COUNCIL AGENDA: 06-03-2008
ITEM: 6.2

CITY OF SAN JOSE
CAPITAL OF SILICON VALLEY

Memorandum

TO: Honorable Mayor and City Council

FROM: William F. Sherry, A.A.E.
Scott P. Johnson

SUBJECT: **Airport Food & Beverage and Retail Concession Program: Approval of Proposer Rankings and Authorization to Negotiate and Execute Concession Agreements and Amendments**

DATE: May 19, 2008

Approved

Date 5/19/08

COUNCIL DISTRICT: City-Wide

RECOMMENDATION

Adoption of a resolution authorizing the City Manager to:

(a) Negotiate and execute Concession Agreements between the City of San José and the following entities, effective from the date of execution by the City Manager through June 30, 2020:

(1) Host International, Inc., for the construction and operation of retail concessions at the Airport listed as Package 1 of the Food & Beverage and Retail RFP, with a minimum annual concession fee guarantee to the City of $1,620,000.

(2) AMS-SJC JV, for the construction and operation of retail concessions at the Airport listed as Package 2 of the Food & Beverage and Retail RFP, with a minimum annual concession fee guarantee to the City of $2,000,000.

(3) Areas USA SJC, LLC, for the construction and operation of food and beverage concessions at the Airport listed as Package 3 of the Food & Beverage and Retail RFP, with a minimum annual concession fee guarantee to the City of $1,726,200.

(4) Host International, Inc., for the construction and operation of food and beverage concessions at the Airport listed as Package 4 of the Food & Beverage and Retail RFP, with a minimum annual concession fee guarantee to the City of $2,860,000.

(b) Terminate negotiations with any of the recommended proposers for Packages 1 through 4 and to negotiate Concession Agreements with lower-ranked proposers in order of their ranking for each package, in the event that the City Manager determines that the City and the recommended proposer cannot agree upon the terms of the Concession Agreement by August 1, 2008.

(c) Negotiate and execute amendments to the Concessions Agreements for expansion or contraction of locations and modification or replacement of concepts and subtenants during the overall term of the Concession Agreements, so long as no changes are made in the provisions in the Concession Agreements regarding percentage rent or MAG to be paid to the City.

OUTCOME

City Council approval of the final ranking of proposals for food & beverage and retail concessions at Mineta San José International Airport and authorization for the City Manager to negotiate terms and conditions, including concepts, locations, and basis of design, with the top-ranked proposers, will allow for timely development of the new concession program at the Airport. In the event the negotiations with the top-ranked proposers are not successful by August 1, 2008, negotiations will proceed with the remaining proposers in the order of their ranking. The Director of Aviation will report back to the Council with an informational report regarding the status and outcome of the negotiations.

EXECUTIVE SUMMARY

After extensive community and business outreach, as well as industry input, the City issued the Food & Beverage and Retail Request for Proposals (RFP) on October 12, 2007, which was based on direction approved by Council on December 14, 2004.

Staff's overriding objective was to achieve the goals articulated in Council's direction of December 2004 by developing a fair, transparent, and competitive process in order to achieve an outcome that would enhance travelers' experience at the Airport and financially benefit the City. Since the City Manager's and City Auditor's Office determined that this RFP is a High Profile and Complex RFP, the RFP process has been coordinated with the City Auditor's Office, City Attorney's Office, and Finance Department as prescribed in the City's online RFP manual. The City Auditor's Office has provided its comments in a separate memorandum to which the Airport and Finance Departments responded to in a supplemental memorandum.

The RFP contained five groupings, or packages, for the location of specific food & beverage and retail concessions. Packages 1 and 2 consist of retail concessions, and Packages 3 and 4 consist of food & beverage concessions. Each package includes concession spaces in both terminals. Package 5 is a comprehensive package that includes all locations for both food & beverage and retail concessions contained in Packages 1 through 4.

Thirteen distinct proposals from six different proposers were received by the submittal deadline of January 24, 2008. The proposals were evaluated and ranked by an impartial evaluation committee that included representatives from the airport industry, business, tourism and labor. Four proposals are recommended, one for each food & beverage and retail packages.

Using the criteria in the RFP and the rankings of the evaluation committee, staff is recommending that:

- Package 1 (retail) and Package 4 (food & beverage) be awarded to Host International, Inc.;
- Package 2 (retail) be awarded to AMS-SJC JV; and
- Package 3 (food & beverage) be awarded to Areas USA SJC, LLC.

Upon Council approval of the recommendation, the City Manager or her designee will enter into negotiations with the top-ranked proposer for each package to develop a Concession Agreement. The four Concession Agreements will be in substantially the same form as the model agreement in the RFP. Negotiations will primarily center on the final subtenant mix, considering all the packages together, resolving adjacency issues in order to serve customers better, and modifying concept placements as they relate to the details contained within the other package proposals. The majority of concepts within the packages will remain intact. The terms of the agreements will be effective upon execution by the City Manager after completion of negotiations and will terminate on June 30, 2020.

The Director of Aviation will report back to the City Council with an informational memorandum regarding the results of negotiations and the status of the Concession Agreements.

Staff presented its recommendation for award to the selected proposers to the Airport Commission on May 12. The Commission endorsed staff's recommendation.

BACKGROUND

RFP Vision

On December 14, 2004, Council approved direction for the development of the Airport's concession program, including the approval of goals and objectives for the program (see Attachment A). The Council's direction included the following vision statement:

> *"Create a concession program for Food & Beverage/Retail in the North Concourse that provides the highest quality, flexibility and efficiency. The operator should be experienced, financially sound and able to create unique spaces and concepts. Local and small business participation will be strongly encouraged to help create an identity for the City."*

Initially, the concession plan covered only the North Concourse. However, in 2005 Council approved changes to the Airport Master Plan that included a remodeled Terminal A, demolition of Terminal C, and construction of a new Terminal B. The concession planning was expanded to

include these structures and, as a result, the entire Airport will have new concessions when the new and upgraded terminals are opened in 2009 and 2010.

Outreach Efforts

Council specifically directed the Airport to reach out to local businesses in the RFP process. In 2005, staff embarked on an extraordinary outreach effort that included 31 community meetings involving 900 attendees. As a result, staff developed a list of nearly 700 small and local businesses and 40 potential prime operators and developers that expressed interest in conducting business at the Airport. In addition, the Airport encouraged small and local companies to connect with prime operators and developers through networking meetings, provided lists of small and local businesses to interested prime operators and developers, provided email and Airport website updates, and conducted workshops on operating at the Airport and on the Airport Concession Disadvantaged Business Enterprise (ACDBE) program. All presentations and information shared at the meetings were posted on the Airport website. Inquiring companies were directed to the website and added to the RFP database that was used to ensure they received timely updates about RFP-related events.

On July 24, 2007, Airport staff conducted a stakeholder meeting attended by more than 160 potential vendors and proposers. This meeting provided: 1) an overview of the terms and conditions of the RFP before release; 2) an opportunity to ask questions and offer comments; 3) additional networking opportunities; and 4) an opportunity to identify possible modifications of the RFP before its final release.

RFP Release

On October 12, 2007, the City released the RFP. On October 30, 2007, a mandatory pre-proposal meeting for the proposers was held, attended by 107 people representing 64 companies. The City subsequently released three addenda to the RFP to address specific questions from proposers at the pre-proposal meeting as well as all written questions and objections to the form and content of the RFP received by the November 6, 2007 deadline for questions and comments. In response to requests from some proposers for more time to respond to the new information contained in the addenda, staff extended the deadline for submitting proposals by two additional weeks from January 10 to January 24, 2008. A summary of key dates and actions in the RFP process is contained in Attachment B.

The City Manager's and City Auditor's Office determined that the RFP is complex and high profile as defined in the City's online RFP manual. Complex and high profile RFPs require ongoing review by the Finance Department and the City Auditor's Office. The RFP strictly followed the City's procurement process in terms of format, requirements and review. Staff and the evaluation committee have worked diligently to ensure that the RFP process has followed Council Policy 0-35, Procurement and Contract Process Integrity and Conflict of Interest. The Council Policy promotes a fair, transparent, and competitive process by:

- establishing a communication protocol during the procurement process;
- directing confidentiality during the evaluation process of proposals; and
- prescribing a code of conduct for suppliers responding to a City solicitation.

The Council Policy also affords interested parties in the procurement process the opportunity to report allegations of Conflict of Interest and misconduct at any time during the pre-procurement or procurement process to City staff, which is required to investigate the allegation in consultation with the City Attorney's Office. The policy further lifts the communication protocol for allegations of misconduct and allows interested parties to discuss such allegations with the City Manager's Office, the City Attorney's Office, the City Auditor's Office, or the Mayor or any City Councilmember at any time during the pre-procurement or procurement process.

