

Franchise and Concession Review Committee Rules

Chapter 1: Concessions

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§ 1-01 Scope.

This Chapter shall apply to initial grants of concessions as well as to renewals of concessions.

§ 1-02 Definitions.

For the purpose of this Chapter:

Administrative Costs. "Administrative Costs" shall mean the costs incurred by an agency in processing and monitoring a concession.

Agency. "Agency" shall mean a city, county, borough, or other office, position, administration, department, division, bureau, board or commission, or a corporation, institution or agency of government, the expenses of which are paid in whole or in part from the city treasury.

Bid. "Bid" shall include any modification to a bid and any withdrawal of a bid.

Business Entity, Principal, Not-for-Profit Organization and Individual Questionnaires. "Business Entity, Principal, Not-for-Profit Organization and Individual Questionnaires" shall mean questionnaires seeking background information about the bidder or proposer and its principals.

Committee. "Committee" shall mean the Franchise and Concession Review Committee.

Competitive Sealed Bidding. "Competitive Sealed Bidding" shall mean a method of procurement by which sealed bids are publicly solicited and a concession is awarded to the highest responsible bidder whose bid meets the requirements and criteria set forth in the invitation for bids.

Competitive Sealed Proposals. "Competitive Sealed Proposals" shall mean a method of procurement by which proposals are publicly solicited and a concession is awarded to the responsible proposer whose proposal is determined to be most advantageous to the city, taking into consideration the revenue to the City and such other factors or criteria as are set forth in the request for proposals.

Concession. "Concession" shall mean a grant made by an agency for the private use of city-owned property for which the city receives compensation other than in the form of a fee to cover administrative costs, except that concessions shall not include franchises, revocable consents and leases.

Concession File Folder. "Concession File Folder" shall mean the folder(s) maintained by the concession manager for each concession under consideration for renewal or initial award. The folder(s) shall include a record of each solicitation of bids or proposals and any addenda thereto, a list of all entities that were issued a solicitation, each abstract or record of bids, each written statement or determination required to be made pursuant to this Chapter and such other information and documentation as may be appropriate.

Concession Manager. "Concession Manager" shall mean a person, designated by an agency, who has general responsibility for concessions management within the agency.

Contract. "Contract" shall have the meaning set forth in § 6-116.2(i) of the New York City Administrative Code.

Franchise. "Franchise" shall mean a grant by an agency of a right to occupy or use the inalienable property of the City to provide a public service.

Invitation for Bid. "Invitation for Bid" shall mean all documents, whether attached or incorporated by reference, utilized in soliciting a competitive sealed bid.

Not-for-Profit Concession. "Not-for-Profit Concession" shall have the following meaning:

(1) The organization which enters into a concession with an agency, or on agreement with an agency authorizing sub-concessions, is a tax exempt organization under § 501(c)(3) or other provisions of the Internal Revenue Code;

(2) The purpose of the concession or sub-concession is related to the tax exempt, non-profit purposes of such organization; and

(3) There is no substantial revenue derived from a concession unrelated to the tax exempt, non-profit purposes of such organization.

Proposal. "Proposal" shall include any modification to a proposal and any withdrawal of a proposal.

Request for Proposal. "Request for Proposal" shall mean all documents, whether attached or incorporated by reference, utilized in soliciting a competitive sealed proposal.

Revocable Consent. "Revocable Consent" shall mean a grant by the City of a right, revocable at will,

(1) to any person to construct and use for private use pipes, conduits and tunnels under, railroad tracks upon, and connecting bridges over inalienable property,

(2) to an owner of real property or, with the consent of the owner, to a tenant of real property to use adjacent inalienable property for such purposes as may be permitted by rules of the Department of Transportation or the Department of Telecommunications or

(3) to a public service corporation for facilities ancillary to, but not within, a franchise granted prior to July 1, 1990.

Significant Concession. "Significant Concession" shall mean any concession which has a term of 10 years or greater (including option periods) or a projected annual income to the City of more than \$100,000 or is a major concession pursuant to rules adopted by the City Planning Commission.

Sole Source Concession. "Sole Source Concession" shall mean a concession granted by an agency without competition when an agency determines that there is either only one source for the required concession or it is to the best advantage of the City to grant the concession to one source.

Vendex Questionnaires. "Vendex Questionnaires" shall mean Business Entity, Principal, Not-for-Profit Organization, and Individual Questionnaires.

§ 1-03 Construction of Rules.

The rules in this Chapter shall be liberally construed to achieve the purpose for which they are intended.

§ 1-04 Decision to Permit Use of City Property for Administrative Cost.

The concession manager must document any decision to issue any permit for the use of City property for a period of over 30 days for a fee to cover administrative costs, rather than a concession. A copy of such documentation shall be forwarded to the Committee.

§ 1-05 Term of Concession.

No agency shall enter into a concession agreement for a term of more than 20 years (including option periods). Notwithstanding the foregoing, in extraordinary circumstances described in a detailed written statement to the Committee, an agency may issue a solicitation for a concession with a term in excess of twenty (20) years upon the unanimous approval of the Committee. Thereafter, an agency may enter into a concession agreement with the successful bidder/proposer.

§ 1-06 Publication Requirements for Notice of Intent to Award a Concession.

(a) Notice of intent to award a concession shall be published in at least five (5) successive issues of The City Record.

(b) Such notice shall include:

- (1) Agency Name;
- (2) Location;
- (3) Summary of the terms and conditions of the proposed concession agreement;
- (4) Name and address of proposed concessionaire; and
- (5) Method by which concession was solicited.

§ 1-07 Protest of Solicitations and Intent to Award a Concession.

(a) Protests. Any actual or prospective bidder or proposer who wishes to protest a determination regarding a solicitation or intent to award a concession may protest to the Agency Head. The protestor shall send a copy of its protest to the New York City Comptroller, for informational purposes, at Office of the New York City Comptroller, Office of Contract Administration, 1 Centre Street, Room 835, New York, New York 10007, (212) 669-3000.

(1) Time for protest. A protest shall be submitted in writing no later than five (5) business days after the publication of the notice of intent to award a concession.

(2) Form and content of protest. The protest shall be in writing and shall briefly state all the facts or other basis upon which the agency decision is contested. Supporting documentation shall be included. If the protest is made by a potential bidder or proposer who has not submitted a bid or proposal, the protest shall be limited to a challenge of the notice procedures followed by the concession manager.

(3) Agency Head. The Agency Head shall consider the protest, and shall make a prompt written decision with respect to its merits. The Agency Head may in his/her exclusive discretion convene an informal conference with the protestor and any appropriate agency personnel to resolve the issue by mutual consent prior to reaching a determination.

(4) Notification to protestor of Agency Head decision. Upon the making of a decision concerning the merits of the protest the Agency Head shall promptly notify the protestor in writing of that determination. The notification shall state the reasons upon which the determination is based.

(5) Finality of Agency Head decision. The Agency Head's decision concerning the merits of a protest pursuant to this section shall be final.

(6) Status of award. In any case in which a court proceeding is commenced, no solicitation or concession award shall be delayed except as determined by the Agency Head.

(7) Documentation. Documents reflecting the agency decision of a protest and evidence of having supplied written notification, as required by this section, shall be maintained in the concession file folder. Copies of these documents shall be sent to the Mayor's Office of Contracts and to the Comptroller.

§ 1-08 Publication Requirements for the Award of a Concession.

(a) Notice of the award of a concession shall be published in The City Record within 15 calendar days after registration of the concession.

