



**DENVER INTERNATIONAL AIRPORT**

# **DIA CONCESSION POLICY**

**July 18, 2007**

**CITY AND COUNTY OF DENVER**  
**DEPARTMENT OF AVIATION**  
Turner West, Manager of Aviation



**DENVER**  
THE MILE HIGH CITY

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## **I. DIA CONCESSION POLICY OVERVIEW**

As a publicly owned facility, DIA has an obligation to build its concession program on a foundation of fairness and transparency.

This policy supports DIA's overall vision and mission and provides a policy framework for managing and developing the concession program. As used herein, concessions generally mean agreements for the provision of food and beverage, retail, and consumer service privileges in the Terminal Complex.

### **A. PURPOSE OF THIS DOCUMENT**

This Concession Policy is intended to provide internal direction to Denver International Airport (the "Airport" or "DIA") staff for the solicitation, selection, award and administration of food and beverage, retail and consumer service concession privileges within the terminal and concourses ("terminal complex") at Denver International Airport. When used herein "City" means the City and County of Denver acting for and on behalf of Denver International Airport.

This Concession Policy does not and shall not constitute a part of any concession agreement, and there is no contract right, property right, or private right of action by any person or party to enforce this Concession Policy. DIA reserves the right to deviate from this Concession Policy in any concession matter, for any reason, in its sole discretion. Airport staff may not deviate from this Concession Policy except with the express direction of the Manager of Aviation ("Manager"). In the event of any inconsistency between the provisions in any concession agreement or request for proposals ("RFP") and this Concession Policy, the provisions in the concession agreement or RFP will control.

### **B. EFFECTIVE DATE**

This Concession Policy and the guidelines contained herein shall become effective immediately upon adoption by the Manager of Aviation. This policy will be reviewed periodically and updated as appropriate.

### **C. CONCESSION PROGRAM VISION STATEMENT**

The vision for the Airport's concession program is:

*"A Concession Program that is among the best in the world offering value, excitement and wide range of culinary and retail experiences and services that evoke a strong sense of place reflecting the best of Denver, Colorado and Rocky Mountain West."*

### **D. GOALS FOR THE CONCESSION PROGRAM**

The goals for the concession program are as follows:

1. Respond to customer needs and provide value and great customer service in everything we do
2. Maximize our non-airline revenue consistent with our obligation to airline partners based on ongoing customer research and feedback
3. Maximize small and local business and ACDBE opportunities through continued use of our direct and competitive leasing approach
4. Keep our program fresh and dynamic by introducing new concepts and services

5. Implement the new Concession Design Standards to create an engaging environment to entice and excite consumers by merging architecture, design, and graphics
6. Attract the best local, regional and national food and beverage and retail concepts and tenants
7. Create and maintain a vibrant first-class concession program offering a range of quality food and beverage, retail and services in a branded environment, with particular emphasis on local, regional and national brands.

#### **E. ROLE OF NON-AIRLINE REVENUES IN MAKING DIA COMPETITIVE**

Increasing non-airline revenue benefits both the Airport and signatory airlines by decreasing the Airport's reliance on airline rates and charges and strengthens DIA's ability to attract new domestic and international passengers and air service. The Airport's Lease and Use Agreement with the signatory airlines requires that the Airport manage the Airport concession program in order to maximize non-aviation revenue. The lease agreements with the Signatory Airlines state the following:

*"In order to minimize the rentals, rates, fees and charges which Airline is obligated to pay under this agreement, City shall promote and develop non-airline revenues at the Airport in a manner consistent with that of a reasonable prudent airport operator."*

## **II. DIRECT LEASING AND SMALL BUSINESS OPPORTUNITIES**

DIA has made a commitment to maximizing opportunities for small businesses, including local small businesses and ACDBEs, through a fair and transparent selection process.

By creating a “level playing field” DIA can encourage participation and increase competition, thereby strengthening the concession program.

There are more than 1,500 individuals and companies that have expressed interest in competing for concession opportunities at DIA. Many of these individuals or companies are capable of contributing to the success of DIA and its concession program. They seek to expand to the Airport, which offers excellent exposure for their small businesses. The Airport has a responsibility to select tenants with the experience needed to succeed at the Airport given its unique operating challenges and investment requirements.

It is in DIA's interest to maximize the competition for future concession privileges, as increased competition provides a broader range of concepts and brands, contributes to the development of a unique “sense of place,” and creates a deeper pool of qualified concession operators from which to choose.

To the extent possible, DIA will provide outreach to local parties on future concession opportunities, provide useful information on current concession operations, and explain the concessionaire selection process in a way that will allow interested parties to make a fully informed decision as to whether or not to respond to future concession solicitations (“RFPs”). DIA will also provide technical information on how the RFP process works, and ensure that the RFP process does not unfairly disadvantage small businesses that lack the resources of larger concession competitors.

