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3/15/05
Item No.: A-3
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**BOARD OF PORT COMMISSIONERS
CITY OF OAKLAND**

RESOLUTION NO. 05079

**RESOLUTION ADOPTING POLICY FOR AWARDING
CONCESSION AND CUSTOMER SERVICE PRIVILEGES IN THE
TERMINAL BUILDINGS AT OAKLAND INTERNATIONAL
AIRPORT.**

RESOLVED that the Board of Port Commissioners hereby finds and determines it is in the best interest of the Port to adopt the Policy For Awarding Concession and Customer Service Privileges in the Terminal Buildings at Oakland International Airport, as described in Agenda Report Item A-3 dated March 15, 2005.

At the regular meeting held on March 15, 2005

Passed by the following vote:

Ayes: Commissioners Ayers-Johnson, Batarse, Katzoff,
Kiang, Kramer, Protopoulos and President Scates – 7

Noes: None

Absent: None

POLICY FOR AWARDING CONCESSION AND CUSTOMER SERVICE
PRIVILEGES IN THE TERMINAL BUILDINGS

AT

OAKLAND INTERNATIONAL AIRPORT

OAKLAND, CALIFORNIA

PORT OF OAKLAND

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I. INTRODUCTION

The Board of Port Commissioners ("Board") of the Port of Oakland ("Port") adopts this concession policy (the "Concession Policy") to govern the awarding of concession and customer service privileges in and adjacent to the Terminal Buildings at the Oakland International Airport ("the Airport"). The goal of the Concession Policy is to assure the highest level of both public service and of revenue generation consistent with the level of service desired and the Port's policy of encouraging the participation of local business concerns within the Local Impact Area (cities of Oakland, Alameda, San Leandro and Emeryville) and the Local Business Area (counties of Contra Costa and Alameda) and of those owned and controlled by socially and economically disadvantaged individuals ("Disadvantaged Business Enterprises" or "DBE's") in accordance with the provisions of 49 CFR Part 23 the "DBE Requirements".

The Port intends to follow this Concession Policy in awarding concession and customer service privileges in the Terminal Buildings. In addition, to ensure realization of the Port's public service and revenue goals, the Port will impose well-defined performance and operating standards in the agreements it enters into with concessionaires and providers of customer services, and will require the concessionaires and providers of customer services to provide performance bonds or other contract security and liability insurance in form and amounts to be established by the Port.

The overall policy for awarding all concessions and customer service privileges is set forth on pages 3 through 8. A policy for awarding individual concession and customer service privileges is outlined on page 9.

The Board reserves the right to amend or terminate this Concession Policy at any time.

II. OVERALL POLICY FOR AWARDING CONCESSION AND CUSTOMER SERVICE PRIVILEGES

This policy shall be observed by the Port in awarding concession and customer service privileges (sometimes referred to as "privilege" or "privileges") in the Terminal Buildings.

A. PUBLIC NOTICE

It is the policy of the Port to develop strong public interest in each concession or privilege being solicited by the Port. To this end, the Port will give reasonable public notice in advance of its solicitation of each concession or privilege. Additionally, a program of local outreach will be developed to make local, small, and DBE businesses aware of future concession opportunities and inform of them of the processes to be followed.

B. DISADVANTAGED BUSINESS ENTERPRISES

It is the policy of the Port that DBEs shall have maximum opportunity to participate in the concessions and customer service privileges in the Terminal Buildings in accordance with applicable federal law and regulation. To this end, the Port will abide by federal and state nondiscrimination requirements with respect to the award and performance of any concession agreement in the Terminal Buildings, will take all necessary and reasonable steps to foster participation by DBEs in its Terminal Building concession activities and will encourage DBE participation in the submission of bids or proposals for all such concessions.

The Port will include the following statements in all concession agreements executed with any Terminal Building concessionaire.

"This agreement is subject to the requirements of the U.S. Department of Transportation's regulations, 49 CFR part 23, subpart F. The concessionaire agrees that it will not discriminate against any business owner because of the owner's race, color, national origin, or sex in connection with the award or performance of any concession agreement covered by 49 CFR part 23, subpart F."

"The concessionaire agrees to include the above statements in any subsequent concession agreements that it enters and cause those businesses to similarly include the statements in further agreements."

