

PORT ORDINANCE NO. 4838
ORDINANCE AMENDING AND ADOPTING THE TERMINAL
CONCESSION POLICY AS CHAPTER 8.04 OF THE PORT OF
OAKLAND ADMINISTRATIVE CODE (POAC), AND FINDING
THAT THE PROPOSED ACTION IS EXEMPT UNDER THE
CALIFORNIA ENVIRONMENTAL QUALITY ACT.

WHEREAS, the Board of Port Commissioners of the City of Oakland ("Board") has reviewed and evaluated the Agenda Report for Agenda Item 5.1, dated April 23, 2026, and related agenda materials ("Agenda Report"), has received the expert testimony of Port of Oakland ("Port") staff, and has provided opportunities for and taken public comment; and

WHEREAS, Section 706 of the City of Oakland ("City") Charter gives to the Board the complete and exclusive power and duty for and on behalf of the City to exercise various powers and duties relating to the Port's jurisdiction, including, but not limited to, the power and duty to "adopt and enforce such ordinances, orders, regulations and practices as are necessary for the proper administration and discharge of its duties and powers, or for the management and government of the port, and its facilities" (City Charter, Sec. 706(27)); and

WHEREAS, in acting upon this matter, the Board has exercised its independent judgment based on substantial evidence in the record and adopts and relies upon the facts, data, analysis, and findings set forth in the Agenda Report and in testimony received; now, therefore,

BE IT ORDAINED by the Board of Port Commissioners of the City of Oakland as follows:

Section 1. The Board hereby finds and determines that the proposed action is not subject to the California Environmental Quality Act ("CEQA") under the general rule exclusion under Section 15061(b)(3) of the CEQA Guidelines because it can be seen with certainty that the proposed action will not have a significant effect on the environment and therefore is not a "project" under CEQA.

Section 2. The Board hereby:

A. Approves, amends, and adopts the Terminal Concession Policy as Chapter 8.04 of the Port of Oakland Administrative Code ("POAC"), as reflected in **Attachment A**, and as further described in the Agenda Report.

B. Repeals all former Port ordinances and/or resolutions containing the Terminal Concession Policy, including, without limitation, Port Resolution No. 16-144.

C. Authorizes the Executive Director or her designee to take all actions necessary to implement this adoption into the POAC, provided that such actions do not materially differ from the terms and conditions

set forth herein and in the Agenda Report, subject to approval as to form and legality by the Port Attorney.

Section 3. This Ordinance is not evidence of and does not create or constitute (a) a contract, or the grant of any right, entitlement or property interest, or (b) any obligation or liability on the part of the Board or any officer or employee of the Port. Unless and until a separate written agreement is duly executed on behalf of the Board as authorized by this Ordinance, is signed as approved as to form and legality by the Port Attorney, and is delivered to the other contracting party, there shall be no valid or effective agreement.

Section 4. This Ordinance shall take effect on the date of its final adoption; provided, however, that if a petition protesting the adoption of this Ordinance is timely and duly submitted to the elections official of the City of Oakland in the manner required under California Elections Code § 9237, the effective date of this Ordinance shall be suspended, and all actions authorized by this Ordinance shall be null and void.

The Board of Port Commissioners, Oakland, California, April 23, 2026. Passed to print for one day by the following vote: Ayes: Commissioners Dominguez Walton, Leslie, Martinez, Myres, Wong and President Cluver - 6. Noes: 0. Excused: Commissioner Muhammad - 1.

Daria Edgerly,

Secretary of the Board

Attachment A

Chapter 8.04 Terminal Concession Policy

Section 8.04.010 Definitions

As used in this Chapter, the following words and phrases shall be construed and defined as follows, unless it is clearly apparent from the context that a different meaning is intended or unless a different meaning is specifically defined and more particularly directed to the use of such words or phrases elsewhere in this Code.

“Bid” shall mean a bid submitted in response to a Port RFB.

“Bidder” shall mean a Person submitting a Bid.