ANALYSIS

This section of the memorandum describes the entire process of the RFP by discussing the RFP structure and terms; outlining the evaluation criteria, process, and results; detailing the award recommendation; and summarizing the results of the protest process.

RFP Structure and Terms

This section of the memorandum describes the overall structure and terms of the RFP, including the two ways for responding to the RFP (Master Concessionaire Model and Developer Model), the proposal packages, the basic proposal terms, and information pertaining to policies for living/prevailing wage, retention requirements, labor peace and opportunities for people with low to moderate income.

RFP Structure

The RFP was structured to describe: 1) the selection process to be used; 2) information required of the proposers; 3) minimum qualifications of proposers; and 4) necessary forms for submitting a proposal. The complete RFP consisted of three elements: the original RFP document, Exhibits to the RFP, and Addenda to the RFP.

Following Council direction, and to encourage open and fair competition for Airport concessions, staff structured the RFP packages to provide flexible opportunities for two basic types of concessionaires to submit proposals:

- *Master Concessionaire model:* A prime concessionaire that assembles a team of businesses to provide concession services. In some cases, the master concessionaire subcontracts with business partners who actually operate the concessions. In other cases, the master concessionaire directly operates a concession through a licensing arrangement or its own proprietary concept. Under a licensing arrangement, the concession would be

directly managed by the master concessionaire and operated by employees who work directly for the master concessionaire. A typical master concessionaire model would contain a combination of subconcessionaires, licensed concessions and proprietary concepts.

- *Developer model:* A prime concessionaire that assembles a team of businesses to provide the concession services at the Airport. The biggest difference is that unlike the master concessionaire, the developer *does not* operate any of the businesses in the concession. The developer subcontracts to fill available space and subconcessionaires manage and operate one or more of their own businesses.

Proposal Packages

The RFP consisted of five proposal packages, outlined below, that were defined as either retail services or food & beverage services. Each package included spaces for concession units in each terminal to foster greater competition both in the RFP process and in subsequent operations.

- *Package1 – Retail:* A retail program containing 8,202 square feet. Due to the Airport's Terminal Area Improvement Plan (TAIP), three of the existing interim units located in Terminals A, A+, and C will close in 2009 and 2010, reducing the ultimate package to 6,052 square feet.

- *Package 2 – Retail:* A retail program containing 8,425 square feet. Due to the Airport's TAIP, three of the existing interim units located in Terminal A and C will close in 2009 and 2010, reducing the ultimate package to 6,775 square feet.

- *Package 3 – Food & Beverage:* A food and beverage program containing 11,575 square feet. In addition, this package includes food court seating and a circulation area of 1,375 square feet. The total square footage is 12,950 square feet.

- *Package 4 – Food & Beverage:* A food and beverage program containing 10,016 square feet. In addition, this package includes food court seating and a circulation area of approximately 5,600 square feet. The total square footage is 15,616 square feet.

- *Package 5 – Consolidated:* A comprehensive package to develop, design, fund and construct improvements, lease, and manage all of the concession square footage contained in all Packages 1 through 4.

With the goal of fostering competition and enhancing customer service, the RFP required that proposers for Packages 1 through 4 *could not be awarded more than one retail and one food & beverage package*, for a maximum of two packages. For the same purpose, Package 5 proposers were required to subcontract at least 75% of the square footage to third parties. Packages 1 through 4 were structured to attract concessionaires who wanted to propose on individual packages. Package 5 was structured to attract concessionaires who wanted to propose on the

entire Airport food, beverage and retail concessions program. By structuring packages so both types of concessionaires could submit proposals, staff hoped to maximize competition.

Basic Proposal Terms

The RFP outlined basic terms for all proposers requiring that the City will receive rent either in the form of a percentage of gross sales (Percentage Rent) or as a minimum annual guarantee (MAG), whichever is higher. The RFP provided that the highest MAG and Percentage Rent proposed would receive the maximum allocated number of points for those evaluation criteria. The proposers also were required to propose a minimum capital investment and define their tenant mix. The RFP further provided that the successful proposer invest an additional 25% of proposer's initial capital investment amount on refurbishments or other upgrades at roughly the mid-term of this twelve-year agreement.

Other basic terms in the RFP require that all awarded proposers must: 1) offer no more than "Street Pricing" plus 10% for items sold at the Airport; 2) participate in any Airport-sponsored customer service programs; and 3) comply with the City's prevailing/living wage, employee retention, and labor peace policies, and make jobs available to people with low and moderate incomes.

Prevailing Wage/Living Wage

Prevailing wage refers to wages paid under a collective bargaining agreement between a concessionaire and a recognized union or, if there is no collective bargaining agreement, not less than the rates established by the City or the California Department of Industrial Relations (DIR). Since there are no established DIR wage rates for food & beverage and retail services, the City's Office of Equality Assurance has established its own prevailing wage rates for the Concession Agreements. Classifications subject to City prevailing wage are: banquet manager, sous chef, supervisor (kitchen, food & beverage, catering, steward), pastry chef, first cook, catering secretary, cook and bartender. These wage rates are subject to annual adjustment. Adjustments are based on the Consumer Price Index, All Items, for All Urban Consumers [CPI-U] for San Francisco-Oakland-San José.

Living wage refers to wages paid under a collective bargaining agreement between a concessionaire and a recognized union. If wage rates set forth in a collective bargaining agreement fall below the current living wage rate established by the City, the rate of pay shall be the living wage rate unless the collective bargaining agreement expressly provides that the agreement shall supersede the living wage policy requirements. If there is no collective bargaining agreement, not less than the living wage rate established by the City must be paid. The classifications subject to City living wage are: bar back/bar attendant, pantry person, store room clerk, host/hostess/cashier/stand worker, steward, dishwasher, cocktail server, bus person, food server and retail services worker. These rates are subject to annual adjustment and are based on the federal poverty rate for a family of three and a geographic factor.

Employee Retention

The new Concession Agreements require the retention of qualified workers who would otherwise be displaced from employment by existing food & beverage and retail operators. Qualified displaced workers include all non-management and non-supervisory workers who provide direct services, who are not exempt under the Fair Labor Standards Act, and who have worked for their current employer for at least six months prior to the effective date of the new Concession Agreements. The Office of Equality Assurance will rank qualified displaced workers by seniority order.

Concessionaires are prohibited from discharging any qualified displaced workers for at least 90 days after beginning operations, except for cause. After the initial 90 days, continued employment of qualified displaced workers will be under the terms and conditions established for the workers in each classification.

Host International, Inc., is the current food & beverage operator at the Airport and would retain its employees, if Council agrees with staff's recommendation for the food & beverage package. It is expected that all qualified displaced retail workers will be offered employment with the proposers that are awarded retail packages.

Labor Peace

In accordance with Council policy, the Office of Equality Assurance determined that the level of vulnerability to service or labor disputes was sufficient to warrant that labor peace is essential to the propriety interests of the City. The City is not involved in the negotiations and terms of the collective bargaining agreements between the concessionaires and their employees, but proposers were required to address how they would ensure that no labor dispute or unrest will occur during the term of the agreement.

Host International, Inc., currently operates under a collective bargaining agreement with the Hotel Employees and Restaurant Employees Local 19. Areas USA SJC, LLC, and AMS-SJC JV have signed Labor Peace/Neutrality Agreements with the Hotel Employees and Restaurant Employees Local 19. Labor neutrality provisions generally allow union campaigns to provide employees with information regarding the merits of unionization without employers offering arguments against unionization.

Opportunities for People with Low to Moderate Income

The City is the recipient of a loan from the United States Department of housing and Urban Development (HUD) commonly referred to as a "Section 108 Loan." The HUD program is a source of financing for the economic development activities that include benefits to low- and moderate-income persons. To document the creation of new low and moderate income jobs at the Airport, the City requires the successful proposers commit to efforts to make at least 51% of its jobs at the Airport available to people with low and moderate income.

Each of the proposers has acknowledged the Section 108 Loan Requirements in their proposals. Staff will work with the successful proposers to document their commitment to the program and ensure continued documentation that demonstrates their compliance.

