

CITY OF NEW YORK

FRANCHISE AND CONCESSION REVIEW COMMITTEE

(Cal. No. 1)

BE IT RESOLVED that the Franchise and Concession Review Committee (FCRC) hereby authorizes the New York City Department of Transportation (DOT) to utilize a different procedure, pursuant to Section 1-16 of the Concession Rules of the City of New York, to negotiate a Sole Source License Agreement (Agreement) with the City University of New York at Baruch College (CUNY BARUCH), to provide for the operation, management and maintenance of a pedestrian plaza located on East 25TH Street between Lexington Avenue and 2nd Avenue, Borough of Manhattan, including through DOT-approved events, sponsorships, and subconcessions, including but not limited to providing for the sale of any of the following: prepared food, flowers, locally grown produce or locally manufactured products, merchandise (such as souvenirs or T-shirts) that helps brand or promote the neighborhood or CUNY BARUCH, and other similar merchandise. Subconcessions would be awarded based on solicitations issued by CUNY BARUCH in the basic form of Request for Proposals or Request for Bids, subject to DOT's prior written approval of both solicitation and award.

BE IT FURTHER RESOLVED that DOT shall submit the Agreement it proposes to enter into with CUNY BARUCH to the FCRC for approval.

THIS IS A TRUE COPY OF THE RESOLUTION ADOPTED BY THE
FRANCHISE AND CONCESSION REVIEW COMMITTEE ON

September 11, 2013

Date: _____

Signed: _____

Title: Director of the Mayor's Office of Contract Services

CONCESSION AGREEMENT PRE-SOLICITATION REVIEW MEMORANDUM COVER SHEET
 (Complete and attach a CPSR Memorandum only if the selection procedure will be other than Competitive Sealed Bids)

AGENCY: New York City Department of Transportation (DOT)	CONCESSION TITLE/DESCRIPTION: Operation, management and maintenance of a pedestrian plaza located on East 25 th Street between Lexington Avenue and 2 nd Avenue, Borough of Manhattan
# VOTES required for proposed action = 4 <input type="checkbox"/> N/A	CONCESSION IDENTIFICATION # _____

SELECTION PROCEDURE
 (* City Chief Procurement Officer approval of CPSR required)

Competitive Sealed Bids (CSB)
 Competitive Sealed Proposals (CSP)*
 Different Procedure * (Sole Source Agreement Other _____)
 Negotiated Concession*

Recommended Concessionaire: City University of New York at Baruch College EIN SSN # 13-3893536

Attach Memo(s) *

<p align="center">CONCESSION AGREEMENT TERM</p> <p>Initial Term: <u>To be negotiated</u></p> <p>Renewal Option(s) Term: <u>To be negotiated</u></p> <p>Total Potential Term: <u>To be negotiated</u></p>	<p align="center">ESTIMATED REVENUE/ANTICIPATED BUSINESS TERMS (Check all that apply)</p> <p align="center"><input type="checkbox"/> Additional description attached</p> <p><input type="checkbox"/> Annual Minimum Fee(s) \$ _____</p> <p><input type="checkbox"/> % Gross Receipts _____%</p> <p><input type="checkbox"/> The Greater of Annual Minimum Fee(s of \$_____ v. _____% of Gross Receipts</p> <p><input checked="" type="checkbox"/> Other formula: <u>Maintenance costs</u></p>
<p>LOCATION OF CONCESSION SITE(S) <input type="checkbox"/> N/A</p> <p>Address: <u>East 25th Street between Lexington Avenue and 2nd Avenue (see attached map)</u></p> <p>Borough: <u>Manhattan C.B. 6 Block # N/A Lot # N/A</u></p>	

CONCESSION TYPE (Check all that apply)

> **Significant Concession:**
 NO
 YES Basis:
 Total potential term =>10 years Projected annual income/value to City >\$100,000 Major Concession

> **Major Concession:**
 NO
 YES - Award will be subject to review and approval pursuant to Sections 197-c and 197-d of NYC Charter.

NOTIFICATION REQUIREMENTS

Subject concession will be awarded by CSB or CSP. YES NO

If YES, check the applicable box(es) below:

The subject concession is a Significant Concession and the Agency has/will complete its consultations with each affected CB/BP regarding the scope of the solicitation at least 30 days prior to its issuance.

The subject concession is a Significant Concession and the Agency provided notification of such determination to each affected CB/BP by inclusion of this concession in the Agency's Plan pursuant to §1-10 of the Concession Rules.

The subject concession has been determined not to be a Major Concession and the Agency has sent/will send written notification of such determination to each affected CB/BP at least 40 days prior to issuance of the solicitation.

The subject concession has been determined not to be a Major Concession and the Agency provided notification of such determination to each affected CB/BP by inclusion of this concession in the Agency's Plan pursuant to §1-10 of the Concession Rules.