“Committee” shall mean the Concessions Evaluation Committee, established by this Chapter and designated by the Port from time to time, to review and evaluate all Bids and Proposals received by the Port.

“Concessions” shall mean the concession and customer service privileges solicited for and awarded under the Concession Policy at the Terminal Complex.

“Concession Policy” shall mean the policies established in this Chapter governing the solicitation and awarding of Concessions at the Terminal Complex.

“Concessionaires” shall mean concessionaires and providers of customer services within the Terminal Complex subject to the Concession Policy.

“DBE Requirements” shall mean the provisions of 49 Code of Federal Regulations, Part 23, as they may be amended or superseded.

“Deposit” shall mean a deposit submitted by a Bidder or a Proposer in conjunction with their Bid or Proposal.

“Director of Aviation” shall mean the Director of Aviation employed by the Port or their designee.

“Disadvantaged Business Enterprises” and “DBEs” shall mean local business concerns owned and controlled by socially and economically disadvantaged individuals.

“Local Business Area” and “LBA” shall mean the California Counties of Contra Costa and Alameda.

“Local Impact Area” and “LIA” shall mean the California Cities of Oakland, Alameda, San Leandro, and Emeryville.

“MAG” shall mean a minimum annual guarantee.

“NDSLBP” shall mean the Port’s Non-Discrimination and Small Local Business Utilization Policy, as it may be amended, superseded, and/or codified into this Code.

“Port Living Wage Policy” shall mean Section 728 of the Charter and any implementing Port policies, including Port Ordinance Nos. 3666 and 3719, as such ordinance may be amended, superseded, and/or codified into this Code.

“Proposal” shall mean a proposal submitted in response to a Port RFP.

“Proposer” shall mean a Person submitting a Proposal.

“Ramp” shall have the meaning assigned to it in Chapter 8.01.

“RFP” shall mean a request for proposals.

“RFB” shall mean a request for bid.

“Sterile Area” shall have the meaning assigned to it in Chapter 8.01.

“Terminal Complex” shall have the meaning assigned to it in Chapter 8.01.

Section 8.04.020 Purpose

A. This Chapter governs the solicitation and awarding of Concessions at the Terminal Complex at the Airport and shall be observed by the Port in awarding Concessions at the Terminal Complex.

B. The goal of the Concession Policy is to assure the highest level of both public service and of revenue generation consistent with the level of service desired and the Port’s policy of encouraging the participation of local business concerns within the LIA and the LBA, and of those qualifying as DBEs in accordance with the DBE Requirements.

C. The Port shall follow this Concession Policy in soliciting for and awarding Concessions at the Terminal Complex. In addition, to ensure realization of the Port’s public service and revenue goals, the Port will impose well-defined performance and operating standards in the agreements it enters into with Concessionaires, and will require the Concessionaires to provide performance deposits or other contract security and liability insurance in form and amounts to be established by the Port.

D. In general, the Port shall solicit Concessions through an RFP or RFB process.

Section 8.04.030 Public Notice

It is the policy of the Port to develop strong public interest in each Concession being solicited by the Port. To this end, the Port shall give reasonable public notice in advance of its solicitation of each Concession. Additionally, a program of local outreach will be developed to

make local, small, and DBEs aware of future Concessions and inform them of the processes to be followed.

Section 8.04.040 Disadvantaged Business Enterprises

A. It is the policy of the Port that DBEs shall have maximum opportunity to participate in the award of Concession opportunities at the Terminal Complex in accordance with applicable federal law and regulation. To this end, the Port shall abide by federal and state nondiscrimination requirements with respect to the award and performance of any Concession at the Terminal Complex, shall take all necessary and reasonable steps to foster participation by DBEs in its Concessions, and shall encourage DBE participation in the submission of Bids or Proposals for all such Concessions.

B. The Port shall include the following statements in all Concession agreements executed with any Concessionaire:

“This agreement is subject to the requirements of the U.S. Department of Transportation’s regulations, 49 CFR part 23. The Concessionaire agrees that it will not discriminate against any business owner because of the owner’s race, color, national origin, or sex in connection with the award or performance of any Concession, management contract, or subcontract, purchase or lease agreement, or other agreement covered by 49 CFR part 23.”