Evaluation Criteria, Process and Results

The RFP detailed the combination of evaluation criteria and weighted values that will be needed to operate a successful concession at the Airport and meet the goals and objectives of the RFP. The criteria and their weighted values for both the written proposal and the oral interview and presentation are as follows:

Criteria	Weighted Value
▪ Financial	25%
▪ Tenant Mix and Overall Concession Plan	25%
▪ Customer Service	15%
▪ Design and Capital Investment	10%
▪ Experience and Qualifications	15%
▪ Marketing and Operations Plans	10%

A nine-member evaluation committee that represented a high level of professional and community experience and expertise evaluated and scored the proposals. The evaluation committee included the following members:

- Dan Fenton, President & CEO, San José Convention and Visitors Bureau
- Pat Dando, President & CEO, San José/Silicon Valley Chamber of Commerce
- Phaedra Ellis-Lamkins, Executive Officer, South Bay Central Labor Council
- Amy Shaw, Manager for Aviation Commercial Business at Seattle-Tacoma International Airport (Airport peer representative)
- Don Simpson, San José Airport Commission member
- Patrick McCue, SJC Property Program Manager
- Terri Gomes, SJC Deputy Director for Finance and Administration
- Vicki Day, SJC Director of Customer Services
- Nancy West, Airport Concession Disadvantaged Business Enterprise consultant

A representative of the airlines was also invited to participate on the evaluation committee. However, due to last minute scheduling conflicts, the airline representative was unable to participate throughout the entire evaluation process, but served on the evaluation committee in an advisory, non-voting capacity.

The City received thirteen written proposals from six enterprises:

Package 1 (Retail):	AMS-SJC JV Host International, Inc. Pacific Gateway Concessions, LLC

Package 2 (Retail):	AMS-SJC JV Host International, Inc. Pacific Gateway Concessions, LLC
Package 3 (Food & Beverage):	Areas USA SJC, LLC Creative Host Services, Inc. Host International, Inc.
Package 4 (Food & Beverage):	Areas USA SJC, LLC Creative Host Services, Inc. Host International, Inc.
Package 5 (Consolidated):	Westfield Concessions Management, LLC

Each proposal met the minimum qualifications as required in the RFP. The written proposals were then evaluated by the evaluation committee. The written proposal could receive a maximum score of 9,000 points, 1,000 points per evaluator, and the oral interview and presentation could receive a maximum score of 2,700 points, 300 points per evaluator, for a total maximum score of 11,700 points. A breakdown of the maximum points available for each component of the evaluation criteria is listed in Attachment C.

Evaluation Results

Based on the evaluation criteria for the written proposals and oral presentations, the evaluation committee scored the proposals as follows.

	Pacific Gateway Concessions	AMS-SJC	Host International	Creative Host Services	Areas USA SJC	Westfield Concessions Management
Package 1 (Retail)	6,739	7,546	**9,484**			
Package 2 (Retail)	6,678	**8,188**	9,334			
Package 3 (Food & Bev.)			9,563	8,446	**8,606**	
Package 4 (Food & Bev.)			**9,635**	7,937	8,424	
Package 5 (Consolidated)						7,393

Boldface represents the score of the recommended proposer for each package.

A breakdown of the scores for each proposal by evaluation criteria is listed in Attachment D.

Award Recommendations

Proposers for Packages 1 through 4 could only be awarded a maximum of one retail package and one food & beverage package. If a proposer had the highest scores in two packages in the same category, the award of one of the packages would go to a proposer with the second highest package score in the same category. The combined scores of the proposals for Packages 1 through 4 that are recommended for award were averaged to compare to Package 5, the Master Concessionaire package.

The averaged combined score of the four recommended awardees is 8,978. The sole proposal for the consolidated Package 5 from Westfield Concessions Management, LLC, had a total score of 7,393. Because this score was lower than combined averaged score of 8,978 for the recommended individual awardees for Packages 1 through 4, staff does not recommend the sole Master Concessionaire package proposal submitted by Westfield Concessions Management, LLC, for award of contract.

Using these evaluation criteria and process identified in the RFP, staff recommends that:

- Package 1 (retail) and Package 4 (food & beverage) be awarded to Host International, Inc., for earning the highest evaluation scores in the retail and food & beverage categories;

- Package 2 (retail) be awarded to AMS-SJC JV for having the next-highest evaluation score in the retail packages;

- Package 3 (food & beverage) be awarded to Areas USA SJC, LLC, for having the next-highest evaluation score in the food & beverage packages.

Benefits to the City

AMS-SJC JV, Areas USA SJC, LLC, and Host International, Inc., present a unique blend of companies with well over 100 years of combined experience in the airport and transportation concessions industry. Many factors were considered by the evaluation committee to arrive at this recommendation, including subtenant mix, customer service standards, capital investment, revenue to the City, marketing and promotions, financial capacity, opportunities for subtenants, sales projections, architectural design, staffing plans, labor/training practices, and experience and expertise in working in an airport environment. The proposals recommended for award offer the most complete food & beverage concessions program with the greatest likelihood for long-term success.

The combination of these proposals recommended for award will provide a minimum of $8.2 million in guaranteed annual revenue to the City beginning when the concessions program is fully operational. This will double the concession revenue the City currently receives at the Airport. A minimum of $22.8 million in initial capital and a minimum of $5.7 million in mid-

term capital will be invested to ensure high-end finishes and innovative designs that will complement the look of the New Airport throughout the term of the Concession Agreements.

The businesses and concepts contained within these recommended packages for award will provide an attractive mix of local, regional, national, and international brands and concepts. The proposers have partnered with well-known local businesses and have proposed an exciting mix that will impress travelers with a strong sense of San José and Silicon Valley. A complete list of concepts and businesses presented in the recommended proposals are in Attachment E.

Compatibility and Continuity

In addition to ensuring a quality experience for travelers, the RFP was designed to foster competition and provide the City flexibility. The recommended proposals contain many interesting concession concepts, but proposers were not aware of the specific concession concepts that their competitors were also proposing. As a result, the winning packages contain some duplicated elements, incompatible adjacent concepts, and architectural features that either would not be compatible or would not provide the best experience for customers.

For example, two immediately adjacent coffee stores or bookstores might mean that similar services would not be available elsewhere in the Airport or result in lower sales per location. These situations will be adjusted through negotiations to achieve the best outcome for passengers, concessionaires and the Airport, and issues related to compatibility and continuity will require some changes to the proposers' concepts and subtenant mix. The majority of the proposed concepts will remain intact. In addition, a basis of design will be developed by the City to ensure compatibility and continuity of features to address architectural issues.

The City's concession consultant used during the development of the RFP has been retained to examine concession compatibility and recommend changes to achieve the best outcome. The evaluation committee and the Aviation Director will consider these suggestions with the objective of enhancing the overall results for the Airport. It is not anticipated that these refinements would require major changes to the proposals or change the direction for the overall concessions program.

Protest Process

The City's Chief Purchasing Officer received a protest letter dated April 16, 2008, from Pacific Gateway Concessions (see Attachment F) alleging that evaluation committee members had conflicts of interest; alleging noncompliance with the City's Lobbying Ordinance; alleging a lack of fairness regarding meeting requests with the City's Director of Aviation; expressing concerns with the objections process of the RFP; and expressing concerns with the evaluation of Pacific Gateway Concessions' proposal. After a careful review of the issues raised and after a meeting with representatives from Pacific Gateway Concessions, the Chief Purchasing Officer issued a response letter on April 28, 2008 (see Attachment G) and upheld the award recommendation as outlined in this memorandum.

In accordance with San José Municipal Code section 4.12.460, the protesting party can appeal the Chief Purchasing Officer's decision within ten days of the issuance of the response letter. On May 7, 2008, the City received an appeal letter to which staff has issued a supplemental memorandum to address the issues raised.

EVALUATION AND FOLLOW UP

The objective is to have the new concessions program in place when the new terminal facilities open in 2009 and 2010. To achieve this goal, the City must retain the necessary flexibility to move quickly to resolve any outstanding issues related to concept compatibility, continuity, and design. Failure to resolve these issues in a timely way could delay the opening of concessions in the New Airport and thus have significant impacts on a critical path of the Terminal Area Improvement Program.

To address these situations, the Council is requested to:

1. Authorize the City Manager to negotiate terms of Concession Agreements to include concepts, locations and design with consultation of the evaluation committee.

2. If agreement to terms cannot be reached by August 1, 2008, authorize the City Manager to terminate negotiations and negotiate terms of a Concession Agreement with the next-ranked proposer for that package.

Over the twelve-year term of this concession program, additional reconfigurations of concepts and tenant mix and other amendments to the concession agreements will be required from time to time as a result of performance issues or business conditions. This will also require that the City have necessary flexibility to respond to new circumstances involving the concessions in the future. The Concessions Agreement provides the Director of Aviation with authority to approve amendments for expansion or contraction of locations, new concepts, and reconfigurations of concepts and subtenant mix during the overall term of the Concession Agreements, so long as no changes are made in the provisions in the Concession Agreement regarding percentage rent or MAG to be paid to the City.

The Director of Aviation will be primarily responsible for the coordination and implementation of the concession program at the Airport and updating Council on progress or any significant changes to the program. The Director of Aviation will report back to Council with an information report upon the completion of the negotiations or if negotiations are terminated with any proposers.

