



**SAN DIEGO COUNTY
REGIONAL AIRPORT AUTHORITY
STAFF REPORT**

**Item No.
15**

Meeting Date: AUGUST 4, 2011

Subject:

Grant a Concession Lease to Spa Didacus, Inc. (A Joint Venture) for Development and Operation of Retail Package #5

Recommendation:

Adopt Resolution No. 2011-0095, awarding a concession lease to Spa Didacus, Inc. for development and operation of Retail Package #5, as included in the Request for Proposals (RFP) for Food Service and Retail Concessions, for a maximum term of nine (9) years and four (4) months, which includes a period not to exceed twenty-eight (28) months to allow for Package Completion, with a first year Minimum Annual Guarantee (MAG) of \$119,000; and authorizing the President/CEO to take all necessary actions to execute the concession lease.

Background/Justification:

For the past three years, staff has been planning for a new concession program at San Diego International Airport (SDIA). The Concession Development Program (CDP) incorporates additional concession opportunities from the Terminal 2 West (Green Build) and Terminal 2 East expansion projects and the re-concepting of most existing locations beginning in December 2012. At its October 26, 2009 meeting, the Board was first informed of the CDP including the goals, objectives, and business strategy of the initiative. Staff further informed the Board of different concession management approaches and recommended a hybrid approach of multiple prime concessionaires with the option for direct leasing. At its November 4, 2010 meeting, staff updated the Board on the CDP Request for Proposals planning and business community outreach efforts. Finally, at its January 6, 2011 meeting, the Board was briefed on RFP packaging guidelines and concession locations in advance of the release of the RFP in February 2011.

On February 2, 2011, eight (8) food service and eight (8) retail concession packages were released via the CDP RFP. The CDP will expand from today's approximately 60,000 square feet to approximately 85,000 square feet of food service and retail space when completed. At full build-out in 2014, the number of food service and retail concession locations will increase from 55 today to up to 86.

000180

As previously briefed to the Board, the CDP RFP included the following goals and objectives:

- Diversity of concepts from local, regional, national, and international brands
- Encourage healthy competition
- Optimize concession revenues
- Capture the spirit of the San Diego region
- Create opportunities for local, small and Airport Concession Disadvantaged Business Enterprises (ACDBE)
- Maximize concession opportunities
- Provide an efficient operating environment
- Exceed passengers' expectations

Each package of the RFP required respondents to propose rent terms that included a fixed MAG and percentage rents of gross sales within a specified range. To ensure a diversity of concepts and encourage competition, the RFP also established the following limitations on the award of concession leases to a single proposer:

- 30% of food service square footage
- 35% of retail square footage
- 30% of total program square footage

Retail Package #5 Details

Retail Package #5 encompasses 5% of the total retail square footage. Retail Package #5 includes the following two locations and concept types:

Location	Square Footage	Concept
T2E Post-Security	875	Spa Services
T2W Core	582	Spa Services
Total	1,457	

A map depicting the Retail Package #5 locations within the terminals is provided in Attachment 1.

The term of the concession lease includes up to 28 months to allow build out of all locations included in the Package (Package Completion), during which time, percentage rent shall be paid. After Package Completion, the MAG requirements set forth below shall apply.

Retail Package #5 included the following minimum requirements:

Minimum Investment in Fixed Improvements per Square Foot	\$300
Percentage Rent Range	10.5%-14.0%
Minimum Annual Guarantee	
1st Annual Period	\$119,000
2nd Annual Period following Package Completion Date	90% of the actual rent paid to Authority during the first Annual Period, or 103% of the MAG for the first Annual Period, whichever is greater.
3rd through 7th Annual Period	90% of the actual rent paid to Authority during the prior Annual Period, or 103% of the MAG for the prior Annual Period, whichever is greater.

Retail Package Proposals

On May 25, 2011, two proposals were received for Retail Package #5 from the following entities:

- Spa Didacus, Inc. (Spa Didacus) - Proposed business entity is comprised of a joint venture between Spa Export SARL (74% ownership) and First Class Concessions (26% ownership)
- XpresSpa San Diego Airport, LLC (XpresSpa) - Proposed business entity is comprised of a joint venture between XpresSpa (74% ownership) and Casa Unlimited Enterprises, Inc. (26% ownership)

A comparison of the proposed concepts associated with the two locations in Retail Package #5 is provided below:

Location	T2E-2020	T2W-2006
Square Feet	875	582
Proposer	Concepts	
Spa Didacus	Be Relax	Be Relax
XpresSpa	XpresSpa	XpresSpa

Financial Offer

Proposer	Proposed Percentage Rent	Year One MAG
Spa Didacus	(years 1-4) 10.5% (years 5-7) 11%	\$ 119,000
XpresSpa	\$0-\$2.0M 11% Over \$2.0M 12% Retail Sales 14%	\$ 119,000

Evaluation Process

The Authority's evaluation panel was comprised of six panelists: (a) three Authority Division Vice Presidents, (b) one Authority Department Director, and (c) two airport concession program managers from San Francisco International and Seattle-Tacoma International Airports.

Proposals were evaluated using the following criteria and weighting factors:

Criteria	Weighting %
Company Background, Experience, Financial Capability and Financial Offer	35
Concept/Brand Development and Merchandise/Menus	20
Designs, Materials, and Capital Investment	15
Management, Staffing Plan, and Training	15
Operations and Maintenance Plan	10
Marketing and Promotions Plan	5

Additional consideration was given in the evaluation process for proposals that met or exceeded the Authority's standards for small business preference (Authority Policy 5.12) and worker retention (Board Resolution 2010-0142R).

The evaluation panel reviewed the two proposals using the above criteria and ranked the proposals as either "1" (best suited) or "2" (next best suited). The results of the rankings of each panel member (PM) are presented in the matrix below:

Proposer	PM1	PM2	PM3	PM4	PM5	PM6	Total
Spa Didacus	1	1	1	1	2	2	8
XpresSpa	2	2	2	2	1	1	10

The evaluation panel recommends that a concession lease be awarded to Spa Didacus for development and operation of Retail Package #5 (as included in the Request for Proposals for Food Service and Retail Concessions) for a maximum term of nine (9) years and four (4) months with a first year MAG of \$119,000.

Depictions of Spa Didacus' concepts for this package are presented in Attachment 2.

Fiscal Impact:

Annual revenue for the Authority will be no less than the MAG amount of \$119,000 for Retail Package #5. In addition, based on the projected gross sales of the concessionaires, the Authority estimates that total CDP annual operating and maintenance costs (including operating costs for the Central Receiving and Distribution Center) will be recoverable from concessionaires.

Environmental Review:

- A. This Board action is not a project that would have a significant effect on the environment as defined by the California Environmental Quality Act ("CEQA"), as amended. 14 Cal. Code Regs. §15378. This Board action is not a "project" subject to CEQA. Pub. Res. Code §21065.
- B. California Coastal Act Review: This Board action is not a "development" as defined by the California Coastal Act Pub. Res. Code §30106.

Equal Opportunity Program:

The Authority's small business program promotes the utilization of small, local, disadvantaged, and other business enterprises, on all contracts, to provide equal opportunity for qualified firms. By providing education programs, making resources available, and communicating through effective outreach, the Authority strives for diversity in all contracting opportunities.

The Authority has an Airport Concession Disadvantaged Business Enterprise ("ACDBE") Plan as required by the Department of Transportation, 49 CFR Part 23. The ACDBE Plan calls for the Authority to submit a triennial overall goal for ACDBE participation on all concession projects.

This solicitation is an airport concession opportunity; therefore, it will be applied toward the Authority's overall ACDBE goal. Spa Didacus, Inc. is proposing 26% ACDBE participation on this project.


Prepared by:

VERNON D. EVANS
VICE PRESIDENT, FINANCE/TREASURER



SAN DIEGO COUNTY REGIONAL AIRPORT AUTHORITY

Board Communication

Date: August 1, 2011
To: Board Members
From: Angela Shafer-Payne, Vice President, Planning and Operations 
Subject: Findings Related to Two Protests Received - Concessions Development Program RFP

The Authority received two protests related to the Request for Proposals for the Concessions Development Program: one protest from XpresSpa and one protest from Nine Dragons. Copies of the protests were provided to Board Members in their Board packet. Since the Board packets were distributed, the Authority's Procurement Administrator has rendered her findings with regard to the protests. Attached are the Procurement Administrator's findings. Each protestor has five (5) business days upon receipt of the Procurement Administrator's findings to file an appeal.

Attachment



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SAN DIEGO COUNTY REGIONAL AIRPORT AUTHORITY

July 27, 2011

Via E-Mail and US Mail
cneils@sheppardmullin.com

Christopher B. Neils
Sheppard, Mullin, Richter & Hampton LLP
5011 West Broadway, 19th Floor
San Diego, CA 92101

For: XpresSpa

Re: Protest Letter, Food Service and Retail Concessions RFP, Retail Package #5

Dear Mr. Neils:

On July 22, 2011, the San Diego County Regional Airport Authority ("Authority") received a letter from XpresSpa formally protesting the Authority's recommendation to award Retail Package #5 to Spa Didicus, Inc. ("Protest") on the grounds that: (1) the Authority failed to follow the evaluation criteria set forth in the RFP; (2) if the Authority had followed the stated evaluation criteria, an award would have been made to XpresSpa based on its superior offering; and (3) the awardee's proposal was non responsive for failure to provide supporting documentation of its good faith efforts to meet the Airport Concession Disadvantaged Business Enterprise (ACDBE) participation level.

Each issue within the protest letter is set forth below and followed by my finding as the Procurement Administrator.

First Assertion: "The Authority failed to follow the evaluation criteria as set forth in the RFP".

Procurement Administrator's Finding: The RFP states that "[a]n evaluation panel ("Panel") established by the Authority will evaluate the Proposals in accordance with Part 5." [RFP, Part 4.A., page 23]. Part 5 provides that the Proposals received will be evaluated in detail in accordance with the following criteria: (1) company background, experience and financial capacity; (2) concept/brand development and merchandise/menus; (3) designs, materials and capital investment; (4) management, staffing plan, and training; (5) operations and maintenance plan; (5) marketing and promotions plan. [RFP, Part 5, page 25]. The RFP goes on to state that the "listed evaluation criteria are not of equal value or decision weight". [RFP, Part 5, page 25]. The "Evaluation Matrix" attached as "Exhibit E" to the Protest was used as a guidance tool for panel members. Panel members were instructed to rank each proposer based



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upon the criteria set forth in the RFP using their expertise and independent judgment. The scoring by each panel member is subjective and based upon each individual's analysis of the proposals using the evaluation criteria set forth in the RFP. There is no evidence that the evaluation process outlined in the RFP was not followed by the evaluation panel and it would be inappropriate for the Procurement Administrator to independently evaluate the proposals and substitute her judgment for that of the evaluation panel. Accordingly, the Protest is denied as to XpresSpa's first assertion.

Second Assertion: "If the Authority had followed the stated evaluation criteria, an award would have been made to XpresSpa based on its superior offering".

Procurement Administrator's Finding: The RFP states that "[a]n evaluation panel ("Panel") established by the Authority will evaluate the Proposals in accordance with Part 5." [RFP, Part 4.A., page 23]. Part 5 provides that the Proposals received will be evaluated in detail in accordance with the following criteria: (1) company background, experience and financial capacity; (2) concept/brand development and merchandise/menus; (3) designs, materials and capital investment; (4) management, staffing plan, and training; (5) operations and maintenance plan; (5) marketing and promotions plan. [RFP, Part 5, page 25]. The RFP goes on to state that the "listed evaluation criteria are not of equal value or decision weight". [RFP, Part 5, page 25]. The "Evaluation Matrix" attached as "Exhibit E" to the Protest was used as a guidance tool for panel members. Panel members were instructed to rank each proposer based upon the criteria set forth in the RFP using their expertise and independent judgment. The scoring by each panel member is subjective and based upon each individual's analysis of the proposals. There is no evidence that the evaluation process outlined in the RFP was not followed by the evaluation panel and it would be inappropriate for the Procurement Administrator to independently evaluate the proposals and substitute her judgment for that of the evaluation panel. Accordingly, the Protest is denied as to XpresSpa's second assertion.

Third Assertion: "The awardee's proposal was non-responsive for failure to provide supporting documentation of its good faith efforts to meet the Airport Concession Disadvantaged Business Enterprise ("ACDBE") participation level".

Procurement Administrator's Finding: The Good Faith Effort Requirements (GFE) are set forth in Attachment M of the RFP. The RFP states: "Failure to meet the Airport Concession Disadvantaged Business Enterprise (ACDBE) participation level will not itself be the basis for disqualification or determination of noncompliance with this policy. However, it is incumbent on the Respondent to submit appropriate documentation to demonstrate that a 'good faith effort' was made to reach out to minority business enterprises (MBE), women owned business enterprises (WBE), ACDBE's or other small business enterprises (OBE). Failure to provide supporting documentation of a good faith effort with your submittal and failure to achieve a minimum of 75 out of 100 Good Faith Effort evaluation points will render the bid/proposal non-responsive and will result in its rejection."



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On March 18, 2011 the Authority issued its written response to question # 39 in the Q&A section of Addendum No. 2 to the RFP. Question #39 states:

"If a proposer's food/beverage submittal will include ACDBE participation of 25% or higher, does the proposer still need to complete Attachment M (Good Faith Effort) and score at least 75 points to meet the ACDBE requirement? Or is Attachment M to be completed only by proposers that are unable to achieve 25% ACDBE participation?"