### **A. ROLE OF DIA AS MASTER DEVELOPER**

The Airport has implemented a direct contracting approach for the concession program at the Airport which differs from the contracting approach used by many other U.S. airports. DIA management acts as the overall developer of the concession program. Under its direct contracting approach, the Airport enters directly into concession agreements with many individual concession operators rather than using a master concessionaire, prime concessionaire, or a concession developer.

It is the policy of the Airport to enter into direct leases with concession operators except where there are unique circumstances (such as the Concourse B Mezzanine). Direct leasing provides the highest overall level of revenue to the Airport and is the best approach for encouraging participation by local businesses.

In order to ensure that potential new concessionaires have an equal opportunity to compete, the concession opportunities will be structured to provide a potential sales volume such that a concessionaire that performs well could be expected to achieve a reasonable return on investment.

To ensure realization of the Airport's goals, the Airport will impose well-defined performance, development and operating standards in the concession agreements it enters into with concessionaires and ensure that concessionaires perform to these standards.

The term of concession agreements will be sufficient to allow reasonable amortization of investment consistent with the practices of other comparable airports. In this role of master developer, it is the responsibility of DIA staff to develop policies that are consistent with the Airport's goals and which incorporate airport industry “best practices”. DIA can learn from other airports, particularly those with direct leasing programs.

## **B. AIRPORT CONCESSIONS DISADVANTAGED BUSINESS ENTERPRISES**

It is the policy of the City that Airport Concessions Disadvantaged Business Enterprises (ACDBEs) (as defined in 49 CFR Part 23) shall have maximum opportunity to participate in the concession program. To this end, the Airport encourages ACDBE participation in the submission of bids or proposals for all concessions. The granting of concessions or privileges for these commercial operations will be by competitive proposal. Historically, the Airport has met its ACDBE goals through its direct leasing policy and emphasis on attracting small local businesses.

## **C. OPTIMIZING SMALL AND LOCAL BUSINESS OPPORTUNITIES**

The Airport has made a commitment to local businesses to ensure a “level playing field” in the solicitation and award of concession privileges, and to ensure that small local businesses have an equal chance to compete with large national or international concession operators.

Under federal law the Airport cannot legally grant preferences for local ownership. Nevertheless, the Airport believes there are advantages to local ownership of concessions. Local ownership allows for close attention to day-to-day operations, high operating standards, and brings a “sense of place” to the concession program.

Local ownership includes local owners operating national branded concepts through franchise or license agreements.

There is already strong local interest in Airport concession opportunities. It is in the Airport’s interest to encourage even higher levels of participation in order to increase competition and secure the best possible tenants. An expanded local outreach program is described below.

## **D. PUBLIC NOTICE AND LOCAL OUTREACH**

It is the policy of DIA to develop strong public interest in each concession or privilege being solicited. To this end, DIA will give reasonable public notice in advance of its solicitation for each concession privilege.

Local outreach meetings will be held from time-to-time and targeted to local, small and ACDBE businesses in order to:

1. Encourage participation in the competitive award of concession privileges at DIA that will attract new concepts, strong operators, local brands, and local ownership.
2. Educate potential operators on the advantages and disadvantages of doing business at the Airport, including financial, operational, and potential business risks and rewards, so that each interested operator can make an informed decision about participating in the competitive selection process. The assistance of current concessionaires will be sought for this purpose.
3. Provide information on the nature of the concession privileges to be awarded in the coming year so that interested operators have time to analyze the opportunity, arrange financing, and lay the groundwork necessary to prepare a strong proposal.
4. Provide guidance and, from time-to-time, technical assistance on the steps necessary to participate in the selection process and submit a responsive and competitive proposal.

## **E. CONCENTRATION OF OWNERSHIP**

In order to encourage competition and to maximize opportunities for small local businesses consistent with DIA's role as the master developer, a goal discouraging concentration of concession ownership will be implemented.

A goal is established providing that no one concessionaire (including related entities, i.e., entities owned or controlled by the same person or entity within the first degree of consanguinity or affinity to the same person or entity) may own, control, manage or operate more than 20% of net concession square feet (exclusive of non-contiguous storage space) in any single line of business (e.g., food and beverage, retail, or consumer services). Further, the goal will provide that no one concessionaire may own, manage or operate more than 10% of all net concession square feet in the terminal complex.

The goal will be considered in the evaluation of proposals and the subsequent recommendation of the Manager.

Concentration percentages will be calculated at the time each RFP is issued, or at such time that concentration may occur, and will take into account the additional space included in the RFP.

### **III. CONTINUOUS IMPROVEMENT OF DIA'S CONCESSION PROGRAM**

Concession programs are a major determinant of passenger satisfaction with the airport experience. Passengers today have come to expect a wide range of high quality shopping, dining and consumer service offerings at reasonable prices at modern and well designed shops and restaurants. As customer preferences change the concession program should adapt as well. This may require changing the use of a space at the expiration of a concession agreement.

Passengers are spending more time in airports, particularly in the areas beyond security. Food and beverage services have become more important as airlines reduced or eliminated meal services. Customers prefer having a variety of food options and types of services. Specialty retail programs are more prominent as passenger dwell times increase.

