizing in-house staff rather than contracting for services, or by using the outside vendor to train only the internal five-member training staff, who can then train their colleagues within the agency.

**Weaknesses with Regard to the Proposal Evaluation Committee.** The purpose of the proposal evaluation committee is to systematically select and recommend a vendor that will best achieve the intended need at the lowest price. According to the handbook, Part 1, Chapter 6, Section B.3.a.:

the evaluation committee should be composed of a minimum of three (five or seven is recommended) Commonwealth employees who possess technical and managerial expertise in the appropriate field. As appropriate, individuals from other agencies of the Commonwealth may be given the opportunity to participate as voting or non-voting members on all committees. An agency is required to invite its comptroller to participate as a non-voting member. Once appointed to the committee, no committee member, whether voting or non-voting, may meet or discuss the RFP or related matters with offerors or other committee members except in formal, scheduled meetings of the committee or as the issuing office may direct and arrange.

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As a result of our examination, we found the following deficiencies:

- **PLCB had no formal methodology for selecting the committee members, including documenting each member's qualifications and determining whether conflicts of interest exist.** Based on interviews, the PLCB executive committee, which is composed of the CEO, Comptroller, high-level directors, Special Counsel to the board, and Chief Counsel selected the six voting proposal evaluation committee members (four of whom were executive committee members) at a meeting. The Chief Counsel then confirmed these individuals through e-mail communications. According to PLCB's Director of Administration, the evaluation committee members were selected based on the known experiences and expertise of the individuals. However, no written justification existed as to why these individuals were selected. Furthermore, the decision to select four executive committee members as proposal evaluation committee members may have led to a lack of independence given that the executive committee participated in the decision to contract these services. PLCB's Director of Administration also stated that the members of the evaluation committee signed confidentiality statements, but are not required to sign a statement confirming that they are unbiased towards any offerors. However, he stated that, if a member was biased in any way, he or she would bring forth that issue.

By not documenting why each evaluation committee member was selected, including their past experiences and expertise, and not requiring the evaluation committee members to sign a statement of impartiality, there exists potential for improprieties. Within the procurement file, no written evidence exists that the evaluation committee members possessed adequate technical and managerial expertise in the customer service or training fields; however, based on interviews with the proposal evaluation committee members, it appears that they possessed the necessary expertise.

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- **No written instructions and limited verbal instructions were provided to the evaluation committee members on how to complete the detailed scoring sheets, even though three of the six members had never been voting members on an evaluation committee in the past.** Based on interviews with evaluation committee members, we confirmed that no written instructions were provided, but we received contradictory information as to the extent of the verbal instructions. For example, the CEO, a first-time evaluator, stated that he did not receive any instructions on how to score the proposals; in contrast, the Director of Human Resource Management stated that she was told to complete the comments section of the detailed scoring sheets in order to remember the reasons behind the scores for the debriefing conference. Furthermore, based on our review of the detailed scoring sheets, we found that the sheets were not filled out consistently. For instance, of the 30 detailed scoring sheets provided, 10 were missing signatures of the evaluators and 15 were missing dates. Additionally, 46 percent of the scores did not contain a comment by the evaluators as to the reason for the original score.

According to the Director of Administration, instructions on how to complete the detailed scoring sheets were not necessary because the scoring sheets are self-explanatory. However, without documented and consistent instructions to each of the evaluation committee members, there is no assurance that the evaluation committee members understood the scoring process and scored the proposals in a consistent and unbiased manner.

- **Discussions at evaluation committee meetings were not documented.** According to the Chief Procurement Officer, legal counsel takes notes for its own use, but no formal minutes are documented or retained. Without formal documentation, discussions and decisions at evaluation committee meetings cannot be evaluated for appropriateness by external parties.

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**Weaknesses in the RFP Process.** With respect to the RFP process for Contract No. 20081103, we noted the following weaknesses - insufficient detail within the RFP work statement, lack of a pre-proposal conference, inadequate time requirements provided to prospective vendors to submit proposals, and inadequate documentation of the RFP review process:

- **The RFP work statement was not sufficiently detailed to allow prospective vendors to fully understand the content of the customer service training that was needed by the PLCB.** According to the handbook, Part 1, Chapter 6, Section B.4.d.4.:

this part is the most important portion of the RFP. Generally, the more precise and complete this part of the RFP is, the greater the probability of receiving proposals that meet the needs of the issuing office. Part IV should provide a detailed description of the needed materials, services, or construction. The Work Statement may include the objectives to be achieved; parameters of measurement; reporting requirements; and segmentation of the work into specific tasks.