(b) Such notice shall include:

(1) Agency name;

(2) Location;

(3) Summary of the terms and conditions of the proposed concession agreement;

(4) Name and address of concessionaire; and

(5) Method by which concession was solicited.

§ 1-09 Annual Report.

Each agency shall submit an annual report to the Committee no later than each October 1st summarizing the concessions awarded pursuant to this Chapter during the prior fiscal year. The summary shall include the date each concession was filed with the Comptroller, a brief description of each concession awarded, the method by which each concession was awarded and the gross revenues received by the City for each concession.

§ 1-10 Opportunity for Public Comment.

(a) The Committee will hold a public hearing annually to solicit comment about this chapter from the vendor community, civic groups and the public at large. Notice of such public hearing shall appear in at least ten (10) successive issues of The City Record and in appropriate newspapers and trade publications. Consideration shall also be given to posting notices in public places, to free radio or television coverage and to such other means as may be appropriate.

(b) The Committee shall consider the issues raised at the public hearing in accordance with the procedures set forth in the Charter under the City Administrative Procedure Act.

§ 1-11 Competitive Sealed Bids.

(a) General. (1) Concessions shall be awarded in accordance with competitive sealed bidding procedures whenever practicable and when advantageous to the City. Concessions may be awarded through a competitive sealed proposal process if the agency makes a written determination that the use of competitive sealed bidding is not practicable or not advantageous to the City for one of the reasons set forth in § 1-12(a). Such determination must be approved in writing by the agency head and must be included in the concession file folder. A copy thereof shall be forwarded to the Committee.

(2) Prior to soliciting bids the agency shall make a written determination as to whether a concession is a major concession pursuant to rules adopted by the City Planning Commission. Such determination shall be approved in writing by the agency head and shall be included in the concession file folder. If a concession is determined to be a major concession it shall be subject to review and approval pursuant to § 197(c) and (d) of the New York City Charter following the agency selection of the successful bidder. If a concession is not determined to be a major concession an agency may proceed with the sealed bid process but shall provide written notification if its determination to each affected community board and Borough President at least thirty days prior to issuance of a solicitation. Upon the written request of the Chairperson of the community board, the community board shall have an additional ten days for its review. The written notification shall include a summary of the terms and conditions of the proposed solicitation.

(3) At least thirty days prior to soliciting bids for a significant concession the agency shall consult with each affected community board and Borough President on developing the scope of the Invitation for Bid.

(b) Preparation of invitation to bid. (1) At least three months prior to the expiration date of a concession, the agency shall initiate action for the selection of a concessionaire. The agency action(s) taken shall include the preparation of an Invitation for Bid containing a detailed description of the concession under consideration for renewal or initial award. The Invitation should describe the requirements of the agency clearly, accurately, and completely. It should include all documents (whether attached or incorporated by reference) furnished prospective bidders for the purpose of bidding. The following information, together with any other appropriate information, should be included in the Invitation for Bid, as applicable:

(i) Location, including a brief description of the surrounding area. If located in a terminal, a map of the entire floor;

(ii) Size, including a blueprint of the premises;

(iii) Photograph of the exterior;

(iv) Prior usage and/or other possible usage of the premises;

(v) Description of fixtures, equipment, etc. on the premises;

(vi) Description of any legal restrictions on the use of the location;

(vii) Term of the concession;

(viii) Invitation to inspect the premises;

(ix) Instructions for submission of Vendex questionnaires;

(x) Instructions for submission of bids, including a requirement that the bidder include the solicitation number, the name and address of the bidder and the time specified for receipt of bids on the outside wrapper; and

(xi) The following statement:

The New York City Comptroller is charged with the audit of concession agreements in New York City. Any person or entity who believes that there has been unfairness, favoritism or impropriety in the bid process should inform the Comptroller, Office of Contract Administration, 1 Centre Street, Room 835, New York, New York 10007; telephone number (212) 669-3000.

(2) Publicizing the invitation for bids.

(i) Bids for concessions shall be solicited by public advertisement in at least 10 successive issues of The City Record, by public advertisement in appropriate newspapers and trade publications, and by contacting each affected Borough President and each affected Community Board. Consideration shall also be given to soliciting bids by posting notices in public places, contacting other City agencies that have concessions, free radio or television coverage and such other means as may be appropriate. The steps taken to solicit bids, including the method of selecting the appropriate newspapers and trade publications, shall be documented by the concession manager and included in the concession file folder. Notwithstanding the foregoing, if the gross revenue of a concession is anticipated to be less than \$75,000 per year, advertisement in newspapers and trade publications shall not be required. Agencies shall provide for special outreach to entities owned by minorities and women as such entities are defined in Charter § 340(6)(f). Current lists of bidders shall be maintained in accordance with § 1-11(c) of this Chapter.

(ii) The advertisement shall include only:

(A) The place the Invitation for Bids may be obtained;

(B) The place where and the day and hour when the bids will be publicly opened; and

(C) A brief description of the concession under consideration for renewal or initial award.

(iii) A bidding time of at least 10 business days between the advertisement's last appearance in The City Record and the opening of bids shall be provided, unless the concession manager makes a written determination that a shorter period is reasonable. A copy of such determination must be included in the concession file folder.

(c) Soliciting mailing lists. (1) Establishment of lists.

(i) Solicitation mailing lists shall be established by concession managers. Their use can assure the agency that a greater number of potential bidders will be aware of the solicitation. A solicitation mailing list may include any entity in a designated field.

(ii) Lists may be established through any appropriate method, including the following:

(A) Inclusion of names of entities that have submitted unsolicited letters and/or made unsolicited telephone calls;

(B) inclusion of names of entities that responded to similar solicitations in the past; and

(C) inclusion of names of other entities that an agency considers capable of filling the requirements of a solicitation. Agencies may refer to appropriate printed directories when compiling the names of entities.

(iii) For each type of concession for which an agency has established a solicitation mailing list, the agency shall publish in The City Record and in appropriate newspapers and trade publications not less than twice annually for five consecutive editions, a notice soliciting the names of entities interested in being included on the solicitation mailing list. A copy of such notice shall promptly be furnished to each affected Borough President and each affected Community Board.

(iv) Prospective bidders shall be notified that they have been included on solicitation mailing lists.

(2) Maintenance of lists.

(i) Agencies may add names to a solicitation mailing list at any time.

(ii) Agencies may remove a name from a list if an entity fails to respond to three solicitation notices. If an agency removes a name from the list the agency must notify the entity in writing of the reason(s) for its removal.

(iii) An agency must remove an entity from the list:

(A) Upon the entity's written request, or

(B) If an entity is currently debarred or suspended by the City in accordance with the provisions of § 335 of the Charter.

(3) Reinstatement on solicitation mailing list. An entity that has been removed from a solicitation mailing list shall be reinstated upon written request or by response to a solicitation unless the entity is currently debarred or suspended by the City in accordance with the provisions of § 335 of the Charter.

(4) Utilization. When a concession is to be granted in a category for which a solicitation mailing list has been developed, all entities on the list shall be mailed a solicitation letter. This letter must include the same information contained in the advertisement announcing the solicitation and should be distributed five days prior to the advertisement's first appearance in The City Record. Once a solicitation letter has been mailed, it is presumed to have been received by all entities. Agencies have no obligation beyond assuring that the solicitation letter has been mailed.

(d) Addenda to the invitation for bid. (1) Agencies must maintain a list of all entities that were issued a solicitation. When an agency changes an Invitation for Bid before the time set for bid opening, a written amendment to the solicitation shall be issued. Addenda must be distributed to all potential bidders who were issued the initial Invitation for Bid and to potential bidders who attended a mandatory site visit, if any.