PUBLIC OUTREACH/INTEREST

- ☐ Criterion 1: Requires Council action on the use of public funds equal to $1 million or greater. **(Required: Website posting)**

- ☐ Criterion 2: Adoption of a new or revised policy that may have implications for public health, safety, quality of life, or financial/economic vitality of the City. **(Required: E-mail and website posting)**

- ☐ Criterion 3: Consideration of proposed changes to service delivery, programs, staffing that may have impacts to community services and have been identified by staff, Council or a community group that requires special outreach. **(Required: E-mail, website posting, community meetings, notice in appropriate newspapers)**

This item does not meet the above criteria requiring additional notification. However, a copy of this report has been provided to all proposers and to each member of the evaluation committee. This report and recommendations will be considered by the San José Airport Commission at its meeting on May 12, 2008, and are posted on the Airport website, **www.sjc.org**. It will also be posted on the City's Council Agenda website for the June 3, 2008, Council meeting.

An extensive amount of public outreach has already occurred during the RFP process with efforts to contact local businesses. Beginning in 2005, 31 community meetings were held involving 900 attendees. The Airport developed a list of nearly 700 small and local businesses and 40 potential prime operators and developers to ensure that interested companies received timely updates about RFP-related events, opportunties, and schedules.

On July 24, 2007, Airport staff conducted a stakeholder meeting attended by more than 160 potential vendors and proposers. This meeting provided: 1) an overview of the terms and conditions of the RFP before release; 2) an opportunity to ask questions and offer comments; 3) additional networking opportunities; and 4) an opportunity to identify possible modifications of the RFP before its final release.

Staff presented its recommendation for award to the selected proposers to the Airport Commission on May 12. The Commission endorsed staff's recommendation to the City Council.

Throughout the RFP process all presentations and information shared at the meetings were posted on the Airport website.

COORDINATION

This memorandum has been coordinated with the City Attorney's Office, City Manager's Budget Office, Office of Equality Assurance, and City Auditor's Office.

COST SUMMARY/IMPLICATIONS

The combination of these proposals will provide $8,206,200 of guaranteed minimum annual revenue to the Airport and an estimated annual sales tax of $564,000 to the City's General Fund beginning once the new concessions program is fully operational, scheduled for Fiscal Year 2011.

CEQA

Resolutions No. 67380 and 71451, PP 08-060.

SCOTT P. JOHNSON
Director of Finance

WILLIAM F. SHERRY, A.A.E.
Director of Aviation

For more information or answers to questions, please contact William F. Sherry, Director of Aviation, at (408) 501-7669.

Attachments

A. Concession Program Goals and Objectives
B. Key Dates in the RFP Process
C. Maximum Evaluation Criteria Points Available
D. Proposal Scores by Evaluation Criteria
E. Concepts in the Proposals Recommended for Award
F. Pacific Gateway Concessions Protest Letter
G. Response to Pacific Gateway Concessions Protest Letter

COUNCIL AGENDA: 12-14-04
Attachment A ITEM: 8.3

CITY OF SAN JOSE
CAPITAL OF SILICON VALLEY

Memorandum

TO: HONORABLE MAYOR AND CITY COUNCIL

FROM: Ralph G. Tonseth
Paul Krutko

SUBJECT: NORTH CONCOURSE CONCESSION DEVELOPMENT FOR FOOD/BEVERAGE & RETAIL

DATE: December 8, 2004

Approved

Date 12/8/04

Council District: Citywide

RECOMMENDATION

Approval of the following direction in the development of the Airport's North Concourse Concession Program:

- A single prime operator for the food and beverage element of the North Concourse, and
- One or two prime operators for the retail portion of the North Concourse

BACKGROUND

With the development and construction of the North Concourse, staff is tasked with creating a concession program that meets the desires and needs of our stakeholders. Towards that end, the following Vision Statement and Objectives were developed:

Vision Statement

Create a concession program for Food/Beverage & Retail in the North Concourse that provides the highest quality, flexibility and efficiency.The operator should be experienced, financially sound and able to create unique spaces and concepts. Local and small business participation will be strongly encouraged to help create an identity for the City.

Objectives

- Integrate the concession program with the approved Paseo architectural concept design
- Insure the continuity of an efficient, successful program that can quickly adapt to industry changes

- Continue our outreach program to solicit input from passengers, employees and local business groups
- Encourage uniquely identifiable City of San José concepts
- Encourage local/regional products and artisans
- Showcase the newest and latest in high technology
- Develop a new "Customer-Service Training Program"
- Require street pricing
- Maximize revenue potential
- Incorporate City public policy

ANALYSIS

Staff, with the assistance of the Airport concession-consulting firm, Sypher-Mueller, developed the basis for a concession program based on historic data and experience from other airports around the country.

The goals for the concession layout plan are based on the following guidelines: passengers should not have to walk more than two gates to purchase a cup of coffee or newspaper; centrally locate the majority of the concessions for passenger convenience; and use the Main Street/clustering effect to drive revenue.

Part of the Vision Statement is to create an identity for the City through local and small business participation. Towards that end, staff developed an Outreach Program that includes presentations at local business events, Chambers of Commerce, Rotary and local and small business groups, to solicit input and ideas and to encourage local businesses to participate in the upcoming Request for Proposals (RFP) processes for the North Concourse Concession Programs. A list of those groups that staff has met with to date is attached as Exhibit A. Additional outreach events will continue over the next several months to promote the benefits of the concession program, and to provide technical assistance and information about operating at an airport.

The focus of the concession program was to determine the best method to include local concepts and operators in the North Concourse Concession Program and promote the long-term success for participants.

Staff recommends that the City utilize the prime operator concept. A prime operator is generally a company whose core business is providing multiple and variable concession services in airports. As envisioned, the City would provide the prime operator with a total square feet of

space and the prime operator would design, build out and allocate the space to concepts and operators that meet the goals and objectives of the City.

The following represent the chief benefits of utilizing a prime operator:

- Ability to finance the high cost of construction and help to provide capital to small/local operators;
- Experience in dealing with City policies and act as an advisor to small/local operators in the differences of operating at an airport;
- Specializes in airport concession trends and concepts, and assists small/local operators in staying ahead of trends and assist in transitions;
- Ability to generate higher revenue due to economies of scale, and provide the benefit of their economy of scale to small/local operators;
- Historically, prime operators include a high level of participation of local and small business operators and local concepts within their programs (staff will continue to strongly encourage local concepts and participation in its food and beverage and retail programs much like it did in the Airport's 1998 Food and Beverage RFP process, which resulted in 50% of the locations operated by local operators);
- Prime operators can replace a failed concept in a short turn-around time, which minimizes revenue losses.

The ability to replace a potential failed concept in a timely manner is a significant concern. Due to the time required for the RFP and construction process, it can take up to a year to replace a failed individual operator, disrupting the aesthetics and vitality of the airport with unoccupied/boarded-up space, and resulting in a loss of revenue. A prime operator is better able to respond quickly and replace a concept in a short period of time.

Overall, staff recommends the use of a prime operator concept rather than individual space operators for the retail and food and beverage concessions at the North Concourse as the best approach to achieve the Vision and Objectives of the overall concession program.

The use of the prime operator concept does not preclude local San José entities from having a presence in the North Concourse and, in fact, may better position local entities in establishing an Airport presence.

PUBLIC OUTREACH

Outreach efforts have been described above. The Airport and the Office of Economic Development will continue to strongly encourage local and small business participation

COORDINATION

This item has been coordinated with the City Manager's Office, the City Attorney's Office, the Office of Equality Assurance, the Airport Commission and the Small Business Development Commission.

CEQA

Resolution Nos. 67380 and 71451, PP 04-269.