With respect to Contract No. 20081103, the Director of Marketing stated that he believed that the winning offeror's cost was significantly lower than the other offerors because the winning offeror did not understand the RFP. The CEO explained that the RFP was purposely written to be generic because PLCB wanted "off-the-shelf" retail training.

Additionally, the Director of Administration stated that the RFP was drafted to receive basic retail training, which is not a complex area. However, he too was concerned as to whether the winning offeror understood what PLCB wanted from a training program. In response to these concerns, PLCB requested a "best and final offer" from the offerors. The winning offeror did not change its proposal with regard to cost. Subsequently, the Director of Administration called the owner of the winning offeror to verify that the vendor

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fully understood what was required, that it could perform the tasks for the proposed cost, and that no change orders would be allowed during the term of the contract.

However, by receiving insufficient detail in the RFP work statement, the vendors may not fully understand what is needed by the agency. Consequently, the vendor may submit a cost proposal that is too low or too high for the project. A high cost proposal could result in the agency paying too much for the services. A low cost proposal could result in receiving a poor quality service.

- **PLCB management chose not to conduct a pre-proposal conference.** The Director of Administration stated that the executive committee collectively decided not to conduct a pre-proposal conference. The Chief Counsel confirmed this decision by informing the Chief Procurement Officer by e-mail that a pre-proposal conference was not necessary. This decision and the justification for the decision were not adequately documented. In lieu of a pre-proposal conference, PLCB accepted questions from prospective offerors in written format and posted on PLCB's website answers to these questions as three addendums to the RFP.

According to the handbook, Part 1, Chapter 6, Section B.7.a., choosing to conduct a pre-proposal conference provides the issuing office the opportunity to "explain the background of the RFP to offerors who intend to submit a proposal; emphasize portions of the RFP considered especially important; answer any written questions previously submitted by the potential offerors; and provide potential offerors with an opportunity to ask additional questions, in writing, on forms provided during the pre-proposal conference."



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The Director of Administration explained that the reason for not having a pre-proposal conference was due to the fact that the board wanted the contract in place by January 2009 and needed to move quickly because time was limited. However, he stressed that nothing was lost by not having a pre-proposal conference. Additionally, the Director of Marketing indicated that a pre-proposal conference was not necessary because the board sought a packaged retail customer service training. He also added that there is little difference between a pre-proposal conference and the question and answer format that was used.

We disagree with the assertion that a pre-proposal conference would not have been beneficial. It offers potential vendors additional information for the RFP including background information and an emphasis on the important issues. It also provides an open forum for vendors to ask additional questions. Without this opportunity for vendors to come together and receive clarification of the RFP, the vendors could potentially misunderstand what is needed from the agency. Such misunderstandings could result in future conflicts or changes in the contract and may explain the disparity in the offerors' cost proposals.

- **Inadequate Time Requirements Provided To Vendors to Submit Proposals.** According to the handbook, Part 1, Chapter 6, Section B.5., "the Issuing Office must provide potential offerors with sufficient time to prepare their proposals. Normally, no fewer than 30 calendar days should be allowed for submission of proposals." However, due to time restraints, the Chief Counsel informed the Chief Procurement Officer the time for the vendors' responses to the RFP should be shortened to 21 days. The justification for this decision was not formally documented within the contract procurement file.

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Although the original RFP gave vendors 21 days to respond, the RFP was amended and vendors were allotted an additional three days to submit their proposals. Therefore, the vendors were provided a total of 24 days to respond to the final amended RFP, instead of 30 days as suggested in the handbook.

By restricting the amount of time a prospective offeror has to prepare its proposal, an agency limits the amount of time the vendor has to read and understand the RFP as well as prepare an adequate proposal to address all the tasks within it. Again, this may explain the large variances in the cost proposals.

- **According to the Chief Procurement Officer, the only documented approval needed for the final draft of the RFP is from the PLCB's Chief Counsel, which was obtained by the Chief Procurement Officer through an e-mail from the PLCB Chief Counsel.** PLCB does not have written policies and procedures for the RFP review and approval process.