(2) Addenda must be distributed in a timely manner so that potential bidders will have sufficient time to submit a complete and responsive bid. When issuing addenda to an Invitation for Bid at a time close to the bid opening date, the agency should consider extending the bid opening date.

(3) If a change to an Invitation for Bid is so extensive that it warrants complete revision of a solicitation, the concession manager shall cancel the Invitation for Bid and issue a new one. In making the determination whether to cancel an Invitation for Bid based on a change, the concession manager shall consider whether the change is such that new bidders, as a result of those revisions, might now be interested in satisfying the requirements of the changed Invitation for Bid.

(4) When time is of the essence, agencies may disseminate important information to potential bidders by telephone, telegram or facsimile. A formal addendum, however, must be sent following all such communications.

(5) Once an addendum has been mailed, it is presumed to have been received by potential bidders. Agencies have no obligation beyond assuring that the correspondence has been mailed. Agencies may wish to distribute addenda to potential bidders using either "return receipt requested" or express mail courier services.

(6) The Invitation for Bid must state that bidders should contact the agency prior to submission of bids to verify that all addenda issued have been received. In addition, agencies must require that bidders acknowledge the receipt of all the addenda as part of their bids. Failure to acknowledge the receipt of all addenda in a bid for a significant concession may be waived if the concession manager, upon written approval of the Agency Head, determines that it is in the best interests of the City to do so. Failure to acknowledge the receipt of all addenda in a bid for a concession, other than a significant concession, may be waived if the concession manager makes a written determination that it is in the best interests of the City to do so. Such determination must be included in the concession file folder.

(e) Bid deposits. No bid shall be valid unless accompanied by a reasonable deposit as specified in the Invitation for Bid. Every Invitation for Bid shall contain a provision that in the event of the failure of a successful bidder to execute a concession agreement in accordance with the terms of its bid, the deposit shall be retained by the City unless the bid has been permitted to be withdrawn.

(f) Submission of bids. Bidders must submit sealed bids to be opened at the time and place stated in the Invitation for the public opening of bids. Each bid shall show the time specified for receipt, the solicitation number and the name and address of the bidder on the outside wrapper.

(g) Receipt and safeguarding of bids. All bids received before the time set for the opening of bids shall be placed unopened in a safe or a secured cabinet in the custody of the concession manager. Bids shall be time and date stamped upon receipt.

(h) Bid opening. The official responsible for conducting the bid opening shall decide when the time set for opening bids has arrived and shall inform those present of that decision. The official shall then:

- (1) personally and publicly open all bids received before that time;
- (2) if practical, read the bids aloud to the persons present;
- (3) have the bids recorded and

(4) have all persons present sign an attendance form with the name of the entity they represent and official title.

The record of bids and the attendance form shall be available for public inspection and shall be included in the concession file folder.

(i) Late bids. (1) It is the responsibility of a bidder to submit their bid prior to the time set for bid opening to the designated agency location. Bids received after that exact time are defined as "late". Late bids must be acknowledged, and time stamped upon receipt and, except under the specific circumstances described below, may not be considered.

(2) A late bid, received before the grant of a concession,

(i) may be considered when the late bid is received within 48 hours after the opening of bids and is the only bid received. (See § 1-11(l))

(ii) must be considered when a modification of a successful bid makes its terms more favorable to the City.

If, based on the above, a late bid or modification is considered, the concession manager must document the circumstances in writing and maintain such documentation as part of the concession file folder. If a late bid or modification is not considered, such bid or modification shall be promptly returned to the bidder unopened and the bidder shall be notified of the reason for such action.

(j) Withdrawal of bids. Bids may be withdrawn by written notice received at the designated agency location before the time set for bid opening. A bidder may not withdraw its bid before the expiration of forty-five (45) calendar days after the date of the opening of bids or such longer period as determined by the concession manager and set forth in the solicitation; thereafter, a bidder may withdraw its bid only in writing and in advance of an actual grant of a concession.

The concession manager shall document each request for withdrawal and prepare a written determination, with supporting facts, as to whether or not the bid was permitted to be withdrawn. Such determinations shall be included in the concession file folder with a copy thereof forwarded to the bidder.

(k) Mistake in bid. Allegations of mistakes in bids shall be processed by the concession manager in accordance with written agency procedures to be approved by the Agency Head. A written determination shall be made and shall be included in the concession file folder.

(l) Sole bids. When a single bid has been received in response to an Invitation for Bid, an award may be recommended only after it has been documented by the concession manager that a sufficient number of other entities had a reasonable opportunity to bid; why, as a result of inquiries made by the agency, representative firms chose not to submit bids; that the bid submitted meets minimum requirements for award; and that a resolicitation would not be in the City's best interest.

If the above specified circumstances cannot be documented, the single bid must be rejected and the procurement may either be pursued, subject to the approval of the concession manager, by the solicitation of new bids or the procurement cancelled.

Notwithstanding the foregoing, when a single bid has been received in response to an Invitation for Bid for a concession, other than a significant concession, the agency shall not be required to make inquiries as to why representative firms chose not to submit bids.

(m) Bidder responsibility. (1) Policy. Concessions shall be awarded to responsible prospective concessionaires only.

(2) General standards.

(i) A responsible bidder is one which has the capability in all respects to perform fully the concession requirements. Factors affecting a bidder's responsibility may include:- Financial resources;- Technical qualifications;- Experience;- Organization, material, equipment, facilities and personnel resources and expertise (or the ability to obtain them) necessary to carry out the work and to comply with required delivery or performance schedules, taking into consideration other business commitments;- A satisfactory record of performance;- A satisfactory record of business integrity;- Where the concession includes provisions for payment to the City based on revenues, the existence of accounting and auditing procedures adequate to control property, funds or other assets, accurately delineate costs, and attribute them to their causes;- Compliance with requirements for the utilization of small minority-owned and women-owned businesses as subcontractors, if any.

(ii) Failure of an entity to provide relevant information specifically requested by the concession manager may be grounds for a determination of non-responsibility.

(3) Special standards.

(i) When it is necessary for a particular concession or class of concessions, the concession manager shall develop, with the assistance of appropriate specialists, special standards of responsibility. Special standards may be particularly desirable when experience has demonstrated that certain minimum experience or specialized facilities are needed for adequate concession performance.

(ii) The special standards shall be set forth in the solicitation (and so identified) and shall apply to all bidders.

(iii) Special standards must be based on demonstrated need and must not be used to artificially limit competition.

(4) Ability to meet standards.

(i) The prospective concessionaire may demonstrate the availability of necessary financing, equipment, facilities, expertise, and personnel by submitting upon request:- Evidence that such bidder possesses such necessary items, or can obtain them;- A documented commitment from, or explicit arrangement with, a satisfactory source to provide the necessary items.

(ii) A prospective concessionaire that has performed unsatisfactorily shall be presumed to be non-responsible, unless the concession manager determines that the circumstances were beyond the bidder's control or that the bidder has taken appropriate corrective action. Past failure to apply sufficient tenacity and perseverance to perform acceptably is strong evidence of non-responsibility.

(5) Making the responsibility determination.

(i) Vendex questionnaire. Prospective concessionaires shall be required to complete questionnaires seeking background information about the bidder and its principals, owners, officers, affiliates and subcontractors, so as to assist concession managers in making the determination of responsibility and to permit compliance with local law concerning creation and maintenance of a computerized database concerning concessionaire background. Such questionnaire, known as "Vendex questionnaires," shall be completed in the case of competitive sealed bid awards where the concession has a value that when aggregated with the value of all other contracts held by the same concessionaire is valued at one hundred thousand dollars or more.