Paul Krutko

PAUL KRUTKO
Director of Office of
Economic Development

Frank Kirkbride

for RALPH G. TONSETH
Director of Aviation, Airport

EXHIBIT A

North Concourse Concessions
Public Outreach Log

Date	Organization	Event	Attendees
07/22/04	Hispanic Chamber of Commerce	Regular Monthly Mtg	30-40
08/11/04	Small Bus. Development Com.	Regular Monthly Mtg	10-12
08/25/04	Small Bus. Development Com.	Public Input Mtg.	25-30
08/26/04	Santa Clara Rotary Club	Regular Monthly Mtg	50-60
09/28/04	Santa Clara Chamber of Commerce AND CVB	Regular Monthly Mtg - Board of Directors	20
09/30/04	N. 13th Street Bus. Assoc.	Regular Monthly Mtg	10
10/07/04	Japantown Bus. Association	Regular Monthly Mtg	5
10/19/04	E. Santa Clara Bus. Assoc.	Regular Monthly Mtg	45
10/20/04	Story Road & Alum Rock Business Assocs.	Joint Meeting	30
10/20/04	San Pedro Square Bus. Assoc.	Regular Monthly Mtg	10
10/20/04	Fountain Alley Bus. Assoc.	Regular Monthly Mtg	6
10/21/04	Alameda Bus. Assoc.	Regular Monthly Mtg	10
10/21/04	San Jose Entrepreneur Center	Special Event	8
10/27/04	SoFA District Business Group	Regular Monthly Mtg	7
11/03/04	Good Bus. In Tough Times Workshop	Special Event	20
11/09/04	W. San Carlos Bus. Assoc.	Regular Monthly Mtg	18
11/17/04	Santa Clara Chamber of Commerce & CVB	Regular Monthly Mtg - General Membership	5
11/18/04	Tough Times Workshop - Nat'l Hispanic University	Special Event	40
11/22/04	SJ Redevelopment Agency	Coordination Meeting - Closed Session	5
01/20/05	San Jose Entrepreneur Center	Special Event - Call-Back	TBD
TBD	Portuguese Chamber of Commerce	Regular Monthly Mtg	TBD
TBD	Winchester Bus. Assoc.	Regular Monthly Mtg	TBD
TBD	Willow Glen Neighborhood Assoc.	Regular Monthly Mtg	TBD

Attachment B

Key Dates for Airport Food & Beverage and Retail RFP Process

December 8, 2004 - Small Business Commission unanimously approves staff's recommendation for this RFP

December 14, 2004 - City Council approval of goals and objectives for the concession program

May 19, 2005 - "Operating at the Airport" workshop and business networking opportunity

November 15, 2005 - Council approves changes to Airport Master Plan

February 7 and 9, 2006 - ACDBE certification workshops

September 12, 2006 - Council approves ACDBE program

July 24, 2007 - Stakeholder meeting to review the basic terms and conditions of the RFP

October 12, 2007 - City releases RFP

October 30, 2007 - Mandatory pre-proposal conference and site tour

November 6, 2007 - Final RFP questions due from proposers

January 24, 2008 - Proposal submittal deadline

March 4, 5, and 6 2008 - Oral interviews and presentations of proposal finalists

April 4, 2008 - Notice of Intent to Award issued

April 16, 2008 – Award protest submittal deadline

May 12, 2008 - San José Airport Commission recommendation

June 3, 2008 - Council action.

Attachment C

Maximum Evaluation Criteria Points Available per Package per Evaluator

Written Evaluation Criteria – 1,000 Total Points

FINANCIAL	**250 Points**
Minimum annual guarantee (MAG)	150 points
Total annual percentage fee	35 points
Sales projections and financials	35 points
Financial capacity and references	30 points
TENANT MIX AND OVERALL CONCESSION PLAN	**250 Points**
Mix of international, national, regional and local concepts and look and feel of the San Jose region	200 points
Proposed concepts justification and rationale	25 points
Percent of locations subcontractor owner/operated	25 points
CUSTOMER SERVICE	**150 Points**
Evaluation of customer service standards	35 points
Employee customer service training	25 points
Customer service levels monitoring	25 points
Speed of service standards	25 points
Payment types and additional service offerings	20 points
Customer feedback, complaints, product guarantees	20 points
DESIGN AND PROPOSED CAPITAL INVESTMENT	**100 Points**
Design incorporates the "look and feel" of SJ and Silicon Valley	30 points
Proposed capital investment	20 points
Concession program design image and integration into SJC	15 points
Proposed capital improvements description/renderings	25 points
Architectural capabilities and experience related to airports, etc.	10 points
EXPERIENCE AND QUALIFICATIONS	**150 Points**
Demonstrate retail management experience/expertise	50 points
Concession program operation performance standards	35 points
Years in business and corresponding receipts	25 points
Past marketing and concession promotion programs	20 points
Photos/videos that demonstrate merchandise expertise	20 points
MARKETING AND OPERATION PLANS	**100 Points**
Proposed new concession marketing/promotions to Airport customers	20 points
Concession program facility maintenance operating standards	20 points
Management organization staffing plan for concessions	15 points
Labor/training practices for organization and concessions	15 points
Concession program operations plan	15 points
Property management plan overview	15 points

<u>Oral Evaluation Criteria</u> – 300 Total Points

FINANCIAL	**75 Points**
TENANT MIX AND OVERALL CONCESSION PLAN	**75 Points**
CUSTOMER SERVICE	**45 Points**
DESIGN AND PROPOSED CAPITAL INVESTMENT	**30 Points**
EXPERIENCE AND QUALIFICATIONS	**45 Points**
MARKETING AND OPERATION PLANS	**30 Points**

Attachment D

Proposal Scores by Evaluation Criteria

Evaluation Criteria	Points Possible	AMS-SJC JV Package 1	AMS-SJC JV Package 2	Pacific Gateway Package 1	Pacific Gateway Package 2	Host Intl. Package 1	Host Intl. Package 2	Host Intl. Package 3	Host Intl. Package 4	Creative Host Package 3	Creative Host Package 4	Areas USA SJC Package 3	Areas USA SJC Package 4	Westfield Concess. Package 5
Financial	2,925	2,017	2,659	2,108	2,091	2,583	2,464	2,679	2,724	2,127	1,580	2,377	2,253	2,328
Tenant Mix and Overall Concession Plan	2,925	1,536	1,538	1,400	1,337	2,250	2,203	2,217	2,237	2,148	2,204	2,108	2,054	1,602
Customer Service	1,755	1,189	1,189	976	973	1,386	1,387	1,413	1,414	1,212	1,210	1,205	1,203	953
Design & Proposed Capital Investment	1,170	662	653	715	729	841	854	850	853	858	858	837	835	588
Experience and Qualifications	1,755	1,328	1,335	894	903	1,470	1,470	1,458	1,458	1,279	1,264	1,221	1,221	1,197
Marketing and Operations Plan	1,170	814	814	646	645	954	956	946	949	822	821	858	858	725
Total Points	11,700	7,546	8,188	6,739	6,678	9,484	9,334	9,563	9,635	8,446	7,937	8,606	8,424	7,393

Attachment E

Concepts in the Proposals Recommended for Award

Package 1 – Retail

- CJ Olson Cherries – A Santa Clara Valley company since 1899 featuring assortments of fresh cherries, dried fruits, nuts, jams, and gift baskets.

- Hispanic Chamber of Commerce Enterprise Store – In conjunction with the Silicon Valley Hispanic Chamber of Commerce, the proposer will fund the build out and provide mentoring for a store that will be made available to Hispanic Chamber members and other small local companies to develop and grow their businesses.

- Hicklebee's Children's Book Emporium – A Willow Glen company in business for almost 30 years offering a wide selection of children's books.

- Schurra's Fine Confections – A San Jose company operating since 1912 producing hand made candies, chocolates, peanut brittle and toffee.

- Pacific Outfitters – Owned and operated by a local Disadvantaged Business Enterprise (DBE) offering luggage, travel gear and accessories with a mind toward value conscious consumers.

- Sunglass Icon –A national retailer offering a wide range of sunglasses.

- Techshowcase – A DBE firm offering branded high-tech products and accessories from popular names such as BlackBerry, Sony and Nokia.

- Sunset News – A newsstand inspired by and licensed through Sunset Magazine.

- Brookstone – A national retailer known for its unique gadgets and gear.

Package 2 – Retail

- Hudson News – A proprietary national newsstand brand providing convenient news and gift items.

- Discover San Jose – An eclectic blend of souvenirs and memorabilia from museums, kitchens, craft houses and cultural attractions of the San Jose area.

- CNN Newsstand – A CNN themed newsstand with live news feeds in a newsroom atmosphere.

- Hudson Booksellers – A store that offers books as well as related accessories and merchandise.

- Life is Good – A national concept that provides casual but quality t-shirts, hats, beach towels, flip flops, jewelry bags and other merchandise.

- Ed Hardy – A popular retail store with California roots offering high end t-shirts, sweatshirts, shoes, jackets, caps, accessories and jewelry.

- Sunglass Hut – Over 1,900 locations around the world that provide a wide range of sunglasses.

Package 3 – Food and Beverage

- Paolo's – A local restaurant since 1958 that will offer a moderately priced menu with the same high quality Mediterranean fare as its downtown namesake.

- Willow Street Pizza – A local restaurant that opened in 1991 with locations in Los Gatos, Willow Glen and Westgate that will serve a mix of pizza, sandwiches, pasta and salads.

- The Brit – This bar will follow the same British pub/sports bar theme as the downtown San Jose Britannia Arms.

- Consuelos - A Mexican bistro located in Santana Row that features dishes that celebrate the flavors of Mexico.

- Le Boulanger – Le Boulanger originated in 1981 in Los Altos and offers sandwiches, breads, breakfast pastries and deserts.