Before issuance, the RFP was sent to ten individuals within PLCB, including the voting evaluation committee members, comptroller, and legal staff, including Chief Counsel, Executive Deputy Chief Counsel, Assistant Counsel, and Special Counsel to PLCB, for review. Through e-mail communications, some of these individuals suggested changes to the RFP or informally stated that they approved the draft. However, there was no formal documentation verifying that the final version of the RFP was approved for issuance by these individuals, other than a single e-mail from the Chief Counsel.

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PLCB must ensure that adequate controls, including a multi-level RFP review and approval process, are in place to ensure the quality and accuracy of the RFP before being issued to the public. Without these controls in place, inadequate or inaccurate information could be released to the public, resulting in vendors misunderstanding the needs of the agency.

**Recommendations:** We recommend that PLCB improve its management controls, procurement policy, and operating procedures as follows:

1. Develop written policies and procedures for areas of the procurement process not adequately addressed within the Procurement Handbook. These areas would include the following:
  - Document the initial need for the project;
  - Perform and document a detailed analysis as to whether a project should be completed in-house or whether the project should be completed by a contractor. This analysis should include determining the resources needed for the agency to perform the project in-house, including the hiring of expert staff;
  - Document a comprehensive RFP preparation, review, and approval methodology, including the approval of all reviewers of the RFP within the contract procurement file; and
  - Document a formal methodology for selecting committee members;
2. Conduct a pre-proposal conference for every RFP issued, or formally document the justification as to why a pre-proposal conference is not necessary;

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3. Adhere to the suggested 30-day minimum time period between the issuance of the RFP and the due date for the vendor proposals as suggested by the Procurement Handbook, or formally document the justification as to why the time period was adjusted;
  4. Provide written instructions for completing the detailed scoring sheets to the evaluation committee members, including requirements such as signing and dating the scoring sheets, writing comments, and documenting score adjustments; and
  5. Formally document all evaluation committee meetings and all decisions made by the executive committee and legal counsel within the contract procurement file.

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**The Pennsylvania Liquor Control Board properly dealt with potential conflicts of interest when they arose. However, we cannot conclude with certainty that a PLCB employee (an Alcohol Education Specialist) did not provide an unsuccessful offeror with confidential information that could have assisted that vendor in preparing its proposal. Such action would have violated the PLCB Code of Conduct and statutes dealing with conflicts of interest.**

The laws and policies that prohibit activities by PLCB employees disallow: (1) employees/board members or a member of their immediate family from benefiting financially from certain Commonwealth contracts, (2) employees/board members participating in the negotiation of or decision to award contracts with or for any entity in which he or she has an interest, (3) employees/ board members representing a private interest in any transaction with the Commonwealth that could reasonably result in a conflict between a private interest of the official or employee and his/her official state responsibility, and (4) employees/board members from using for personal gain or for the gain of others any information obtained as a result of service or employment with the board.<sup>7</sup>

Discussed below are three instances of potential conflicts of interest that arose during the RFP process. Each time, the PLCB sought legal counsel on how to proceed and took appropriate measures to address the issues.

The fourth issue addressed involves the appearance of favoritism shown toward particular vendors during the technical evaluation. However, the outcome of the technical review was not affected by these changes.

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<sup>7</sup> See discussion in the Introduction and Background section of this report.

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**1. The owner of Solutions 21, the winning offeror, is married to the Western Regional Director for the PLCB.**

At the first meeting of the evaluation committee on December 15, 2008, the Director of Administration informed the committee that the Western Regional Director was the wife of the owner of Solutions 21. A PLCB attorney was assigned to research the issue to determine whether a company that has a spouse working for the PLCB may be a contractor for the PLCB. To accomplish this task, the attorney reviewed the pertinent sections of the Code of Conduct and related policies, ran a computer search of Solutions 21 on the Department of State's website, and contacted DGS' legal office for advice. The DGS counsel in charge of procurement matters informally advised the PLCB attorney that, as long as the Western Regional Director was not involved in the evaluation committee and did not supervise any of the employees involved in the contract, there did not appear to be a problem. The PLCB attorney reported these facts to the PLCB Chief Counsel, and she decided to proceed with the selection process.