The questionnaire responses shall be entered into the citywide computerized Vendex database which is jointly maintained by the Mayor and the Comptroller. Questionnaires need be completed only once every three years, so long as a prospective concessionaire prior to award certifies that its business address, business telephone number, Taxpayer Identification Number and all other information specifically required by local law to be maintained on a current basis are current, accurate and complete. If there have been changes, the concessionaire shall supply the changed information and shall certify that the updated information is current, accurate and complete. Names on the questionnaires shall be reviewed by the Department of Investigation to ascertain whether the business or its affiliated individuals are or have been the subject of an investigation by the Department. If the Department of Investigation ascertains that there has been such an investigation, it shall provide a copy of any final report or statement of findings to the concession manager for use in making the determination of responsibility.

(ii) The concession manager should use the following sources of information to support determinations of responsibility or non-responsibility:- Vendex listings of debarred, suspended and ineligible contractors and concessionaires;- Vendex and other records or evaluation of performance, if available, as well as verifiable knowledge of agency personnel;- Records or Certificates of Compliance with equal employment opportunity laws and executive orders enforced by the Office of Labor Services and the Office of Economic and Financial Opportunity, if any;- Information supplied by the prospective concessionaire, including bid information, Vendex questionnaire replies, financial data, information on production equipment and personnel information; and other sources such as publications, suppliers, subcontractors and customers of the prospective concessionaire, financial institutions, other government agencies, and business and trade associations.

(iii) Nothing in this section shall preclude a concession manager, prior to award, from notifying the bidder of unfavorable responsibility information and providing the bidder an opportunity to submit additional information or explain its actions before adverse action is taken.

(6) Written determination of non-responsibility required.

(i) If a bidder who otherwise would have been awarded a concession is found non-responsible, a written determination of non-responsibility setting forth in detail and with specificity the reasons for the finding of non-responsibility shall be prepared by the concession manager.

(ii) A copy of the determination of non-responsibility shall be immediately sent to the non-responsible bidder. Notice to the non-responsible bidder must be mailed no later than two business days after the determination of non-responsibility is made and must inform the bidder of the right to appeal the determination to the Agency Head or designee within five days of receipt. The notification shall also contain the following statement:

The bidder shall also send a copy of its appeal to the New York City Comptroller, for informational purposes, at Office of the New York City Comptroller, Office of Contract Administration, 1 Centre Street, Room 835, New York, New York 10007, (212) 669-3000.

A copy of the determination of non-responsibility shall be sent to the Committee.

(iii) The written determination of non-responsibility shall be made part of the concession file folder, delivered to the Mayor's Office of Contracts and included in the Vendex database.

(7) Appeal of determination of non-responsibility. Appeals of the determination of non-responsibility shall be made pursuant to the following procedure:

(i) Time for appeal. Any bidder who is determined to be non-responsible in connection with the award of a particular concession shall be allowed five days from receipt of the agency's notification to file a written appeal of that determination with the Agency Head. Receipt of notice by the bidder shall be deemed to be no later than five days from the date of mailing or upon delivery, if delivered. Filing of the appeal shall be accomplished by actual delivery of the appeal document to the office of the Agency Head.

(ii) Form and content of appeal by bidder. The appeal by the bidder shall be in writing and shall briefly state all the facts or other basis upon which the bidder contests the agency finding of non-responsibility. Supporting documentation shall be included.

(iii) Agency Head determination. The Agency Head shall consider the bidder's appeal, and shall make a prompt written decision with respect to the merits of the bidder's appeal. The Agency Head may, in his or her sole discretion, meet with the bidder to discuss the bidder's appeal.

(iv) Notification to bidder of Agency Head decision. A copy of the decision of the Agency Head shall be sent to the bidder.

(v) Finality. The Agency Head's decision of a bidder's appeal from a determination of non-responsibility shall be final.

(vi) Delegation. The Agency Head may designate a senior agency official, other than the concession manager or his or her subordinates, to consider this appeal.

(8) Stay of award of concession pending Agency Head decision. Award of the concession shall be stayed pending the rendering of a decision by the Agency Head unless the Agency Head makes a written determination that execution of the concession without delay is necessary to protect substantial City interests.

(9) Documentation. Documents reflecting the concession manager's determination of non-responsibility and any appeal and decision with respect to appeal, and evidence of having supplied written notifications as required by this section, shall be maintained in the concession file folder. Copies of these documents shall be sent to the Mayor's Office of Contracts for inclusion in the Vendex data base. A copy of the determinations of the concession manager and the Agency Head shall be forwarded to the Committee.

(n) Responsiveness of bids. (1) Policy. The award of concessions shall be made only to bids received that are responsive to the solicitation, as set forth below.

(i) A bidder must submit a responsive bid in order to be considered for award.

(ii) No award shall be made unless the concession manager makes a written determination of responsiveness.

(2) Standards.

(i) A responsive bid is one which conforms to the requirements of the solicitation documents.

(ii) Factors affecting the responsiveness of bids include:- Compliance with all material requirements of the specifications;- Compliance with all material terms and conditions of the solicitation;- Submission of bids in the form specified in the solicitation;- Submission of bids by the time and date and at the place specified in the solicitation;- Submission of bid deposits, if required by the solicitation;- Submission of samples, literature or other information, if required by the solicitation;- Submission of all required disclosure statements; and- Attendance at a presolicitation conference or site inspection, if required.

(3) Written determination of responsiveness required. If the bid offering the highest revenue to the City is selected, the concession manager must determine in writing that such bid is responsive.

(4) Written determination of non-responsiveness required. If the bid offering the highest revenue to the City is found non-responsive, a written determination setting forth in detail and with specificity the reasons for such finding, must be made by the concession manager. A copy of such determination shall be filed with the Committee.

(5) Notice. A copy of the determination of non-responsiveness shall be immediately sent to the non-responsive bidder. Notice to the non-responsive bidder must be mailed no later than two business days after the determination of non-responsiveness is made and must inform the bidder of the right to appeal the determination to the Agency Head or designee within five days of receipt. The notice shall also contain the following statement:

The bidder shall also send a copy of its appeal to the New York City Comptroller, for informational purposes, at Office of the New York City Comptroller, Office of Contract Administration, 1 Centre Street, Room 835, New York, New York 10007, (212) 669-3000.

(6) Record. The written determination of responsiveness or non-responsiveness shall be retained in the concession file folder.

(7) Appeal of determination of non-responsiveness. Appeals of the determination of non-responsiveness shall be made pursuant to the following procedure:

(i) Time for appeal. Any bidder whose bid is determined to be non-responsive shall be allowed five days from receipt of the agency's notification to file a written appeal of that determination with the Agency Head. Receipt of notice by the bidder shall be deemed to be no later than five days from the date of mailing or upon delivery, if delivered. Filing of the appeal shall be accomplished by actual delivery of the appeal document to the office of the Agency Head.

(ii) Form and content of appeal by bidder. The appeal by the bidder shall be in writing and shall briefly state all the facts or other basis upon which the bidder contests the agency finding of non-responsiveness. Supporting documentation shall be included.

(iii) Agency Head determination. The Agency Head shall consider the bidder's appeal, and shall make a prompt written decision with respect to the merits of the bidder's appeal. The Agency Head may, in his or her sole discretion, meet with the bidder to discuss the merits of the appeal.

(iv) Notification to bidder of Agency Head decision. A copy of the decision of the Agency Head shall be sent to the bidder.

(v) Finality of Agency Head decision. The Agency Head's decision of a bidder's appeal from a determination of non-responsiveness shall be final.

