



CITY OF SAN ANTONIO

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

ADDENDUM II

SUBJECT: Request for Proposals, **Airport Retail Vending Machine Concession Program, (RFP-012-048-CC)**, dated May 6, 2012.

DATE: May 17, 2012

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

A. THE ABOVE MENTIONED RFP IS HEREBY AMENDED AS FOLLOWS:

1. On the RFP Coversheet, the project number 012-045-CC, under the RFP title Airport Retail Vending Machine Concession Program, is amended to read:

“RFP-012-048-CC.”

B. QUESTIONS RECEIVED BY CITY STAFF IN ACCORDANCE WITH RFP SECTION VIII ARE ANSWERED AS FOLLOWS:

Question 1: Article I. Definitions:

“Gross Receipts” – We request that the customer returns be excluded from the definition of gross receipts:.

Response: Customer returns are already excluded under item ii of the second paragraph of the Gross Receipts definition.

Question 2: Article II. Premises, Grant and Term

Section 2.04 Holding Over – We request that the following language be added to the end of this section: **“Notwithstanding the foregoing, Concessionaire shall not be subject to holdover rent if the parties have entered into good faith negotiations to extend the term of the Agreement or negotiate a new agreement, neither of which are executed prior to the then expiring term.”**

Response: **No change is necessary. Section 2.04 already provides that there is no penalty for a “friendly” holdover such as the one described in this scenario.**

Question 3: Article III. Rental

Section 3.01 Minimum Annual Guaranteed Rent (“MAG”) – We request that the MAG language be included as follows: “\$[] per month, per installed Unit.”

Response: City is open to this concept but requires further discussion with successful proposer to properly address all pertinent issues involved such as percentage rent.

Question 4: Article IV. Records and Sales Reports

Section 4.01(b) & (c) Concessionaire Records. Proposer wants to ensure that Director understands that the vending units only accept credit cards for purchase, not for cash. Consequently, Proposer does not maintain a cash control system for POS information.

Response: Request considered and denied. Cash control systems are not for cash only, they provide controls for credit cards as well.

Question 5: Section 4.02(a)(ii) – (iv) Reports by Concessionaire. Proposer does not begin its annual audit until May of each year. Also, Proposer’s return are for all vending units collectively, not individual units. Proposer currently provides annual audited statements certified by Proposer’s Controller for all of our location contracts requiring annual reports. Proposer’s current monthly and annual statements provide a complete summary of monthly and year-end sales for units installed at each airport. Proposer does not currently have the staffing needed to provide the additional analysis requested in subsection (iv).

Response: City will delete items 5 & 6 from subsection iv. City is open to concept of exploring a different timeline for submission of annual audit.

Question 6: Section 4.02(d) – Proposer requests that this subsection be revised to include the following language: “**Notwithstanding the foregoing, Concessionaire shall not be deemed to have failed to comply with Section 4.02 provided Concessionaire provides Director with the requested information within ten (10) days from when Concessionaire completes its annual audit.**”

Response: As stated in answer to previous question, City is open to exploring a different timeline for submission of annual audit. The timeline, however, will not be open ended.

Question 7: Article V. Audit

Section 5.01 Audit. Proposer generally requests in its contracts that the understatement be three percent (3%) or more for Proposer to pay for any such audit. We request this same revision as part of this section.

Response: Agreed.

Question 8: Article VII. Alterations, Changes and Additions

Section 7.03 Changes and Additions. We request that the following language be added to the end of this Section: “**Notwithstanding the foregoing, in the event any Airport**

renovations or constructions result in limited public access to the Premises or reduces traffic or sales by more than twenty percent (20%), Concessionaire may request relocation of the affected vending unit. In the event an alternative location is not available or agreeable to the parties, Concessionaire may terminate as to the affected vending unit upon thirty (30) days prior written notice.”

Response: Agreed.

Question 9: **Section 7.04(a) Relocation, Reduction or Termination.** we request that you add the following language at the end of the first paragraph as it addresses relocation and is included in Proposer’s existing location agreements due to the cost of relocating the vending units and the need to obtain brand approval for any request to relocate the vending unit and also to survey any new locations to ensure that WiFi is available: **“Notwithstanding the foregoing, Director will make its best efforts not to relocate the vending units during the term of the Agreement; however, if relocation is necessary, Director will provide Concessionaire with thirty (30) days prior written notice. In the event the new location is not reasonably acceptable to Concessionaire or its brand partner, Concessionaire may terminate as to the affected vending unit upon thirty (30) days prior written notice.”**

Response: Agreed but will also add the following sentence at the end of suggested language: **“Concessionaire agrees that the temporary relocation due to the Terminal A Renovations Project shall not be grounds for termination of the Terminal A location.”**