The advice of DGS legal counsel is consistent with The Public Official and Employee Ethics Act (Ethics Act):

No public official or public employee or his spouse or child or any business in which the person or his spouse or child is associated shall enter into any contract valued at \$500 or more with the governmental body with which the public official or public employee is associated or any subcontract valued at \$500 or more with any person who has been awarded a contract with the governmental body with which the public official or public employee is associated, unless the contract has been awarded through an open and public process, including prior public notice and subsequent public disclosure of all proposals considered and contracts awarded. In such a case, a public official or public employee shall not have any supervisory or overall responsibility for the implementation or administration of the contract. Any contract or subcontract made in violation of this subsection shall be voidable by a court of competent

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jurisdiction if the suit is commenced within 90 days of the making of the contract or subcontract.<sup>8</sup>

*Based on the testing performed, there is no evidence that the Western Regional Director violated any provisions governing Commonwealth employees and conflicts of interest. However, our ability to determine the substance of communications between a married couple is obviously limited.*

The Ethics Act states: “No public official or public employee shall engage in conduct that constitutes a conflict of interest.”<sup>9</sup> A conflict of interest is defined as: “Use by a public official or public employee of the authority of his office or employment or any confidential information received through his holding public office or employment for the private pecuniary benefit of himself, a member of his immediate family or a business with which he or a member of his immediate family is associated.”<sup>10</sup>

Although Solutions 21 is “a business with which [s]he or a member of [her] immediate family is associated” by virtue of the fact that her husband is the owner of the business, for a violation of the Ethics Act to occur, it must also be proven that she used the authority of her employment or confidential information received through her employment to confer a pecuniary benefit upon said business.

We found no evidence that the Western Regional Director, a public employee, used the authority of her employment or confidential information received through her employment for the private pecuniary benefit of herself, her husband, or her husband’s business.

The Western Regional Director stated in her interview that her husband had established his company (Solutions 21) prior to their marriage, her husband was the owner of the company, and she was not an officer, director, shareholder or employee of her

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<sup>8</sup> 65 Pa. C.S. § 1103(f).

<sup>9</sup> 65 P.S. § 1103(a).

<sup>10</sup> 65 P.S. § 1102 (“Conflict of interest” definition).

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husband's company. She also stated that she was aware that her husband's company was going to submit a proposal in response to the RFP, but that they agreed not to discuss it. We found no evidence to contradict her statement.

According to PLCB's CEO, the Western Regional Director would have been aware of a training need and have some basic knowledge of the PLCB moving toward a training commitment, but would not have had specific knowledge of the RFP and related information. For example, the Western Regional Director would have received an e-mail message sent on September 16, 2008, to all PLCB employees soliciting individuals interested in participating in the "train-the-trainer" program.

We reviewed numerous e-mails written and/or received by individuals involved with the RFP and contracting process and we found no documentary evidence that the Western Regional Director discussed or received inside information regarding the RFP. Personal contact between the Western Regional Director and these individuals would be limited based on the geographical distance between them. The Western Regional Director works in the PLCB's Western Region and the RFP/contracting was done in Harrisburg (Central Pennsylvania).

Our review of Solutions 21's corporate documents and the Western Regional Director's *Statements of Financial Interest* and her *Supplemental Statements of Financial Interest* found no evidence contradicting the Western Regional Director's statements that she does not have a financial interest, as defined by the Ethics Act,<sup>11</sup> in her husband's business.

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<sup>11</sup> The Ethics Act defines "Financial interest" as: "Any financial interest in a legal entity engaged in business for profit which comprises more than 5% of the equity of the business or more than 5% of the assets of the economic interest in the indebtedness." 65 Pa. C.S. § 1102.



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These facts are germane to not only the Ethics Act but also to the State Adverse Interest Act, which provides: "No State employe shall have an adverse interest in any contract with the State agency by which he is employed."<sup>12</sup> The phrase "have an adverse interest" is further defined as: "Be the party to a contract . . . or be a stockholder, partner, member, agent, representative or employe of such party."<sup>13</sup> Because we found no evidence that she had any financial interest in, or was employed by or an agent of, her husband's business, we find no violation of the State Adverse Interest Act either.

**2. Alutiiq Business Services, LLC ("Alutiiq"), which was ultimately unsuccessful in securing the contract at issue, submitted a proposal listing a current PLCB employee as the on-site staff person required under the contract.**

This employee (not the Western Regional Director) has been employed at PLCB as an Alcohol Education Specialist since February 2002, and is based in Centre County.

Per DGS' handbook, after proposals are opened, the proposals are to be reviewed for responsiveness. During the review of Alutiiq's proposal, it was discovered that a PLCB employee was listed as the required on-site staff person under the contract.