The Authority provided the following response that was shared with all registered recipients of the RFP:

"The Demonstration of Good Faith Effort must be completed even though a prime contractor has achieved 25% or more ACDBE participation. Such participation through an acceptable partnership, as defined in the Request for Proposals, may satisfy indicator 3, 5, 6, 7, 9, 10 via the following assumptions: Indicator 3 – Demonstrated by indicator 5. Indicator 5 - If you have a written commitment from the ACDBE(s), it will be assumed that there was notice provided to potential partners. Indicator 6 – As a result of an agreement reached, it will be assumed that solicitation follow-up was performed. Indicator 7 – It will be assumed that plans, specifications & requirements were shared with the partner for them to make a business decision to partner with the prime. Indicator 9 – It will be assumed good faith negotiations took place in order for an agreement to be reached. Indicator 10 – It is assumed that hurdles caused by financial obligations were overcome as result of the partnership."

The Authority's Small Business Development Department independently reviewed all proposals for compliance with GFE. It specifically reviewed Spa Didacus' GFE score sheet which was part of its submission to the RFP and determined that Spa Didacus achieved 81 points in the GFE requirements as follows:

1. Spa Didacus is a joint venture with 74% going to Spa Export SARL and 26% going to First Class Concession (FCC). FCC is certified as an ACDBE and qualifies as an MBE, WBE, ACDBE and OBE. Per the Q&A identified above, the 26% participation by FCC fulfilled the requirements for categories 3, 5, 6, 7, 9 & 10 for a total of 71 points.
2. Category 2 provided 10 points if the Respondent attended the pre-submittal conference. Required documentation to satisfy this category is for Respondent to "Attend pre-submittal meeting and be listed on the attendance sheet." Tasneem Vakharia attended the pre-submittal meeting and is identified on the sign in sheet. She is the President of FCC, 26% partner in Spa Didacus, the Respondent; therefore the Respondent was awarded the 10 points.

Spa Didacus timely submitted its GFE documentation and achieved 81 out of 100 good faith effort points. Accordingly, the Protest is denied as to the XpresSpa's third assertion.



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Conclusion:

Based upon the information received, this protest is denied on the grounds set forth herein.

Please be advised that pursuant to Part 14, section G entitled "Protest Procedures", XpresSpa may appeal this decision. The pertinent section states: If the protest is rejected, the party filing the protest has five (5) working days to file an appeal to the Director of Procurement. The Director will issue a ruling with fifteen (15) working days following receipt of the written appeal. If the Director determines that the protest is frivolous, the party originating the protest may be determined to be irresponsible and that party may be determined to be ineligible for future contract awards."

Sincerely,

A handwritten signature in cursive script that reads "Karie Webber".

Karie Webber
Senior Procurement Analyst
San Diego County Regional Airport Authority
P.O. Box 82776 San Diego, CA 92138-2776
619.400.2547



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INFORMATION RECEIVED FROM THE PUBLIC

Be Relax World Headquarters
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11350 McCormick Road
Hunt Valley, Maryland 21031

Frederic Briest
Phone: 410-340-06150
Facsimile: 410-771-9660
f.briest@berelax.com
www.berelax.com

Thella F. Bowens, President/CEO
San Diego Regional Airport Authority
Authority Procurement Department
3225 North Harbor Drive
San Diego, CA 92101

July 30, 2011

RE: Response to Protest of Award for Concession Retail Package #5, Submitted by XpresSpa

Dear Ms. Bowens:

Our company, SPA DIDACUS, Inc is honored to have been selected by the Airport Authority Evaluation Panel for the award of Package 5 (Spa services) of the Retail Concession RFP. We look forward to the opportunity to bring to San Diego the same world class SPA services that we currently operate at other major world airports.

However, on July 23rd, 2011, we received the protest letter from XpresSpa regarding the award of Package 5. The letter from XpresSpa attempts to establish that the Airport Authority's selection process was poorly managed and flawed, and that the submittal provided by SPA DIDACUS was non-responsive. While we have found the RFP process to be competitive and thorough, we will limit our comments in this letter to the truly relevant points and particularly to the accusations that the submittal from SPA DIDACUS was non-responsive.

SPA DIDACUS is a subsidiary of Be Relax, which has operated SPA services in airports for more than 7 years (Be Relax was founded in 2004) at sites including Paris CDG, London Heathrow or Roma Fiumicino. Our professionalism and the impeccable quality of our services have been recognized by major airport authorities worldwide, and is supported by recent mystery shopper reports at London Heathrow (we ended with 100% satisfaction and were ranked 1st shop of the entire airport), Paris CDG or Manchester Airport. Moreover, at

Frankfurt Airport where Be Relax has received a "Most Innovative Store" Award each of the past two years.

Our certified ACDBE partner, Ms Tasneem VAKHARIA, is a U.S Citizen, a San Diegan, and is President of First Class Concessions, a San Diego company with operations at U.S. Airports large and small, including Phoenix Sky Harbor, Will Rogers World Airport, Northwest Florida Beaches International Airport, and Santa Barbara Airport. Ms. Vakharia has built First Class Concession around first class customer service. Ms. Vakharia brings first had knowledge of San Diego and the needs of the travelling public. SPA DIDACUS chose Ms. Vakharia for her outstanding reputation and commitment to customer service. **Service remains our core business and our ability to provide the highest customer satisfaction explains our high retail market share that has no equivalent in our industry. Be Relax aims at always reaching 100% satisfaction.**

Please know that Be Relax is no stranger to the U.S. Frederic BRIEST, Be Relax CEO, studied (Dean's List at the University of Chicago) and worked in the US, as did his entire family, and most of our executives have been educated, employed or have had regular business relationships with companies in the United States.

With regard to the issue of our experience at U.S. Airports, San Diego will be our third major U.S. presence. Earlier this year, Be Relax opened two new Spa stores at BWI Airport, employing a total of more than 20 people. We also recently won a location at Boston Logan Airport Terminal C. We are under construction with that site and will open in late September. San Diego is our third presence in the U.S., adding to Be Relax's 27 other locations worldwide.

XpresSpa offers many misleading statistics and comparisons in its letter, but the most egregious is its frequent attempt to compare apples to oranges. It is misleading to use sales and customer data from JFK or Atlanta as a bench mark for anticipated performance in San Diego. We believe that your consultant would agree that to do so creates false expectations and an airport concession program doomed to fail. A comparison with airports like BWI, St. Louis, or Raleigh Durham would have been more realistic and accurate.

While we all aspire to greatness, using improper bench marks leads to unrealistic forecasts and unrealistic expectations. We believe that your Minimum Annual Guarantee reflects a more honest assessment of the market in San Diego. Our sales forecasts remain forecast and the rent will automatically rise in case of over performance. Be Relax offers guaranteed revenues to airports and not theoretical sales numbers and rents intended for RFP purposes.

Regarding the issue of investment per square foot, I assure you that Be Relax's cost efficient approach is based on fair pricing of construction costs and rejects all exaggerated transfer of internal architectures costs. Moreover, the Be Relax design is praised for its unique features. Our coherent and elegant shops, designed by Jean-Michel WILMOTTE, Architect of the Champs Elysées, and Jean GRISONI (Christian DIOR), reflect our commitment to offering an unsurpassed Spa environment that defines the ultimate passenger experience. We are proud of the comments from *Airmall* magazine for our stores at BWI:

"This major airport retail management company has insisted on the quality of the Be Relax design that has no equivalent in the United States."

With regard XpresSpa's accusations that our proposed staffing levels are inadequate, this claim conflicts with independent industry measures of our performance such as mystery shopper surveys and our reputation for providing personalized customer service. Truly, our customers tell the story. We would never have been able to capture such a large share of the Airport SPA market without having earned the respect of our customers and the airports in which we operate.

In addition, Be Relax is able to retain outstanding employees by paying fair wages and investing in training. We are fortunate to have found a partner, First Class Concessions, that shares the same commitment and philosophy. That translates to minimal employee turnover, and the kind of motivated, service-oriented employees that SDIA would like to see in all its concession operations.

In conclusion, Be Relax (SPA Didacus), together with our ACDBE partner First Class Concessions, stands by the integrity of our submittal which we believe to be completely responsive to the Airport Authority's RFP. We are extremely excited about a partnership with SDIA and the opportunity of bringing our previous successes to San Diego to develop the first class SPA facilities that San Diego travelers deserve and expect. Our CEO, Mr. Frederic Briest will be attending the Airport Authority meeting on August 4, and will be available to answer any additional questions that you may have. In the meantime, if you need additional information or assistance, please do not hesitate to contact me. Recognizing that the time difference between San Diego and Paris may pose a challenge, you may also contact our representative in San Diego, Mr. Jack Monger whose cell number is 619 922-7200 and office number is 619 522-9000.

Thank you for your consideration.

Sincerely,

Frederic Briest
CEO



RECEIVED
JUL 25 2011
General Counsel

Writer's Direct Line: 619-338-6530
cneils@sheppardmullin.com

July 22, 2011

Our File Number: 07WK-163136

VIA HAND DELIVERY

Thella F. Bowens, President/CEO
San Diego Regional Airport Authority
Authority Procurement Department (Protest)
3225 North Harbor Drive
San Diego, CA 92101

Re: Protest of the Recommendation for Award by the San Diego County Regional Airport Authority for the Request for Proposal for Food Service and Retail Concessions – Retail Package #5

Dear Ms. Bowens:

This law firm¹ represents XpresSpa, which, in a joint venture with Casa Unlimited Enterprises, Inc., submitted a proposal in connection with the subject Request for Proposal ("RFP") – Retail Package #5. The purpose of this letter is to formally protest the San Diego County Regional Airport Authority's ("Authority") recommendation to award Retail Package #5 to Spa Didacus, Inc. on the bases that (1) the Authority failed to follow the evaluation criteria as set forth in the RFP, (2) if the Authority had followed the stated evaluation criteria, an award would have been made to XpresSpa based on its superior offering, and (3) the awardee's proposal was non-responsive for failure to provide supporting documentation of its good faith efforts to meet the Airport Concession Disadvantaged Business Enterprise ("ACDBE") participation level.

XpresSpa requests that the award instead be made to XpresSpa or, in the alternative, that the competing proposals be re-evaluated given the information contained in this submittal. This submittal is timely as it is made within five business days of the Authority's issuance of its notice of intent to award. Concurrent with the filing of this protest, a copy of this protest will be transmitted to Spa Didacus, the awardee and only other competitor for Retail Package #5.

¹ XpresSpa is represented by the author of this letter, Christopher B. Neils, at Sheppard, Mullin, Richter & Hampton LLP, 501 West Broadway, 19th Floor, San Diego, CA 92101, at telephone number (619) 338-6530.

Thella F. Bowens, President/CEO

July 22, 2011

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I. FACTUAL BACKGROUND

A. RFP Evaluation Criteria And Requirements

On February 2, 2011, the Authority published the RFP for Food Service and Retail Concessions. The RFP sought experienced food service and retail concessionaires to operate food service and retail concessions at San Diego International Airport ("Airport") with the opportunity to design, construct, operate, and manage food service and retail concessions at leased locations within the Airport. As stated in Part 9 of the RFP, the bidders were to "use their best efforts to propose premier, world-class concepts and exceptional operations that will enhance the customer experience at the Airport and be consistent with the image and status of San Diego as a foremost domestic and international gateway."

The retail concession opportunities for the RFP were divided into six packages. Retail Package #5 included two locations, totaling 1,457 square feet, for Spa Services in Terminal 2 of the Airport. The services offered could include "manicures, pedicures, facials, massages, shaves, and eyebrow threading."

Part 5 of the RFP set forth the evaluation criteria to be used by the Authority in evaluating all competing proposals:

Proposals received will be evaluated in detail in accordance with the evaluation criteria listed below. The listed evaluation criteria are not of equal value or decision weight. The Minimum Qualifications will be Pass/Fail. If Respondent does not Pass the Minimum Qualifications, Respondent will be deemed non-responsive and will not advance to the evaluation process.

- Minimum Qualifications
 - Minimum Experience;
 - Worker Retention;
 - ACDBE Good Faith Effort;
 - Administrative (All Applicable Forms)

- Company Background, Experience, and Financial Capability;
- Concept/Brand Development and Merchandise/Menus;
- Designs, Materials, and Capital Investment;
- Management, Staffing Plan, and Training;
- Operations and Maintenance Plan;
- Marketing and Promotions Plan

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In addition, the evaluation criteria provided for "bonus points" for any proposals that meet or exceed the requirement standards for Small Business and Worker Retention.

As stated in Attachment M of the RFP, it is the Authority's policy that all businesses, including socially and economically disadvantaged businesses under 49 Code of Federal Regulations (CFR) Part 26, be provided equal access in the performance of contract and leasing opportunities. The RFP required each Respondent "to assist the Authority in implementing this policy by taking all reasonable steps to ensure that all qualified enterprises including MBEs, WBEs, ACDBEs and OBEs have an equal opportunity to compete for and participate in Authority contracts." A Respondent's failure to provide the requisite supporting documentation of its good faith efforts to comply with this directive would result in the bid being deemed non-responsive, as stated in bold in Attachment M twice:

Failure to provide supporting documentation of a good faith effort with your submittal and failure to achieve a minimum of 75 out of 100 Good Faith Effort Evaluation points will render the bid/proposal non-responsive and will result in its rejection.

...

However, failure to submit supporting documentation of a good faith effort with your submittal and failure to achieve a minimum of 75 out of 100 Good Faith Effort Evaluation points will render the bid nonresponsive and will result in its rejection.

B. Bid Submittal And Notice Of Intent To Award

The deadline to submit proposals was May 25, 2011. The Authority received proposals for Retail Package #5 from only two competing bidders: XpresSpa and Spa Didacus (a subsidiary of Be Relax in a joint venture with First Class Concessions).