(vi) Stay of award of concession pending Agency Head Decision. Award of the concession shall be stayed pending the rendering of a decision by the Agency Head unless the Agency Head makes a written determination that execution of the concession without delay is necessary to protect substantial City interests.

(vii) Delegation. The Agency Head may designate a senior agency official, other than the concession manager or his or her subordinates, to consider this appeal.

(8) Documentation. Documents reflecting the concession manager's determination of non-responsiveness and any appeal and decision with respect to appeal, and evidence of having supplied written notifications as required by this section, shall be maintained in the concession file folder. A copy of the determinations of the concession manager and the Agency Head shall be forwarded to the Committee.

(o) Award and processing. (1) The apparent high bidder must submit Vendex Questionnaires to the agency prior to award when and as directed by the Agency.

(2) The agency granting the concession may reject all bids if it shall deem it for the interest of the City so to do; if not, it shall, without other consent or approval, grant the concession to the highest responsible bidder whose bid meets the requirements and criteria set forth in the Invitation for Bids. A determination to reject all bids for a concession, other than a significant concession, shall be made by the concession manager in writing, and shall be included in the concession file folder. A determination to reject all bids for a significant concession shall be made by the concession manager in writing, approved by the agency head, and shall be included in the concession file folder. All bidders shall be notified of the reason for such action.

(3) (i) Tie bids are to be decided by the agency granting the concession and the award made. When two or more bids are equal in all respects, concessions shall be awarded in the following order of priority:

(A) Award to entities owned by minorities and women as such entities are defined in Charter § 340(6)(f).

(B) Award to a New York City bidder.

(ii) If two or more bidders still remain equally eligible after application of subparagraph (3)(i) above, award shall be made by a drawing by lot limited to those bidders. If time permits, the bidders involved shall be given an opportunity to attend the drawing. The drawing shall be witnessed by at least three appropriate agency staff personnel, and the concession file folder shall contain the names and addresses of the witnesses and the person supervising the drawing.

(iii) When an award is to be made by using the priorities under this subparagraph, the concession agreement shall include a provision whereby the concessionaire agrees to perform, or cause to be performed, the concession in accordance with the circumstances justifying the priority used to break the tie or select bids for a drawing by lot.

(iv) The concession manager shall include a statement in the concession file folder describing how the tie was broken.

(4) If the highest bidder is determined by the agency not to be a responsible bidder pursuant to § 1-11(m) of this Chapter or the highest bid is determined by the agency to not meet the requirements and criteria set forth in the Invitation for Bids pursuant to § 1-11(n) of this Chapter, the agency making such determination may award the concession to other than the highest bidder.

(5) If less than three bids have been received the concession manager shall examine the situation to ascertain the reason for the small number of responses and shall initiate corrective action, if appropriate, to increase competition in future solicitations. A written statement of any corrective action taken shall be included in the concession file folder. Concessions may be granted notwithstanding the limited number of bids.

(6) It is not permissible to engage in any type of negotiation with any bidder. Notwithstanding the foregoing, prior to award it is permissible for the concession manager to request the successful bidder to increase its bid. The concession manager must document any discussions of this nature and maintain such documentation as part of the concession file folder. If a bid increase is obtained, written verification thereof shall be furnished by the successful bidder to the concession manager and shall be included in the concession file folder.

(p) Bid retention. The agency must retain all submitted bids and modifications in the permanent concession file folder. Although the Agency may consider only the latest version of a bid, the retention of these documents will serve as a reference for responses to future inquiries.

§ 1-12 Competitive Sealed Proposals.

(a) General. (1) Proposals may be solicited through Requests for Proposals ("RFP's") only if the agency makes a written determination that competitive sealed bidding is not practicable or not advantageous to the City for one of the following reasons:

(i) Specifications cannot be made sufficiently definite and certain to permit selection based on revenue to the City alone; or

(ii) Judgment is required in evaluating competing proposals, and it is in the best interest of the City to require a balancing of revenue to the City, quality and other factors. Such determination must be approved in writing by the agency head and must be included in the concession file folder. A copy thereof shall be forwarded to the Committee.

(2) Prior to soliciting proposals the agency shall make a written determination as to whether a concession is a major concession pursuant to rules adopted by the City Planning Commission. Such determination shall be approved in writing by the agency head and shall be included in the concession file folder. If a concession is determined to be a major concession it shall be subject to review and approval pursuant to § § 197(c) and (d) of the New York City Charter following the agency selection of the successful proposer. If a concession is not determined to be a major concession an agency may proceed with the request for proposal process but shall provide written notification of its determination to each affected community board and Borough President at least thirty days prior to issuance of a solicitation. Upon the written request of the Chairperson of the community board

the community board shall have an additional ten days for its review. The written notification shall include a summary of the terms and conditions of the proposed solicitation.

(3) At least 30 days prior to soliciting proposals for a significant concession the agency shall consult with each affected Community Board and Borough President on developing the scope of the RFP.

(b) Preparation of the request for proposals. At least three months prior to the expiration date of a concession the agency shall initiate action for the selection of a concessionaire. The agency action(s) taken shall include the preparation of a Request for Proposals containing a detailed description of the concession under consideration for renewal or initial award. The RFP should describe as explicitly as possible the requirements of the agency. The RFP should include all documents (whether attached or incorporated by reference) furnished prospective proposers for the purpose of submitting a proposal. The following information, together with any other appropriate information, should be included in the Request for Proposals, as applicable:

(1) Location, including a brief description of the surrounding area. If located in a terminal, a map of the entire floor;

(2) Size, including a blueprint of the premises;

(3) Photograph of the exterior;

(4) Prior usage and/or other possible usage of the premises;

(5) Description of fixtures, equipment, etc. on the premises;

(6) Description of any legal restrictions on the use of the location;

(7) Term of the concession;

(8) Amount of proposed capital investment;

(9) Instructions for submission of Vendex Questionnaires;

(10) Invitation to attend preproposal conference or site visit if any;

(11) The evaluation criteria that will be applied to the evaluation of all proposals (See § 1-12(n));

(12) Description of minimum qualification requirements, if any (See § 1-12(o));

(13) Description of the Selection Committee (See § 1-12(q));

(14) Description of the procedures that will be used to evaluate the proposals;

(15) Instructions for submission of proposals, including a requirement that the proposer include the solicitation number, the name and address of the proposer and the time for receipt of proposals on the outside wrapper; and

(16) The following statement:

The New York City Comptroller is charged with the audit of concession agreements in New York City. Any person or entity who believes that there has been unfairness, favoritism or impropriety in the proposal process should inform the Comptroller, Office of Contract Administration, 1 Centre Street, Room 835, New York, New York 10007, telephone number (212) 669-3000.

All proposers must be advised in the RFP that the agency has the option to select the successful proposer without conducting negotiations and that each proposer should submit their best proposal initially since negotiations may not take place.

(c) Publicizing the request for proposals. (1) Proposals for concessions shall be solicited by public advertisement in at least 10 successive issues of The City Record, by public advertisement in appropriate newspapers and trade publications and by contacting each affected Borough President and each affected Community Board. Consideration shall also be given to soliciting proposals by posting notices in public places, contacting other City agencies that have concessions, free radio or television coverage and such other means as may be appropriate. The steps taken to solicit proposals, including the method of selecting the appropriate newspapers and trade publications, shall be documented by the concession manager and included in the concession file folder. Notwithstanding the foregoing, if the gross revenue of a concession is anticipated to be less than \$100,000 per year, advertisement in newspapers and trade publications shall not be required. Agencies shall provide for special outreach to entities owned by minorities and women as such entities are defined in Charter § 340(6)(f).

