



CITY OF SAN ANTONIO

P.O. Box 839966
San Antonio, Texas 78283-3966

ADDENDUM III

SUBJECT: Request for Proposals, **Terminal A Food & Beverage Prime Concessionaire, (RFP-012-032-MA)**, dated March 11, 2012.

DATE: May 22, 2012

THIS NOTICE SHALL SERVE AS ADDENDUM NO. III – TO THE ABOVE REFERENCED REQUEST FOR PROPOSALS (RFP)

A. QUESTIONS RECEIVED BY CITY STAFF AT THE PRE-SUBMITTAL CONFERENCE OR IN ACCORDANCE WITH RFP SECTION VIII ARE ANSWERED AS FOLLOWS:

Question 1: Can the Architect provide renderings of the exterior signage requirements for the units?

Response: No. Signage mount and brackets for concession portals are still being designed.

Question 2: Draft Concession Agreement, Page 27 of 122, Section 4.02(a)iii – Reports by Concessionaire, states that all tenants must report sales that have been certified/audited by a CPA. I'm sure most people outsource their financial statement and income tax preparations to a CPA because it's not their area of expertise. However, I am a degreed accountant with 27 years of experience in financial statement management. As an officer of the company, will that suffice for a means to authenticate sales information?

Response: No.

Question 3: Since the ceiling lighting elements in the north central food court match the south central food court, what is the airport's preference for this lighting? Should it remain and be integrated into the new design or be replaced?

Response: The lighting in the north food court will be a leased area and can be replaced and does not need to match lighting in the south food court. Lighting in south food court (outside of lease limits) will be replaced under Terminal A Renovation Project.

Question 4: Since the stone wall finish at the columns and low wall surrounding the north central food court match the finishes in other parts of the airport, what is the airport's preference for this finish to remain or be replaced?

Response: Stone walls will be outside of lease limits and will be removed under Terminal A Renovation.

Question 5: Will the airport provide dimensioned lease outline drawings (LODs) of all spaces?

Response: Drawings were provided in Addendum II.

Question 6: Will any of the lease lines be altered in the Terminal A Renovations, which are to include new terrazzo flooring up to the lease lines? I ask because at least one lease line is curved and we're wondering if it will be straightened.

Response: See Attachment 1 to this Addendum III.

Question 7: Since the deadline was extended, may the deadline for questions be extended as well?

Response: Deadline for questions was not extended.

Question 8: Draft Concession Agreement, Page 85 of 122, Section 17.02 states that no food retailer can sample their product outside their lease line. Knowing this is our best form of marketing, can we ask for a waiver of this point?

Response: No waiver will be granted. Sampling may only take place within lease line.

Question 9: Insurance coverage limits being requested by the City in the airport lease are much higher than those required by our franchise agreement. Although employees won't typically be transferring inventory between stores or using their personal vehicles on company business often; the non-owned vehicle coverages we carry are half of what the airport requires. Limits we carry are consistent with our Franchise agreement and advice received by our insurance agent. Additionally, we do own a company vehicle that carries 500K/500K, but the airport is asking for \$1,000,000. Are these higher limits for vehicles that would be driven near the tarmac, or fuel tankers? In those cases, I could see the need, but in our case I only see us using employee parking. Please advise?

Response: The \$1,000,000 combined single limit required in the document is the standard contractual requirement for auto liability coverage for the City of San Antonio

Question 10: Can you please verify if concessionaire will be responsible for investing and remodeling/supplying furniture to the north food court seating area (where McDonald's and Famous Famiglia are located)?

Response: Yes. The north food court seating area is leased space and concessionaire shall supply the furniture.

Question 11: Can we provide the existing operations interior and exterior photos on an 11x17 page?

Response: Yes.

Question 12: Would you reconsider the street pricing requirement and allow at least street plus 10%?

Response: No. Street pricing requirement applies to all concessionaires.

Question 13: Would the Airport consider modifying the lease term for full service restaurants to be at least ten years with two one-year options and the term for quick service units to be at least seven years with two one-year options?

Response: No.

Question 14: Can the wall in space #180 be replaced with glass so that the unit can be seen visually from the outside rear of the unit?

Response: Currently, the wall is glass. Respondents may choose to provide service to the unsecured area through this access but must give consideration to TSA security issues.

Question 15: Draft Concession Agreement, Article 1. Definitions, Page 10 of 122, "Gross Receipts" states that the gross receipts language for rent calculation does not allow us to deduct the Mixed Beverage Gross Receipts Tax that we pay to the state of Texas, because pursuant to Texas Law, we cannot separately state this tax on the consumers receipt (which – separately stating a tax on the receipt is excludable pursuant to your sublease). This law states that this tax cannot be passed to the consumer and therefore cannot be put on the consumers receipt.

As a result of this dynamic scenario, this is effectively asking a concessionaire to pay rent, on a tax that is paid. Since the concessionaire makes no revenue under this scenario and it is extremely uncommon in any retail concession scenario for operators pay rent on a tax, we ask that you specifically "also exclude taxes paid under the state's Liquor Law Tax".