On July 15, 2011, XpresSpa received a letter from the Authority stating that, though XpresSpa's "experience and qualifications are impressive, the Authority concluded, after careful screening of the submissions, that another candidate better meets the needs of the Authority." [Exhibit A.] The Authority, at that time, did not disclose the number of competitors for Retail Package #5 or the awardee.

Thella F. Bowens, President/CEO

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C. Information Obtained Through XpresSpa's California Public Records Request

On July 19, 2011, pursuant to the California Public Records Act (California Government Code §6250 *et seq.*), XpresSpa submitted a Public Records Request Form to the Authority seeking "[c]opies of all proposals (other than the XpresSpa Proposal), evaluation and scoring materials in connection with the Authority's RFP for Food Service and Retail Concessions dated February 2, 2011, PACKAGE #5." [Exhibit B.] Having not received a response, and given the limited period of time within which to submit a protest of the award, XpresSpa submitted a second Public Records Request Form on July 20, 2011 seeking inspection of the materials. [Exhibit C.]

On July 21, 2011, after follow-up calls from XpresSpa's counsel, the Authority responded in writing to the requests and made available copies of Spa Didacus' proposal (not including Spa Didacus' submitted corporate financial records), blank scoring sheets, and a summary sheet indicating how each Panel Member on the Evaluation Committee ranked the competitors. A copy of the Authority's letter response is attached hereto as Exhibit D.² Copies of the blank scoring sheets are attached hereto as Exhibit E. A copy of the summary sheet is attached hereto as Exhibit F.

As revealed by the blank scoring sheets, the evaluation criteria were to be weighted using a point system, with an available point total of 1,070 points:

Organization Background, Experience, and Financial Background	350 Points
Concept Development and Merchandise/Menus	200 Points
Designs, Materials, and Capital Investment	150 Points
Operations and Maintenance Plan	100 Points
Proposed Management, Staffing, and Training	150 Points
Marketing and Promotions Plan	50 Points
Board Adopted Preference – Small Business 5%	50 Points
Board Adopted Preference – Worker Retention 2%	20 Points
TOTAL	1,070 Points

² Given the short period of time given for submitting this protest from the notice of award, and the fact that XpresSpa only received information responsive to its California Public Records Request one day before it was required to submit the protest, XpresSpa reserves the right to supplement this protest after a more thorough review of the received materials or any other materials that may exist and be subsequently produced by the Authority.

Thella F. Bowens, President/CEO

July 22, 2011

Page 5

However, the summary sheet did not include any tabulation of points for either competitor for Retail Package #5. Instead, the summary sheet indicated only that Panel Members 1, 2, 3 and 4 ranked Spa Didacus first, while Panel Members 5 and 6 ranked XpresSpa first:

Proposer	PM1	PM2	PM3	PM4	PM5	PM6	Total
Spa Didacus	1	1	1	1	2	2	8
XpresSpa	2	2	2	2	1	1	10

After receiving the materials, counsel for XpresSpa contacted the Authority to request the completed scoring sheets for Retail Package #5. The Authority informed XpresSpa's counsel that the scoring sheets were not collected from the Panel Members and that Panel Members were instructed to discard and not retain their notes and scoring sheets.

A review of the submittal made by the awardee revealed that Spa Didacus did not submit complete supporting documentation of a good faith effort in accordance with Attachment M of the RFP. Although Spa Didacus submitted documentation showing that its ACDBE partner attended the pre-submittal meeting, no documentation was included with the submittal regarding the following indicators:

- 3 Sufficient Work Identified For Subcontractors
- 4 Advertisement
- 5 Written Notices To Sub-Participants
- 6 Follow-Up On Initial Solicitations
- 7 Plans, Specifications and Requirements
- 8 Contacted Recruitment/Placement Organizations
- 9 Negotiate In Good Faith
- 10 Bond, Lines Of Credit, And Insurance Assistance

II. THE RFP EVALUATION WAS FLAWED FOR FAILURE TO FOLLOW THE EVALUATION CRITERIA

A. The Evaluation Panel Did Not Follow The Stated Evaluation Criteria

As discussed above, the RFP explicitly listed the evaluation criteria and indicated that competing proposals would be evaluated using a points system in which the evaluation criteria were not of equal value or decision weight. Following XpresSpa's California Public Records Request, it received a summary sheet showing individual Panel Member's ranking of the two competing proposals. Based on the provided documentation, it appears that Spa Didacus was recommended for the award based on its first place ranking by four of the six Panel Members. The provided summary sheet—which is apparently the only record of the evaluation in the Authority's possession—does not indicate how many total points each competitor earned

Thella F. Bowens, President/CEO

July 22, 2011

Page 6

in the evaluation or what the spread of points were between the competitors on each criteria or in aggregate. Therefore, it does not appear that the Evaluation Panel followed the evaluation criteria as stated in the RFP, which required that the proposals be evaluated using a points system. Since it does not appear that the Authority followed the evaluation criteria specified in the RFP, XpresSpa's protest should be sustained.

Moreover, even if each Panel Member used the detailed scoring sheets, the Authority did not collect those sheets and instructed the Panel Members to discard and not retain their notes and scoring sheets. Therefore, there is no feasible way in which to now compare the evaluated scores for each competitor on each of the evaluation criteria. XpresSpa has been materially prejudiced in its ability to provide a full and complete statement specifying in detail the grounds of the protest and the facts in support thereof. On this basis, the RFP process and evaluation was flawed, since it provides no assurance to the competitors or the public that the Authority awarded Retail Package #5 to the best offering.

B. If The Evaluation Panel Had Followed The Evaluation Criteria, An Award Would Have Been Made To XpresSpa Based On Its Superior Offering

XpresSpa was shocked to learn that Spa Didacus—a subsidiary of the French company, Be Relax—was awarded Retail Package #5. Given the lack of documentation showing the Evaluation Panel's application of any criteria to the proposals for Retail Package #5, it is not possible to discern why Spa Didacus was recommended for the award. Indeed, a comparative evaluation of the two proposals clearly shows that XpresSpa's offering was superior to that of Spa Didacus.

1. Financial Offering

The financial offering, and thus the projected revenue for the Authority, for XpresSpa and Spa Didacus differ greatly. Spa Didacus proposed a rent percentage of 10.5% of sales for Years 1-4 and 11% for Years 5-7. Based on their projected gross sales of approximately \$1M per year, Spa Didacus' projected rent for Year 1 would be only the Minimum Annual Guarantee ("MAG") of \$119,000 and only \$837 above the MAG for Year 2. In comparison, XpresSpa proposed a rent percentage of 11% of service sales up to \$2M (and 12% over that amount) and 14% of product sales. Based on XpresSpa's reasonably projected gross sales of approximately \$2M per year, XpresSpa's projected rent for Year 1 would pay more than double the MAG amount of \$119,000 with increasing amounts in subsequent years. In fact, over the term of the lease, XpresSpa is projected to pay the Authority almost \$2M more than Spa Didacus (Spa Didacus' own projections estimate only \$783,266 in rent compared to XpresSpa's rent of \$2,749,283). This is not surprising considering Be Relax's (the parent company for Spa

Thella F. Bowens, President/CEO

July 22, 2011

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Didacus) historical sales and actual performance at other airports, based on the information in its proposal, show that no single location generates more than \$1M in sales.³

The reasonableness of XpresSpa's projections is well-founded and based on XpresSpa's long experience operating in the United States market. Attachment C-2 to XpresSpa's proposal provides comparable XpresSpa operations, all in major U.S. airports (Atlanta, JFK and LaGuardia), which amply justify the projected gross sales that are set forth in its San Diego proposal.⁴

2. Investment Per Square Foot

The XpresSpa model places a premium on construction of its facilities. The beautiful environs are what attract its customers and what create a loyal fan base of repeat visitors. From the start, XpresSpa has sought to create an "oasis of tranquility" away from the stresses of the airport environs. XpresSpa has demonstrated, time and again, that its investment in premium construction has paid dividends for the spa, the customers, and the airport. A lesser investment per square foot inevitably results in a "cheap" looking environment, doing a disservice to both the airport and its passengers. Accordingly, XpresSpa's bid included an investment per square foot of \$617. Spa Didacus proposed an investment of only \$400 per square foot.

³ XpresSpa notes that, according to the provided blank scoring sheets, the total financial offering, *i.e.*, the revenue return to the Authority, accounted for only 75 out of a total of 1070 possible points in the evaluation. Given the clear benefits to the Authority and the public of XpresSpa's superior financial offering, XpresSpa's questions the weighting applied to this factor, a fact which was not known to XpresSpa at the time of proposal submittal.

⁴ As discussed above, XpresSpa was provided with only blank scoring sheets in response to its California Public Records Request. However, the instructions on the scoring sheets indicate that a consultant would prepare a financial projections summary to evaluate the "Reasonableness, Viability of the Proposed Operations and Financial Offer, and Ability to Fund the Operation." In the points evaluation, a bid would be looked at unfavorably if the bidder's projections were higher than the consultants projections. If, indeed, XpresSpa's projections were looked at unfavorably compared with a consultant's projections, XpresSpa submits that it is likely that there were flaws in the consultant's projections. There is no indication that the consultant was fully experienced in the nuances of the XpresSpa business model, and without the benefit of seeing that report, XpresSpa cannot demonstrate what flaws may exist.

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3. Experience

At the time of its submittal, Be Relax—the French parent company for Spa Didacus—had no actual experience operating in the U.S. airport market. Be Relax had zero dollars in U.S. revenue from spa services at the time of its proposal, zero spa services provided in the U.S., and zero customers in the U.S. The Spa Didacus ACDBE partner is a food and beverage concessionaire who has operated primarily in small, low-volume airport venues. The ACDBE partner has no experience in San Diego International Airport.

At the time of its submittal, XpresSpa had 30 operating locations. Of these, all except two are in the U.S. XpresSpa grew up in the U.S. airport environment. This is no small matter – XpresSpa has learned through years of experience that the U.S. airport concession market is nothing like the European market. All aspects of the business—from the labor pool and labor expenses, to the legal framework, to cultural differences among customers and staff—contribute to a very different experience which requires a steep learning curve. XpresSpa has operations in three European stores, all in Schiphol Amsterdam Airport. XpresSpa chose to learn the European market carefully by limiting its presence and growing gradually, with the understanding that the differences between the two markets could lead to disastrous results—unless these differences are fully understood, appreciated and accounted for. There is no question that in the U.S. market, XpresSpa is the leader. Though XpresSpa has not been given access to the Be Relax financials presented in Spa Didacus' Proposal, XpresSpa is of the reasonable belief that XpresSpa's aggregate gross sales dwarf those of Be Relax. There can be little question that XpresSpa is the more experienced player.

Furthermore, XpresSpa has a global labor pool of approximately 600 employees, the vast majority of which are U.S.-based. From the materials in the Spa Didacus proposal, it does not appear that the Be Relax labor pool approaches this number. Furthermore, XpresSpa has been operating spas in the unique market of California since 2005. The second spa in XpresSpa's network was in San Francisco Airport. XpresSpa has since expanded its presence in San Francisco to 3 operating stores, with a fourth to open in August 2011; and a store in LAX that is set to open by Labor Day 2011.

XpresSpa's ACDBE partner has operated *exclusively* in the high-volume airport environment, with a plethora of stores in both Phoenix Sky Harbor International Airport as well as San Diego International Airport.

4. Staffing

The Spa Didacus proposal indicates a very low level of employees to offer services at the Airport Terminal locations. At one location, Spa Didacus proposed two managers plus two employees TOTAL, with only one Manager plus one employee per shift. At the other location, Spa Didacus proposed having two managers plus two technicians, with only

Thella F. Bowens, President/CEO

July 22, 2011

Page 9

one manager and three technicians present per shift. XpresSpa is planning for twice as many jobs, twice as many employees, twice the level of service, and twice the level of revenue.

XpresSpa knows the amount of labor ideally required in the U.S. spa environment, and is committed to maximizing the number of jobs it can bring to the San Diego region. XpresSpa, in all of its airport spas nationwide, hires the most local talent of any concessionaire per square foot. XpresSpa's proposal will bring many more jobs to San Diego than Spa Didacus and will ensure a superior experience for San Diego customers. Spa customers go to spas to feel pampered and treated well. Only a large enough staff can ensure that passengers aren't "left out in the cold" while waiting for a service.

Furthermore, XpresSpa is supported by a US-based back-office support staff of over 25 individuals in the corporate office, as well as at least 4 individuals in the office of our ACDBE partner. By contrast, XpresSpa understands that Spa Didacus has no significant U.S. support staff beyond its ACDBE partner and a small office that is believed to be staffed by no more than one individual in Maryland.

5. Additional Comparisons

A more detailed, though non-exhaustive, comparative chart showing XpresSpa's superior offering is attached hereto as Exhibit G. Based on these and other factors, it is clear that application of the stated evaluation criteria should have resulted in an award to XpresSpa and not Spa Didacus.

III. SPA DIDACUS' PROPOSAL WAS NONRESPONSIVE

XpresSpa's protest should also be sustained on the grounds that Spa Didacus' proposal was nonresponsive due to failure to submit the requisite supporting documentation of its good faith efforts in accordance with Attachment M of the RFP. Spa Didacus' failure to include this information indicates that Spa Didacus did not comply with the Authority's directive to take "all reasonable steps to ensure that all qualified enterprises including MBEs, WBEs, ACDBEs and OBEs have an equal opportunity to compete for and participate in Authority contracts." (Emphasis added). As discussed above, the Authority stated twice in bold in Attachment M that failure to include the supporting documents would result in the bid being rejected as nonresponsive. Spa Didacus' failure to include this documentation should have been fatal to its submittal.