#### **A. USE OF BRANDS**

Experience at airports in the U.S. and around the world has shown that passengers (and employees) have a strong preference for local and national brands. Brands outperform "generic" airport concepts and offer customers greater familiarity, value, quality, and customer satisfaction.

Local brands have proven to be very successful at airports, and can differentiate an airport's concession program to help create a unique "sense of place". At many airports, established local restaurant operators have been successful in bringing their brands to airports through self-operation or by franchising or licensing their concepts to other qualified operators. Legal Sea Foods at Boston Logan, Max & Erma's at Columbus, Perry's Restaurant at San Francisco, and Garduno's Restaurant at Albuquerque airports are examples of well-regarded successful local restaurants that help differentiate these airports from others.

To achieve the overall vision for the concession program, DIA needs a full range of food and retail services that includes an appropriate mix of international, national, local and regional concepts. Proven local concepts and brands help to differentiate DIA from other airports and support DIA's unique sense of place as the gateway to the West.

For concession operators, brands offer advantages of proven menus, operating systems, and added quality control inspections by the brand owner. The Airport can also ensure its pricing policy is followed because prices at branded restaurants can be easily compared with off-Airport units.

The Airport believes a mix of local and national brands provides the best overall balance, the highest level of service, creates incremental sales by offering a wide selection, and creates a unique concession program that appeals to the broadest range of passengers, both local originating passengers and those passengers who use the Airport for flight connections.

A "local brand" is defined as an established trade name currently doing business offering a standardized menu and trade dress in at least two locations, one of which is in the Greater Denver area. A "national brand" is defined as an established trade name in at least 10 locations in the United States. A "location" means a street or shopping mall location that regularly serves and is open and accessible to the general public, excluding airports, sports venues, campuses, theme parks or other restricted or gated facilities.

#### **B. ONGOING CONCESSION PERFORMANCE EVALUATION**

The best information for making decisions concerning the concession program comes directly from our customers. The DIA concession program should be responsive to the needs of a broad range of passengers, both local and connecting. Periodic passenger intercept surveys are the best way of evaluating the needs of the marketplace, identifying strengths, weaknesses and opportunities and understanding customer perception of our program.

In order to ensure a high level of customer service and program performance, DIA will employ techniques to evaluate program performance used by airports with leading concession programs, including:

- Customer comments
- Passenger intercept surveys
- Concessionaire performance monitoring by DIA staff
- Independent “Secret Shopper” audits
- Internal benchmarking and operational performance data
- External benchmarking with comparable airports
- An annual concession program performance report compiling all of the above.

### **C. CONCESSION MASTER PLAN**

To ensure that a full range of services is provided, DIA staff will prepare and periodically update a concession master plan identifying the optimal use of each space within the terminal complex and that will maximize achievement of our concession program goals. The concession master plan will include a space plan, business plan, and a merchandise plan defining specific uses for each space and an overall concession mix that will meet the needs of passengers in each area of the terminal complex.

The concession master plan will be updated periodically to reflect passenger needs and changes in the airport and airline operating environment. The concession master plan will provide the underlying rationale for each concession solicitation.

### **D. CREATING A COMPETITIVE ENVIRONMENT**

Passengers, Signatory Airlines, and DIA all benefit from healthy competition at the Airport.

Competition between concessionaires ensures that the customer has multiple choices among brands and services, and helps to keep prices reasonable, just as competition for concession privileges through the RFP process results in stronger concepts, operators, and business plans.

Within the terminal complex, DIA will seek to ensure that no single concessionaire dominates any concession category or area of the terminal complex.

## **IV. CONCESSION BUSINESS TERMS**

This section describes the basic business terms which will be incorporated in requests for proposals and the standard form of concession agreement. DIA recognizes that the business terms must be balanced to ensure reasonable pricing, quality investment in facilities, excellent customer service, and, for concessionaires, the opportunity to create a successful business with good returns on their investment.

### **A. METHOD FOR AWARDING CONCESSIONS**

Competitive proposals will be used for those concession privileges where type of service, volume of business to be generated, quality of services or products, and demonstrated capability and depth of management can be clearly differentiated among several operators. The concession will then be awarded following the Airport's comparative evaluation of each proposal with respect to depth of management, demonstrated experience, reputation, proposed improvements, level of capital investment, financial return to the Airport, and any other specific selection criteria as set out in the RFP.

However, in certain limited circumstances DIA may enter into agreements on a sole source or negotiated basis if such action is in the best interests of the Airport.

### **B. TERM**

Concession agreements will be for a fixed term. For food and beverage concessions on the enplaning level, the term will run up to 7 years from the opening date. For larger restaurants with bar facilities located on the mezzanine level of the concourses, the term will be for up to 10 years in recognition of the higher investment requirements and the lower passenger traffic levels on the concourse mezzanines (compared with the enplaning levels). For retail services on the enplaning level, the term will be 5 years. For retail facilities on the mezzanine, the term will be 7 years. Consumer services will all be for terms of 5 years.