The Port shall implement a disadvantaged business enterprise (DBE) concession plan containing the elements listed in applicable federal regulation, including but not limited to 49 C.F.R. §23.95. The Port shall review and update the plan at least annually and submit the plan and each updated plan to the FAA Regional office for

approval. Each updated plan shall include any information required by applicable federal regulation that was not available to the Port when the previous submission to the FAA Regional office was made.

In compliance with federal DBE requirements, the Port will establish an overall goal for the participation of DBE's in concession opportunities anticipated to be awarded each fiscal year consistent with federally approved DBE goal setting processes and shall make good faith efforts to achieve the overall goals. The Port reserves the right to further amend this concession policy, if required, in order to comply with any applicable laws or regulations hereafter adopted by the United States Government, its agencies, the State of California, the City of Oakland or the Port.

C. NON-DISCRIMINATION AND SMALL LOCAL BUSINESS UTILIZATION POLICY

The Port has adopted a Non-Discrimination and Small Local Business Utilization Policy that encourages the participation of local small businesses within a defined Local Business Area and a Local Impact Area. The award of concessions and customer services shall comply with this policy to the extent practicable.

D. LIVING WAGE AND LABOR STANDARDS POLICY

The Port has adopted a Living Wage and Labor Standards policy that is applicable to certain Port tenants and contractors. This policy will be included in proposal or bid documents and concession agreements awarded under this Concession Policy.

The Board, from time to time, may require that agreements for certain concession and consumer service privileges contain other labor-specific requirements.

E. QUALIFICATIONS OF PROSPECTIVE BIDDERS OR PROPOSERS

In order to have a bid or proposal considered by the Port, all prospective operators of concession or customer service privileges in the Terminal Buildings shall provide the Port with a bid or proposal bond. The bond will serve as a guaranty that the selected bidder or proposer will enter into the final agreement with the Port and serve as liquidated damages should the bidder or proposal fail to follow through with its offer. The amount of the bid bond will be sufficient to act as a penalty for failure to perform and offset the Port's additional costs, and will vary with the size and value of the privileges that are the subject of the bid or proposal. Each bidder or proposer shall also complete an eligibility form to be supplied by the Port. The eligibility form shall require, as a minimum, the following information:

1. The type of organization submitting the bid or proposal (sole proprietorship, partnerships, joint venture, corporation, etc.);

2. Evidence that the bidder or proposer is authorized to do business in the State of California;
3. Evidence that the bidder or proposer has at least the level of experience in offering goods or services of the type covered by the bid or proposal as specified in the solicitation;
4. The names and addresses of all persons having a financial interest in the business to be operated by the bidder or proposer in the Terminal Buildings. If the bidder or proposer is a partnership or joint venture, the names and addresses of all general partners or members must be provided. If the bidder or proposer is a corporation, the names and addresses of all officers and directors and of all shareholders owning more than 5% of any class of stock must be provided;
5. The names, address, and business background of the person(s) to be employed as manager(s) of this business;
6. A pro forma statement of the projected results of operations of this business for each of the first two (2) years of operations in the Terminal Buildings, identifying the source of funds to cover any deficits shown in such statement, and a current statement showing the assets, liabilities and net worth of the bidder or proposer;
7. Evidence setting forth the initial capital requirements of the business and providing evidence satisfactory to the Port that such requirements can and will be met; and
8. Such additional information as may be required in the bid or RFP documents.

If the bid or proposal bond and eligibility form are not submitted by the bidder or proposer, or if, in the sole discretion of the Port, the information contained on the eligibility form is incomplete or not responsive or if the bidder or proposer does not have the financial capability to provide the required goods and services, the bid or proposal may be rejected by the Port.

F. ALTERNATIVE METHOD OF AWARDING CONCESSION AND CUSTOMER SERVICE PRIVILEGES

There are three ways in which concession and customer service privileges may be awarded:

1. Competitive bidding to specifications;

2. Competitive proposals based on specifications, followed by negotiations with the selected proposer(s) to obtain maximum revenue consistent with desired levels of public service; and,
3. Negotiation with a single concession/service operator (a) where services or products are unique, or (b) where services are sole sourced in accordance with state law or regulation, or (c) where services or spaces are set aside and allocated for concession development solely by DBEs.