In contrast, XpresSpa, which also partnered with an ACDBE, submitted the complete supporting documentation of its good faith efforts, including, but not limited to, the required telephone logs, results of good faith negotiations, and back-up correspondence. Therefore, XpresSpa's proposal does meet the requirements of Attachment M and is responsive.

Thella F. Bowens, President/CEO
July 22, 2011
Page 10

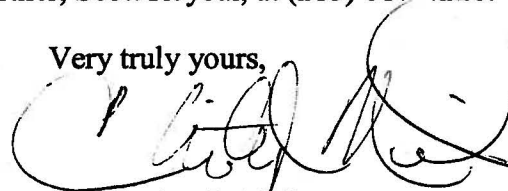
Accordingly, the Authority should have awarded Retail Package #5 to XpresSpa, which submitted the only responsive proposal.

IV. CONCLUSION

Accordingly, for the above stated reasons, XpresSpa's protest of the award of Retail Package #5 to Spa Didacus should be sustained. XpresSpa requests that the award instead be made to XpresSpa or, in the alternative, that the competing proposals be re-evaluated given the information contained in this submittal.

I appreciate your attention to this matter. If you have any questions or comments, please contact me at (619) 338-6530 or my partner, Scott Roybal, at (213) 617-4226.

Very truly yours,



Christopher B. Neils

for SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

W02-WEST:ICEHI\403751824.1

Attachments

cc: Breton K. Lobner, Esq., *via* certified mail and e-mail
Office of General Counsel
San Diego County Regional Airport Authority
P.O. Box 82776
San Diego, CA 92138

Spa Didacus, Inc., *via* certified mail and e-mail
Be Relax World Headquarters
SPA Didacus, Inc.
Executive Plaza I, Suite 502
11350 McCormick Road
Hunt Valley, MD 21031

Scott F. Roybal, Esq.

EXHIBIT A



SAN DIEGO COUNTY REGIONAL AIRPORT AUTHORITY

July 15, 2011

Via E-Mail
mbinn@xpresspa.com

XpresSpa San Diego Airport, LLC
Attn: Marisol Binn, President

Re: Food Service and Retail Concessions – RFP
Retail Package 5

Dear Ms. Binn:

The San Diego County Regional Airport Authority (“Authority”) thanks you for giving us the opportunity to consider your proposal for the Food Service and Retail Concessions – RFP, Retail Package 5.

The Authority conducted a highly competitive evaluation process. Although your company’s experience and qualifications are impressive, the Authority concluded, after careful screening of the submissions, that another candidate better meets the needs of the Authority. We hope you will consider us for other work in the future.

Sincerely,

A handwritten signature in black ink that reads "Karie Webber".

Karie Webber
Senior Procurement Analyst



SAN DIEGO
INTERNATIONAL
AIRPORT

EXHIBIT B

XpressPA[®]

FACSIMILE TRANSMITTAL SHEET

TO:	Public Records Dept	FROM:	Matthew S. Podell
COMPANY:	SD County Reg. Airport Auth.	DATE:	July 19, 2011
FAX NUMBER:	619-400- 240 2549	TOTAL NO. OF PAGES, INCLUDING COVER:	2
PHONE NUMBER:		SENDER'S REFERENCE NUMBER:	
RE:		YOUR REFERENCE NUMBER:	

URGENT FOR REVIEW PLEASE COMMENT PLEASE REPLY PLEASE RECYCLE

NOTES/COMMENTS:

Please process the attached Public Records Request Form.

Please contact me at my direct phone number, 646-607-9727, or via email at mpodell@xpresspa.com, with the cost of duplication for this request.

Thank you.

MSP



San Diego County Regional Airport Authority
 Corporate Services Department
 P.O. Box 82776
 San Diego, California 92138-2776
 (619) 400-2400
 (619) 400-2549 (fax)

Official Use Only:

Date of Request: _____

General Counsel Review: _____

Date Available: _____

Date Provided: _____

Copy fee: _____ Postage fee: _____

Processor Initials: _____

Public Records Request Form

Public records are open to inspection at all times during regular office hours and can be inspected at no charge. Please note that some records are not available for review because they are confidential, pursuant to the Public Records Act or other statute. If a request to inspect records includes numerous files and/or documents, the Authority reserves the right to set a date and specific time when the documents will be available for inspection.

Copies may be requested and will be provided within a reasonable amount of time and in most instances, upon request. Requestor will be notified in writing if additional time will be necessary, pursuant to the Public Records Act. Authority staff will provide a date and time when the documents will be ready. All document duplication fees are due and payable in full and are based on the current fee schedule.

Person requesting information:

Name: Matthew Podell Phone: 646-607-9127
 Address: c/o XpresSpa, 150 E. 58th Street City: New York
 State: NY Zip: 10155
 mpodell@xpresspa.com

I would like to INSPECT or **COPIES** of the following document(s):
 (Circle One)

STAFF REPORT.: _____ CONTRACT NO.: _____

RESOLUTION NO.: _____ ORDINANCE NO.: _____

MINUTES.: _____

OTHER.: Copies of all Proposals (other than the XpresSpa Proposal)
and copies of all evaluation and scoring materials in
connection with the Authority's RFP for Food Service and
Retail Concessions dated 2/2/11, PACKAGE #5 (Spa Services).

Delivery method for records: US Mail Pick-Up

TRANSMISSION VERIFICATION REPORT

TIME : 07/19/2011 18:18
NAME :
FAX :
TEL :
SER.# : 000H5J258253

DATE, TIME : 07/19 18:17
FAX NO./NAME : 16194802549
DURATION : 00:00:38
PAGE(S) : 02
RESULT : OK
MODE : STANDARD
ECM

XpressPA[®]

FACSIMILE TRANSMITTAL SHEET

TO: **Public Records Dept** FROM: **Matthew S. Podell**
COMPANY: **SD County Reg. Airport Auth.** DATE: **July 19, 2011**
FAX NUMBER: **619-400-3400 2549** TOTAL NO. OF PAGES, INCLUDING COVER: **2**
PHONE NUMBER: SENDER'S REFERENCE NUMBER:
RE: YOUR REFERENCE NUMBER:

URGENT FOR REVIEW PLEASE COMMENT PLEASE REPLY PLEASE RECYCLE

NOTES/COMMENTS:

Please process the attached Public Records Request Form.

Please contact me at my direct phone number, 646-607-9727, or via email at mpodell@xpresspa.com, with the cost of

EXHIBIT C

XpRES SPA[®]

FACSIMILE TRANSMITTAL SHEET

TO: Corporate Services Dept. **FROM:** Matthew S. Podell

CC: Breton K. Lobner, Esq.,
General Counsel (via fax)

Christopher Neils, Esq.,
Sheppard Mullin LLP

Scott Roybal, Esq.
Sheppard Mullin LLP

COMPANY: SD County Reg. Airport Authority	DATE: July 20, 2011
FAX NUMBER: 619-400-2549	TOTAL NO. OF PAGES, INCLUDING COVER: 2
PHONE NUMBER:	SENDER'S REFERENCE NUMBER:
RE: Public Records Request Form	YOUR REFERENCE NUMBER:

URGENT FOR REVIEW PLEASE COMMENT PLEASE REPLY PLEASE RECYCLE

NOTES/COMMENTS:

Please see the attached Public Records Request Form. Please note that this request supplements the request submitted to the Corporate Services Department yesterday, July 19, 2011. As time is of the essence, we hereby request immediate access to the records (this afternoon, if possible). We look forward to your response to this request.

Thank you.

MSP



San Diego County Regional Airport Authority
 Corporate Services Department
 P.O. Box 82776
 San Diego, California 92138-2776
 (619) 400-2400
 (619) 400-2549 (fax)

Official Use Only:

Date of Request: _____

General Counsel Review: _____

Date Available: _____

Date Provided: _____

Copy fee: _____ Postage fee: _____

Processor Initials: _____

Public Records Request Form

Public records are open to inspection at all times during regular office hours and can be inspected at no charge. Please note that some records are not available for review because they are confidential, pursuant to the Public Records Act or other statute. If a request to inspect records includes numerous files and/or documents, the Authority reserves the right to set a date and specific time when the documents will be available for inspection.

Copies may be requested and will be provided within a reasonable amount of time and in most instances, upon request. Requestor will be notified in writing if additional time will be necessary, pursuant to the Public Records Act. Authority staff will provide a date and time when the documents will be ready. All document duplication fees are due and payable in full and are based on the current fee schedule.

Person requesting information:

Name: Matthew S. Podell Phone: (646) 807-9727

Address: c/o XpresSpa, 150 East 58th Street, 7th Floor City: New York

State: NY Zip: 10155

I would like to INSPECT or COPIES of the following document(s):
 (Circle One)

STAFF REPORT.: _____ CONTRACT NO.: _____

RESOLUTION NO.: _____ ORDINANCE NO.: _____

MINUTES.: _____

OTHER.: Inspection of all Proposals (other than the XpresSpa Proposal), evaluation and scoring materials in connection with the Authority's RFP for Food Service and Retail Concessions dated February 2, 2011, PACKAGE #5. This request supplements the request for copies of said materials, submitted 7/19/11. Inspection requested ASAP.

Delivery method for records: US Mail Pick-Up

TRANSMISSION VERIFICATION REPORT

TIME : 07/20/2011 16:03
NAME :
FAX :
TEL :
SER.# : 000H5J258253

DATE, TIME	07/20 16:02
FAX NO./NAME	16194002549
DURATION	00:00:48
PAGE(S)	02
RESULT	OK
MODE	STANDARD ECM

XpRESsPA[®]

FACSIMILE TRANSMITTAL SHEET

TO: Corporate Services Dept. FROM: Matthew S. Podell

CC: Breton K. Lobner, Esq.,
General Counsel (via fax)

Christopher Neils, Esq.,
Sheppard Mullin LLP

Scott Roybal, Esq.
Sheppard Mullin LLP

COMPANY: SD County Reg. Airport Authority	DATE: July 20, 2011
FAX NUMBER: 619-400-2549	TOTAL NO. OF PAGES, INCLUDING COVER: 2
PHONE NUMBER:	SENDER'S REFERENCE NUMBER:
RE: Public Records Request Form	YOUR REFERENCE NUMBER:

URGENT FOR REVIEW PLEASE COMMENT PLEASE REPLY PLEASE RECYCLE

TRANSMISSION VERIFICATION REPORT

TIME : 07/20/2011 16:04
NAME :
FAX :
TEL :
SER.# : 000H5J258253

DATE, TIME	07/20 16:04
FAX NO./NAME	15194002428
DURATION	00:00:22
PAGE(S)	02
RESULT	OK
MODE	STANDARD ECM

XpRESSPA[®]

FACSIMILE TRANSMITTAL SHEET

TO:	Corporate Services Dept.	FROM:	Matthew S. Podell
CC:	Breton K. Lobner, Esq., General Counsel (via fax)		
	Christopher Neils, Esq., Sheppard Mullin LLP		
	Scott Roybal, Esq. Sheppard Mullin LLP		
COMPANY:	SD County Reg. Airport Authority	DATE:	July 20, 2011
FAX NUMBER:	619-400-2549	TOTAL NO. OF PAGES, INCLUDING COVER:	2
PHONE NUMBER:		SENDER'S REFERENCE NUMBER:	
RE:	Public Records Request Form	YOUR REFERENCE NUMBER:	

URGENT FOR REVIEW PLEASE COMMENT PLEASE REPLY PLEASE RECYCLE

EXHIBIT D

SAN DIEGO COUNTY
REGIONAL AIRPORT AUTHORITY

P.O. BOX 82776, SAN DIEGO, CA 92138-2776
619.400.2400 WWW.SAN.ORG

July 21, 2011

Matthew S. Podell
c/o Christopher Neils
Sheppard Mullin Richter & Hampton LLP
501 West Broadway, 19th Floor
San Diego, California 92101

Dear Mr. Podell:

This letter is in response to your public records requests received on July 19 and 20, 2011 ("request"). Pursuant to the California Public Records Act (California Government Code §6250 *et seq.*) ("Act"), specifically you requested from the San Diego County Regional Airport Authority ("Authority") "all proposals (other than the XpresSpa Proposal), evaluation and scoring materials in connection with the Authority's RFP for Food Service and Retail Concessions dated February 2, 2011, PACKAGE #5."

In accordance with the Act, the Authority has reviewed its public records to ascertain whether it possesses the records you have requested. This letter is to advise you that the search did produce records in response to your request, and they are now available for review.

Please be advised that the corporate financial records included in the proposal received from Spa Didacus are exempt from disclosure and are not being provided pursuant to California Government Code Section 6254.15.

The total cost for copying these records is \$14.90. You may pick up the records at the reception desk located on the 3rd Floor of the Commuter Terminal at the San Diego International Airport. Please be prepared to submit payment in the form of cash or check made payable to the San Diego County Regional Airport Authority.

If you need further assistance or information, please contact us at (619) 400-2550.