These terms are consistent with the practices at comparable airports, and are commensurate with the level of sales produced by concession spaces at DIA. The term of concession agreements entered into prior to this policy were based on specific set of business terms including investment requirements, percentage rents, term length and minimum annual guarantees that were appropriate at that time. Therefore, this policy applies only to new concession privileges and will not be applied retroactively.

DIA will not include option periods in its concession agreements.

### **C. GENERAL FINANCIAL BASIS FOR PROPOSALS**

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

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

year to an amount equal to 85% of the amount paid to the Airport during the previous 12-month period, or the first year MAG, whichever is greater.

Percentage fees will be established based on the percentage rents at other major U.S. airports with similar operating costs, the level of investment that may be required, and the need to keep prices reasonable for the traveling public, employees and visitors.

All concessionaires occupying storage space apart from public premises will pay a storage space rate per square foot in accordance with the Airport Rates, Fees and Charges determination as established periodically.

#### **D. PERCENTAGE RENT STRUCTURE**

The rent structure will be consistent with other airports that have similar pricing policies and to the extent practicable take into account differences in tenant operating costs, such as operating cost pass-throughs, food court common area maintenance charges and other common area maintenance charges. The percentage fees may be fixed by the airport for concession type and may be differentiated by products within each of those types. Percentage rents will be stepped so that as certain thresholds are met, the rent will increase. This policy allows for concessionaires to retain more of the gross revenues at lower volumes to help recoup capital investment costs while allowing the Airport to share in the upside as business grows. The more successful a concession is, the more that both parties benefit from that success.

By setting the percentage rent, the RFP process will place greater emphasis on the ability of the proposer to drive high sales. For example, a proposal that includes a higher percentage rent but is based on a weak concept is unlikely to produce high sales—and overall higher revenue to the Airport—than a stronger concept paying a somewhat lower percentage rent. This has been demonstrated throughout the airport industry, where certain branded concepts have replaced generic concepts. Although the percentage rents may be lower, the gross sales are considerably higher and result in higher revenues to the airport (not to mention higher customer satisfaction).

By setting the percentage rent based on market rates, the Airport is providing a rent structure that should provide operators with the ability to achieve reasonable returns, and to avoid the high pricing and low service levels that result from unnaturally high percentage rents.

The percentage rent structure to be used in future RFPs is shown below.

	<b>PERCENTAGE RENT</b>		
	<b>First \$1M</b>	<b>\$1M-\$2M</b>	<b>Over \$2M</b>
<b>FOOD AND BEVERAGE</b>			
Specialty Coffee	16%	17%	18%
Fast Food	10%	12%	14%
Quick Serve Food	14%	15%	16%
Casual Dining/Bar	10%	12%	14%
All alcoholic beverages	17%		
<b>RETAIL</b>			
Newsstands – Category A	12%	12%	12%
Newsstands – Category B	15%	16%	17%
Specialty Retail*	10% to 14%	10% to 14%	10% to 14%

Consumer services financial terms will be determined at the time of the issuance of the RFP.

## **E. MINIMUM REQUIRED CAPITAL INVESTMENT**

Construction of concession spaces in the Airport terminal and concourses is challenging due to stringent security requirements, ongoing airline operations, restrictions on deliveries on the airside (aircraft ramp areas), and limitations on causing noise, dust or other inconveniences to Airport passengers. Other factors that may affect the cost of construction include prevailing wage requirements and the state of the local economy, which affects the demand for construction services and the availability of contractors.

In all cases, the Airport will establish in the RFP a minimum capital investment requirement that will reflect the likely cost of building out quality improvements consistent with the Airport's Sense of Place Design Standards.

The actual cost to construct improvements may vary, and will be solely the responsibility of the successful proposer. Actual costs are likely to exceed the minimum investment requirement.

Proposers may propose a higher capital investment amount, which can be considered in the evaluation of proposals. The proposed capital investment (not the minimum investment requirement set by the Airport) will become a binding financial obligation in the concession agreement, with any shortfall between the actual cost and the proposed capital investment payable to the Airport. Thus, proposers will be responsible for making the same level of investment for which they were given credit in the evaluation of proposals.

The proposer's proposed capital investment and the RFP's minimum capital investment will be based on a cap of 15% on "soft costs" for engineering, architecture, design, program management and other services. "Hard costs" are based on direct labor and materials including furniture, fixtures, and equipment. Financing costs and corporate overhead costs will not be included when determining if a proposer has met either the minimum capital investment or if the concessionaire has met its proposed minimum capital investment. The concession agreement will provide detailed language on construction costs.

Each concessionaire will be required to submit within 90 days of completion of improvements a statement with supporting detail documenting the cost of construction and attested to by an officer of the concessionaire company or its construction manager. This statement will document all allowable costs to ensure that the required investment was made and will also serve to document historical costs in the case of a buy-out, insurance claim, shortened term, or other unforeseen event.