If **NO**, check the applicable box below:

- The Agency certifies that each affected CB/BP has received/will receive written notice at least 40 days in advance of the FCRC meeting at which the agency will seek approval to use a different selection procedure.
- The Agency certifies that based on exigent circumstances it has requested/will request unanimous approval of the FCRC to waive advance written notice to each affected CB/BP.
- The Agency certifies that each affected CB/BP will receive written notice that the concession was determined to be non-major along with a summary of the terms and conditions of the proposed concession upon publication of a Notice of Intent to Enter into Negotiations. The agency further certifies that it will send a copy of this notice to the members of the Committee within five days of the notice to each affected CB/BP.

AUTHORIZED AGENCY STAFF

This is to certify that the information presented herein is accurate.

Name Michelle Craven Title Executive Director of Coordinated Street Furniture and Franchises

Signature _____ Date / /

CITY CHIEF PROCUREMENT OFFICER

This is to certify that the agency's plan presented herein will comply with the prescribed procedural requisites for the award of the subject concession.

Signature _____ Date / /
City Chief Procurement Officer

CONCESSION PRE-SOLICITATION REVIEW MEMORANDUM

A. DETERMINATION TO UTILIZE OTHER THAN COMPETITIVE SEALED BIDS N/A

Instructions: Attach copy of draft RFP or other solicitation document, and check all applicable box(es) below.

The Agency has determined that it is not practicable or advantageous to use Competitive Sealed Bids because:

- Specifications cannot be made sufficiently definite and certain to permit selection based on revenue to the City alone.
- 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.
- The agency will be pursuing a negotiated concession for the reasons listed in section (B)(3)(b)
- Other (Describe):**

The New York City Department of Transportation (DOT) will be pursuing a Sole Source License Agreement (Agreement) pursuant to Section 1-16 of the Concession Rules of the City of New York ("different procedures") for the reasons listed in section (B)(2).

B. DETERMINATION TO USE OTHER THAN COMPETITIVE SEALED PROPOSALS N/A

1. ***Briefly summarize the terms and conditions of the concession. Add additional sheet(s), if necessary.***

Subject to Franchise and Concession Review Committee (FCRC) Step 1 authorization, DOT intends to negotiate the Agreement with the City University of New York at Baruch College for the operation, management and maintenance of a pedestrian plaza located on East 25th Street between Lexington Avenue and 2nd Avenue in the borough of Manhattan (Licensed Plaza).

City University of New York at Baruch College would have the right to provide for the operation and management of the Licensed Plaza in exchange for ongoing maintenance of the Licensed Plaza, including through DOT-approved events, sponsorships and subconcessions including but not limited to providing for the sale of any of the following: prepared food, flowers, locally grown produce or locally manufactured products, merchandise (such as souvenirs or T-shirts) that helps brand or promote the neighborhood or City University of New York at Baruch College, and other similar merchandise. Subconcessions would be awarded based on solicitations issued by City University of New York at Baruch College in the basic form of Request for Proposals or Request for Bids, subject to DOT's prior written approval of both solicitation and award.

2. ***Briefly explain the basis for the determination not to solicit Competitive Sealed Proposals.***

The intent of the Agreement is that all revenue received by City University of New York at Baruch College from the operation and management of the concession will go toward maintaining the Licensed Plaza. Since the concession will not yield a profit to City University of New York at Baruch College, a determination was made not to solicit Competitive Sealed Proposals.

It is in the City's best interest to enter into the Agreement using a different procedure with City University of New York at Baruch College because this educational organization's mission is to engage the larger civic community including the neighborhood in which the Licensed Plaza is located. This organization is an integral part of the neighborhood that it will serve and has a specific interest in the Licensed Plaza.

3a. **Briefly explain the selection procedure that will be utilized.**

On September 11, 2013, DOT intends to seek FCRC authorization to negotiate the Agreement with City University of New York at Baruch College for the operation, management and maintenance of the Licensed Plaza ("Step 1"). Pending FCRC Step 1 approval, DOT intends to negotiate the terms of the Agreement with the City University of New York at Baruch College

Once negotiated and if determined by DOT to be a significant concession, the agency and the FCRC will hold a joint Public Hearing on the proposed Agreement before presenting the proposed concession to the FCRC for "Step 2" approval at a second Meeting. If DOT determines the concession to be non-significant, DOT will present the fully negotiated Agreement with City University of New York at Baruch College to the FCRC and request the required FCRC authorization to enter into the Agreement directly (without the need for an initial public hearing).