Sincerely,

Tony R. Russell, CRM, MMC
Director, Corporate Services/Authority Clerk



Jessica Fairchild
Records Management Coordinator, Corporate Services



SAN DIEGO
INTERNATIONAL
AIRPORT

EXHIBIT E

**SAN DIEGO COUNTY REGIONAL AIRPORT AUTHORITY
FOOD SERVICE AND RETAIL CONCESSIONS**

**CONCESSION DEVELOPMENT PROGRAM
REQUEST FOR PROPOSAL EVALUATION MATRIX**

PROPOSER:

PACKAGE:

EVALUATION COMMITTEE MEMBER NUMBER:

SELECTION CRITERIA SUMMARY

1,000 Points

ORGANIZATION BACKGROUND, EXPERIENCE, AND FINANCIAL BACKGROUND	350 POINTS
CONCEPT DEVELOPMENT AND MERCHANDISE/MENUS	200 POINTS
DESIGNS, MATERIALS, AND CAPITAL INVESTMENT	150 POINTS
OPERATIONS AND MAINTENANCE PLAN	100 POINTS
PROPOSED MANAGEMENT, STAFFING, AND TRAINING	150 POINTS
MARKETING AND PROMOTIONS PLAN	50 POINTS

BOARD ADOPTED PREFERENCE - SMALL BUSINESS 5%	50 POINTS
BOARD ADOPTED PREFERENCE - WORKER RETENTION 2%	20 POINTS

TOTAL	1,070 POINTS
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PROPOSER:

PACKAGE:

EVALUATION COMMITTEE MEMBER NUMBER:

SELECTION COMMITTEE

CATEGORY

SCORE

ORGANIZATION BACKGROUND, EXPERIENCE, AND FINANCIAL BACKGROUND

ORGANIZATION BACKGROUND AND EXPERIENCE

The information below was requested on pages 12, 13, 14 & 15 of the RFP. The purpose of this section is to inform the Authority of the type of business organization under which the Respondent will operate, but also to inform the Authority of the Respondent's applicable experience. Additionally, the Respondents are asked to provide the Authority with new and in progress contracts in order for the Authority to be informed of the Respondent's capacity and capability to execute future projects. A spreadsheet will be provided to summarize projects and the relevant operations that the Respondent has presented.

Description of proposing organization (i.e., corporation, LLC, partnership, joint venture or sole proprietorship) along with the following information depending on the organization structure:

- If a corporation, attach the Articles of Incorporation, and list the names, addresses and shares of all persons or entities owning ten percent (10%) or more of the Respondent's voting stock.
- If an LLC, attach the Articles of Organization and list the name and address of each member.
- If a partnership, attach a copy of the Partnership Agreement, and list the name, address and share of each partner.
- If a joint venture, list date of organization, attach a copy of the joint venture agreement, indicate if the joint venture has done business in California and where, and list the name, address and share of each joint venture partner. If the joint venture includes an ACDBE or an ACDBE applicant, and it is the desire of the joint venture partners that the ACDBE partner's portion of the sales be applied towards the ACDBE goal, then the joint venture must be in compliance with the Joint Venture Guidelines included in Attachment O of this RFP.
- If a sole proprietorship, list all business names under which such proprietor has done business during the last five (5) years, address(es), how long in business, social security number, and state whether registered or authorized to do business in California.

Include a brief history of the Respondent company(ies). Note any changes in company name(s) and ownership structure(s) and any other names under which the company(ies) has(ve) been doing business. Describe the company's current operations as they exist today. Describe the experience of the Respondent in past and current businesses. For each business, be sure to include the Respondent's role, nature of the business, location, size, and the status/outcome of every relevant business owned.

Provide descriptions of up to ten (10) of the company(ies)' operations most relevant to those being proposed. For these relevant operations, list the square footage occupied, gross sales for the last three years, enplanements for those years (if an airport property), average sales per transaction, minimum annual guaranteed rent, percentage rent, actual rent paid, term of lease (including commencement and expiration dates), capital investment (broken down into initial build-out and refurbishments, if applicable) and photographs (if available). Also provide the names, addresses and telephone numbers of the current landlords or property managers for each of these operations who will be familiar with the

**SAN DIEGO COUNTY REGIONAL AIRPORT AUTHORITY
FOOD SERVICE AND RETAIL CONCESSIONS**

**CONCESSION DEVELOPMENT PROGRAM
REQUEST FOR PROPOSAL EVALUATION MATRIX**

PROPOSER:	PACKAGE:	
EVALUATION COMMITTEE MEMBER NUMBER:		

day-to-day operations.
Provide information regarding any recently-awarded leases or contracts as well as any leases or contracts for which design or build-out is currently underway. Include the name of the airport/property, number of square feet, the capital investment, and the estimated date of completion of construction.

Provide the name, location and date of any of the Respondent's leases that have been terminated either voluntarily or involuntarily, within the past five (5) years. Provide an explanation of the reason(s) for termination and a contact name and telephone number for the landlord.

List any judgments or lawsuits currently pending against the Respondent or any lawsuit filed against or judgment offered against Respondent within the last ten (10) years. Also list any lawsuits filed by Respondent in the last ten (10) years.

List any affiliate of Respondent engaged in similar business activities and any corporation with a direct or controlling interest in the Respondent, and any subsidiary corporation in which the Respondent has a controlling interest and any affiliates thereof.

Respondents shall submit the following historical financial information for the proposing entity and any joint venture or affiliate entities:

- Partnerships/Individuals: Balance sheet and income statements for the last three (3) fiscal years prepared in accordance with generally accepted accounting principles (GAAP), reflecting the current financial condition of the partners or individuals submitting the Proposal, also including an interim balance sheet and income statement of any significant financial events occurring subsequent to the closing date of the most recent financial statements. The three (3) most recent completed IRS tax returns.
- Public Corporations: Previous three (3) year's annual reports for the proposing entity.
- Private Corporations: Previous three (3) year's CPA-prepared and certified financial statements.

Newly-formed Organizations: The Respondent must include a certified statement of the names of the officers of the organization to be formed, the principal occupation of all members of new organization's Board, and certified statements of the net worth of the prime participants in the organization.

If a teaming arrangement, joint venture, or other business combination is proposed, the information required above shall also be required for each prime participant in the Proposal.

In addition, Respondents shall provide the following information:

- A statement declaring whether Respondent has ever declared bankruptcy, filed a petition in any bankruptcy court, filed for protection from creditors in bankruptcy court, or had involuntary proceedings filed in bankruptcy court and the status of each occurrence.
- Franchise authorization letters disclosure documents for any franchised concepts included in the proposal.
- License authorization letters for any licensed concepts included in the proposal.
- Names, addresses, and telephone numbers of at least three (3) credit references, including at least one (1) banking reference.

The Authority reserves the right to request additional financial information from any Respondent. If a Respondent submits financial statements for a parent company and is thereafter awarded the Lease, the parent company shall be required to also execute the Lease such that it is bound jointly with the Respondent/subsidiary to the obligations of the Lease. A parent company shall submit an acknowledgement of this obligation in the Proposal in the form of a

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resolution of the governing body of the parent company authorizing the obligations of the Lease to be awarded.

Please assign points for the Organization's Background and Experience using the following scale:

Outstanding (provided all information requested and relevant operations exceed the type and scope of operations being proposed) 81-100 points

Very Good (provided all information requested and relevant operations are comparable to the type and scope of operations being proposed) 61-80 points

Good (provided most of the information requested and relevant operations may or may not be comparable to the type and scope of operations being proposed) 41-60 points

Fair/Poor (significant omissions from the information requested) 21-40 points

Unsatisfactory (did not provide sufficient information to evaluate this section) 0-20 points

The following financial ratios were calculated for each Respondent to inform the Authority of the Respondent's financial status. The most current full year of data for each respondent was used in all calculations. The corresponding scores will be provided to you. This section represents up to 100 points of the total 350 points allocated for this criterion (Organization Background, Experience, and Financial Background).

The scoring is based on the following parameters:

Ratio	Ratio Formula	100 Points	Scoring Parameters	100 Points
Current Ratio	Current Assets/Current Liabilities	20	Ratio less than 1.0=1 point Ratio equal to or between 1.0-1.2=15 points Ratio greater than 1.2=20 points	
Gross Margin	Sales - Costs of Goods Sold/Sales	20	Ratio less than 0.59=1 point Ratio equal to or between 0.59-0.74=15 points Ratio greater than 0.74=20 points	
Return on Assets Ratio	Net Profits Before Taxes/Total Assets	20	Negative Ratio=0 points Ratio greater than or equal to 0, but less than 0.04=1 point Ratio equal to or between 0.04-0.05=15 points Ratio greater than 0.05=20 points	
Debt to Equity Ratio	Total Liabilities/ Equity	20	Negative Ratio=0 points Ratio greater than or equal to 0, but less than- 1.1=20 points Ratio equal to or between 1.1-1.2=15points Ratio greater than 1.2, but less than or equal to 1.5 =1 point Ratio greater than 1.5 = 0 points	
Working Capital	Total Current Assets - Total Current Liabilities	20	Positive Number=20 points Negative Number=0 points	
TOTAL				

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OR

The following financial ratios were calculated for each Respondent to inform the Authority of the Respondent's financial status. The most current full year of data for each respondent was used in all calculations. The corresponding scores will be provided to you. This section represents up to 100 points of the total 350 points allocated for this criterion (Organization Background, Experience, and Financial Background).

The scoring is based on the following parameters:

Ratio	Ratio Formula	100 Points	Scoring Parameters	100 Points
Current Ratio	Current Assets/Current Liabilities	20	Ratio less than 1.5=1 point Ratio equal to or between 1.5-2.0=15 points Ratio greater than 2.0=20 points	
Gross Margin	Sales – Costs of Goods Sold/Sales	20	Ratio less than 0.39=1 point Ratio equal to or between 0.39-0.54=15 points Ratio greater than 0.54=20 points	
Return on Assets Ratio	Net Profits Before Taxes/Total Assets	20	Negative ratio=0 points Ratio equal to or greater than 0, but less than 0.035=1 point Ratio equal to or between 0.035-0.045=15 points Ratio greater than 0.045=20 points	
Debt to Equity Ratio	Total Liabilities/ Equity	20	Negative ratio=0 points Ratio equal to or greater than 0, but less than 0.25=20 points Ratio equal to or between 0.25-0.75=15 points Ratio greater than 0.75, but less than or equal to 1.0 =1 point Ratio greater than 1.0 = 0 points	
Working Capital	Total Current Assets - Total Current Liabilities	20	Positive Number=20 points Negative Number=0 points	
Total				

FINANCIAL OFFER (RENT PROPOSAL) AND FINANCIAL PROJECTIONS

There are two distinct scoring elements for this criterion:

1. Reasonableness, Viability of the Proposed Operations and Financial Offer, and Ability to Fund the Operation (75 points maximum)
2. Percentage Rent Offer (75 points maximum)

Reasonableness, Viability of the Proposed Operations and Financial Offer and Ability to Fund the Operation (75 points maximum)

75 Points

To evaluate the "Reasonableness, Viability of the Proposed Operations and Financial Offer, and Ability to Fund the Operation" please refer to the financial projections summary that has been prepared by the Authority's concession consultant and will be provided to you. This summary will assist by providing

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the consultant's sales projections and percentage rent projections on a per package basis.

Please assign a score for this portion of the criterion using the scale below.

Outstanding (provided all information, sales, and costs requested and the sales per enplanement projections are not more than 15% higher than those stated in the consultant's report. Financial projections, including pre-tax profit margin, return on investment and sales per square foot are reasonable and support a profitable operation) 61-75 points

Very Good (provided all information, sales, and costs requested and the sales per enplanement projections are not more than 10% lower than OR between 16% to 20% higher than those stated in the consultant's report. Financial projections, including pre-tax profit margin, return on investment and sales per square foot are reasonable and support a profitable operation) 46-60 points

Good (provided most of the information, sales, and costs requested and the sales per enplanement projections are between 11% to 15% below OR between 21% to 25% higher than those stated in the consultant's report. Financial projections, including pre-tax profit margin, return on investment and sales per square foot are reasonable but some costs appear lower or higher than the average as calculated in the consultant's report) 31-45 points

Fair/Poor (provided some of the information, sales and costs requested and the sales per enplanement projections are between 25% to 30% higher than those stated in the consultant's report. The financial projections, including pre-tax profit margin, return on investment and sales per square foot are not reasonable and some costs appear significantly lower or higher than the average as calculated in the consultant's report) 16-30 points

Unsatisfactory (did not provide enough information, sales and costs to evaluate the reasonableness of the projections to support the operations and/or the sales per enplanement projections are more than 15% lower than OR more than 30% higher than those stated in the consultant's report) 0-15 points

Financial Offer (75 points maximum)

75 Points

The evaluation of the "percentage rent offer" will be provided to you and will consist of a pure mathematical calculation equivalent to the actual percentage rent proposed. The Respondent offering the highest rent percentage for each package will receive the highest number of points for this portion of the criterion and all of the other Respondents to this package will receive a fraction of the points based on a mathematical comparison of their proposed rent percentage versus the highest proposed rent percentage.

**TOTAL POINTS FOR ORGANIZATION BACKGROUND AND EXPERIENCE
(100 points maximum)**

**+ TOTAL POINTS FOR FINANCIAL BACKGROUND
(100 points maximum)**

**+ TOTAL POINTS FOR FINANCIAL OFFER AND FINANCIAL PROJECTIONS
(150 points maximum)**

**= TOTAL POINTS FOR ORGANIZATION BACKGROUND AND EXPERIENCE, AND
FINANCIAL BACKGROUND (350 POINTS MAXIMUM)**

PROPOSER:

PACKAGE:

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CONCEPT DEVELOPMENT AND MERCHANDISE/MENUS

FOOD SERVICE

The objective of this section is for the Respondent to clearly communicate how they will satisfy the concept, service, and merchandise or menu requirements in the RFP. See Part 10, Description of the Food Service Concession Opportunity of the Request for Proposals for Proposed Concept descriptions.