Question 10: Article VIII. Conduct of Business by Concessionaire

Section 8.01 Permitted Use. We request that you add the following language at the end of the first paragraph of this Section: **“In the event Concessionaire is no longer able to offer the Permitted Use at the Airport, and an alternative new use is either not available or agreeable to the parties, Concessionaire may terminate this Agreement as to the affected vending unit, or in its entirety if all vending units are affected, upon thirty (30) days prior written notice.”**

Response: Agreed but will restate as follows: **“In the event Concessionaire is no longer able to offer the Permitted Use at the Airport due to inability to renew or extend necessary store/brand license agreements/franchise, and an alternative new use is either not available or agreeable to the parties, Concessionaire may terminate this Agreement as to the affected vending unit, or in its entirety if all vending units are affected, upon thirty (30) days prior written notice.”**

Question 11: Section 8.02(a) Operation of Business. We request that the following new language be added to the end of subsection (a) as it addresses issues related to Proposer’s automated retail: **“Notwithstanding the foregoing, Director acknowledges that, due to the automated nature of Concessionaire’s business, Concessionaire shall be open for business 24/7 with exception for reasonable downtime for necessary service maintenance and repair. Any such downtime shall not be deemed a violation of this Agreement.”**

Response: Agreed.

Question 12: Section 8.02(e) –

We request that the following language be added to the end of this subsection (e): **“Director acknowledges that Concessionaire shall not be in violation of this Section 8.02(e) if Concessionaire’s repairs extend beyond twenty-four (24) hours due to parts being ordered or extended repair time which requires additional staffing or security escort during off hours.”**

Response: Agreed.

Question 13: Section 8.02(h) –

We request that the following language be added to the end of this subsection (h): **“Notwithstanding the foregoing, Director acknowledges that, due to the automated nature of Concessionaire’s business, Concessionaire and its third party service provider shall clean and remove all rubbish resulting from servicing and replenishing the vending units during routine service and maintenance visits**

Response: Agreed but will restate as follows: **“Notwithstanding the foregoing, Director acknowledges that, due to the automated nature of Concessionaire’s business, Concessionaire and its third party service provider shall clean and remove all rubbish resulting from servicing and replenishing the vending units during routine service and maintenance visits or when notified by City from time to time.”**

Question 14: Article X. Signs

Section 10.01 Concessionaire Signs. We request that the following language be added to the end of this Section: **“Notwithstanding the foregoing, Concessionaire’s signage, including aesthetics and affixed television, as depicted in Exhibit B are deemed preapproved. Director and Airport staff shall have the ability to set the volume levels for the affixed television to acceptable levels.”** We have this carve out in our agreements as the design and aesthetics for each branded vending unit is the same for our entire network. Proposer does not have the ability to alter the design, signage and aesthetics from location to location.

Response: Agreed but will restate as follows: **“Notwithstanding the foregoing, Concessionaire’s signage, including aesthetics and affixed television, as depicted in Exhibit B are deemed preapproved. Director and Airport staff shall have the ability to set the volume levels for the affixed television to acceptable levels. Concessionaire shall set the affixed televisions’ volume at mute or the lowest level possible.”**

Question 15: Article XI. Maintenance and Repairs

Section 11.02(a) Concessionaire’s Maintenance and Repairs. We request that the following language be added to the end of the first paragraph: **“Tenant and its third party service provider shall be provided with access to the Concession Area during normal business hours for necessary service, maintenance and repair, provided**

Tenant does not cause undue disruption to Airport patrons.” Proposer’s service provider operates during normal business hours.

Response: Agreed.

Question 16: Section 11.03 Rights of the City. Proposer wants to ensure that City will not make any attempts to repair the vending units. City should contact Proposer directly to arrange for any necessary repairs by calling the 1-800-Customer Service Number for maintenance, service and repair requests.

Response: City agrees not to attempt to repair Concessionaire’s equipment.

Question 17: Article XX. Default.

Section 20.01 Concessionaire’s Default. We request that a new subsection (g) be added as follows: “(g) **Notwithstanding anything contained herein to the contrary, Concessionaire shall not be in default of this Agreement if the nature of the default cannot be cured within the requisite time period, provided Concessionaire has commenced work to cure any such default and continues to do so until such time as the default has been cured.**”

Response: Language is not necessary since the same principle is already stated in 20.01(a)ii

Question 18: Article XXIII. Concessionaire’s Property

Section 23.03 The City’s Lien. – We need this section revised or deleted remove any requirement to grant a lien or security interest as Proposer cannot grant lien or security interest in the vending units or its inventory to City. The vending units are financed by a third-party financier and Proposer is not permitted to grant title or interest to another party. Proposer has never granted title or a security interest in any of its vending units installed anywhere.

Response: City agrees to waive the lien on property and inventory not owned by Concessionaire and/or to the extent that the property or inventory serves as collateral on a financial arrangement.

Question 19: Exhibit C. Proposer requests that we are permitted to offer a cashier’s check in lieu of an LOC for any required security deposit. This is consistent with what Proposer offers at all current airports.

Response: Request considered and denied.