“The Concessionaire agrees to include the above statements in any subsequent Concession agreement or contract covered by 49 CFR part 23, that it enters and cause those businesses to similarly include the statements in further agreements.”

C. The Port shall implement a DBE concession plan containing the elements listed in applicable federal regulation, including but not limited to 49 Code of Federal Regulations § 23.21. The Port shall review and update such plan as necessary and submit the plan and each updated plan to the FAA regional office for approval. Each updated plan shall include any information required by applicable federal regulation that was not available to the Port when the previous submission to the FAA regional office was made.

D. In compliance with federal DBE requirements, the Port shall establish an overall triennial goal for the participation of DBEs in Concession opportunities anticipated to be awarded each triennial period consistent with federally approved DBE goal-setting processes and shall make good faith efforts to achieve the overall goals.

E. The Port reserves the right to further amend this Chapter, if required, in order to comply with any applicable laws or regulations hereafter adopted by the United States Government, its agencies, the State, the City, or the Port.

Section 8.04.050 Non-Discrimination and Small Local Business Utilization Policy

The NDSLBUUP encourages the participation of local small businesses within a defined LBA and LIA. The award of Concessions shall comply with the NDSLBUUP to the extent practicable.

Section 8.04.060 Port Living Wage Policy

A. The Port Living Wage Policy applies to certain Port tenants and contractors, including Concessionaires, and its requirements will, to the fullest extent applicable, be included in RFP/RFB documents and Concession agreements awarded under the Concession Policy.

B. The Board, from time to time, may require agreements for certain Concessions to assure that there are no labor interruptions to the operation of the Concessions or the Airport.

Section 8.04.070 Qualifications of Prospective Bidders or Proposers

A. Deposit

In order to have a Bid or Proposal considered by the Port, all Bidders or Proposers of a Concession shall provide the Port with a Bid or Proposal Deposit. The Deposit will serve as a guaranty that the selected Bidder or Proposer will enter into the final agreement with the Port and serve as liquidated damages should the Bidder or Proposer fail to follow through with its offer. The amount of the Deposit will be sufficient to act as a penalty for failure to perform and offset the Port's additional costs, and will vary with the size and value of the Concession that is the subject of the Bid or Proposal.

B. Eligibility Form

Each Bidder or Proposer shall complete and submit to the Port an eligibility form to be supplied by the Port. The eligibility form shall require, as a minimum, the following information:

1. The type of organization submitting the Bid or Proposal (e.g., sole proprietorship, partnerships, joint venture, corporation);
2. Evidence that the Bidder or Proposer is authorized to do business in the State;
3. Evidence that the Bidder or Proposer has at least the level of experience in offering a Concession of the type covered by the Bid or Proposal as specified in the RFP/RFB;
4. The names and addresses of all persons having a financial interest in the Concession. If the Bidder or Proposer is a partnership or joint venture, the names and addresses of all general partners or members shall be provided. If the Bidder or Proposer is a corporation, the names and addresses of all officers and directors and of all shareholders owning more than Five Percent (5%) of any class of stock shall be provided;
5. The names, address, and business background of the Person(s) to be employed as manager(s) of the Concession;

6. A pro forma statement of the projected results of operations of the Concession for each of the first two (2) years of operations, identifying the source of funds to cover any deficits shown in such statement, and a current statement showing the assets, liabilities and net worth of the Bidder or Proposer;

7. Evidence setting forth the initial capital requirements of the Concession and providing evidence satisfactory to the Port that such requirements can and will be met; and

8. Such additional information as may be required in the RFP/RFB documents.

C. Rejection of the Bid or Proposal

If the Deposit and eligibility form are not submitted by the Bidder or Proposer, or if, in the sole discretion of the Port, the information contained on the eligibility form is incomplete or not responsive or if the Bidder or Proposer does not have the financial capability to provide the required improvements, goods and/or services, the Bid or Proposal may be rejected by the Port.