(2) Advertisements to solicit proposals shall include the following information:

- (i) The place the RFP may be obtained,
- (ii) The anticipated proposer submission deadline, time and location for proposal submission;
- (iii) A brief description of the concession under consideration for renewal or initial award;
- (iv) The time, date and location of any pre-proposal conference or site visit, if any, and if attendance is mandatory; and
- (v) The name, address and phone number of the agency contact person.

(3) A response time of at least 15 business days between the advertisement's last appearance in The City Record and the proposal submission deadline shall be provided, unless the concession manager makes a written determination that a shorter period is reasonable. A copy of such determination must be included in the concession file folder.

(d) Solicitation mailing lists. Concession managers shall establish, maintain, and use lists of potential sources in accordance with § 1-11(c).

(e) Addenda to the RFP. (1) Agencies must maintain a list of all entities that were issued a solicitation. When an agency changes an RFP before the proposal submission deadline, a written amendment to the solicitation shall be issued. Addenda must be distributed to all potential proposers who were issued the initial RFP and to potential proposers who attended a mandatory pre-proposal conference or site visit, if any.

(2) Addenda must be distributed in a timely manner so that potential proposers will have sufficient time to submit a complete and responsive proposal. When issuing addenda to an RFP at a time close to the proposal due date, the agency should consider extending the due date.

(3) If a change to an RFP is so extensive that it warrants complete revision of a solicitation, the concession manager shall cancel the RFP and issue a new one. In making the determination whether to cancel an RFP based on a change, the concession manager shall consider whether the change is such that new proposers, as a result of those revisions, might now be interested in satisfying the requirements of the changed RFP.

(4) When time is of the essence, agencies may disseminate important information to potential proposers by telephone, telegram or facsimile. A formal addendum, however, must be sent following all such communications.

(5) Once an addendum has been mailed, it is presumed to have been received by potential proposers. Agencies have no obligation beyond assuring that the correspondence has been mailed.

Agencies may wish to distribute addenda to potential proposers using either "return receipt requested" or express mail courier services.

(6) The RFP must state that proposers should contact the agency prior to submission of proposals to verify that all addenda issued have been received. In addition, agencies must require that proposers acknowledge the receipt of all the addenda as part of their proposals. Failure to acknowledge the receipt of all addenda in a proposal for a significant concession may be waived if the concession manager, upon written approval of the Agency Head, determines that it is in the best interests of the City to do so. Failure to acknowledge the receipt of all addenda in a proposal for a concession, other than a significant concession, may be waived if the concession manager makes a written determination that it is in the best interests of the City to do so. Such determinations must be included in the concession file folder.

(f) Proposal deposits. No proposal shall be valid unless accompanied by a reasonable deposit as specified in the RFP. Every RFP shall contain a provision that in the event of the failure of a successful proposer to execute a concession agreement in accordance with the terms of its proposal, the deposit shall be retained by the City unless the proposal has been permitted to be withdrawn.

(g) Receipt of proposals. (1) The procedures for receipt and safeguarding of proposals should be similar to the receipt and safeguarding of bids. Proposals shall be time and date stamped upon receipt.

(2) Proposers are responsible for submitting proposals so as to reach the agency office designated in the solicitation on time. Unless the solicitation states a specific time, the time for receipt is 4:30 p.m. local time for the designated agency office on the date that proposals are due. Each proposal shall show the time for receipt, the solicitation number and the name and address of the proposer on the outside wrapper.

(h) Opening of proposals. Proposals may only be opened after the proposal submission deadline. All proposals received by the submission deadline, including letters of declination, are to be opened under the supervision of the responsible official and in the presence of at least one appropriate agency witness. The responsible official must then complete a Proposal Receipt Register. Once opened, proposals should be made available only to those City personnel or consultants acting on behalf of the City who have a direct role in the award of the RFP. The Proposal Receipt Register shall be available for public inspection after the concession has been granted and shall be included in the concession file folder.

(i) Late proposals. (1) It is the responsibility of a proposer to submit their proposal prior to the submission deadline to the designated agency location. Proposals received after that exact time are defined as "late". Late proposals must be acknowledged, and time stamped upon receipt and, except under the specific circumstances described below, may not be evaluated.

(2) A late proposal, received before the Selection Committee has made its final recommendation,

(i) may be evaluated when the late proposal is received within 48 hours after the submission deadline and is the only proposal received (See § 1-12(k)).

If, based on the above, a late proposal or modification is evaluated, the concession manager must document the circumstances in writing and maintain such documentation as part of the concession file folder. If a late proposal or modification is not evaluated, such proposal or modification shall be promptly returned to the proposer unopened and the proposer shall be notified of the reason for such action.

(j) Withdrawal of proposals. Proposals may be withdrawn by written notice received at the designated agency location before the proposal submission deadline. A proposer may not withdraw its proposal before the expiration of forty-five (45) calendar days after the date of the opening of proposals or such longer period as determined by the concession manager and set forth in the solicitation; thereafter, a proposer may withdraw its proposal only in writing and in advance of an actual grant of a concession.

The concession manager shall document each request for withdrawal and prepare a written determination, with supporting facts, as to whether or not the proposal was permitted to be withdrawn. Such determination shall be included in the concession file folder with a copy thereof forwarded to the proposer.

(k) Mistake in proposal. Allegations of mistakes in proposals shall be processed by the concession manager in accordance with written agency procedures to be approved by the Agency Head. A written determination shall be made and shall be included in the concession file folder.

(l) Sole responses to the RFP. When a single proposal has been received in response to an RFP, an award may be recommended only after it has been documented by the concession manager, that a sufficient number of other entities had a reasonable opportunity to respond; why, as a result of inquiries made by the agency, representative firms chose not to submit proposals; that the proposal submitted meets minimum requirements for award; and that a resolicitation would not be in the City's best interest.

If the above specified circumstances cannot be documented, the single proposal must be rejected and the procurement may either be pursued, subject to the approval of the concession manager, by the solicitation of new proposals or the procurement canceled.

Notwithstanding the foregoing, when a single proposal has been received in response to an RFP for a concession, other than a significant concession, the agency shall not be required to make inquiries as to why representative firms chose not to submit proposals.

(m) Proposal retention. The agency must retain all submitted proposals and modifications in the permanent concession file folder. Although the Selection Committee may consider only the latest version of a proposal, the retention of these documents will serve as a reference for responses to future inquiries.

(n) Evaluation criteria. (1) The criteria that will be used in evaluating proposals should be tailored to each RFP and should include only those factors that will be relevant to the selection decision.

(2) The criteria that will be considered in evaluating proposals and their relative importance are within the broad discretion of agency officials. Normally, revenue to the City should be included as an evaluation factor in every selection. Other evaluation criteria that may apply to a particular concession are technical excellence, experience, qualifications and any other relevant factors.

(3) After the evaluation criteria have been determined and their relative importance decided each criteria should be compared to the others and assigned a weight. Before criteria are assigned specific weights, a decision must be made as to the role that revenue to the City will play in the ultimate selection of a proposal. These determinations shall be reduced to writing, dated, and placed in the concession file folder.

(4) The RFP shall clearly state the evaluation criteria that will be considered in making the award. However criteria should be stated in general terms with no indication of their corresponding weights.

(o) Minimum qualification requirements. Minimum qualification requirements are those objective standards that an agency may decide a proposer must meet in order to be considered for award. Minimum qualification requirements may neither be waived nor supplemented after proposals have been opened.