Within hours of the opening of the proposal, the PLCB's Chief Counsel became aware that a PLCB employee was listed in one of the proposals as the on-site person and recommended that, due to the potential violation of the PLCB Code of Conduct,<sup>14</sup> the Liquor Code (§ 2-210(g)), and the Ethics Act (§ 1103(g)), Alutiiq must replace the PLCB employee with another individual.

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<sup>12</sup> 71 P.S. § 776.5. Statutes that are *in pari materia*, (i.e., relate to the same subject) such as the Ethics Act and the State Adverse Interest Act, should be construed together, if possible, as one statute. Section 1932(b) of the Statutory Construction Act, 1 Pa. C.S. § 1932(b).

<sup>13</sup> 71 P.S. § 776.2(4).

<sup>14</sup> The Chief Counsel did not indicate specific sections of the Code of Conduct. However, we included pertinent sections in the background sections of this report. We would add that the situation is also a potential violation of the State Adverse Interest Act and Chapter 23 of the Commonwealth Procurement Code.

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The Chief Procurement Officer informed Alutiiq that the Alcohol Education Specialist was not eligible to work on the contract and requested that Alutiiq replace her. Within 24 hours, the PLCB employee had been replaced. Thus, the scoring of the proposals occurred after the PLCB employee had been replaced.

According to the Director of Human Resource Management, the employee was counseled on this situation, which is the first level of discipline at the PLCB. However, the Alcohol Education Specialist contradicted this statement by saying that there was no discussion with her by anyone other than her direct supervisor, who merely informed her that her resume had been submitted with Alutiiq's proposal.

*We cannot conclude with certainty that this PLCB employee did not provide the vendor with confidential information that could have assisted the vendor in preparing its proposal. Such action would have violated the PLCB Code of Conduct provision prohibiting "Use for personal gain or for the gain of others any information obtained as a result of service or employment with the Board. . . or divulge such information in advance" and the Ethics Act conflict of interest provision prohibiting the "Use by a public official or public employee of the authority of his office or employment or any confidential information received through his holding public office or employment for the private pecuniary benefit of himself, a member of his immediate family or a business with which he or a member of his immediate family is associated."*

The Alcohol Education Specialist was unable to provide specific information about how she became involved with Alutiiq. She believes that, three or four years ago, an acquaintance told her that there was a firm (Alutiiq) which was "looking to do some work in Pennsylvania." She stated that this acquaintance told her Alutiiq might be interested in having her involved in its projects, and that the jobs would involve some travel and working around the state. The Alcohol Education Specialist apparently told this acquaintance that she would be interested, but would need to work outside of Pennsylvania as

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she was employed by the PLCB. The Alcohol Education Specialist stated that she submitted a resume to Alutiiq at this time.

The Alcohol Education Specialist stated that she received either an e-mail or telephone call from her acquaintance asking her if she would be interested in participating in an upcoming proposal. The Alcohol Education Specialist was not initially informed that the proposal would be submitted to the PLCB. In subsequent conversations, she did become aware that the proposal would be submitted to PLCB, but did not recuse herself upon learning that the proposal was being sent to her current employer or ask that her resume/information not be used. However, she knew that the information from her resume was going to be used in the proposal to represent the on-site person's qualification.

Regarding the dates of any e-mails or phone calls involving this matter, the Alcohol Education Specialist stated that there are no records, and she could not recall with any specificity when she was contacted. When asked to review her e-mails relating to the RFP and Alutiiq, she stated that all correspondence occurred on her home computer and that she no longer has access to the e-mail because her computer recently suffered a complete loss of all data and e-mails.

We reviewed numerous e-mails written and/or received by individuals involved with the RFP and contracting process and found no e-mails sent to or received by the Alcohol Education Specialist.

She stated that she provided her resume and discussed salary and job security, but no other information that would assist the vendor in its preparation of the RFP.

Based upon the foregoing, we cannot conclude with certainty that the Alcohol Education Specialist did not violate the Code of Conduct or the Ethics Act.

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**3. A third (ultimately unsuccessful), cost proposal was unsealed before the cost analysis was conducted.**

According to the Chief Procurement Officer, Chief Counsel, and the Assistant Counsel, the cost proposal for a vendor (not Solutions 21 or Alutiiq) either (1) was opened by accident the day the technical proposals were opened, or (2) arrived opened.