Section 8.04.080 Alternative Method of Awarding Concession and Customer Service Privileges

As set forth in this Section, Concessions may be awarded in the following three (3) ways: (1) competitive bidding to specifications; (2) competitive proposals based on specifications, followed by negotiations with the selected Proposer(s) to obtain maximum revenue consistent with desired levels of public service; and (3) Negotiation with a single Concessionaire (i) where services or products are unique, or (ii) where services are sole sourced in accordance with State law or regulation, or (iii) where services or spaces are set aside and allocated for concession development solely by DBEs.

A. Bidding to Specifications

Bidding to specifications will be used for those Concessions where it is difficult to differentiate type of service, income to be generated, and quality of service or products among several Bidders. In bidding to specifications, the Concession will be awarded to the highest dollar Bidder; provided, however, that if the Port has established a DBE contract goal for the Concession, then that Concession shall be awarded to the highest dollar Bidder which the Port determines has offered a reasonable MAG and which has met or exceeded that contract goal or made a good faith effort to achieve that contract goal. Concessions to be awarded by bidding include rental cars. Other Concession opportunities may be bid or negotiated.

B. Competitive Proposals

1. Competitive proposals will be used for those Concessions 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 Proposers. The Concession will then be awarded by the Port's comparative evaluation of each proposal with respect to depth of management, demonstrated

experience at other locations, financial responsibility, reputation, success in marketing and promoting programs with similar characteristics, concession improvements of facilities proposed, level of capital investment to be made, financial return to the Port, and compliance with the DBE contract goal, if any, established by the Port, as well as any other specific selection criteria set forth in the RFP/RFB with respect to the particular Concession. The final terms of the agreement will be negotiated to produce maximum financial return to the Port consistent with public service requirements.

2. Privileges to be awarded by competitive proposal include, but are not limited to:

- a. Advertising and Display;
- b. Food and Beverage;
- c. Retail (News/Gifts/Specialty Retail); and
- d. Duty Free.

3. The Port reserves the right to decide to award one or more of the Concessions described in this Subsection by bidding rather than by competitive proposal.

C. Negotiations

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

2. Negotiation may also be used where specific Concessions or spaces are set aside and allocated for Concession development solely by DBEs. Further, the terms of such negotiated Concessions will be reasonable, in compliance with the DBE Requirements, and provide revenues in an amount which would be acceptable to a reasonably prudent Concessionaire of an airport system comparable to the Airport.

D. Negotiations for Renewals or Extensions with an Existing Operator

1. It is the policy of the Board that, in general, there will be no extensions or renewals to any Concession agreement. Negotiation with an existing Concessionaire for extension of the term will be used only when, upon anticipated expiration of the full term of the Concession agreement, it is determined by the Board to be in the best interests of the Airport to negotiate a new agreement with the current Concessionaire for continued operation of the given Concession, or, alternately, during any interim period when the

Port is accepting Bids or Proposals for such Concession. Such negotiation will be initiated only at the option of the Board, and in no instance will such negotiations commence prior to one (1) year before the expiration of the existing Concession agreement.

2. Subject to the foregoing, there is no restriction regarding successive contracts with the same Concessionaire following a Bid or competitive Proposal process.

Section 8.04.090 General Financial Basis for Proposals

1. In most instances, the financial return to the Port from each Concession will be based on a privilege fee expressed as a percentage of gross receipts (sales) or a payment per enplaned passenger (or total enplaned and deplaned passengers), against a MAG.

2. The Port 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 Port. In no event will both the percentage(s) and the MAG be bid or proposed since the use of more than one variable makes the evaluation of financial returns impossible.

Section 8.04.100 Preproposal and Prebid Conferences

1. Preproposal and prebid conferences will be held for all Concession opportunities (or group of Concession opportunities).