(p) Rating sheet. After the evaluation criteria have been developed and weights have been assigned, rating sheets must be created. Each rating sheet must provide the opportunity for easy-to-read comparisons of all responses to the RFP and should be designed to readily identify the relative capabilities of each proposer in each criteria category. All evaluation criteria and weighted values must be listed. Rating sheets must contain the following language to ensure that Selection Committee members do not have a conflict of interest:

Evaluator Affidavit (Check one and sign)

To the best of my knowledge, information and belief, neither I nor any member of my immediate family is, has ever been, or has current plans to be a sole proprietor, director, officer, stockholder, partner or employee of or has, ever had, or has current plans to have a fiduciary relationship with any of the proposers responding to this RFP, nor have I ever discussed employment upon conclusion of my City service with any such proposers.- I attest that the above statement is true.- I cannot attest to the above statement, for the reasons set forth in the attached statement.

(q) Selection Committee. (1) The Selection Committee is responsible for evaluating proposals based on the established criteria and recommending a proposal based on the best combination of quality, revenue to the City and other enumerated criteria. The Selection Committee should include appropriately experienced personnel to ensure that all components of the RFP will be evaluated. Selection Committees must be comprised of a minimum of three members, at least one of whom must neither supervise, nor directly report to any other member of the Selection Committee in the normal course of agency business. Members of the Selection Committee must be free from bias or a potential or actual conflict of interest and each member will be required to sign an affidavit to this effect when completing the rating sheet. Personnel who were involved in developing the RFP specifications may be part of the Selection Committee.

(2) All proposals received prior to the submission deadline must be evaluated by the Selection Committee. Only in the case when an agency prescribed minimum qualification requirements may the Selection Committee designate the concession manager to initially screen proposals to ensure that each has met all such requirements. The concession manager shall document the process used to screen proposals against minimum qualification requirements in the concession file folder. The documentation shall list all proposals that failed to meet the minimum qualification requirements with reasons to justify this determination.

(3) Prior to undertaking to evaluate the proposals, the Selection Committee should hold an initial meeting to review the pre-established criteria, the assigned weights and the evaluation methods and discuss any procurement issues relative to the RFP.

(4) Members of the Selection Committee shall independently read and evaluate each proposal and record their evaluations in the form of ratings on the individual rating sheet prepared with the RFP. The only criteria that may be used by the Selection Committee members in their evaluation are those specified in the RFP. Each Selection Committee member must sign and date their individual rating sheet.

(5) Upon completion of the independent evaluations the Selection Committee shall meet to review the member's individual ratings and to decide on some form of combined ranking of the proposals. After discussing the proposal evaluations as a group, Selection Committee members may

wish to change a rating to reflect new or previously misunderstood information or a change of opinion. Rating sheets may be amended as a result of such Selection Committee discussions. When such changes are made, however, all original rating sheets must be retained intact and attached to the revised version, along with an explanation for the change.

(6) The concession manager shall compile all of the members' rating sheets to determine the Selection Committee's overall scoring of the proposals based on a method previously approved by the Selection Committee and shall include all original rating sheets and any amendments thereto in the concession file folder. The Selection Committee must now take one of the following actions:

(i) Determine that award should be made on the basis of initial proposals and request the Concession Manager to obtain Vendex Questionnaires from at least the two highest rated proposers where the concession has a value that when aggregated with the value of all other contracts held by the same concessionaire is valued at one hundred thousand dollars or more. After review of the results of the Vendor name check, make a final recommendation for award;

(ii) Determine that it is not in the best interests of the City to award solely on the basis of initial proposals, and that negotiations should be initiated with a selected group of proposers; or

(iii) Determine that it is in the best interest of the City to not make an award and to either cancel or resolicit the RFP. Such determination must be in writing, approved by the Agency Head and included in the concession file folder. All proposers should be notified of the reason for such action.

(r) Forming the competitive range. (1) When the Selection Committee has completed its evaluation of the proposals and has determined that it is not in the best interests of the City to award solely on the basis of initial proposals, the Selection Committee must form a competitive range. This competitive range, or short list, should be comprised only of those proposers who have a reasonable chance of being selected for award and may include as many or as few proposers as the Selection Committee wishes to continue considering. When revenue to the City proposals are involved, a competitive range may be formed only after revenue to the City proposals have been considered. Proposers not in the competitive range should be notified.

(2) The Selection Committee may decide that negotiations should be conducted with all proposers within the competitive range, or with only those proposers considered the most qualified.

(3) Removal from the competitive range should take place only when the Selection Committee has decided that the proposer no longer has a reasonable chance of being selected for award.

(4) When an agency determines that there is a need for minor modifications in its requirements after a competitive range has been established, those modifications must be communicated in writing to all of the proposers in the competitive range. If changes in the requirements are so extensive that they warrant complete revision of a solicitation, the concession manager shall cancel the RFP and issue a new one. In making the determination whether to cancel an RFP based on changes in requirements, the concession manager shall consider whether the changes are such that new proposers, as a result of those revisions, might now be interested in satisfying the requirements of the changed RFP.

(5) Upon the Selection Committee's decision as to who negotiations will be conducted with, the concession manager will designate one or more persons who will be responsible for the conduct of these negotiations.

(s) Conduct of negotiations. Auction techniques (revealing one proposer's revenue to the City to another) and disclosure of any information derived from competing proposals are prohibited.

(t) Best and final offers. Upon the negotiator(s) determination that discussions have concluded, the negotiator(s) shall issue to all proposers still within the competitive range a request for best and final proposals. The request shall include:

(1) Notice that discussions are concluded;

(2) Notice that this is the opportunity to submit a best and final proposal; and

(3) A common cut off date and time that allows a reasonable opportunity for submission of written best and final proposals. The negotiator(s) shall also request those proposers still within the competitive range to submit Vendex Questionnaires to the agency at a designated time where the concession has a value that when aggregated with the value of all other contracts held by the same concessionaire is valued at one hundred thousand dollars or more.

Best and final proposals shall be submitted to the Selection Committee for their consideration as will the results of the Vendor name check.

(u) The final recommendation. (1) The Selection Committee's final recommendation must be consistent with the RFP specifications and the evaluation criteria. If any Selection Committee member feels that there are procedural or substantive issues which prevent support of the recommendation, this person must be given an opportunity to document that disagreement and include it with the evaluation rating sheets.

(2) Once the Selection Committee has made its recommendation, the chairperson must document the recommendation in a report to be submitted to the concession manager. This report must identify the RFP being considered, the number of proposals received, whether the planned evaluation process and schedule for award was followed and the reasons for deviations, if any, and the proposal recommended. It must include all best and final proposals, the basis for the recommendation, all original rating sheets, any other relevant evaluation material used by the Selection Committee, the recommendation of each of the members, their names and titles, and the signature of the chairperson. If any Selection Committee member prepared a document outlining a disagreement with the recommendation, it must be attached to the report. The concession manager shall file the report in the concession file folder.

(v) Public hearings on significant concession awards. Prior to an Agency granting any significant concession to be awarded by competitive sealed proposals, the Franchise and Concession Review Committee and the Agency shall jointly hold a public hearing on the terms and conditions of each proposed significant concession agreement. Any such public hearing shall be held within 30 days of the filing with the Committee by the Agency of a proposed agreement containing the terms and conditions of the proposed concession agreement. No hearing shall be held until after notice thereof and a summary of the terms and conditions of the proposed agreement shall have been published for at least 15 days immediately prior thereto in the City Record and a minimum of 15 days written notice, containing a summary of the terms and conditions of the proposed concession, shall have been given to each affected Community Board and each affected Borough President. All public hearings shall be held in City Hall unless another location is specified and the public is given notice thereof. A record of comments received at the hearing shall be maintained in the concession file folder.