- Illy – An international Italian style coffee shop with specialty sandwiches and pastries.

- Sora's- An authentic Japanese restaurant offering exotic dishes and sushi.

- San Jose Rocks – A restaurant and bar concept showcasing the history of San Jose rock-and-roll highlighting performers that call San Jose and the Silicon Valley home.

- Peet's Coffee – Peet's coffee started in Berkeley in 1966 and has grown to be a national brand with their roasting facility located in Emeryville.

Package 4 – Food and Beverage

- Chiaramonte's Deli – San Jose's oldest Italian deli dating back to 1908. The original shop on 13th street sells hand-made Italian style sausages, hot sandwiches and traditional dishes.

- Sonoma Chicken Coop – A local restaurant that offers a wide variety of reasonably priced, quality food with three locations in the San Jose area including downtown, Almaden and Campbell.

- Shark's Cage – A San Jose Sharks themed restaurant and bar paying homage to the local NHL team with large screen televisions highlighting sports events and décor patterned after a hockey rink with a one-of-a-kind sports theme.

- Gordon Biersch – A local brewery established in 1988, and now with twenty-four locations, offering a full menu with favorite dishes selected from its downtown San Jose restaurant.

- Santa Cruz Wine Bar –A concept created with the assistance of the Santa Cruz Mountains Wine Growers Association. This full service wine bar and casual dining restaurant will specialize in wines from the Santa Cruz Mountains region.

- Harbor Express – Healthy and affordable Chinese food with an existing presence at the Airport.

- Brioche Doree Café – Brioche Doree Café is a French country café concept that will sell European style pastries, coffee, tea, sandwiches and salads.

- Mojo Burger – A local fast casual hamburger and chicken concept focusing on natural and local products with two locations in San Jose.

- Sushi Boat – A locally owned business with four locations in the region serving sushi and Japanese cuisine.

- Starbucks –A popular coffee concept with an international footprint.

- Una Mas – The first Una Mas opened in 1991 in San Jose and has grown to 20 locations. This popular concept offers innovative, heart healthy, quick Mexican food.

- Cold Stone Creamery – An ice cream concept that features ice cream mixed with ingredients chosen by the customer.

Attachment F

Pacific Gateway Concessions, LLC
1150 North First Street Suite 220
San Jose, CA 95112

April 16, 2008

Via hand-delivery

City of San Jose
Attention: Walter C. Rossman, CPM
200 East Santa Clara Street, 13th Floor
San Jose, CA 95113

Re: Protest of the award recommendation by Pacific Gateway Concessions, LLC (PGC) (DeLaVe, Inc. 50% Ownership Interest in PGC)

Dear Mr. Rossman:

We respectfully submit the following Protest of the award recommendation made on April 4, 2008 for the Norman Y. Mineta San Jose International Airport Food, Beverage and Retail RFP (the "RFP"), pursuant to Section 1.12.9, Protest Procedure.

MEMBERS OF THE COMMITTEE HAD CONFLICTS OF INTEREST, FAILED TO ENGAGE IN DUE PROCESS, AND VIOLATED RULES OF FUNDAMETAL FAIRNESS IN THE PROCUREMENT PROCESS

1. PGC has reason to believe that certain members of the Evaluation Committee appear to have engaged in conflicts of interest and ethical misconduct which is either violative of city proscribed rules, or at a minimum gives an appearance of improper or illegal conduct. Specifically, I was informed by Committee member Phaedra Ellis that she was going to support Host/Marriot proposal because she has a union relationship with them. Not because they presented a financial package that was better for the City of San Jose, not because the Marriot was more experienced in the Airport retail business, but because it was better for her union relationship. This was communicated by Ms. Ellis to me BEFORE the RFP was even out, and before the presentations and proposals were submitted by all competitors. How can such a process be fair and equitable when committee members like Ellis are predisposed, irrespective of the benefits to the City? Is the goal of the Committee to protect the self serving interest of one member, or is it to protect the interest of the citizens of San Jose? Redundantly, Ms. Ellis, and anyone else with such a predisposition, without properly weighing the merits of other competitors, should be summarily disqualified from the Committee, or at least in voting on the contract award.

2. In addition, Hudson News RFP package 2 pages 140 and 146 included a letter of reference from Amy Shaw, who was serving as one of the Committee Members. PGC believes this to be a conflict of interest, therefore disqualifying Ms. Shaw from the award process or otherwise requiring that she recuse herself from the evaluation committee.

In this connection, further to paragraphs V (Allegation of Conflict of Interest) and VI (Allegations of Misconduct) of the Procurement and Contract Process Council Policy, PGC request an investigation of Ms. Ellis, Ms. Shaw and all members of the committee where appropriate.[1]

3. There is also evidence that lobbyists were used by three of the competing bidders to procure an award of this contract. Though hiring of lobbyists in and of itself does not necessarily rise to the level of wrongdoing, it definitely clouds the climate of integrity sought by the City Council/The Mayor and iterated by the City of San Jose's own Council Policies relating to the Procurement and Contract Process, Integrity and Conflict of Interest. Said Policy reads as follows:

> *It is the policy of the City of San Jose to provide a fair opportunity to participants in competitive processes for the award of City Contracts by promulgating integrity and removal of Conflicts of Interests through the inclusion of the following components in all competitive solicitation.*
> City of San Jose, Council Policy, Page 1, Policy Number 0-35, Effective 2/6/07.[2]

4. In addition to the above, there are other factors which raise suspicion that PGC was not provided an "equal and level playing field" in the Procurement Process. First, Airport Director Bill Sherry refused PGC's initial request to meet with PGC prior to the release of the RFP.[3] Though we were eventually granted an audience with Director Sherry, the balance of the meeting with Sherry involved him telling PGC members how unhappy he was with our efforts to force this meeting upon him. Moreover, PGC has learned from its competitors that Director Sherry did in fact meet with PGC competitors on several occasions without having to make multiple efforts (like PGC) to meet with Sherry. This begs the question, was Director Sherry playing favorites, stacking the deck against PGC and otherwise predisposed, irrespective of City Interest, to vote against PGC. Was this a case of a selective process of procurement? These are questions that must be answered prior to the final disposition and awarding of the contract. In addition, one of the bidders, Areas USA told PGC that their lobbyist was informed by Director Sherry that DeLaVe was an undesirable partner, but offered no explanation. Competitor Westfield also told DeLaVe, Inc. that the Airport Director did not want to do business

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[1] Council Policy, 0-35, para. V: *Prior to the solicitation release up to award of contract, any allegations of Conflict of Interest by a City employee, consultant, or other participant in the pre-solicitation and solicitation process shall be reported to the Procurement Contact. The Procurement Contact shall investigate the alleged conflict of interest in consultation with the City Attorney's Office and document the resulting determination.*

Allegations of Misconduct: At any time during a solicitation process, any misconduct by a City employee, consultant or other participant in the pre-solicitation and solicitation process, shall be reported to the City's Chief Purchase Officer. The Chief Purchasing Officer shall investigate the alleged misconduct, in consultation with the City Attorney's Office and others as appropriate...

[2] Can one harbor any doubt that the conduct of Ms. Ellis, Ms. Shaw and perhaps others, violates the aforementioned policy?

[3] City Policy permits said contact prior to the issuance of Solicitations. See City Policy Number 0-35, page 2, IA (Communication Protocol)

with DeLaVe, Inc, again without explanation and without any factual or legal basis. This bias must be investigated.

5. Another point of protest relates to a concern previously stated in our objection to the RFP, in an objection letter as amendment to the RFP dated November 6, 2007. In that letter we stated our concern that any objections made to the RFP would create a negative bias toward the party raising the objection during the evaluation process. We had requested that any objections to the RFP be considered without disclosure of the party raising the objection as a way to prevent such bias from impacting the evaluation process. In spite of your assurance that the evaluation committee would consist of impartial members, we are concerned that the fact of our having raised objections to the RFP may have nonetheless resulted in a negative bias against our proposal. As the result of our objection letter having nothing to do with the evaluation criteria it should have not been provided to the selection panel for there review as we requested. It is likely that the improper dissemination of this objection letter clouded the judgment of the committee members. We believe this is indicated by the fact of our significantly lower scores on the six evaluation criteria: Tenant Mix, experience & operations, customer service, design, financials, and marketing plan as compared to overall Concession Plans contained in the proposals of the other proposers. All evaluation criteria being equal, despite having the best Minimum Annual Guarantee (MAG), PGC's proposal was not adopted.

TENANT MIX

Our contention is further supported by comments of the Evaluation Committee members during our debriefing that suggested our concepts, such as the San Jose Mercury News store, included declining brands as compared to our competitors submitted as an example, SJC News, a non brand. Such statements indicate that the Committee was biased against PGC and its concepts, or simply had an intrinsic lack of understanding of basic concepts in the retail business. Additional concerns regarding our concepts were misjudged, as PGC's concepts were equal if not better than our competition, and our local and national brand concepts were as strong (or stronger) than that of our competitors. In this connection, we are able to provide additional detail upon request.

