

Challenging Challenges

Industry Officials Weigh In On Reducing Costly, Time-Consuming RFP Processes

By Andrew Telljohn

When **Los Angeles International (LAX)** approved two dining contracts in May that will fill space in Terminals 4, 7 and 8, it was the beginning of the end of a saga that saw a yearlong protest delay the construction of new eating establishments at the airport and overturn several of the originally recommended concepts that were to fill the spaces up for bid.

That high-profile disagreement was followed by the protest of a concessions contract offered at **Phoenix Sky Harbor International (PHX)** over the airport's process for awarding contracts.

These and other high-profile post-recommendation request for proposal challenges in recent years have industry observers wondering and debating how to best balance between the need for allowing bidders to raise legitimate concerns of unfairness or wrongdoing with reducing or eliminating expensive, time-consuming delays brought on by challenges some say are of questionable merit.

PHX Defends Process, Adjusts It For Next RFP

The Phoenix Aviation Department in June put out an announcement defending its practices in conducting procurement procedures, but at the same time announcing several changes that would take place as part of the next phase of its food and beverage overhaul.

The changes included preventing the incumbent concessionaire from

refreshing existing concepts during the bidding process, seating a new committee to evaluate proposals and make recommendations, and amending the RFP to require a minimum commissary investment of \$1M to erase any perception that the winner of the first package might have an advantage over bidders in the second package.

The aviation department also will have a non-aviation manager with expertise in procurement processes observe the deliberations of the evaluation panel.

In announcing the changes, airport officials also defended PHX's history with procurements, saying in a statement that it had conducted 76 procurements for professional and general services and another 25 procurements for concession contracts similar to the Terminal 4 food and beverage RFP that led to the challenge.

"The aviation department has a long-standing practice and successful experience with procurements such as the Terminal 4 food and beverage concession," says Danny Murphy, aviation

Phoenix Sky Harbor International defended its RFP history after a protest of its procurement process during the first part of its food and beverage overhaul. But the airport also announced several changes going into the second RFP, including seating a new evaluation committee.

director, in the June statement. "The aviation department's objective is to ensure competition for the Terminal 4 food and beverage concession program. This competition produced three outstanding proposals received for Package 1."

What Would Others Do?

Industry consultants and other observers who have seen many of the

Danny Murphy, aviation director at Phoenix Sky Harbor International, says the airport has had 76 successful procurements for professional and general services and 26 for concession contracts similar to the process run during the first RFP for its Terminal 4 food and beverage overhaul. That RFP was challenged.



recent RFPs expressed concern about the spate of challenges hitting the industry in recent years and shared some ideas they have on how airports might be able to lessen the likelihood of having RFPs challenged.

San Francisco International (SFO) just went through the long-awaited opening of its new Terminal 2, and that process went off with few hitches. Mike McCarron, a spokesman for SFO, says the airport didn't do anything new for this project. The process was as upfront as possible ahead of time regarding selection criteria. It stressed transparency, and it set forth the city's requirements, warning bidders that not meeting them would kick them out of the process, "so ask your questions now," McCarron says.

The city of San Francisco also has someone assigned to SFO who is an expert on RFPs. She has worked with airport officials and RFPs for years and is considered the resident expert. Her word is gold, McCarron says, and that is how the airport avoids differing interpretations.

"She is the final arbiter," he says.

Joe Anderson, former manager of concessions and business development at **Minneapolis-St. Paul International (MSP)**, says one strategy that worked during a major concessions overhaul there was putting a commissioner from the board of directors on the review team as a scoring member.

That person knew everything the review committee had discussed during its meetings and had read all the same documents they had. When the process was completed, if a non-winning bidder raised an issue, that committee member was able to respond authoritatively, Anderson says.

"Also, knowing a full commissioner was an active, full-voting member ... your fellow commissioners are much more comfortable supporting your staff recommendation because they are basically supporting their

Ann Ferraguto, principal with AirProjects, says she generally does not believe companies challenge RFP losses frivolously. Doing so would only cost them good will and attorney's fees, she says. Rather, the concern over challenges is more due to processes at large airports being called into question during high-profile RFPs, she adds.

fellow commissioner," says Anderson, who has since retired from MSP but does some consulting in the industry.

Litigation Mentality Bad For The Industry?

Anderson and others indicate that as the projected sales from concessions programs increase, the industry has become increasingly willing to file challenges and threaten lawsuits when they don't win.

Kevin Kern, owner of **Kern Consulting**, says he thinks most airports have done a fine job of having fair and transparent RFPs with far fewer reasons to challenge results now than in the past.

"The driving factor is not that you were cheated but that you just lost and you don't like it," he says. "It's so expensive and time consuming. ... When you lose, it's a huge blow. People feel slighted. They feel that somehow it was unfair."

Kern says he thinks the challenge process is important.

"I don't think we should ban challenging," Kern says. "You should have a right to challenge if something isn't fair or if something didn't happen the way it should."