(w) Award and processing. (1) The concession manager must ensure that the recommended proposal does not vary substantially from the RFP and that the resulting agreement will be consistent with the winning proposal. Upon approval by Agency Head, the concession manager may proceed to process the agreement.

(2) An agency must obtain the prior approval of the Franchise and Concession Review Committee if the Agency Head wishes to deviate from the final recommendation of the Selection Committee. Requests for such approval shall be forwarded to the Committee and shall include a detailed statement, signed by the Agency Head, setting forth the reasons for the request together with all other relevant information. If the Committee approves the request the Agency Head may award the concession as authorized by the Committee.

§ 1-13 Committee Approval of Different Procedures.

(a) No agency shall enter into a concession agreement without soliciting bids or proposals as set forth in § 1-11 and § 1-12 of this Chapter unless the Franchise and Concession Review Committee reviews and approves a different procedure. Agencies that wish to enter into Agreements such as Not-for-Profit Concession Agreements and Sole Source Concession Agreements must therefore obtain prior Committee approval of different procurement procedures.

(b) Requests for approval of a different procedure shall be forwarded to the Committee and shall include:

- (1) a statement of the procedure for which approval is requested;
- (2) a summary of the terms and conditions of each concession involved;
- (3) an explanation of the reasons for not soliciting bids or proposals as set forth in § 1-11 and § 1-12 of this Chapter;

(4) a statement that each affected community board has received written notice at least 40 days in advance of the Committee meeting that the Agency is seeking Committee approval of a different procedure, together with a listing of each community board and the date of such notification. Such statement may be waived with the unanimous approval of the Committee upon a written statement from the Agency of the exigent circumstances; and

- (5) all other relevant information.

(c) If the Committee approves a different procedure, the agency shall submit the concession agreement it proposes to enter into as a result of that procedure for prior approval by the Committee together with a completed Vendex questionnaire when the concession has a value that when aggregated with the value of all other contracts held by the same concessionaire is valued at one hundred thousand dollars or more. Significant concession agreements shall be subject to the public hearing requirements set forth in § 1-12(u) of this Chapter. No concession agreement to be awarded by a different procedure shall go into effect until the Committee has approved it.

(d) Notwithstanding the foregoing, the Committee need not review awards of concessions that are not subject to renewal and have a term of less than 30 days.

§ 1-14 Registration With the Comptroller.

(a) Definition. Registration of concession agreements is the process through which the Comptroller:

- (1) Maintains a registry of City concession agreements;
- (2) Presents objections if, in the Comptroller's judgment, there is sufficient reason to believe that there is possible corruption in the letting of the concession or that the proposed concessionaire is involved in corrupt activity; and
- (3) Tracks City revenues and expenditures associated with the concession agreements.

(b) No concession agreement executed pursuant to the New York City Charter or other law shall be effective until:

(1) A copy of the executed concession agreement and other documentation as described in (c) below have been filed with the Comptroller; and

(2) The Comptroller has registered the concession agreement or thirty days have elapsed from the date of filing, during which the Comptroller has neither raised an objection pursuant to subdivision (f) below nor refused to register the concession agreement pursuant to subdivision (e) below.

(c) The following documentation shall be submitted for every concession agreement:

(1) The original executed concession agreement;

(2) An advice of award for revenue agreements containing:

(i) The name, address, telephone number and federal taxpayer's identification number of the concessionaire and the location of the concession site;

(ii) The term, annual minimum fees and percentages of the gross receipts stated in the concession agreement;

(iii) The name and/or code of the agency that awarded the concession and the concession agreement number;

(iv) The manner in which the concessionaire was selected, including whether the concessionaire was selected through public letting and if so, whether the concessionaire was the highest responsible bidder; whether the concessionaire was selected through a request for proposal procedure, and if so, whether the concessionaire was the highest responsible bidder; whether the concessionaire was selected through a request for proposal procedure, and if so, whether the concessionaire response to the request offered the highest price option; or whether the concessionaire was selected without competition or as a sole source;

(v) The number of responses to an invitation to bid or request for proposals (excluding a response to an invitation to bid or request for proposals (excluding a response of "no bid" or "no proposal"));

(vi) An indication whether the concessionaire is a not-for-profit organization;

(vii) An indication whether the concessionaire has been certified by the Office of Economic and Financial Opportunity ("OEFO") as a woman-owned or minority-owned business enterprise. This subparagraph (vii) shall not take effect until a certification procedure, if any, has been implemented by OEFO;

(viii) Any other information for accounting purposes requested by the Comptroller; and

(ix) Any other information for other than accounting purposes requested by the Comptroller and approved by the Committee, or required by law.

(3) Copies of any related written statements, determinations and reports required by the rules of the Committee specific to the concession agreement being registered;

(4) Copies of any approvals of major concessions by the City Council and City Planning Commission;

(5) Copies of any approvals of concessions by the Committee including the date of approval and agenda number;

(6) Copies of all required Vendex Questionnaires (See § 1-11(m)(5)). This requirement will remain in effect until such time as such information is available on line by computer to the Comptroller prior to registration;

(7) Certificates by Corporation Counsel pursuant to § 327(b) and § 394(b) of the Chapter;

(8) Documentation of notification to each affected Community Board(s) and Borough President(s), if applicable (see § § 1-11(a)(2) and 1-12(a)(2)); and

(9) For bids, the number of responses and the prices received for each bid that was opened; for convenience, the agency may supply a copy of its bid tabulation sheets. For proposals, the number of proposals received, overall technical rating of each proposal, and the proposed price for each proposal that was opened.

(d) The date of filing pursuant to § 328 of the Charter shall be the date by which all materials required in subdivision (c) above have been delivered to the Comptroller. Following such date of filing, any question by the Comptroller regarding any such materials shall be responded to by the agency forthwith.

(e) Refusal of the Comptroller to register the concession agreement.

(1) The Comptroller may refuse to register a concession agreement if:

(i) The Comptroller has not received a copy of the concession agreement and related materials required by these rules; or

(ii) The Concessionaire has been suspended or debarred from doing business with the City.

(2) Procedure. Upon making a determination that there is a basis for refusing to register the concession agreement, the Comptroller shall promptly notify the agency Concession Manager in writing of the determination and return the concession agreement to the Concession Manager.

(f) Comptroller objections to concession agreement registration.

(1) The Comptroller may object in writing to the registration of a concession agreement if:

(i) In the Comptroller's judgment, there is sufficient reason to believe that there is possible corruption in the letting of the concession;

(ii) In the Comptroller's judgment, there is sufficient reason to believe that the proposed Concessionaire is involved in corrupt activity.

(2) Procedure. The Comptroller's objection shall be delivered to the Mayor and shall set forth in detail the basis for the Comptroller's determination.

(3) Mayor's response. The Mayor shall respond in writing to the Comptroller's objection and shall describe:

(i) The corrective action(s), (if any) that have been taken or will be taken in response to the Comptroller's objections; or

(ii) The reasons why the Mayor disagrees with the Comptroller's objections.

(4) After the Mayor has responded to the Comptroller's objections, the Mayor may require registration of the concession agreement despite the Comptroller's objections. Such response by the Mayor shall not serve as the basis for future objection by the Comptroller, who shall register the concession agreement within 10 days of the receipt of the Mayor's response.

(g) Registration is not approval. Registration of a concession agreement by the Comptroller shall not constitute an approval of the concession as awarded, nor shall it preclude future audits of or objections to the concession agreement.