The Chief Procurement Officer stated that she immediately sealed the envelope, dated and initialed it, and put it in the safe. She stated that neither she nor the PLCB Comptroller's Office representative reviewed any of the information.

The Assistant Counsel stated that she spoke to several different PLCB executive level staff about how to handle the unsealed envelope and was told by the Chief Counsel that, because no information was disclosed, the envelope should be sealed and put in the safe with the other cost proposals.

**4. A member of the Evaluating Committee stated that she had adjusted her scores to ensure that her top three choices moved forward in the contracting process. Her changes do not appear to have affected the overall outcome.**

RFP Section III-3 states that, "[i]n order for a proposal to be considered for selection for best and final offers or selection for contract negotiations, the total score for the technical submittal of the proposal must be greater than or equal to **seventy percent (70%)** of the highest scoring technical submittal."

Each of the six reviewers was given copies of the five proposals submitted and were to evaluate and score the proposals on certain criteria enumerated in the RFP. Each criterion was assigned a point value representing the maximum number of points available for that criterion. A proposal's final score was the average of the total points awarded for that proposal by each of the six evaluators.

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The Commonwealth Procurement Code and DGS' Procurement Handbook permit the evaluation committee to seek clarification from an offeror to assure full understanding of and responsiveness to the RFP. Requests for clarification generally occur prior to the evaluation committee's preliminary evaluation, but may occur any time prior to final evaluation. The evaluation committee will review any revised technical submittals, and assign a final technical score based on the criteria listed in the RFP.

A PLCB employee who was also a member of the evaluation committee stated that she had revised the scores on her evaluation sheet on several occasions. Some of the changes were made during evaluation committee meetings based on group discussions and clarifications, some were to ensure that her top three choices had sufficient points to move to the next round, and other times it was to correct mathematical errors. A review of her score sheets disclosed that she added a total of 142 points to one proposal.

This member of the evaluation committee was not the only one to change his or her scores. We observed approximately 199 erasures, cross-outs, and other adjustments to the 30 individual scoring sheets. Of these 199 changes, only nine were listed in the column for adjusted score. Evaluators are permitted to change their score based upon discussion in review sessions and from clarifications received from vendors. However, a total of 199 changes on 30 proposals seems excessive, especially when most reviewers did not record why the changes were made. The evaluation sheet has a column for comments and a column to document the reason for adjustments.

Using what we believe to be the initial scores on each of the 30 evaluation sheets, we recalculated the scoring and found no difference with the outcome using the adjusted point totals.

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**Recommendations:** We recommend:

6. Because the PLCB is a public agency, entrusted with spending public funds, management should always err on the side of caution when making decisions about the awarding of contracts. Even though its actions may not violate contracting laws and policies, PLCB management should always be aware of situations that could be perceived as a conflict of interest. The exercise of good judgment in this regard is vitally important in the contracting process.
7. PLCB ensure that management and employees are aware of, understand, and comply with the various laws and policies pertaining to conflicts of interest; and
8. PLCB require members of future evaluation committees to document changes on their individual scoring sheets and use the various columns such as initial score and adjusted score when completing the score sheets.

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## **Appendix A**

### **Scope and Methodology**

The Department of the Auditor General, as requested by the Pennsylvania Liquor Control Board, conducted this examination of the professional development program contract issued to Solutions 21 in order to provide an independent assessment as to whether this contract was awarded appropriately. Our examination was conducted in accordance with attestation standards established by the American Institute of Certified Public Accountants, and, accordingly, included procedures that we considered necessary in the circumstances.

#### **Scope**

The primary focus of our examination was on the duties and responsibilities of PLCB with regard to contracting for professional development services through the Request for Proposals and the contract. The period under review included from the time the need for the service was determined by PLCB to the execution of Contract No. 20081103, on January 29, 2009.

#### **Methodology**

To determine whether PLCB let Contract No. 20081103 in accordance with the Commonwealth Procurement Code, Procurement Handbook, and other applicable PLCB policy and procedures; and to determine whether any conflicts existed with respect to the issuance of the RFP and the awarding of the contract to Solutions 21, we performed the following procedures:

- Reviewed the Commonwealth Procurement Code, handbook, applicable PLCB policies and procedures, and Contract No. 20081103, including the RFP to gather background information and to establish appropriate criteria;

