

SUPPLEMENTAL AGENDA REPORT

Resolution: Resolution Approving Supplemental Terms And Conditions For The 2018 Food And Beverage Concession Opportunities Request For Proposals Relating To First Referral Source And Non-Discrimination Against Applicants With History With Criminal Justice System In The Employment Of Concession Employees **(SRD)**

MEETING DATE: 4/26/2018

AMOUNT: Choose an item.

PARTIES INVOLVED: Potential proposers including Multinational and Regional Prime Concessionaires, ACDBE Operators, Restaurateurs with Local Concepts, and Small Business Food and Beverage Operators

SUBMITTED BY: Amy Tharpe, Director of Social Responsibility

APPROVED BY: J. Christopher Lytle, Executive Director

ACTION TYPE: Resolution

EXECUTIVE SUMMARY

Port staff ("Staff") requests approval and authorization from the Board of Port Commissioners ("Board") for the Executive Director to include both first source and fair chance hiring requirements in the 2018 Food and Beverage Concessional Request for Proposal.

BACKGROUND

On April 12th, the Port Board of Commissioners voted to approve the business terms and conditions to be incorporated into the Request for Proposals for Food and Beverage Concession Opportunities at Oakland International Airport. At that time, the Board directed staff to work with key stakeholders to develop a recommended policy direction and accompanying Request for Proposal (RFP) language that would incorporate two elements into the Food and Beverage Concessions RFP: 1) a first source hiring program that facilitates the recruitment of local residents in the Port's local impact area who face barriers to employment with the assistance of local workforce development organizations, subject to any collective bargaining agreements and existing Port policies and 2) a fair chance hiring program that would prohibit employers from disqualifying applicants who have received conditional offers of employment and necessary badges based upon a prior criminal history not directly related to

job requirements. The Board also recommended that staff return to the Board at their April 26, 2018 Board meeting to request approval of the proposed policies and language.

In offering these recommendations, staff has conferred with the East Bay Alliance for Sustainable Economy (EBASE) which represents a coalition of 30 organizations (including Unite Here Local 2850) that consist of community members, faith, youth and labor groups that work to ensure that economic development brings good, accessible careers to surrounding communities.

ANALYSIS

Staff recommends that the 2018 Food and Beverage Concessions RFP contain the following requirements related to first source and fair chance hiring:

First Source/ Local Hiring:

Under the FAA rules relating to Airport Concessions Disadvantaged Business Enterprises (ACDBE) and use of airport revenues and federal grants, airports may not implement its concession program in a way that favors local businesses or workers and discriminates against out-of-state employers or employees. In SRD's consultation with FAA's ACDBE office, the FAA representative confirmed this regulatory policy.

However, airports can implement "First Source Hiring" programs, examples including programs at the San Francisco Airport (SFO) and the Los Angeles World Airports (LAWA), under which employers operating at the Airports are required to first source job applicants from job banks established by the airports and/or local government agencies before they recruit elsewhere. SFO and LAWA and their respective city governments establish these job banks by recruiting job applicants who are from disadvantaged communities and live within the airports' respective "impact areas". They refer these individuals to airport businesses as jobs become available. Once the referrals are exhausted, the airport businesses can then recruit candidates on their own.

Staff recommends that the Port require employers to make a "good faith effort" to hire residents from its local impact area (Oakland, Alameda, San Leandro and Emeryville) who face barriers to employment for a specified period of time. Staff also recommends that the Port require employers to use local workforce development agencies, as determined by the Port of Oakland, as referral sources prior to hiring independently. When hiring independently, staff would also ask that employers make all good faith efforts to recruit applicants from the local impact area. This first source hiring program would ~~not~~ be subject to any collective bargaining agreements and must comply with pre-existing Port policies such as the Port's labor pool and worker retention policy.

The Port plans to include first source/local hiring language in the RFP as follows:

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The Port will require employers to make a Good Faith Effort to hire residents from the Port's local impact area and those who face barriers to employment and partner with local workforce development agencies as determined by the Port of Oakland in consultation with Revive Oakland Coalition, as referral sources to fulfill the hiring requirements. Employers will provide upfront notice of job openings and exclusively consider applicants from the agencies for a specified time period. This first source hiring program would be subject to any collective bargaining agreements and must comply with pre-existing Port policies. Employers will report quarterly on first source hiring compliance. Noncompliant employers will be subject to liquidated damages.