## **F. MID-TERM REFURBISHMENT OBLIGATION**

In order to maintain the appearance and attractiveness of the entire concessions program, each tenant will be required to refurbish the concession space at the mid-point of the concession term. The amount spent will be 20% of the original proposed capital investment, although the amount spent can be lower than 20% subject to the agreement between the Airport and the concessionaire and taking into account the condition of the concession unit. The Mid-Term Refurbishment obligation will cover replacement of flooring, counters, seating and other surfaces, and excludes ongoing, routine maintenance expenses required of all concessionaires. The proposer is expected to incorporate the Mid-Term Refurbishment costs into its original business plan.

## **G. UTILITY CHARGES**

Utility charges are calculated by the DIA finance department and applied on an annual basis, or, rely on meters established in certain areas of the terminal complex.

## **H. PROPOSAL SURETY AND PERFORMANCE SURETY**

A proposal surety will be required with each proposal as a guarantee that the proposer will execute a formal concession agreement with the City. The proposal surety in an amount between \$10,000 and \$20,000 may be retained as liquidated damages in the event that a proposer fails to execute a concession agreement or to furnish a faithful performance surety or to furnish evidence that the brand or concept proposed has been secured, and will act as partial compensation for lost revenue due to the delay in award of the concession privilege, or to offset the additional time and expense of reissuing the RFP, if necessary. The proposal surety will be returned to the successful proposer after full execution of a concession agreement, delivery of evidence of the right to operate a proposed brand or concept and delivery of a performance surety.

The performance surety will provide the Airport with a financial guarantee equal to six months minimum annual guarantee (adjusted in each following year to one-half of the annual revenue paid to the Airport).

All proposals submitted to the Airport will constitute a firm and binding offer to the Airport and may be accepted by the City at any time within 120 days after the proposal due date. After 120 days the proposer has the option to extend its proposal if requested by the City.

Proposal sureties may be in the form of a bond or a cashier's check payable to the Airport.

Proposal sureties of all unsuccessful proposers will be returned as soon as an agreement has been negotiated and recommended by the Manager and a concession privilege has been awarded to a successful proposer, or, in the event that all proposals are rejected, within ten (10) days after the date of rejection.

## **I. INSURANCE**

Insurance requirements are included in the concession agreement as established by the Airport's Risk Manager and are subject to change at the Risk Manager's discretion, including requirement of additional insurance. Insurance requirements are established for the protection of the Airport, passengers, and other tenants and users of the Airport. The requirements must be met by each tenant before commencing operations. Generally, the following types of insurance must be in full force at all times:

- Commercial Comprehensive General Liability
- General Aggregate Limit
- Operations Aggregate Limit
- Personal & Advertising Injury
- Fire Damage Legal
- Worker's Compensation
- Business Auto Liability
- Umbrella Liability – Area Access

## V. SELECTION PROCESS

The process used to attract and evaluate prospective tenants needs to be open, transparent, and as reasonably straightforward as possible, recognizing that many desirable small businesses are not accustomed to the stringent contracting requirements used by local governments and airports.

It is incumbent on the staff to ensure that the RFP is clear and understandable, that established outreach, solicitation, and selection processes are followed, and that a “level playing field” is provided to the extent practicable for all prospective tenants, whether experienced incumbent concessionaires or local small businesses proposing for the first time.

### A. MINIMUM QUALIFICATIONS

In order to have a proposal considered by the Airport, a prospective operator of a concession privilege in the terminal complex shall demonstrate that it meets the minimum qualifications for the concession established in the RFP documents. Typically, proposers will be required to meet the following minimum qualifications:

- 1. Minimum Years of Experience Required.** Each proposer must have a minimum of four (4) years of experience within the past five (5) years in the ownership, management and operation of a retail, food and beverage, or service business. Ownership means control of more than 50% of the equity of the business. If a proposer has multiple owners, a majority of the equity must be held by individual(s) who meet this minimum qualification.
- 2. Minimum Gross Revenues Required.** The retail, food and beverage, or service business used to meet the requirements in (1), above, must have had minimum gross sales equal to at least 50% of the estimated first-year gross revenues of the concession that is subject of the RFP.
- 3. Financial Capability.** Airport staff will review information concerning the proposer's financial capability (defined as the ability to finance the improvements and provide working capital necessary to operate the concession) and may contact the proposer to obtain any additional information needed to make this determination.
- 4. ACDBE Requirements, if any.** The City's Division of Small Business Opportunity (DSBO) will review the proposal and determine if the proposer has met, or made a good faith effort to meet, any ACDBE requirements. DSBO's determination is final.

Failure to meet each of the minimum qualifications will result in the proposal being rejected as non-responsible or non-responsive and therefore not subject to further evaluation.

### B. MANDATORY PREPROPOSAL CONFERENCE AND SITE VISIT

Following the issuance of an RFP Airport staff will conduct a mandatory preproposal conference and site visit. The pre-proposal conference will be mandatory to ensure that all potential proposers have a full and complete understanding of the concession opportunity and the requirements of the RFP, and to ensure that all proposers are given the same information on which to prepare their proposals.