All food service Respondents shall submit the following:

- Proposed food service concepts and menus shall meet the minimum requirements described in Part 10, Descriptions of Food Service Concession Opportunity, of the RFP.
- Specific concept descriptions and how they would be incorporated into the Airport's concession program.
- Proposed restaurant names.
- Menus for each concession location and concept, the prices for each menu item, and identification of the menu items that are considered healthy or vegetarian. Include children's menu items, as required. Specifically indicate which menu items will be pre-packaged for grab and go service and how those items will be packaged for the customers. Describe the type of packaging that will be used for carry-out items. Describe the use of any locally-sourced products.
- A description of any unique attributes of the proposed concepts.
- The percentage of the unit area that would be allocated to kitchen and back-of-house, seating (if any, including an estimated seat count), carry-out counter (if any), serving area, and queuing space.
- List of any merchandise, including logoed or branded merchandise that will be sold from any of the food service units and the prices for those items.
- Describe any concept-specific quality assurance procedures, guarantees, and customer service initiatives and policies that are not described in other sections of the Proposal.

Please assign a score for Concept Development and Merchandise/Menu using the scale below.

Outstanding (meets all and exceeds some or all requirements) 161-200 points

Very Good (meets all requirements) 121-160 points

Good (meets most requirements) 81-120 points

Fair/Poor (meets some requirements) 41-80 points

Unsatisfactory (does not meet requirements in most areas) 0-40 points

TOTAL POINTS FOR CONCEPT DEVELOPMENT AND MERCHANDISE/MENUS (200 POINTS MAXIMUM)

FOOD SERVICE

OR

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CONCEPT DEVELOPMENT AND MERCHANDISE	RETAIL
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The objective of this section is for the Respondent to clearly communicate how they will satisfy the concept, service, and merchandise requirements in the RFP. See Addendum 2, revised Part 11, Description of the Retail Concession Opportunity of the Request for Proposals for Proposed Concept descriptions.

All retail Respondents shall submit the following:

- Proposed retail concepts for each concession location in a package that meet the minimum requirements described in Part 11, Description of Retail Concession Opportunity, of the RFP
- Specific concept descriptions and how they would be incorporated into the Airport's concession program
- Proposed store names
- Merchandise mix, including a list of proposed merchandise for each concept (including the number of newspaper and periodical titles to be carried in each newsstand facility) and the price ranges for each type of merchandise item
- A description of any unique attributes of the proposed concepts
- The percentage of store selling area that would be allocated to each product category and any back-of-house area
- Merchandising techniques to promote the theme and merchandise focus
- Describe any concept-specific quality assurance procedures, guarantees, and customer service initiatives and policies that are not described in other sections of the Proposal

Please assign a score for Concept Development and Merchandise/Menus using the scale below.

Outstanding (meets all and exceeds some or all requirements) 161-200 points

Very Good (meets all requirements) 121-160 points

Good (meets most requirements) 81-120 points

Fair/Poor (meets some requirements) 41-80 points

Unsatisfactory (does not meet requirements in most areas) 0-40 points

TOTAL POINTS FOR CONCEPT DEVELOPMENT AND MERCHANDISE/MENUS (200 POINTS MAXIMUM)

RETAIL

PROPOSER: _____ **PACKAGE:** _____

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DESIGNS, MATERIALS, AND CAPITAL INVESTMENT

The information below was requested on pages 17, 18, and 19 of the RFP. The purpose of this section is to inform the Authority of the quality of the proposed tenant construction, the proposed investment in the construction and other equipment and improvements, and the financial plan to fund the investment. A spreadsheet will be provided to summarize the proposed capital investment.

Each concession location offered under this RFP requires complete build-out of the concession facilities. The Authority will provide Shell conditions, including framed demising walls between public areas and the Premises (as needed), concrete slab flooring, unfinished ceiling (as needed), and utility access as described in Article 10 of the draft Concession Lease.

The Selected Respondents shall plan, design, and build out, at their sole cost, the Premises in accordance with the Tenant Design Criteria Manual included as Exhibit H of the draft Concession Lease and the Tenant Improvement Program (TIP) Design Review Process Guidelines, included as Exhibit G of the draft Concession Lease.

The Selected Respondents shall invest no less than the minimum amounts stated in Part 10 and Part 11 of the RFP for the fixed improvements for each concession location included in a package for which a Proposal is submitted. In addition, the Selected Respondents shall invest the following:

- The per square foot amount identified in the Selected Respondent's Proposal for mandatory mid-term refurbishment to occur during the midpoint of the Term of the Lease to be awarded. The per square foot amount to be invested shall be **no less than \$40 for food service concession locations, and no less than \$25 for retail concession locations.**
- All costs and expenses necessary to maintain the concession locations in an attractive, like-new, and inviting condition.

Respondents shall submit the following preliminary plans for each permanent concession location, providing enough detail so that the Evaluation Committee can properly evaluate the design and quality of the materials proposed. All plans and designs shall comply with the Tenant Design Criteria Manual and Tenant Improvement Handbook for the Airport.

Preliminary renderings of the proposed concepts that are a representative illustration of the designs and sufficient to show the exterior and interior of the concepts, proposed color schemes, and graphics. In the case where a Respondent intends to virtually duplicate an existing concept that the Respondent has developed elsewhere, the Respondent may substitute pictures or photographs of an existing facility for the renderings.

A floor plan of each unit (not concept) should be provided indicating locations for counters, queuing, kitchens, seating (including estimated number of seats), point-of-sale counters, and any back-of-house area, as appropriate. Please also indicate the square footage to be allocated to front versus back-of-house areas and how customers with bags will be accommodated.

A list of materials to be used per concession location that demonstrates the quality of the materials to be used in each unit, including:

- i. Floor covering;
- ii. Wall covering;
- iii. Ceiling treatment;

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- iv. Service counter and display units or fixtures;
- v. Any proposed signage, interior and exterior.
- vi. Any use of sustainable, renewable, recycled, and/or locally-sourced materials renderings (or photographs) and floor plans may not exceed 11" by 17" and must be bound within the Proposal.

It is the Respondent's responsibility to ensure that the design of the Premises complies with all federal, state and local laws, including but not limited to the Americans with Disabilities Act ("ADA") and the ADA standards and guidelines implementing the ADA. Respondent shall submit a narrative addressing specifically how it will meet the ADA requirements.

Respondents shall submit a financial plan and indicate the sources of funding to be used for tenant improvements and working capital, including the following:

- Estimated costs by concession location for the initial Capital Investment and mid-term refurbishment improvements (separately), delineating expenses for Leasehold Improvements, furniture, fixtures, equipment, and design, engineering, and construction management costs
- Estimated working capital support
- Sources of funding

Please assign a score for Designs, Materials, and Capital Investment using the scale below:

Outstanding (meets all and exceeds some or all requirements) 121-150 points

Very Good (meets all requirements) 91-120 points

Good (meets most requirements) 61-90 points

Fair/Poor (meets some requirements) 31-60 points

Unsatisfactory (does not meet requirements in most areas) 0-30 points

**TOTAL POINTS FOR DESIGNS, MATERIALS, AND CAPITAL INVESTMENT
(150 POINTS MAXIMUM)**

PROPOSER:

PACKAGE:

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OPERATIONS AND MAINTENANCE PLAN

Respondent shall submit an operation and maintenance plan containing sufficient information to allow the Authority to evaluate the plan for daily and ongoing operations, including but not limited to maintenance, deliveries, trash removal, inventory stocking and storage, pest control, janitorial services, and cash control system, including the make, model, and capabilities of cash registers and point of sale equipment. Please note that the Authority intends to arrange common services for trash pick-up from each concession location, food service common seating area janitorial services, grease interceptor and hood and ventilation system cleaning, and merchandise receiving and deliveries. For ongoing maintenance and cleaning, Respondent shall include in its Proposal information as to whether the maintenance and cleaning will be performed by in-house personnel or an outside contractor, and proposed response times for maintenance issues. Respondent shall also include a proposed plan to monitor the facilities for cleanliness and maintenance, including any checklist to be developed and an explanation of the manner in which the list would be addressed in practice. Each Respondent shall submit a proposed phasing and temporary concession location plan as part of the Proposal. This plan should detail the start and end dates for the improvement process for each temporary and permanent concession location. Since Shell turnover dates are not known for all locations, these start and end dates should be provided using a generic schedule beginning with "Day One," with durations for all activities provided in terms of days or weeks after Day One. An airportwide construction phasing plan will be developed based on input from the Selected Respondents following Lease awards. The Selected Respondents will be expected to comply with the Authority's schedule and adjust the phasing and temporary concession location plan using the dates in the airportwide construction phasing plan.

Please assign a score for Operations and Maintenance Plan using the scale below:

Outstanding (meets all and exceeds some or all requirements) 81-100 points

Very Good (meets all requirements) 61-80 points

Good (meets most requirements) 41-60 points

Fair/Poor (meets some requirements) 21-40 points

Unsatisfactory (does not meet requirements in most areas) 0-20 points

**TOTAL POINTS FOR OPERATIONS AND MAINTENANCE PLAN
(100 POINTS MAXIMUM)**

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PROPOSER:	PACKAGE:
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PROPOSED MANAGEMENT, STAFFING, & TRAINING	
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<p>Respondents shall submit the following information regarding the proposed management and organizational structure, staffing plan, and management and staff training and incentive programs.</p> <ul style="list-style-type: none"> • Organization chart illustrating the reporting relationships between corporate and on-site management and between all on-site staff; • Metrics used to ascertain the levels of staffing required to provide excellent customer service and product quality. Indicate whether the proposed operating hours exceed or match the minimum hours of operation stated in this RFP; • Resumes for the proposed on-site General Manager, regional manager, and any other key management or culinary staff (as appropriate); • Labor and training practices, including a brief description of customer service training program or any other training program unique to the proposed concepts that will be used by Respondents at the Airport; • For compliance with the Authority's Worker Retention directive, Respondents must attach a written program and/or a signed commitment statement set forth in Attachment L; • Brief description of any employee incentive programs that will be initiated at the Airport to monitor, measure, promote, and reward sales and customer service; • Description of the management and staffing responsibilities of the proposed ACDBE participant(s), including resumes for management personnel; • General description of the proposed employee dress code or uniform by location. <p>Also consider the percentage of sales that wages and benefits represent to assess staffing plans and forecasts. The calculations using figures from the Respondents' proformas for Year 1 <u>will be provided to you.</u></p>	
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<p>Please assign a score for the qualitative portion of Management, Staffing, and Training using the scale below:</p> <p><i>Outstanding (meets all and exceeds some or all requirements) 121-150 points</i></p> <p><i>Very Good (meets all requirements) 91-120 points</i></p> <p><i>Good (meets most requirements) 61-90 points</i></p> <p><i>Fair/Poor (meets some requirements) 31-60 points</i></p> <p><i>Unsatisfactory (does not meet requirements in most areas) 0-30 points</i></p>	
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TOTAL POINTS FOR PROPOSED MANAGEMENT, STAFFING, & TRAINING (150 POINTS MAXIMUM)	
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PROPOSER: _____ **PACKAGE:** _____

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MARKETING AND PROMOTIONS PLAN

Respondents shall submit sufficient information to allow the Authority to evaluate the marketing and promotions plan for its proposed concessions.

- Describe the analysis conducted to determine the concepts, brands, merchandise, menus, and product lines incorporated in the Proposal;
- Describe the research to be used to monitor customer satisfaction with the concepts, brands, merchandise, menus, and product lines selected for the program;
- Describe your corporate customer service philosophy. Identify how that philosophy will be applied in the Airport's concession program. Describe how the special needs of travelers such as families with small children, senior citizens, people with disabilities, and non-English speaking persons will be addressed. There is no need to repeat any employee incentive programs described in the Proposed Management, Staffing, and Training Plan in this section;
- Describe typical on-airport promotions likely to be employed at the Airport if awarded the Lease.

Please assign a score for the Marketing and Promotions Plan using the scale below.

Outstanding (meets all and exceeds some or all requirements) 41-50 points

Very Good (meets all requirements) 31-40 points

Good (meets most requirements) 21-30 points

Fair/Poor (meets some requirements) 11-20 points

Unsatisfactory (does not meet requirements in most areas) 0-10 points

TOTAL POINTS FOR MARKETING AND PROMOTIONS PLAN

(50 POINTS MAXIMUM)

PROPOSER:

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BOARD ADOPTED PREFERENCES

SMALL BUSINESS PREFERENCE (5%) SMALL BUSINESS STAFF TO REVIEW CERTIFICATE AND AWARD POINTS IF APPLICABLE.

50 POINTS

This RFP is subject to the Authority's Small Business Preference Policy 5.12 and as amended on November 5, 2009 by the Board of Directors Resolution No. 2009-0141. A qualified Small Business desiring consideration under the Authority's Small Business Preference Policy must complete and submit with the Proposal "Attachment E – Small and Local Business Eligibility Statement" and "Attachment F – Policy 5.12 Small Business Preference Verification Certificate."

Staff Scores SB Preference

WORKER RETENTION (2%) EVALUATION COMMITTEE MEMBER TO SCORE 1 TO 20 POINTS IF MINIMUM STANDARD IS EXCEEDED

20 POINTS

This RFP is subject to the Authority's Worker Retention directive. Each Proposal must include the information set forth in Attachment L of the RFP.