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Fair Chance Hiring

The Port requires non-discrimination in hiring and supports the creation of employment opportunities for local residents with barriers to employment, including individuals who have had former involvement in the criminal justice system. Fair chance hiring (or "ban the box" policies) prohibit discrimination against qualified applicants based upon their criminal history. All employers in California are subject to AB 1008, a law that became effective on January 1, 2018 which 1) prohibits any employment application to include a question on conviction history 2) prohibits an employer to inquire about criminal history prior to a conditional offer of employment 3) prohibits an employer from denying an applicant a position based upon conviction history until they provide an individualized assessment by linking the conviction to the job's duties and 4) offers the applicant appeal rights and requires them to receive justification in writing if he/she is ultimately denied the position.

In addition to requiring that concession employers comply with all federal and state laws related to fair chance hiring, staff recommends that the Board adopt the following fair chance hiring requirements:

- Consistent with AB1008, employers with at least 2 employees may not inquire or investigate an applicant's criminal history until a conditional offer of employment is made.
- Employers may not disqualify an applicant who has received a conditional offer of employment and meets the badging requirements of the Transportation Security Administration and the Customs and Border Patrol, based on prior criminal history or history of involvement with the criminal justice system that is not directly related to the job requirements.

The Port plans to include fair chance hiring language in the RFP as follows:

The Port is committed to non-discrimination and creating opportunities for individuals who face barriers to employment, including those who have former involvement with the criminal justice system. Fair chance hiring policies prohibit discrimination against qualified job applicants based upon their criminal history.

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In addition to complying with state and federal fair chance hiring laws, including AB 1008, the Port requires that employers with 2 or more employees may not inquire about or investigate an applicant's criminal history until a conditional offer of employment is made. Prior to conducting any background check, employers must provide the Port with any directly related convictions that exceed badging requirements. Employers may only consider convictions directly related to job requirements. Employers may not disqualify an applicant who has received a conditional offer of employment and meets the Port's policy requirements and the badging requirements of the Transportation Security Administration and the Customs and Border Patrol based on prior criminal history that is not directly related to the job requirements.

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BUDGET & STAFFING

The proposed action does not have any budgeting or staffing impact.

MARITIME AVIATION PROJECT LABOR AGREEMENT (MAPLA)

The matters included in this Agenda Report do not fall within the scope of the Port of Oakland Maritime and Aviation Project Labor Agreement ("MAPLA") and the provisions of the MAPLA do not apply.

STRATEGIC PLAN

The action described herein would help the Port achieve the following goals and objectives in the Port's Strategic Business Plan (2018–2022).

<https://www.portoakland.com/wp-content/uploads/Port-of-Oakland-Strategic-Plan.pdf>

Goal: Serve our Community and Objective: Ensure that as the Port thrives, the community thrives.

LIVING WAGE

Living wage requirements, in accordance with the Port's Rules and Regulations for the Implementation and Enforcement of the Port of Oakland Living Wage Requirements (the "Living Wage Regulations"), do not apply to this agreement because the requested action is not an agreement, contract, lease, or request to provide financial assistance within the meaning of the Living Wage regulations.

SUSTAINABILITY

The RFP includes requirements for proposers to develop an operation plan that includes an approach to sustainability, conservation, composting and recycling. Specific details will be included in the agenda reports for the award of the Food & Beverage Concessions Opportunities.

ENVIRONMENTAL

This project has been determined to be categorically exempt from the California Environmental Quality Act (CEQA) Guidelines pursuant to Section 15301, Existing Facilities, which exempts the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment or topographical features, involving negligible or no expansion of use beyond that existing at the time of the lead agency's determination. Approving the business terms and conditions for the 2018 Food & Beverage Concessions Opportunities Request for Proposals does not change the use of the existing facility (operating concessions) and is therefore categorically exempt under CEQA. No further environmental review is required.

GENERAL PLAN

This action does not change the use of any existing facility, make alterations to an existing facility, or create a new facility; therefore, a General Plan conformity determination pursuant to Section 727 of the City of Oakland Charter is not required.

OWNER-CONTROLLED INSURANCE PROGRAM (OCIP)

The Owner Controlled Insurance Program (OCIP) does not apply to the matters addressed by this Agenda Report as they are not capital improvement construction projects.

OPTIONS

Staff has identified the following options for the Board's consideration:

Option 1: Authorize the Executive Director to include both first source and fair chance hiring requirements in the 2018 Food and Beverage Concessional Request for Proposal.

Option 2: Do not authorize the Executive Director to include both first source and fair chance hiring requirements in the 2018 Food and Beverage Concessional Request for Proposal.

RECOMMENDATION

Staff recommends that the Board adopt a resolution approving and authorizing the Executive Director to include both first source and fair chance hiring requirements in the 2018 Food and Beverage Concessional Request for Proposal.