1. Bidding to Specifications

Bidding to specifications will be used for those concessions or customer service privileges where it is difficult to differentiate type of service, income to be generated, and quality of service or products among several operators. In bidding to specifications, the concession or privilege will be awarded to the highest dollar bidder; provided, however, that if the Port has established a Disadvantaged Business Enterprise contract goal for the concession or privilege, then that concession or privilege shall be awarded to the highest dollar bidder which the Port determines has offered a reasonable minimum annual guarantee and which has met or exceeded that contract goal or made a good faith effort to achieve that contract goal. Privileges to be awarded by bidding include: Rental Cars. Other Concession and Customer Service privileges may be bid or negotiated.

2. Competitive Proposals

Competitive proposals will be used for those concession or customer service privileges where type of service, volume of business to be generated, quality of services or products, and demonstrated capability and depth of management can be clearly differentiated among several operators. The concession or customer service privilege will then be awarded by the Port's comparative evaluation of each proposal with respect to depth of management, demonstrated experience at other locations, financial responsibility, reputation, success in marketing and promoting programs with similar characteristics, concession improvements of facilities proposed, level of capital investment to be made, financial return to the Port, and compliance with the Disadvantaged Business Enterprise contract goal, if any, established by the Port, as well as any other specific selection criteria set forth in the solicitation with respect to the particular concession or customer service privilege. The final terms of the agreement will be negotiated to produce maximum financial return to the Port consistent with public service requirements.

Privileges to be awarded by competitive proposal include:

- Advertising and Display
- Food and Beverage
- Public Parking (Management Contract)
- News / Gifts / Specialty Retail
- Duty Free

- Shuttle Buses
- Security Services

The Port reserves the right to decide to award one or more of the above-described privileges by bidding rather than by competitive proposal.

3. Negotiations

Negotiation will be used where services offered are covered by patents, copyrights, trademarks or service marks, are unique or available only from a single supplier, or where services are sole sourced in accordance with state law or regulation,. In addition, if only one concessionaire meets the eligibility requirements established by the Port with respect to the good or services required or desired, the Port may, at its sole discretion, negotiate the concession or privilege. Conversely, if the Port determines during a negotiation that the privilege being negotiated is available from more than one eligible supplier, then the privilege will be awarded by the bidding or proposal procedure, as appropriate.

Negotiation may also be used where services or spaces are set aside and allocated for concession development solely by DBE's. Further, the terms of such negotiated concession or customer service agreements will be reasonable, in compliance with the DBE requirements, and provide revenues in an amount which would be acceptable to a reasonably prudent operator of an airport system comparable to the Airport.

4. Negotiations for Renewals or Extensions with an Existing Operator

It is the policy of the Board that, in general, there will be no extensions or renewals to any concession or customer service agreement. Negotiation with an existing operator for renewal or extension of the term will only be used when, upon anticipated expiration of the full term of the agreement, it is determined by the Board to be in the best interests of the Airport to negotiate a new agreement with the current concessionaire for continued operation of the given concession or customer service privilege, or, alternately, during any interim period when the Port is accepting bids or proposals for such concession or customer service privilege. Such negotiation will be initiated only at the option of the Board, and in no instance will such negotiations commence prior to one year before the expiration of the existing agreement.

Subject to the foregoing, there is no restriction regarding successive contracts with the same concessionaire or customer service provider following a competitive bid or proposal process.

G. GENERAL FINANCIAL BASIS FOR PROPOSALS

In most instances, the financial return to the Port from each concession and customer service privilege will be based on a privilege fee expressed as a percentage of gross receipts (sales) or a payment per enplaned passenger (or total enplaned and deplaned passengers), against a minimum annual guaranteed amount.

The Port will establish the dollar amount of the lowest acceptable minimum annual guarantee and the percentage(s) of gross receipts or payments per passenger. Proposers will then propose the minimum annual guarantee, which must be equal to or in excess of the lowest acceptable minimum annual guarantee established by the Port. In no event will both the percentages and the minimum annual guarantee be bid or proposed since the use of more than one variable makes the evaluation of financial returns impossible.

H. PREPROPOSAL AND PREBID CONFERENCES

Preproposal and prebid conferences will be held for all concession or customer service privileges (or group of concession or customer service privileges).

Prior to the preproposal or prebid conference for each concession or privilege, the Port staff shall develop a working draft of the bid or proposal documents, including specifications and requirements for the concession or privilege and the proposed agreement to be entered into with the Port. Written notice that such contract documents will be issued generally will be through advertising in at least one local newspaper, internet solicitation of interests, and by placing a notice on the Port website. To the extent possible, a list of the names and addresses of all persons or firms to which any contract documents have been issued shall be maintained.