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- Interviewed high-level management responsible for determining the need for the contracted service, or drafting and/or approving the RFP, various attorneys within the Office of Chief Counsel, members of the executive committee responsible for selecting the evaluation committee members, and members of the evaluation committee to obtain an understanding of the development of the RFP, selection of the evaluation committee, and the process of awarding this contract and to obtain an understanding of PLCB's internal controls;
- Reviewed and analyzed correspondence, e-mails, and other documentation to obtain evidence validating what was said during various interviews or to determine whether PLCB complied with the procurement process;
- Reviewed and analyzed the five contract proposals, evaluation committee members' detailed scoring sheets, summary scoring sheets, and other documentation used to evaluate the proposals to determine the reasonableness of the vendor selection and to ensure compliance with applicable law and policies;
- Reviewed the 2007 customer survey conducted by Management Science Associates, Inc. and 857 customer comments received in calendar 2008 through the PLCB website and comment cards;
- Reviewed laws, policies, and procedures and required documentation governing conflicts of interest involving PLCB employees;
- Reviewed the meeting minutes of the Pennsylvania Liquor Control Board for the period January 1, 2007, through March 4, 2009;
- Interviewed PLCB staff identified as having a potential conflict of interest;



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- Interviewed the attorney for the Pennsylvania Department of General Services who was identified as having provided guidance to the PLCB during the RFP process/contract award; and
- Examined specific areas listed below to ascertain if any conflicts of interest existed.
  - The planning and development phase for evidence of whether any PLCB employee with a relationship to a potential vendor had influence over the development and drafting of the RFP;
  - The RFP and technical proposals submitted for any evidence that the RFP was tailored to a specific vendor and for evidence that the vendors complied with the conflict of interest disclosures required by the RFP; and
  - The cost proposals submitted by the top three vendors having sufficient points after the technical review to continue on in the contracting process for reasonableness and evidence of vendors having inside information.

Response from PLCB

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**Response  
to PLCB's  
Management  
Comments**

What follows on subsequent pages is the verbatim response of the Pennsylvania Liquor Control Board (PLCB) in response to our findings and recommendations. We thank the PLCB for its cooperation and commend the board for its concurrence with all of our recommendations, with the exception of what the board has designated as recommendation No. 6.

In its formal response, the board expressed its disagreement with what is actually the overall conclusion of our report, that the PLCB should have reconsidered its decision to award the contract on the grounds of the potential conflicts of interest and numerous other red flags. More consideration should have been given to providing this training by PLCB staff, thus saving taxpayer dollars. Moreover, the board could have at least appropriately exercised its discretion to reject all proposals received and issue a new and more detailed Request for Proposals, if the requested services were truly needed. We stand by our conclusion.

We are confident that this report will further strengthen the procurement process within the PLCB because of the cooperation demonstrated throughout this examination by members of the board and its management staff.



Commonwealth of Pennsylvania  
Pennsylvania Liquor Control Board  
Harrisburg  
17124-0001

PATRICK J. STAPLETON III  
CHAIRMAN

April 24, 2009

Telephone: 717-787-2696  
Fax: 717-772-3714

The Honorable Jack Wagner  
Auditor General  
Department of the Auditor General  
229 Finance Building  
Harrisburg, PA 17120-0018

Dear Auditor General Wagner:

The Pennsylvania Liquor Control Board ("PLCB") thanks you for your thorough review of our professional development contract with Solutions 21. In a letter to you dated March 13, 2009, we asked that your office conduct a financial review of the process that led to the awarding of the contract. We were hopeful you would be able to deliver a prompt response. We are grateful that you have done just that. Your expert staff is to be commended for the professional manner in which your examination was conducted, especially considering the thousands of supporting documents reviewed, the complexity of applicable policies and procedures analyzed, and the number of witnesses interviewed.

The dual objectives of this review were to determine if the awarding of the contract was in conformity with the conflict of interest laws of this Commonwealth and to assess whether the processes and procedures used by the PLCB are in compliance with the Procurement Code.

We are pleased that your examination did not reveal any violations of any state laws or codes, including the Liquor Code, the Public Official and Employee Ethics Act, the State Adverse Interest Act or the PLCB Official

Code of Conduct. Further, we are gratified by your conclusion that we affirmatively and properly dealt with potential conflicts of interest when they arose.