He notes, however, that incumbents often have an incentive to challenge if a



recommendation doesn't go their way because they get to keep their existing space longer. He says from what has been made public, some of the recent challenges seem frivolous to him. In those cases he would consider invoking some sort of penalty, such as preventing a company from bidding at the airport in question for a set time period.

"I would hope airports would finally put their foot down and be more strict about entertaining some challenges," he says. "Overall, too many challenges are bad for the industry."

Others Less Convinced Of Litigiousness

Ann Ferraguto, a principal with **AirProjects**, thinks the perception of an increase in challenges might be the result of high-profile projects that have fallen under heavy scrutiny rather than any overwhelming change in the industry's collective mentality. Filing frivolous protests and lawsuits is not going to gain a company points and will likely only cost them in attorney's fees and possibly good will.

"Unless there is a specific cause, they're not going to win the protest, so what is the point?" she says.

Ferraguto also thinks airports do the best they can to get through the tedious, time-consuming process in as efficient a way as possible. She suggests airports identify their evaluation procedures up front and meticulously stick to them.

"What they shouldn't be doing is making up the rules as they go along," she says.

They also need to make sure they treat all proposers equally, being consistent in enforcing the rules regarding whether

Joe Anderson, retired manager of concessions and business development at Minneapolis-St. Paul International, says MSP used a commissioner from its board as a scoring member of the review team during one major concessions overhaul. So, when a non-winning bidder raised issues, the commissioner was able to respond authoritatively because he knew the process and the documents thoroughly.



documents are admissible or whether companies submitted the correct financial statements.

Ferraguto also emphasized that evaluation panels must be educated on the requirements ahead of time and free of outside influences as they consider the proposals. If airports follow these guidelines in preparing for major RFPs, they should be able to prevent issues from arising.

"It seems like where there has been a diversion from the process, that's when it opens the door" to challenges, she says.

Airports Bear Responsibility

Mark Pullman, owner of **Airport Retail Portfolio Group**, says challenges are understandably frustrating for airport owners insofar as they seem to make an already inefficient process even more so. But he observes that they are also a vital part of the process when an airports' evaluation system is ambiguous or creates questionable results that seem lacking in objective merit.

Particularly in light of the dollars at play with many concessions RFPs these days, Pullman places the onus on publicly operated airports to go above and beyond in providing assurances that their processes produce the best results in as fair and objective a way as possible. In order to garner the most interest in RFP opportunities, prospective participants need to have faith and confidence in the fundamental fairness of the RFP development and evaluation process, he adds.

"In a public situation with a public asset, another level of assurance needs to be provided," Pullman says. "You really need



SSP America Executive Vice President Pat Murray knows finding the balance between specifying the wants and needs of an airport and allowing concessionaires to be creative in finding concepts to propose is difficult. He says SSP is trying to learn from the challenging situations it has been in and he hopes airports will study them and evolve, as well.

these airports involves large and impactful revenues and represents a huge opportunity for the airport owner to provide the infrastructure necessary to make the region competitive in a very competitive environment."

Concessionaire Offers Thoughts

Pat Murray, executive vice president of **SSP America**, says he does not have any magic answers for structuring the perfect RFP, and he recognizes that airport operators have a difficult task writing RFPs and evaluating the many responses.

As it is, they are usually complicated to dissect, different in nearly every market, and often wrought with political sensitivities and other external challenges. SSP, he says, is trying to learn from the challenging situations it has been involved with and he hopes airports will look at the recent protests and learn and evolve from them, as well.

But Murray also says his company's main focus is on operating top-notch restaurants for passengers. He wants RFPs to give definition to what airports are seeking, while also giving his team of restaurateurs the opportunity to then seek out or create interesting brands with which they can fill a space.

Some RFPs are being written with capped minimum annual guarantees aimed at minimizing the effect of money and maximizing the differentiation in concepts the bidders propose.

"I think RFPs need to allow operators more latitude to be creative," he says, acknowledging that can create challenges for evaluators as they try to determine an objective answer to a subjective question. "Who's to say what hamburger concept is more interesting?"

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absolute transparency and a reputation for best practices."

Pullman says an RFP should clearly define who will be evaluating and scoring the competition and how the scoring system will work. He also says RFPs should be clear and convincing statements of the airport's wants and needs, and should be specified to the greatest possible extent so that RFP responses allow evaluators to compare apples to apples instead of oranges.

Airports that leave significant swaths of planning considerations for bidders to propose whatever concept categories they want or whatever rent structures they think are appropriate are abdicating a responsibility that should be handled by airport staff as representatives of the airport owner. In today's era, there is simply no excuse for a top-tier airport to have less than a highly professional staff who are deeply skilled in the ways and means of airport concession development, leasing, management and operations, Pullman adds.

"The burden should be on the city to have an appropriately professional staff with experience that operates universally using best practices," Pullman says. "Airports are a major, if not the major, economic generator in almost every community. The concession business in

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