Notice that an RFP will be issued will be given by:

- (1) Advertising in local newspapers, by sending notices to local chambers of commerce, restaurant associations, and minority business groups

(2) Placing a notice on FlyDenver.com, the Airport website,

(3) Sending notices by email to interested parties who have registered their interest in the concession program with the Airport.

To the extent possible, a list of the names and addresses of all persons or firms to which any contract documents have been issued shall be maintained. Subsequent changes or addendums to the bid or proposal documents shall thereafter be made available electronically to all those on record as having received proposal documents and shall be posted on the Airport's website.

### **C. PROPOSAL REJECTION**

Proposals may be rejected or disqualified for any of the following reasons:

1. Failure to meet the Minimum Qualifications.
2. Failure to provide complete documentation as required.
3. Collusion among proposers.
4. Default or termination of other contracts with the City.
5. Improper contact with regard to this RFP
6. Lack of ability to operate the concept or brand as proposed.
7. Omissions or fraudulent statements.
8. Failure to comply with the terms and conditions of existing concession agreements or contracts with the City and County of Denver.
9. Default or arrearages under any previous or existing agreement with the City or debts owed to the City.
10. Failure to disclose all trademark, copyright, licensing, franchise, and other contractual or property rights proposer has with third parties that proposer intends to use at DIA that may restrict current concessionaires in any way, or may have an unfavorable impact on future proposers for concession privileges at the Airport.
11. Other causes as deemed relevant by the Manager.

In addition, the Manager reserves the right to reject any and all proposals in the best interest of the City.

### **D. EVALUATION CRITERIA**

For each concession opportunity, Airport staff will set the criteria that will be used to evaluate the proposals in advance and include the criteria and the weighting for each criterion in the RFP. These criteria will be selected and weighted to focus on finding the best tenant for the concession space that maximizes sales and customer satisfaction.

Evaluation criteria will, to the extent practicable, emphasize the experience and qualifications of the proposer, the strength of the proposed concession concept, and the ability of the proposer to maximize sales, revenue to the Airport, and customer satisfaction.

### **E. THE EVALUATION COMMITTEE**

Proposals received in response to each RFP and deemed responsible or responsive will be given to an Evaluation Committee ("Committee") to be evaluated and scored. Each Committee, consisting of at least 5 voting members, will be appointed by the Manager. The Committee will be chaired by a

non-voting member of the Airport concession staff. Committee members may include Airport or other City employees, consultants to the Airport, airline representatives, or volunteers from the private sector (provided there is no conflict of interest with current or potential concession tenants).

## **F. EVALUATION COMMITTEE SCORING AND ORAL INTERVIEWS**

The Committee will prepare an initial scoring based on the Evaluation Criteria. The Committee, may, at its discretion, invite the highest ranked proposers in for oral interviews. The number of interviews will normally be limited to 5, although the Committee has the discretion to invite more or less than 5.

The interview will be an opportunity for members of the Committee to ask questions or seek clarification of proposals and is not a formal presentation. The Committee may provide questions in advance of the interview. In the interests of minimizing the costs for small businesses, the following rules will apply to interviews. Generally, proposers invited to an interview will not be permitted to:

- Bring food or beverages, merchandise, gifts or handouts to the interviews
- Introduce additional information at the interviews that is not in the original written proposal
- Change or alter the business terms or proposed concept in any way
- Bring presentation boards, computer-aided presentations, or visual aids of any kind.

The proposer may provide written answers to questions provided in advance by the Committee.

Following the interviews, if any, each member of the Committee may revise its initial scoring. There will be no separate scoring of interviews and written proposals. Only those evaluation criteria listed in the RFP will be used in the final scoring of the proposals by the evaluation committee. The scores for each criterion by each member of the Committee will be recorded and an overall point total determined for each proposal. The Committee's work will not be complete until a recommendation has been made by the Manager. The composite score for each proposal will be made available to proposers upon request immediately after a recommendation for award is made by the Manager and sent to the City Council.

## **G. AUTHORIZATION TO NEGOTIATE BY THE MANAGER**

The Committee's composite score will be submitted to the Manager. The Manager reserves the right to select a proposer that was not the highest ranked by the Committee in terms of total points when it is in the best interests of the City. In choosing to exercise his authority, the Manager may consider other aspects of the concessions program that the Committee did not consider.

The Manager will then authorize Airport staff to negotiate a concession agreement. If negotiations with the proposer fail, the Manager may then authorize negotiations with another proposer. The Manager's authorization to negotiate a concession agreement does not guarantee that a concession agreement will be completed and sent to the City Council for approval.

## **H. NO SUBSTITUTION OF BRANDS AFTER AWARD OF A CONCESSION AGREEMENT**

The single most important factor in awarding a concession privilege is the proposed concept and brand. For this reason, a concept or brand may not be changed or substituted following award. Proposers will be responsible for ensuring that they have established the relationship with the brand or concept owner, understand the business terms that will apply, and have the legal authority to both propose and operate the brand or concept being proposed prior to submitting a proposal.