Additionally, the PLCB appreciates your kind words regarding the wisdom of this Agency's decision to seek an independent review of this matter, its willingness to provide to you immediate and complete access to all necessary documents, information and personnel, and its decision to enter into the contract at issue after an open and competitive bidding process

Your draft report recommends areas in which the PLCB can improve its procurement process and asks that the PLCB comment on those recommendations. As set forth more specifically in the attached document, the PLCB welcomes and concurs with your recommendations and will begin the process of establishing procedures to implement them as part of its continuing process of engaging in best business practices. In doing so, we note that your recommendations for improvement focus primarily upon enhanced documentation of the work we already do through our process, rather than flaws or shortcomings in the process itself. It is gratifying that the core practices of our agency appear to your auditors to be sound and appropriate.

That being said, the PLCB does wish to elaborate on its position in regard to Recommendation Six, wherein you suggest that the PLCB could have justified the rejection of all proposals and redone the Request for Proposals ("RFP").

The PLCB is bound to follow the dictates of law, which require the awarding of a contract arising from an RFP to the responsible proposer who submits the qualified proposal that is most advantageous to the Commonwealth, taking into consideration all of the evaluation factors. The rejection of such a qualified proposal for a service deemed to be necessary and without substantial legal justification would expose the PLCB to litigation. Further, when a properly conducted RFP process produces a qualified bidder at substantially lower cost to the Commonwealth, we are duty bound to regard that as a positive development to be availed, rather than cause for scrapping the process and starting over. Especially when starting the review over would come at substantial additional public expense. Thus, while our two agencies agree as to the goal sought, it appears we have

Response to Auditor General report  
Page 3

differing perspectives on this particular matter, differences we feel obliged to respectfully note.

Once again, we thank you and your staff for your expert analysis and professional approach to this examination. Given the significant media attention the awarding of this contract received, we believe it was tremendously important that an independent office conduct this type of review. It is our hope that your findings will justify continued confidence among our customers as we work to transform the PLCB into a customer-focused agency that is striving every day to improve its service to Pennsylvanians.

Sincerely,



Patrick J. Stapleton III  
Chairman  
Pennsylvania Liquor Control Board

Enclosure

### Response to Auditor General's Report

- Finding One – Improve Management Controls, Procurement Policy and Operating Procedures
  - RECOMMENDATION ONE – Develop written policies and procedures to supplement Procurement Handbook. These policies and procedures should include documentation of the need for the project, detailed analysis of whether the project should be performed in-house or through a contractor; documentation that the RFP committee members have reviewed the RFP prior to issuance and an established selection methodology for selecting committee members.
  - RESPONSE – The PLCB agrees with this recommendation.
  - RECOMMENDATION TWO – Conduct a pre-proposal conference for all RFPs unless written justification for an exception is created.
  - RESPONSE – The PLCB agrees with this recommendation.
  - RECOMMENDATION THREE – Adhere to a minimum 30 day period of time between the RFP issuance and due date for all RFPs unless written justification for an exception is created.
  - RESPONSE – The PLCB agrees with this recommendation.
  - RECOMMENDATION FOUR– Provide committee members with written instructions on how to properly fill out scoring sheets.
  - RESPONSE – The PLCB agrees with this recommendation.
  - RECOMMENDATION FIVE – Document all meetings and all decisions, including legal decisions, and put in the file.
  - RESPONSE – The PLCB agrees with this recommendation.

- Finding Two – The PLCB properly dealt with the potential conflicts of interest when they arose. However, the Auditor General cannot conclude with certainty that a PLCB employee (an Alcohol Education Specialist) did not provide an unsuccessful proposer with confidential information that could have assisted that vendor in preparing its proposal.
  - RECOMMENDATION SIX – The PLCB should always err on the side of caution and be aware of how potential conflicts of interest could be perceived by the public.
  - RESPONSE – The PLCB agrees with this recommendation. However, the PLCB is also bound to follow the dictates of law, which require the awarding of a contract arising from an RFP to the responsible proposer who submits the qualified proposal that is most advantageous to the Commonwealth, taking into consideration all of the evaluation factors. The rejection of such a qualified proposal for a service deemed to be necessary and without substantial legal justification would expose the PLCB to litigation.
  - RECOMMENDATION SEVEN – Ensure employees and management are aware of and comply with all conflict of interest laws and policies.
  - RESPONSE – The PLCB agrees with this recommendation.
  - RECOMMENDATION EIGHT – Document all changes on the scoring sheets.
  - RESPONSE – The PLCB agrees with this recommendation.

**PLCB's Professional Development  
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Jack Wagner, Auditor General  
April 2009*

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