6 Minimum Components of Worker Retention:

1. The hiring or retention of Incumbent Workers who have been employed for the preceding twelve (12) months or longer by the terminated contractor, with Incumbent Workers retained for a period of ninety (90) days, unless there is cause to terminate their employment sooner;
2. Employment of the Incumbent Workers during the ninety (90) day period under the terms and conditions established by the successful contractor or as required by law or other applicable agreement;
3. Application of the term "contractor" to subcontractors where applicable;
4. Where pooling of Incumbent Workers by job classification occurs, interviewing and hiring by the successful contractor from such pools for the first six (6) months of operations at the Airport or until the terminated contractor completely ceases operations at the Airport, whichever is later;
5. Maintenance by the successful contractor of a preferential hiring list of Incumbent Workers not initially hired; and
6. Release from the obligation to hire from the job classification pools when all of the Incumbent Workers within a job classification pool have received a ninety (90) day employment offer or the pooling period as defined above has expired.

The following are exemptions from Worker Retention:

1. Small businesses that operate with less than ten (10) employees.
2. Management positions.
3. Positions requiring a specialized skill or license not available from the pool of Incumbent Workers.

Respondents must attach a written program and/or a signed commitment statement to this Attachment as stated in Part 2, Section C Minimum Qualification, to be included in Binder 1.

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Please indicate that the minimum components have been met and assign a score for the Worker Retention Plan using the scale below.

- Minimum components met: yes/no _____*
- Outstanding (exceeds 3 components of requirements) 11-20 points*
- Very Good (exceeds 2 components of requirements) 6-10 points*
- Good (exceeds 1 component of requirements) 1-5 points*

TOTAL POINTS FOR BOARD ADOPTED PREFERENCE WORKER RETENTION 2% (20 POINTS MAXIMUM)

EXHIBIT F

Proposer	PM1	PM2	PM3	PM4	PM5	PM6	Total
Spa Didacus	1	1	1	1	2	2	8
XpresSpa	2	2	2	2	1	1	10

EXHIBIT G

NOTABLE DIFFERENCES BETWEEN THE PROPOSALS

Category	Be Relax d/b/a SPA Didacus, Inc.	XpresSpa
COMPANY BACKGROUND, EXPERIENCE, AND FINANCIAL CAPABILITY		
Rent	<p>Years 1-4: 10.5% Years 5-7: 11%</p> <p>Projected to pay MAG only in year 1. In year 2 they project paying only \$837 above MAG.</p> <p>Total estimated rent over the term is projected to be: \$783,266</p>	<p>Product Sales: 14%.</p> <p>Service Sales: 11% up to \$2M; 12% over.</p> <p>Projected to pay more than double the MAG starting in Year 1 and accelerating from there.</p> <p>Total estimated rent over the term is: \$2,749,283 – almost \$2M higher</p>
Gross Sales	<p>Projections are at approx. \$1M per year.</p> <p>Based on the comp sales provided by BeRelax it appears they have no locations that generate more than \$1M</p>	<p>Projections are approx. \$2M per year.</p> <p>Reasonability of projections is well-founded, based on XpresSpa's long experience operating in the US market. Attachment C-2 provides comparable XpresSpa operations, all in major US airports (Atlanta, JFK and LaGuardia), which amply justify the projected gross sales that are set forth in the San Diego proposal.</p> <p>If, indeed, XpresSpa's projections were looked at unfavorably compared with a consultant's projections, we submit it is likely that there were flaws in the consultant's projections. It seems highly unlikely that the consultant was fully experienced in the nuances of the XpresSpa</p>

Category	Be Relax d/b/a SPA Didacus, Inc.	XpresSpa
		<p>business model, and without the benefit of seeing that report, we cannot demonstrate what flaws may exist.</p> <p>Presumably, in the airport consultant's effort to evaluate the "reasonableness" of the sales projections as provided for in evaluation criteria, they would have used benchmarks from airport spas in the United States.</p> <p>As of the time of the proposal submission we estimate there were 38 full-service spas in the U.S, over 30 of which are XpresSpas. Therefore any assessment of the reasonableness of US spa sales estimates would by definition have to rely heavily on XpresSpa benchmarks. Further, several other non-XpresSpa full-service airport spas are underperforming and their inclusion would be erroneous and not comparable to San Diego's expectations or XpresSpa's operations.</p> <p>Any disregard for XpresSpa's expertise and knowledge of spa sales potential in the U.S. would appear to be an indication of potential bias against XpresSpa.</p>

Category	Be Relax d/b/a SPA Didacus, Inc.	XpresSpa
<p>Proven ability to manage and generate projected sales.</p>	<p>We understand from its proposal that Be Relax generated only approximately \$647,520 in 2010 in its Frankfurt Terminal 2 location – an airport that has 2.2 Million enplanements.</p> <p>We understand that the Be Relax Frankfurt spa is approximately 1238 square feet, which equates to revenue of approximately \$523 per square foot.</p>	<p>In stark contrast, XpresSpa in 2010 generated approximately \$1.00 per enplanement at JFK Terminal 7 (\$1,835,000 in sales from 1,863,000 enplanements) or approximately \$1,400 per square foot.</p>
<p>Experience – Prime</p>	<p>At the time of its submittal, we understand that Be Relax had no actual experience operating in the US airport market. Any assertion that it "operated" two stores in BWI airport and one in Boston Logan was false.</p> <p>Be Relax had zero dollars in U.S. revenue from spa services at the time of the Proposal; zero spa services provided in U.S.; zero customers in the U.S.</p>	<p>At the time of its Proposal, XpresSpa had 30 operating locations. As of today, that number has increased to 33, and by Labor Day is projected to be at 36. Of these, all except three are in the US. XpresSpa grew up in the US airport environment. This is no small matter: XpresSpa has learned through years of experience that the US airport concession market is nothing like the European market. All aspects of the business, from the labor pool and labor expenses, to the legal framework, to cultural differences among customers and staff, all contribute to a very different experience which requires a steep learning curve. XpresSpa has operations in three European stores, all in Schiphol Amsterdam Airport. XpresSpa chose to learn the European market carefully by limiting its presence and growing gradually, with the understanding</p>

Category	Be Relax d/b/a SPA Didacus, Inc.	XpresSpa
		<p>that the differences between the two markets could lead to disastrous results—unless these differences are fully understood, appreciated and accounted for. There is no question that in the US market, XpresSpa is the leader.</p> <p>Though we have no access to the Be Relax financials presented in their Proposal, we are of the reasonable belief that XpresSpa’s aggregate gross sales dwarf those of Be Relax. There can be little question that XpresSpa is the more experienced player.</p> <p>Note, further, that XpresSpa has a global labor pool of approximately 600 employees, the vast majority of which are US-based. From the materials in the Spa Didacus proposal, it does not appear that the Be Relax labor pool approaches this number. Furthermore, XpresSpa has been operating spas in the unique market of California since 2005. The second spa in XpresSpa’s network was in San Francisco Airport. XpresSpa has since expanded its presence in San Francisco to 3 operating stores, with a fourth projected to open in August 2011; and a store in LAX that is projected to open by Labor Day 2011.</p>
Experience – ACDBE Partner	The Be Relax ACDBE partner is a food and beverage concessionaire which has operated	XpresSpa’s ACDBE partner has operated <i>exclusively</i> in the high-volume airport

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	<p>primarily in small, low-volume airport venues. The cited experience is in the airports of Panama City, FL; Oklahoma City; Phoenix Sky Harbor International; St. Petersburg, FL; Fort Wayne, IN; and, as of May 2011, Santa Barbara. Of those, only Phoenix Airport is comparable to San Diego International. The Be Relax ACDBE partner appears from the proposal to have no experience in San Diego International Airport.</p>	<p>environment, with a plethora of stores in both Phoenix Sky Harbor International Airport as well as San Diego International Airport.</p>
ACDBE Certification / Experience	<p>The Be Relax ACDBE partner is certified as Food Service Contractor – Eating & Drinking Places. This does not appear to be an appropriate certification for a partner in a spa business.</p>	<p>XpresSpa's ACDBE partner is certified as Airport Concessionaire – Gift, Novelty, and Souvenir Shop. This certification demonstrates experience which is directly on point with retail sales, a key component of the ideal spa package offering. XpresSpa knows from long experience that retail products add "take-along value" to customers which keep them coming back every time they fly through the airport. XpresSpa's ACDBE partner is qualified to drive this key component of the business.</p>
DESIGNS, MATERIALS, AND CAPITAL INVESTMENT		
Investment per Sq. Ft.	\$400 per square foot	\$617 per square foot. The XpresSpa model places a premium on construction of our facilities. The beautiful environs are what attract our customers and what create a loyal

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		<p>fan base of repeat visitors. From the start, XpresSpa has sought to create an "oasis of tranquility" away from the stresses of the airport environs. XpresSpa has demonstrated, time and again, that its investment in premium construction has paid dividends for the spa, the customers, and the airport.</p> <p>A lesser investment per square foot inevitably results in a "cheap" looking environment, doing a disservice to both the airport and its passengers.</p>
<p>Repeatedly throughout the RFP and public presentations, the Authority emphasized the importance of the concession program to create a "sense of place."</p> <ul style="list-style-type: none"> • Design Strategy: Integrate Advertising and Art • Design Strategy: Unique design that represents San Diego • The Authority's airport-wide Concession Development Program is intended to provide an inviting and memorable experience with concessions that are original and representative of 	<p>From the renderings and proposal text, it appears that Be Relax offered its standard European Corporate brand and design with zero unique elements identified with San Diego. No "sense of place."</p>	<p>XpresSpa incorporated extensive use of San Diego design elements that celebrate the vibrant San Diego community. There is no mistaking that you are in San Diego when in our spa.</p> <ul style="list-style-type: none"> • Local Hand-blown Light fixtures from local artists • San Diego graphics of local public art sculptures • San Diego tourism information on our video displays • Local Beach Glass incorporated into the design • Sunset Cove theme recognition • Local San Diego Retail products

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<p>San Diego and the region.</p> <ul style="list-style-type: none"> • Concession programs establish a "sense of place" and provide an experience that is unique to the geographic area • Upon arrival offer them a glimpse of what the local community is like • Airport concession programs serve as a vital extension of the local community • Concessions playing a vital role in establishing the identity of the airport brand itself • The concessions in Sunset Cove are included in this RFP and should provide passengers with a memorable "San Diego" experience, in a town center environment. • The concessions will provide airport passengers and the public with a unique and comprehensive experience that captures the true spirit of and commitment to the San Diego region. 		

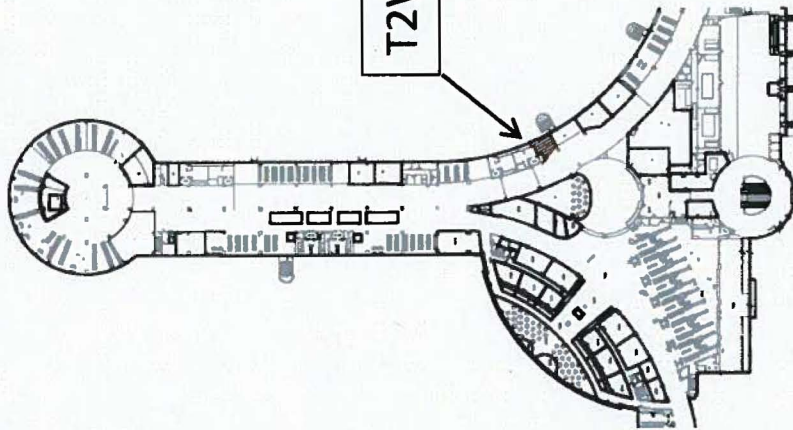
Category	Be Relax d/b/a SPA Didacus, Inc.	XpresSpa
<ul style="list-style-type: none"> The Authority's airport-wide Concession Development Program is intended to provide an inviting and memorable experience with concessions that are original and representative of San Diego and the region. 		
<p>Green Build / Sustainability – The Airport, through the Green Build project will pursue Leadership in Energy and Environmental Design (LEED) silver certification.</p> <p>Goals of the project's sustainable design include decreased water usage, reduced energy consumption and use of alternative energy sources.</p>	<p>Zero Sustainability Initiatives</p> <p>Be Relax has proposed a cookie-cutter design that mimics their European operations and presents no apparent environmental benefits.</p>	<p>XpresSpa has gone above and beyond and shares the Airport's priorities and values to be the greenest airport and greenest spa in the country.</p> <p>XpresSpa's proposal is replete with sustainability initiatives that are beneficial to the environment and in tune with the desires of much of the local demographic. Notably, the XpresSpa proposal points to "Green" construction materials; lighting; recycling initiatives; waste reduction initiatives; Green retail packaging initiatives; a unique Living Wall feature that provides a beautiful aesthetic while reducing energy loads; and a collaboration with a Wind Energy Generation company.</p>

Category	Be Relax d/b/a SPA Didacus, Inc.	XpresSpa
MANAGEMENT, STAFFING PLAN, AND TRAINING		
Staffing	<p>Be Relax has a very low level of employees to offer services:</p> <p>T2E-2020: 2 Managers plus 2 employees (4 total); ONLY 2 Per shift – ONLY 1 Manager plus 1 Employee</p> <p>T2W-2006: 2 Managers plus 6 technicians (8 total); ONLY 4 Per shift – ONLY 1 Manager plus 3 Technicians</p> <p>Insufficient labor can translate into poor service, long lines, waiting, underperforming real estate, low sales.</p> <p>This could be interpreted as yet another sign that Be Relax is not familiar with the U.S. market and has much to learn.</p>	<p>T2E-2020: 1 Manager, 2 Assistant Managers, 6 Technicians (9 total); 5 employees per shift</p> <p>T2W-2006: 1 Manager, 2 Assistant Managers, 8 Technicians (11 total); 8 employees per shift to maximize service to passengers and revenue to the city.</p> <p>XpresSpa is planning for twice as many jobs, twice as many employees, twice the level of service, and twice the level of revenue.</p> <p>XpresSpa, in all of its airport spas nationwide, hires the most local talent of any concessionaire per square foot. XpresSpa's proposal will bring many more jobs to San Diego than Be Relax. XpresSpa's greater labor pool will ensure a superior experience for San Diego customers. Spa customers go to spas to feel pampered, treated well. Only a large enough staff can ensure that passengers aren't "left out in the cold" while waiting for a service.</p> <p>XpresSpa knows the amount of labor ideally required in the US spa environment, and is committed to maximizing the number of jobs it can bring to the San Diego region.</p> <p>Furthermore, XpresSpa is supported by a</p>