Subsequent changes or addendums to the bid or proposal documents shall thereafter be made available electronically to all those on record with the Port as having received proposal documents and shall be posted on the Port's website.

I. LOCAL OUTREACH MEETINGS

In order to encourage the maximum amount of local participation, including participation by small and DBE businesses, the Port generally will conduct local outreach meetings in advance of issuing Request for Proposals or Bids. The Local Outreach Meetings will be targeted to local, small and DBE businesses (in accordance with the Port's LIA and LBA policies and in accordance with federal regulations) in order to:

1. Provide information on the nature of the concession privilege to be awarded;
2. Educate potential operators on the advantages and disadvantages of doing business at the Airport, including financial, operational, and potential business risks and rewards; and,
3. Provide guidance on the steps necessary to participate in the selection process.

Local Outreach Meetings generally will be conducted in advance of the issuance of Request for Proposals that include LIA, LBA, and/or DBE participation goals.

J. FORMAL SUBMISSION OF BIDS OR PROPOSALS

Each proposer for a concession or customer service privilege will be required to describe its operating plans for the privilege to be awarded and provide any other information considered desirable by the Port as required by the RFP.

A Concessions Evaluation Committee (the "Committee"), as designated by the Port from time to time, will review and evaluate all bids and proposals received by the Port. The Chair of the Committee will be the Director of Aviation, or such other person as may be designated by the Director of Aviation. The Committee may be advised from time to time by other members of the Port staff (including the Port Attorney and staff from the Port's Division of Social Responsibility) and consultants to the Port, as requested by the Committee.

Competitive Proposal Ranking, Evaluation and Negotiation: Regarding competitive proposals, the Committee shall review all proposals submitted, and rank each of them from best to worst. Evaluation and selection criteria used by the Committee shall be as set forth in the RFP and in accordance with Section II. F. 2 of this Policy. The Committee may, in its discretion or in accordance with the terms of the RFP, require the highest ranked proposers to make a formal presentation to the

Committee. The Committee shall review and evaluate the highest-ranked proposals, and prepare a recommendation as to which proposer should receive the award.

The Port may negotiate the precise terms and conditions of the proposal with the highest ranking proposer, in accordance with the terms of the RFP and Section II. F. 2 of this Policy. Such negotiation of specific terms and conditions of the award shall resolve any outstanding details of the proposal, and not materially affect the business terms contained in the Request for Proposals. If the Committee determines that an acceptable agreement cannot be reached with the highest ranked proposer, it may then terminate negotiations and commence negotiations with the second highest proposer, and so on, until a mutually-acceptable agreement is reached. In no event shall negotiation with any proposer continue for a period of more than sixty (60) days without the approval of the Director of Aviation. In any event, the Port reserves the right to reject any or all proposals and to discontinue negotiations with any individual proposer at any time.

The Committee then will provide to the Board a recommended contract award with a list of all persons or firms submitting responsive bids and proposals, identifying those which were ranked highest by the Committee, together with its written review and evaluation of the highest-ranked bids and proposals, and its recommendation as to which bidder or proposer should receive the award. The Board may approve or reject the Committee's recommendation, and will adopt the final ranking of the bids or proposals. Evaluation and selection criteria shall be as set forth in the RFP and in accordance with Section II. F. of this Policy.

III. POLICY OUTLINE - INDIVIDUAL CONCESSION AND CUSTOMER SERVICE PRIVILEGES

The Director of Aviation shall maintain specific policy criteria to be used in awarding each major concession and customer service privilege at the Airport. Such criteria shall be in accordance with best aviation industry practices, updated periodically to reflect current practices.

One concession privilege will be awarded in each category, except as indicated. Additional concession or customer service privileges may prove desirable in the future. Specific policies with regard to added concessions or privileges will be developed by the Port as required.

The specific policy criteria that may be used in the award of concession and consumer service privileges include the following:

1. General Description of Privileges.
2. Eligibility Requirements.
3. Method of Awarding Privileges.
4. Basis of Award.
5. Term.
6. Fees to be paid the Port.
 - a. Storage space: All concessionaires occupying storage space shall pay an identical rate as other concessionaires for storage space apart from demised or public premises, which rate shall be in accordance with Airport Rates and Charges.
7. Port Improvements, if any.
8. Concessionaire Improvements.