A concession agreement will not be executed by the City until evidence in a form acceptable to the Airport is provided that the brand or concept has been secured by entering into an appropriate license or franchise agreement and submitting a copy of it to the Airport.

No substitution of brands will be permitted, as this is unfair to other proposers and undermines the integrity of the competitive proposal process.

#### **I. INITIATION OF CITY APPROVAL PROCESS**

Once the Airport has negotiated a contract with a proposer, and the proposer has signed the concession agreement, normal City approval processes will be initiated. A concession agreement shall not be considered awarded, binding or in effect until it has been fully executed by the City.

## **VI. CONTRACT ADMINISTRATION AND COMMITMENT BY STAFF**

The burden of developing a world-class concession program falls on DIA staff as well as its concessionaires. To that end, DIA concession staff must be committed to achieving the vision statement and goals for the concession program.

The success of DIA's concession program relies on the cumulative successful performance of all concessionaires. DIA cannot be successful without the contribution of all tenants. The tenants' success also translates into enhanced customer satisfaction and increased revenue to the Airport.

Similarly, concession tenants also rely on the performance of other tenants. If a customer has a bad experience in one DIA concession, the customer is unlikely to visit other concessions.

Once concession agreements are in effect, DIA staff must administer the contracts in a way that optimizes overall concession performance and that provides an opportunity for all concessionaires to be as successful as reasonably possible, consistent with the privileges and obligations in their concession agreements.

Staff will be careful to consider the impact of a request by one concessionaire on other concession tenants as well as the program as a whole.

### **A. TIMELY DECISIONS BY STAFF**

The DIA organization is aligned under a Deputy Manager position to enhance the performance of non-airline revenue generating activities. This requires staff to make timely decisions and collect all necessary information so that a decision may be made by others.

Concessionaires are required by the terms of their concession agreements to seek prior approval on certain matters, such as price increases and changes or improvements to their facilities. Unnecessary delay in making decisions results in added costs for concessionaires. Wherever possible, decisions should be made at the appropriate level of the organization or forwarded to the appropriate management level for disposition. Policies and procedures will be developed for the handling of routine requests.

Concessions staff does not control all aspects of the Airport. For example, design review, parking permits, or security badges are administered by other divisions of the Airport and are not under concessions staff control. However, staff can work closely with other parts of the DIA organization to expedite approvals.

It is the nature of airport concessions management that, depending upon circumstances, DIA concession staff will at times be an advocate for a concessionaire; an adversary, when enforcement of a concession agreement is required; and, a facilitator, in order to develop a world-class program that serves our passengers.

### **B. PRICING**

In order to ensure reasonable pricing for DIA users, a pricing policy is included in all concession agreements. Current policy allows a maximum of 110% of the off-Airport or "street" price. Items with a pre-printed MSRP, such as newspapers, books or periodicals, cannot be priced above the pre-printed MSRP.

For branded concessions, the pricing comparison will be made by applying 110% against the same menu items or merchandise sold at the off-Airport branded locations. Taxes will be excluded in the comparison.

### **C. SIMPLIFIED APPROACH ON PRICING APPROVALS**

Customers are sensitive to pricing at airports, and it is in DIA's long-term interest to ensure that prices are kept at a level consistent with its "street plus 10%" pricing requirements.

Pricing changes require DIA approval, and the number of individual concession locations places a large workload on DIA staff. To simplify the review of pricing requests, the following approach will be developed and put into effect.

1. **Opening of new concessions.** Concessions staff will ensure that prices in effect at the time of opening of a new concession are consistent with the prices included in the proposal and incorporated by reference in the concession agreement. (The RFP process outlined in an earlier section of this document provides for pricing data to be provided in proposals that would be effective at the time of opening of the concession unit). Pricing inconsistent with the concessionaire's original proposal will be rejected. The pricing committed to by the concessionaire during the RFP process will be in effect for one full year before price increases will be considered.
2. **Branded concessions.** Pricing changes at branded concession units will be considered based on a comparison of prices at a sampling of Denver-area units of the same brand. Pricing approvals for these units is straightforward and requires only applying the 110% standard against the off-Airport prices.
3. **Non-branded concessions.** For non-branded units, price increase requests will be considered using a CPI approach. A substantial, but representative, sample of current, best-selling menu items or merchandise will be selected by staff (or agreed to with the concessionaire) and compared to the Consumer Price Index for the Denver MSA. For food and beverage units, the CPI index for "Food Away From Home" can be used. This index is weighted towards the two most important drivers of restaurant price increases—labor and food costs.

If the total change in prices for the selected "basket" of goods is consistent with the CPI change, concession staff can issue a price approval. If not, the price approval will be rejected. The concessionaire will then have the burden of proving that its price increases are reasonable under the terms of its concession agreement.

### **D. CUSTOMER SERVICE STANDARDS**

All concessions must meet minimum customer service standards that are outlined in the concession agreement and Airport Rules and Regulations. The Airport will monitor compliance with these standards and take appropriate action when these standards are not met.