3b. **If the selection procedure is a negotiated concession, check the applicable box: N/A**

The Agency made a determination that it is not practicable and/or advantageous to award a concession by competitive sealed bidding or competitive sealed proposals due to the existence of a time-sensitive situation where a concession must be awarded quickly because:

- The agency has an opportunity to obtain significant revenues that would be lost or substantially diminished should the agency be required to solicit the concession by competitive sealed bids or competitive sealed proposals and the diminished revenue does not relate only to the present value of the revenue because of the additional time needed to solicit competitive sealed bids or competitive sealed proposals; *[Explain]*
- An existing concessionaire has been terminated, has defaulted, has withdrawn from, or has repudiated a concession agreement, or has become otherwise unavailable; *[Explain]*
- The agency has decided, for unanticipated reasons, not to renew an existing concession in the best interest of the City and requires a substitute/successor concessionaire. *[Explain]*
- DCAS is awarding a concession to an owner of property adjacent to the concession property, or to a business located on such adjacent property, and has determined that it is not in the best interest of the City to award the concession pursuant to a competitive process because of the layout or some other characteristic of the property, or because of a unique service that can be performed only by the proposed concessionaire. *[Explain]*

Approved by CCPO: _____ **on** ___/___/___.

4. If the agency has/will request unanimous FCRC approval to waive advance written notice to affected CB(s) that a selection procedure other than CSB or CSP will be utilized, explain the exigent circumstances. **N/A**



Department of Transportation

JANETTE SADIK-KHAN, Commissioner

May 28, 2013

The Honorable Scott Stringer
Manhattan Borough President
1 Centre Street, 19th Floor
New York, NY 10007

Toni Carlina, District Manager
Manhattan Community Board 6
866 UN Plaza, Suite 308
New York, NY 10017

Re: Pedestrian Plaza Concession

Dear Ms. Carlina and Mr. Stringer:

Pursuant to Section 1-16 of the Concession Rules of the City of New York, the New York City Department of Transportation ("DOT") intends to seek approval from the Franchise and Concession Review Committee ("FCRC") to utilize a different procedure to negotiate a Sole Source Concession Agreement with a not for profit organization (the "Concessionaire") for the operation, management and maintenance of a pedestrian plaza located on East 25th Street between Lexington and 2nd Avenue in the Borough of Manhattan. DOT has identified the City University of New York at Baruch College as a potential Concessionaire, but DOT will consider additional expressions of interest from other qualified and experienced not for profit organizations. As such, a public notice is being placed in the City Record to inform other qualified not for profit organizations of this opportunity.

If you have any questions, please feel free to contact me at 212-839-6210.

Sincerely,

A handwritten signature in black ink, appearing to read "M. Forgione".

Margaret Forgione
Manhattan Borough Commissioner

PUBLIC NOTICE OF A CONCESSION OPPORTUNITY FOR THE OPERATION, MANAGEMENT AND MAINTENANCE OF A PEDESTRIAN PLAZA LOCATED ON 25TH STREET BETWEEN SECOND AVENUE AND LEXINGTON AVENUE IN THE BOROUGH OF MANHATTAN

Pursuant to the Concession Rules of the City of New York, the Department of Transportation (“DOT”) intends to enter into a concession for the operation, management, and maintenance of a pedestrian plaza located on East 25th Street between Lexington Avenue and 2nd Avenue in the borough of Manhattan (“Licensed Plaza”), including through DOT-approved events, sponsorships, and subconcessions including but not limited to providing for the sale of any of the following: prepared food, flowers, locally grown produce or locally manufactured products, merchandise (such as souvenirs or T-shirts) that helps brand or promote the neighborhood or the concessionaire, and other similar merchandise.

Subconcessions would be awarded based on solicitations issued by the concessionaire in the basic form of Request for Proposals or Request for Bids, subject to DOT’s prior written approval of both solicitation and award.

DOT has identified the City University of New York at Baruch College as a potential concessionaire, but DOT will consider additional expressions of interest from other potential not-for-profit (including educational institutions) concessionaires for the operation, management, and maintenance of the Licensed Plaza. In order to qualify, interested organizations should be active in the neighborhood of the Licensed Plaza and have demonstrated experience in the management, operation and maintenance of publicly accessible facilities, including but not limited to programming/events management and concession or retail operation/management.

Such organizations may express interest in the proposed concession by contacting Andrew Wiley-Schwartz, Assistant Commissioner for Public Spaces, by email at awileyschwartz@dot.nyc.gov or in writing at 55 Water Street, 9th Floor, New York, NY 10041 by September 09, 2013. Mr. Wiley-Schwartz may also be contacted with any questions relating to the proposed concession by email or by telephone at (212) 839-6678.

Please note that the New York City Comptroller is charged with the audit of concession agreements in New York City. Any person or entity that believes that there has been unfairness, favoritism or impropriety in the concession process should inform the Comptroller, Office of Contract Administration, 1 Centre Street, New York, New York 10007, telephone number (212) 669-2323.

25th Street Plaza

AREA = 13,500 SF