2. Prior to the preproposal or prebid conference for each Concession, Port staff shall develop a working draft of the RFP/RFB documents, including specifications and requirements for the Concession and the proposed agreement to be entered into with the Port. Written notice that such RFP/RFB documents will be issued generally through advertising in at least one local newspaper, internet solicitation of interests, industry publications or websites, and by placing a notice on the Port's website. To the extent possible, a list of the names and addresses of all persons or firms to which any RFP/RFB documents have been issued shall be maintained. Subsequent changes or addendums to the RFP/RFB documents shall thereafter be made available electronically to all those on record with the Port as having received RFP/RFB documents and shall be posted on the Port's website. It shall be the Proposer's responsibility to place all contact information on the preproposal and/or prebid conference sign-in roster.

Section 8.04.110 Local Outreach Meetings

1. In order to encourage the maximum amount of local participation, including participation by small and DBE businesses, the Port generally will conduct local outreach meetings in advance of issuing RFPs/RFBs. These local outreach meetings will be targeted to local, small and DBE businesses (in accordance with the Port's LIA and LBA policies and in accordance with federal regulations) in order to:

- a. Provide information on the nature of the Concession to be awarded;
- b. Educate potential Concessionaires on the advantages and disadvantages of doing business at the Airport, including financial, operational, and potential business risks and rewards; and
- c. Provide guidance on the steps necessary to participate in the selection process.

2. Local outreach meetings conducted under this Section generally will be conducted in advance of the issuance of RFPs/RFBs that include LIA, LBA, and/or DBE participation goals.

Section 8.04.120 Formal Submission of Bids or Proposals

A. Each Proposer for a Concession will be required to describe its operating plans for the Concession to be awarded and provide any other information considered desirable by the Port as required by the RFP/RFB.

B. The RFP/RFB may include the following criteria:

- 1. General Description of Concession(s).
- 2. Eligibility Requirements.
- 3. Method of Awarding Concessions.
- 4. Basis of Award of Concession.
- 5. Term of Concession Agreement.
- 6. Fees to be paid the Port
 - a. Percentage of gross receipts (sales) or a payment per enplaned passenger (or total enplaned and deplaned passengers), against a MAG.
 - b. MAG.
 - c. Storage Space.

All Concessionaires occupying storage space shall pay an identical rate as other Concessionaires for storage space apart from demised or public premises, which rate shall be in accordance with Airport Rates & Charges

- 7. Port Improvements, if any.
- 8. Concessionaire Improvements, if any.

C. Concessions Evaluation Committee

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

D. Competitive Proposal Ranking, Evaluation and Negotiation

Regarding competitive proposals, the Committee shall review all Proposals submitted, and rank each of them from best to worst. Evaluation and selection criteria used by the Committee shall be as set forth in the RFP/RFB and in accordance with Section 8.04.080 B. The Committee may, in its discretion or in accordance with the terms of the RFP/RFB, require the highest ranked Proposers to make a formal presentation to the Committee. The Committee shall review and evaluate the highest-ranked Proposals, and prepare a recommendation as to which Proposer should receive the award.

E. The Port may negotiate the precise terms and conditions of the Proposal with the highest ranking Proposer, in accordance with the terms of the RFP/RFB and with Section 8.04.080 B. Such negotiation of specific terms and conditions of the award shall resolve any outstanding details of the Proposal, and not materially affect the business terms contained in the RFPs/RFBs. If the Committee determines that an acceptable agreement cannot be reached with the highest ranked Proposer, the Committee may then terminate negotiations and commence negotiations with the second highest Proposer, and so on, until a mutually acceptable agreement is reached. In no event shall negotiation with any Proposer continue for a period of more than sixty (60) days without the approval of the Director of Aviation. In any event, the Port reserves the right to reject any or all Proposals and to discontinue negotiations with any individual Proposer at any time.

F. The Committee then will provide to the Board a recommended contract award with a list of all Bidders or Proposers submitting responsive Bids or Proposals, identifying those which were ranked highest by the Committee, together with its written review and evaluation of the highest-ranked Bids or Proposals, and its recommendation as to which Bidder or Proposer should receive the award. The Board may approve or reject the Committee's recommendation, and will adopt the final ranking of the Bids or Proposals. Evaluation and selection criteria shall be as set forth in the RFP/RFB and in accordance with Section 8.04.080.