FINANCIALS

PGC was further informed in our debriefing meeting on Wednesday, April 9, 2008, that there was significant concern regarding whether our Minimum Annual Guarantee was realistic based on the sales projections and that this concern resulted in lower scoring than we might have earned otherwise. First, as everyone is aware, all MAG's were supported by bond. Second, this concern was not raised at any point during our oral presentation by the Committee, therefore we never had the opportunity to respond or provide the necessary support or assurances that our financial projections were accurate. Had the Committee raised these concerns during our presentation, we would have been able to discuss these concerns and allay these concerns in detail during the presentation, as our projections are supportable. In addition, in reviewing our competitor's packages we have found numerous discrepancies regarding their financial projections, yet our competitors still were given scores higher than PGC.

QUALIFICATIONS

With respect to the evaluation scores related to experience and qualifications, we believe that the evaluation of our Proposal should not have been adversely affected because of the relative number of stores we have overseen. While we have opted to focus our experience and growth within the local community, we believe that as a locally owned and operated business and because of our extensive familiarity with this community and the customers who make their lives here we have a superior quality of experience and qualifications which cannot be underestimated and certainly should not result in a lower evaluation score simply because we do not operate on the same scale nationwide. Our experience as a locally owned and operated business and our long-term presence and commitment to the region is a substantial asset that makes us uniquely capable of serving the community and the San Jose International Airport. Indeed, PGC is more than qualified to prevail on this bid given PGC's prior successful experiences at other International Airports. Specifically, our experience at San Francisco International Airport is a prime example of our success – over Thirty Three Million dollars in sales last year from twenty two (22) stores, generating financial performance ratios (sales per square foot and sales per enplanement) within the "top of national airport concession industry standards". As an earlier example, in 1999, PGC won an eight (8) store RFP over Host Marriott International, the then incumbent in San Francisco – since winning this contract, PGC has shown "greater sales growth" over Host Marriot since the inception of the contract. Further examples of our experience and success have been and are available upon request.

CUSTOMER SERVICE & EXPERIENCE

As indicated above, the Committee failed to undertake reasonable due diligence in evaluation of PGC's experience. Specifically, we were informed by committee member Terri Gomes on April 9th at the post briefing meeting that "we [The Committee] do not make field trips". That's like a vinter bottling wine without ever tasting it. That type of thinking does not make business or economic sense, is not in the best interest of the city, and suggests that the Committee makes decisions in a vacuum. Does the magnitude of this contract justify an investment of time and effort to "make a field trip"? The answer is unequivocally yes, and had the committee made the effort, it would have been in a much better position to make a fully informed decision, and to genuinely evaluate PGC's experience and customer service. Moreover, PGC is particularly at a disadvantage when its business operations are successful, but it purportedly lack the "name", but not experience, of its competitors.

CONCLUSION

Given all of the above, it is unassailable that the Committee failed to employ fundamental fairness in its review of PGC's proposal, and in awarding of the contract. PGC submits that the process and procedures employed by the Committee were intrinsically unfair, and thus did not provide the requisite due process mandated by standards of law, and standards proscribed by the City. The aforementioned conflicts of interest, the predispositions of at least two, if not more, Committee members, and the "lack of a level playing field", all contribute to a grossly inadequate procedure and

process that reeks of misconduct, and constitutes a failure of integrity in the Procurement process. At a minimum, such conduct must be investigated.

Moreover, PGC presented a cogent proposal package for retail packages 1 and 2 of the RFP. With its vast and successful experience in other International Airports, its innovative concepts, and its financial commitment to the City that was equal if not superior to its competitors, it is difficult to conceive a better package that would benefit the City. Moreover, PGC connections to the local community are underscored by owners who were born and raised in San Jose, and who attended and graduated from San Jose State University's School of Business. Given the City's purported interest in hiring home bred talent, so long as they are qualified, PGC fits that bill better than the competition.

We appreciate your consideration of the issues we have raised in this Protest. Indeed, we submit that as a result of our experience, and PGC's financial guarantee for package 1 (the highest of all competitors) we submit that Package 1 should be summarily awarded to PGC. In the alternative, we submit that as a result of the flawed process iterated above, that the Committee 1) launch a full scale investigation of all issues raised in this Protest letter; 2) reevaluate the RFP Procurement process with an entirely new committee, and/or 3) conduct a second vote on the PGC's proposal after recusal of those members who are shown to have a conflict of interest, a predisposition on the award, or have otherwise engaged in misconduct. Please advise us of the steps related to the adjudication of this Protest to the award recommendation.

Thank you for your anticipated cooperation in this matter. Nothing in this letter shall be deemed a waiver of our legal rights and privileges, and we specifically reserve the right to continue our independent review of the process and pursue any and all legal remedies through the Courts after all administrative efforts have been exhausted.

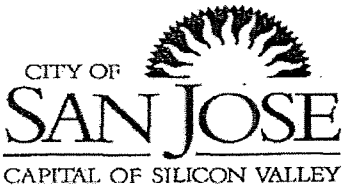
Sincerely,

Javier Vega

Frank DeLaCruz

CC: City of San Jose Attorney, Brown & Ramirez, LLP, Lauren MacDonald, Pugh, Jones, Johnson & Quandt, P.C.

Attachment G



Finance Department
PURCHASING DIVISION

April 28, 2008

Mr. Javier Vega
Mr. Frank DeLaCruz
Pacific Gateway Concessions, LLC
1150 North First Street, Suite 220
San Jose, CA 95112

Dear Messrs. Vega and DeLaCruz:

Subject: Protest letter from Pacific Gateway Concessions, LLC to City of San Jose, dated 4/16/08
Reference: Request for Proposal (RFP) for Norman Y. Mineta San Jose International Airport Food, Beverage, and Retail RFP

This letter is in response to the subject letter alleging that evaluation Committee Members had a Conflict of Interest; issues with compliance of the City's Lobbying Ordinance; lack of fairness regarding meeting requests with the City's Director of Aviation; concerns about the objections process of the RFP; and concerns about the evaluation of your company's proposal.

Allegations of Conflict of Interest

The subject letter makes certain allegations about two members of the evaluation committee that you characterize as a conflict of interest or ethical misconduct. Specifically, your letter discusses the following:

1. **Conversation with Evaluation Panel Member.** You state that Committee member Phaedra Ellis-Lamkins told PGC representatives that "she was going to support a Host/Mariott proposal because she has a union relationship with Host/Mariott." According to Ms. Ellis-Lamkins, that is not something that she said. There is no way to now determine what may or may not have been said, nor would it serve any real purpose to determine what was said, because based upon my examination of the evaluation, there is no evidence that Ms. Ellis-Lamkins either engaged in an actually biased evaluation or exerted an influence over the evaluation process that would have changed the outcome based upon any bias.

2. **Letter of Reference.** Your letter also mentions a letter of reference from Amy Shaw, Manager for Aviation Commercial Business at the Seattle-Tacoma International Airport, that was included in the Hudson News proposal (see Attachment A). The generic reference letter dated November 17, 2006, is addressed with "To Whom It May Concern." The letter was dated nearly a year prior to Ms. Shaw receiving an invitation and accepting to serve on the City's evaluation committee. The City concluded that the submission of this reference letter does not constitute a conflict of interest or a violation of Council Policy 0-35, titled "Procurement and Process Integrity and Conflict of Interest."

   Indeed it is not uncommon for evaluators and staff to be familiar with the work of a particular proposer or proposers. This is almost always true when there are incumbent companies participating in a competitive process in order to continue to provide service. There is nothing inappropriate in using as evaluators people who are familiar with a particular industry. You should also note that the City selected an evaluation committee consisting of nine members to ensure a broad, independent and

impartial review and evaluation of proposals by various technical experts and members of the community representative of organizations as it relates to the Airport's Concession business. The scores from all members were averaged to arrive at a final score with no one or two of them having an overriding influence over the others.

Use of Lobbyists

The subject letter suggests that lobbyists were used by three of the competing proposers but does not provide any detail regarding the engagement of lobbyists or any violation of either the City's Lobbyist Ordinance or Council Policy 0-35, titled "Procurement and Contract Process Integrity and Conflict of Interest." Specifically, Council Policy 0-35 states that "companies which respond to a City solicitation agree to adhere to this Policy and are individually and solely responsible for ensuring compliance with this policy on behalf of the respondent's employees, agents, consultants, lobbyists, or other parties or individuals engaged for purposes of developing or supporting a response." The City Clerk's Office confirmed that lobbyists representing AMS-SJC and Westfield were registered with the City in 2007 and 2008. In my investigation, I found no evidence of impropriety or violation of Council Policy 0-35.