### **E. LIQUIDATED DAMAGES**

The Airport's Rules and Regulations provide a mechanism for levying liquidated damage provisions for non-performance by airport tenants including concessionaires. Concessions staff will use the existing procedures in the Rules and Regulations as needed to ensure compliance with the requirements of the concession program.

Liquidated damages assessed under the Rules and Regulations are in addition to any other remedies available to the Airport as provided in the concession agreement, or at law or in equity.

## **F. TERM EXTENSIONS**

In general, there will be no extensions or renewals of term to any concession. However, when an extension is necessary to provide uninterrupted service to the traveling public (such as during a solicitation for proposals for a concession privilege), a term may be extended by the Manager, provided that negotiations to extend a term: (1) will be initiated only at the option of the Manager, (2) will not commence more than one year before the expiration of the existing term, and (3) the extended term will not exceed one year.

There is no restriction regarding successive competitively awarded concession agreements to the same concessionaire or customer service provider.

## **G. ASSIGNMENT OF CONCESSION AGREEMENTS**

The award of concession privileges is based on a number of factors, including the experience, qualifications and financial strength of the proposer. The City enters into a concession agreement on the assumption that the proposer will be the operator of the concession throughout the term.

It is generally not in the best interest of the Airport to permit the transfer, sale, assignment or sublease of a concession agreement, or to encourage speculation in the ownership of a concession. The City has the sole discretion to approve or deny the assignment of a concession agreement based on the best interests of the City.

In no cases will assignments be approved that provide for a term extension.

In the case of a bona fide illness or tragedy in a family owned concession, the Airport staff may, with the approval of the Manager, recommend the assignment of the concession agreement.

## **H. DAILY SALES REPORTING PROGRAM**

In lieu of submitting annual statements by a Certified Public Accountant, concessionaires may participate in the Airport's daily sales reporting program. By 2:00 PM of each day, the previous day's sales are due to the Airport Property Management Office via automated telephone.

## **I. MARKETING PROGRAM**

Under the terms of existing concession agreements, the Airport will be collecting 1% of sales in addition to the normal concession rent to fund a joint marketing program. The intent of this program is to help all concessionaires achieve increased sales and increased revenue to the Airport. This money will be spent on programs identified by the Airport as valuable with input from the concessionaires, such as advertising, directories, brochures, and promotions.

The DIA staff will administer the marketing program with the advice of a committee representing current concessionaires.

## **J. MARKETING ADVISORY COMMITTEE**

A marketing advisory committee will be established in consultation with the existing concessionaires.

The revenue to fund the joint concession marketing program is collected from the concessionaires and will be deposited in the Airport Revenue Fund, as required by the General Bond Ordinance. DIA

staff will prepare a set of goals and objectives for the concession program, and an annual budget based on the revenues to be collected during the year (once the required number of concession agreements is reached) and consult with the advisory committee on the use of those funds.

#### **K. OPENING CHECKLIST**

Concession staff with the responsibility for concession development will be responsible for a formal “hand-off” to staff with contract administration responsibilities. A checklist will be developed that will ensure that a completed file is developed for ongoing contract administration. An exception will be for the final capital investment costs data to be supplied by concessionaires within a fixed period of months after opening, as required in the concession agreements.

#### **L. LEVERAGING OF TECHNOLOGY**

DIA can improve the development, management and administration of the concession program by leveraging new technologies. To the extent that resources and capabilities allow, new technologies will be incorporated in our policies and procedures.

#### **M. DISTRESSED CONCESSIONS**

The Airport believes that poor performance of an individual concession detracts from the overall program and limits the financial return to the Airport. In the event that a concession is not performing in a manner consistent with the Airport’s goals, or if the Airport sees trends that indicate performance is going to deteriorate, the Airport will seek to improve performance.

Current concession agreements provide that concessions paying only the minimum monthly guarantee for a period of 12 consecutive months may be terminated for underperformance.

For under performing concessions, the Airport will first ask the concessionaire to provide a program to improve sales and customer service within six months. If the concession has not improved performance within six months, the Airport may negotiate a termination of the concession agreement.

These actions will avoid delaying the inevitable decline in business if a concession does not bring performance up to acceptable levels.

In some cases, reconcepting or rebranding of the concession may be in the best interests of the Airport, and will be considered provided (1) the concept is similar to the original approved concept as described in the concession agreement; (2) the new concept does not materially and unfairly compete with another concept in the immediate area of the terminal or concourse; and (3) the change in concept can be accomplished within the remaining term of the concession agreement.

#### **N. AIRPORT EMERGENCIES**

Effective communication with concessionaires is required to serve the traveling public during emergencies. When an emergency is declared by the Airport, the concessions staff will be the primary conduit for communications with all concessionaires during the emergency. To ensure consistent coordination, concessionaires should direct all inquiries to concessions staff. Procedures will be established covering communications with concessionaires during emergencies.