Response: Taxes on mixed beverages or alcohol-containing beverages will be excluded from revenue and excluded from the gross receipts calculation for purposes of calculating rent. However, it will need to be identified on the concessionaire reports. The definition will be revised to reflect this

Question 16: Draft Concession Agreement Article I. Definitions, Page 12 of 122, “Transition Rent” reads “Rent assessed on premises operated by the concessionaire before completion of the Transition Period. Transition Rent shall consist of (i) Percentage Rent for temporary locations, if any; (ii) MAG for those locations for which construction is complete and are open to the public; (iii) MAG for those locations that have been delivered to the Concessionaire and are open to the public and operated by Concessionaire, its subcontractors or sublessees, pursuant to the terms of this Agreement; and (iv) applicable Additional Rent. MAG identified under (iii) above shall be abated when the location begins an active construction phase (not design).”

16a: For (ii) and (iii), should the obligation be the greater of MAG or percentage rent?

Response: Yes. Percentage rent applies at all times.

16b: How do we distinguish a temporary store subject to (i) and stores subject to (iii)?

Response: For purposes of (i), a temporary location is a store that operates from a reduced footprint or alternate location due to active construction of the ultimately intended store. For purposes of (iii), the store would be fully operational from the entirely delivered footprint but not have undergone construction. The section will be modified to reflect the nuance.

16c: Who will provide official documentation?

Response: When deemed appropriate, City will provide official written notification of significant dates such as the start of transition rent, location MAG, completion of transition period, start of various Lease Years and associated MAG, etc.

Question 17: Draft Concession Agreement, Page 17 of 122, Sec. 3.01 (c) MAG during Transition Period reads “Notwithstanding the foregoing, Concessionaire shall pay Transition Rent during the Transition Period. Concessionaire shall pay MAG for locations that (i) have been constructed and opened for business; and/or (ii) are not yet constructed but are operating and open to the public. For each location, Concessionaire’s obligation to pay the Transition Rent shall begin on the first day of the month following store opening”.

Should a store open at the middle of the month during the transition period, will the period from opening to end of the month be rent free?

Response: No. Percentage rent applies at all times. This provision is meant to avoid prorating a location MAG for the partial month.

Question 18: Draft Concession Agreement, Page 16 of 122, Sec. 3.01 - (b) reads “The MAG for the second Lease Year and each succeeding Lease Year shall be calculated by multiplying 85% by the total amount of concession fees (consisting of MAG and Percentage Rent) due from Operator to the City in the immediately preceding twelve-month period and be provided to Concessionaire within 30 days of the beginning of the succeeding Lease Year. For example, assuming that the Lease Year begins in January, in order to provide the MAG to the Concessionaire in December, the MAG would be based on the Rents due, excluding Additional Rents, for the sales during the prior twelve month period between November 1 through October 31. In no event, however, shall the MAG for any Lease Year be less than the first Lease Year, except as provided in Section 3.01(d) below.”

Please delete the following language: “and be provided to Concessionaire within 30 days of the beginning of the succeeding Lease Year. For example, assuming that the Lease Year begins in January, in order to provide the MAG to the Concessionaire in December, the MAG would be based on the Rents due, excluding Additional Rents, for the sales during the prior twelve month period between November 1 through October 31”. Similar to the provisions of other contracts, add verbiage to have the new calculated MAG effective at the beginning of the new lease year.

Response: Request considered and denied. The calculated MAG is effective at the beginning of the new lease year. The language in the draft agreement will enable the City to calculate the new MAG prior to the beginning of the new lease year. For clarification, if the City were to wait until the December Rents are available to calculate the new MAG, it would have to wait until February. However, the new MAG in the above example is due on January 1. The offsetting calculation allows the City to provide the new MAG in a timely manner.

Question 19: Draft Concession Agreement, Page 27 of 122, Section 4.02(a)iv REPORTS BY CONCESSIONAIRE reads “The Monthly Statements and Annual Statements prepared by Concessionaire shall also provide an analysis of operations, which shall include the following data:

- 1) total Gross Receipts and, if requested, Concessionaire shall calculate such Gross Receipts per square foot of Floor Area in the Premises;
- 2) sales by general product category and location;
- 3) total number of transactions per location;
- 4) average dollar amount per transaction per location;
- 5) sales variance analysis as compared to the immediately prior Lease Month and/or Lease Year; and
- 6) sales time distribution if requested by the Director.

Items #4, #5 and #6 require significant manual manipulation of data based on the current POS system technology. Please delete these report requests or only require them to be provided on a yearly basis.

Response: No change on Item #4 as it should not require significant manual manipulation. It is essentially item #2 divided by item #3. Items #5 and #6 will be required only if requested by Director from time to time and not on a monthly basis. Contract will be modified accordingly.

Question 20: In Draft Concession Agreement, Page 31 of 122, Section 6.01(b): Construction of Premises, construction build out time is set at “60 days”. Can this be revised to read “90 days for food court and 120 days for restaurant/bar”?

Response: Request considered and denied. The 60 days in question refers to completion of final drawings. Build out is to be completed in accordance with Schedule B. Section will be revised to delete extraneous wording but substance will remain the same.

Question 21: If a concessionaire is proposing as a prime, but is proposing a joint venture on an individual store location, what information is required for this (i.e. financials, letter of intent)?

Response: In addition to meeting all other requirements, Prime’s responding as Joint Venture for an individual location must, together with the other Joint Venturers, provide all information required of RFP Attachment A, Tab 3, Proposed Concession Plan.

Question 22: If an existing concession space does not have an overhead rolling grill, must the new tenant include one in their design?

Response: Yes.

B. Questions received prior the deadline for questions and in accordance with RFP Section VIII that were not answered above will be addressed in Addendum IV.

ATTACHMENT 1 TO ADDENDUM III