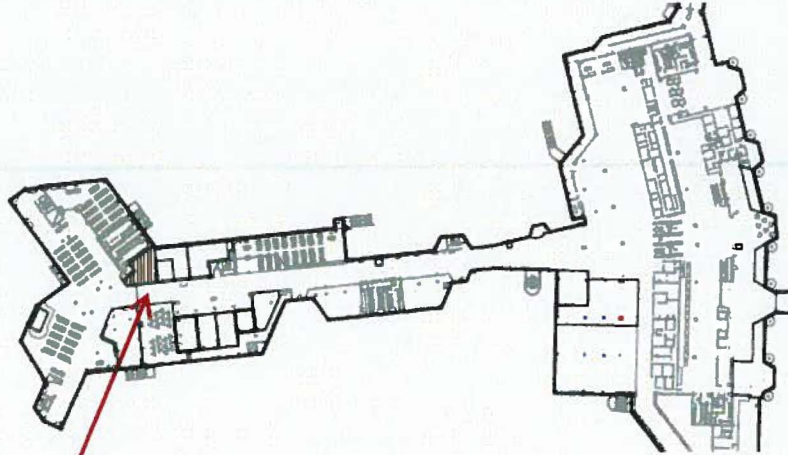
Category	Be Relax d/b/a SPA Didacus, Inc.	XpresSpa
		US-based back-office support staff of over 25 individuals in the corporate office, as well as at least 4 individuals in the office of our ACDBE partner. By contrast, Be Relax has no significant US support staff beyond its ACDBE partner and a small office that is believed to be staffed by no more than one (1) individual in Maryland.
MINIMUM QUALIFICATIONS		
Good Faith Efforts documentation, required by Revised Attachment M of the RFP.	Not included.	Included and requirement satisfied.
Administrative (All Applicable Forms) – Attachment B – Business Organization Statement	Statement does not appear to be signed. Also, statement alludes to receipt of 3 addenda when there were in fact 4.	No errors.

RETAIL PACKAGE 5

Terminal 2 West

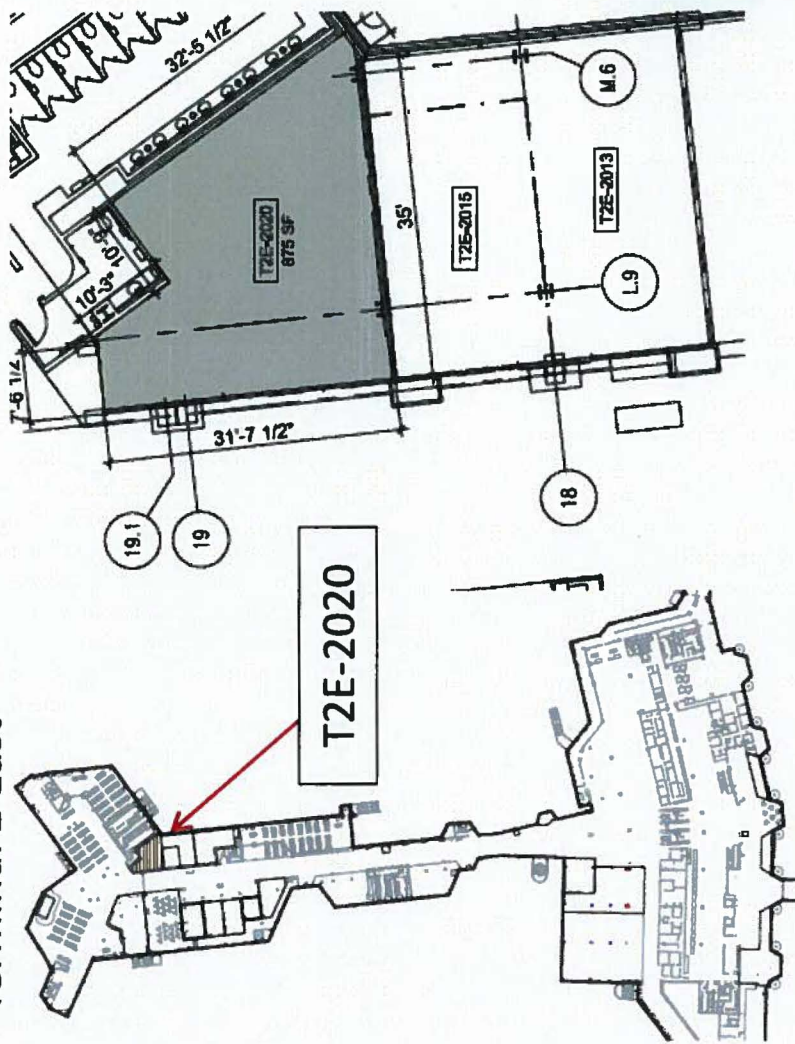


Terminal 2 East



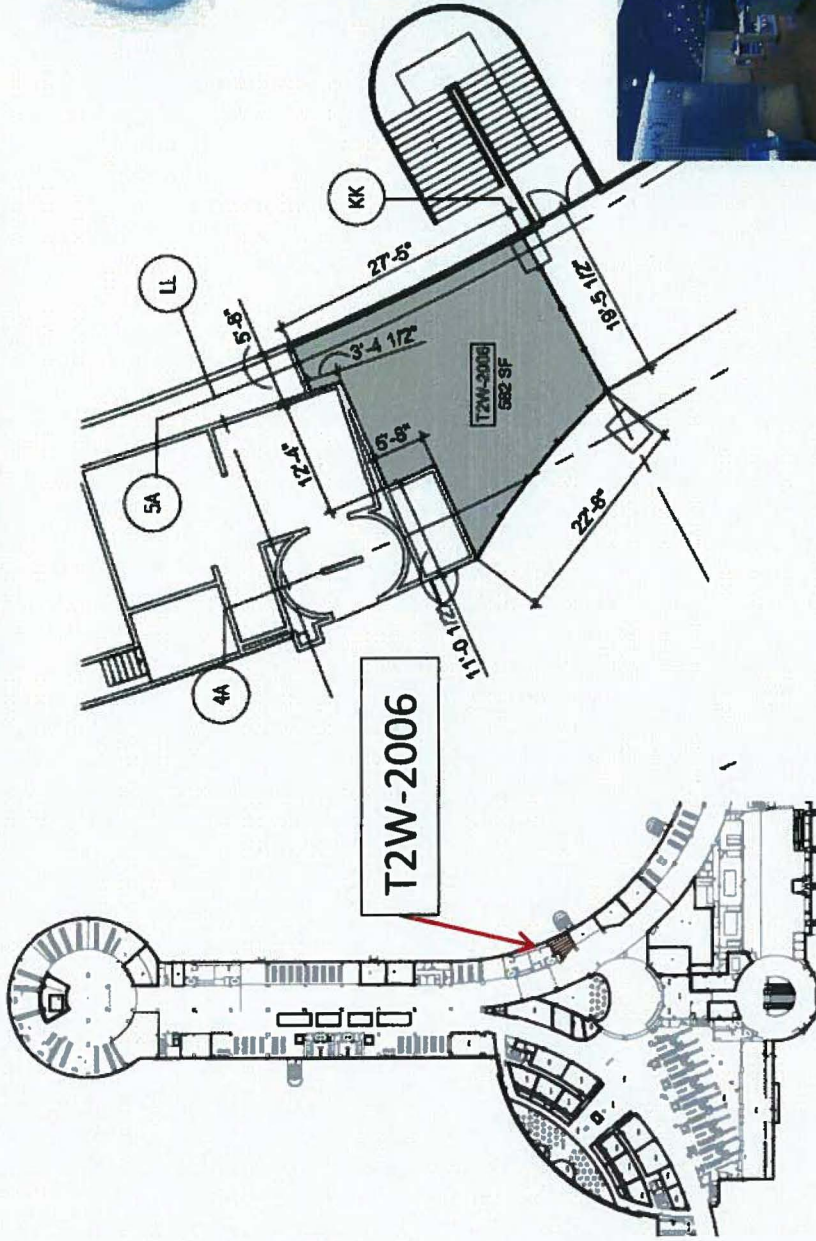
RETAIL PACKAGE 5 T2E-2020 – 875 SF

Terminal 2 East



RETAIL PACKAGE 5 T2W-2006 – 582 SF

Terminal 2 West



Retail Pkg 5: Be Relax Spa (2 locations)



RESOLUTION NO. 2011-0095

A RESOLUTION OF THE BOARD OF THE SAN DIEGO COUNTY REGIONAL AIRPORT AUTHORITY, AWARDING A CONCESSION LEASE TO SPA DIDACUS, INC. FOR DEVELOPMENT AND OPERATION OF RETAIL PACKAGE #5, AS INCLUDED IN THE REQUEST FOR PROPOSALS (RFP) FOR FOOD SERVICE AND RETAIL CONCESSIONS, FOR A MAXIMUM TERM OF NINE (9) YEARS AND FOUR (4) MONTHS, WHICH INCLUDES A PERIOD NOT TO EXCEED TWENTY-EIGHT (28) MONTHS TO ALLOW FOR PACKAGE COMPLETION, WITH A FIRST YEAR MINIMUM ANNUAL GUARANTEE (MAG) OF \$119,000; AND AUTHORIZING THE PRESIDENT/CEO TO TAKE ALL NECESSARY ACTIONS TO EXECUTE THE CONCESSION LEASE

WHEREAS, for the past three years, staff has been planning to solicit responses via a Request for Proposal (RFP) for a new food service and retail concession program at San Diego International Airport; and

WHEREAS, the Concession Development Program (CDP) RFP provides for new concession locations from the Terminal 2 West (Green Build) and Terminal 2 East Expansion projects and complete re-concepting of existing locations, beginning in December 2012; and

WHEREAS, at its October 26, 2009 meeting, the Board was informed of the goals, objectives and business strategy of the CDP; and

WHEREAS, at its November 4, 2010 meeting, staff informed the Board of CDP RFP planning, involving business community outreach efforts; and

WHEREAS, at its January 6, 2011 meeting, the Board was briefed on RFP packaging guidelines and concession locations; and

WHEREAS, on February 2, 2011, the CDP RFP was released. The CDP RFP included eight food service packages totaling 46 locations and eight retail packages totaling 40 locations; and

WHEREAS, each package required respondents to propose a fixed Minimum Annual Guarantee and percentage rents within a specified range; and

WHEREAS, to ensure a diversity of concepts and encourage competition, the CDP RFP also established the following limitations on the award of concession leases to a single proposer:

- 30% of food service square footage
- 35% of retail square footage
- 30% of total program square footage; and

WHEREAS, Retail Package #5 includes two locations encompassing approximately 1,457 square feet; and

WHEREAS, on May 25, 2011 two proposals were received for Retail Package #5; and

WHEREAS, the proposers were evaluated by an evaluation panel using the following criteria:

- company background, experience, financial capability and financial offer;
- concept/brand development and merchandise/menus;
- design, materials and capital investment;
- management, staffing plan, and training;
- operations and maintenance plan; and
- and marketing and promotions plan; and

WHEREAS, additional consideration was given in the evaluation process for proposals that met or exceeded the required standards for small business participation and worker retention; and

WHEREAS, the evaluation panel reviewed the proposals and recommended that a concession lease be awarded to Spa Didacus, Inc. for development and operation of Retail Package #5 (as included in the CDP RFP) for a maximum term of nine (9) years and four (4) months (which includes a period not to exceed twenty-eight (28) months to allow for base building construction, Authority shell construction and renovation, and build out of the concession locations (package Completion)), with a first year Minimum Annual Guarantee (MAG) of \$119,000; and

WHEREAS, the Board finds that awarding a concession lease to Spa Didacus, Inc. is in the best interest of the Authority.

NOW, THEREFORE, BE IT RESOLVED that the Board hereby AWARDS a concession lease to Spa Didacus, Inc. for development and operation of Retail Package #5, as included in the Request for Proposals (RFP) for Food Service and Retail Concessions, for a maximum term of nine (9) years and four (4) months, which includes a period not to exceed twenty-eight (28) months to allow for Package Completion, with a first year Minimum Annual Guarantee (MAG) of \$119,000; and AUTHORIZES the President/CEO to take all necessary actions to execute the concession lease; and

BE IT FURTHER RESOLVED that the Board of the San Diego County Regional Airport Authority finds that this Board action is not a "project" as defined by the California Environmental Quality Act ("CEQA"), Pub. Res. Code §21065; and is not a "development" as defined by the California Coastal Act, Pub. Res. Code §30106.

PASSED, ADOPTED, AND APPROVED by the Board of the San Diego County Regional Airport Authority at a regular meeting this 4th day of August, 2011, by the following vote:

AYES: Board Members:

NOES: Board Members:

ABSENT: Board Members:

ATTEST:

TONY R. RUSSELL
DIRECTOR, CORPORATE SERVICES/
AUTHORITY CLERK

APPROVED AS TO FORM:

BRETON K. LOBNER
GENERAL COUNSEL

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