Equal and Level Playing Field regarding Meeting Requests

In the protest letter, your company expresses concern that PGC was not provided an "equal and level playing field" regarding meeting requests with Mr. William F. Sherry, Aviation Director.

At PGC's request, Mr. Sherry met with representatives of PGC twice in 2007. During these meetings, Mr. Sherry did not express a reluctance to meet with PGC. However, after PGC representatives broached the subject of the upcoming subject RFP, Mr. Sherry asked them to use established lines of communication, such as stakeholder outreach meetings, to convey PGC's thoughts, concerns, and comments about the planned RFP. Mr. Sherry directed the conversation towards the established lines of communication to ensure that City staff could appropriately capture any input regarding the subject RFP.

In 2006, Mr. Sherry met twice with HMS Host and once with Paradies, a concessionaire that did not bid on the RFP. Conversations at both HMS Host meetings were limited to issues related to the existing operations at the airport. The meeting with Paradies was a cordial visit discussing operations at Ft. Lauderdale-Hollywood Int'l Airport (FLL) in Florida. Prior to serving as Aviation Director for the City of San José, Mr. Sherry worked at FLL.

In accordance with Council Policy 0-35, Mr. Sherry did not have any meetings with any prospective company potentially responding to the subject RFP after its release.

Objections to subject RFP

Your letter includes a discussion of PGC's letter objecting various aspects of the RFP on November 6, 2007 in accordance with the RFP document (see Attachment B), in which Mr. Vega expressed concern about a potential negative bias due to the submission of objections regarding the form and content of the RFP and requested that the City not release the identity of the objecting party. The City invites and welcomes objections to any aspects of the RFP for the purpose of ensuring that it considers the views of potential proposers on the RFP's content. Because the City values this input, the City in no way put any objecting participant in a negative light as part of considering objections.

As I stated in an email after receipt of the objection letter, any document received as part of the RFP process is a public record and will be released as part of the RFP process as an attachment to an addendum in accordance with Council Policy 0-35, which states that, "All requests for clarification, objections to the structure, content, or distribution of a solicitation, or other inquiries must be made in

writing and the City shall answer to these clarifications, objections, and inquiries in writing via addenda to the solicitation. The objection letter was released as part of Addendum #3 on December 18, 2007 (see Attachment C). In accordance with standard City procurement practice, the entire RFP including all addenda were made available to the evaluation committee.

You have offered no factual basis for the proposition that the inclusion of your objection letter as part of the RFP materials reviewed by the evaluation panel was perceived by anyone as negative or any other way resulted in any lower scoring of your company's proposal on the six evaluation criteria.

Tenant Mix

In the subject letter, your company contends that the evaluation committee had an intrinsic lack of understanding of basic concepts in the retail business and that PGC's concepts were misjudged. As stated previously, the nine member evaluation committee consisted of various technical experts and members of the community representative of organizations as it relates to the Airport's Concession business. The scores reflect the Committee's evaluation of the written material submitted and PGC's oral presentation.

Financials

The evaluation of proposers' financial condition and guarantee of revenue for the Airport was weighted at 250 points out of a total of 1,000 possible points for the written proposal. The table below provides specific detail regarding the make-up of the criteria for the financial evaluation.

Criteria for Financial Evaluation	Maximum Points for each Criterion
Minimum Annual Guarantee	150 Points
Total Percentage Fee	35 Points
Sales Projections and Financials	35 Points
Financial Capacity and References	30 Points
Total	**250 Points**

All proposers, including PGC that submitted the highest proposal for the Minimum Annual Guarantee (MAG) received the maximum points in this category.

For the other financial criteria, the evaluation committee's rating of PGC's proposal resulted in a lower score because of the following main reasons: inconsistencies between various types of financial information provided, low annual sales projections, and underestimated enplanement projections. Additionally, during the oral interview, PGC representatives stated that they did not expect to break even on this contract until 2015 – during the seventh year of the contract.

In response to the reference of a performance bond, the protest letter states correctly that the RFP required that the winning proposer is required to submit to the City a faithful performance guarantee equal to six months of the MAG. This security deposit provides some protection to the City and is considered a last resort. It is important to the City that companies who do business at the Airport remain financially sound in order to pay their employees and suppliers and to offer outstanding service to the traveling public. Therefore, in order to assure the City of these capabilities, the evaluation criteria included a review of each proposer's financial projections and capacity.

Experience and Qualifications

The Experience and Qualifications Section of the RFP was weighted at 15% of the overall points allocated for the evaluation of written proposals and consisted of criteria as outlined in the table below.

Criteria for Experience and Qualifications	Maximum Points for each Criterion
Demonstrate Retail Management Experience/Expertise	50 Points
Concession Program Operation Performance Standards	35 Points
Years in Business and Corresponding Receipts	25 Points
Marketing and Concession Promotion Programs	20 Points
Photos/Videos that Demonstrate Merchandise Expertise	20 Points
Total	**150 Points**

To ensure fairness in the evaluation process, the members of the evaluation committee were charged with evaluating proposals in accordance with the evaluation criteria. If PGC believed that the City should have assigned more points to other criteria, PGC could have objected to the process by the due date for objections on November 6, 2007. It would be inherently unfair for the City to now change the selection criteria after all proposals had been submitted. Therefore, I cannot consider your objection to evaluation criteria at this stage.

Customer Service and Experience

In the subject letter, your company raised a concern that the City's evaluation process did not include a site visit as part of the evaluation process. Again, it is inappropriate to chose to object to the evaluation process after submission of proposals or after issuance of the Notice of Intended Award.

Protest Determination

After careful review of the subject letter, for the reasons stated above, I find no basis to determine that any impropriety or conflict of interest was present in the evaluation process. I also have determined that the evaluation and resulting recommendation was reasonable and consistent with the stated criteria.

Therefore, I deny the protest and am recommending award of contract to the companies as outlined in the Notice of Intended Award, dated April 4, 2008 (see Attachment D). Your company may appeal my decision to the City Council by filing an appeal, in writing, to the City Clerk within ten calendar days of this letter.

I appreciate your interest in doing business with the City of San José. For questions regarding this correspondence, please contact me at walter.rossmann@sanjoseca.gov or at (408) 535-7051.

Sincerely,

Walter C. Rossmann, C.P.M.
Chief Purchasing Officer

Print Form

RD:NKS:NKS
11/21/2006

RECEIVED
San Jose City Clerk

2008 MAY 21 A 9:26

STATEMENT AND DECLARATION OF CONFLICT OF INTEREST FORM

City Council Policy 0-34 requires the Mayor and Councilmembers and members of City Boards and Commissions to a review agenda items for conflicts of interest in order to publicly disclose the nature of any conflict of interest. The Policy requires filing this form at least 24 hours in advance of the meeting at which the agenda item will be discussed or as soon as the conflict of interest is known but no later than the end of the meeting at which the agenda item is heard. You should consult with the City Attorney's Office about any potential conflict of interest and before you complete and submit this form.

You should disclose the conflict of interest on this form in accordance with the instructions and file the original form with the City Clerk and submit a copy to the City Attorney.

Policy 0-34 also provides information on state law procedures for disclosure of conflicts of interest concerning a matter on a City Council, Agency, Board or Commission agenda.

Name: (Last)	(First)	(Middle)	Daytime Telephone Number:
Chu	Kansen		(408) 535-4904
Title/Legislative Body: Council Member, District 4			
Meeting Date: June 3, 2008			Agenda Item No.: 6.2
Description of Agenda Item: Actions related to the Food & Beverage and Retail Request for Proposal at the Airport.			

Please check the economic interest which is affected and which creates a conflict of interest for you in the Agenda Item described above:

☐ Investment – name of business entity: _____

☐ Business position – general description of the business activity and name of the business entity: _____

☐ Real Property – Address or location of the property (If principal or personal residence, then indicate only that the property is a residence): _____

☒ Income or gifts – Identification of the source: Within one year from sale of

source of income, Harbor Express.

☐ Personal financial effect – Identification of the expense, liability, asset or income affected:_____

☐ Financial interest in an agreement or contract (as described in Gov. Code Section 1090) - description of the agreement or contract and the interest in the agreement or contract. (Include agreements or contracts with nonprofits if serving on the board of directors):

☐ Other (i.e. non-economic interest)_____

Verification

I have used all reasonable diligence in preparing this statement and have disclosed the conflict of interest described above as soon as the conflict of interest became known to me. I have reviewed this statement and to the best of my knowledge the information contained in this statement is true and complete. I declare under penalty under the laws of the State of California that the forgoing is true and correct.

Signature: _____ Date Signed: 5/20/08