

Title 12: Franchise and Concession Review Committee

Chapter 1: Concessions

§ 1-01 Scope.

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

Agency Head. "Agency Head" shall mean the head of an agency granting a concession or his or her designee.

Best and Final Offers. The revised and corrected final proposals submitted by proposers upon the request of the concession Selection Committee.

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

CCPO. "CCPO" shall mean the Director of the Mayor's Office of Contract Services, the person to whom the authorization is delegated by the Mayor to perform all Mayoral reviews, make all Mayoral determinations and give all Mayoral approvals and certifications regarding concessions.

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. "Concession File" shall mean the file(s), including electronic file(s), maintained by the concession manager for each concession under consideration for renewal, resolicitation or initial award. The file(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 or proposals, 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, including the supervision of subordinate agency staff in conjunction with the CCPO, and for the making of determinations with respect to concessions.

Concession Officer. "Concession Officer" shall mean a person duly authorized to administer concession agreements and make determinations with respect thereto.

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

Day(s). "Day" shall mean calendar day unless otherwise specifically stated in the applicable rule.

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.

In Ink. "In ink" shall mean a provision specifying the use of a pen to satisfy all signature and initialing requirements. Wherever these Rules provide that an action be taken "in ink," this requirement may be satisfied, if provided for in the solicitation, through the use of electronic signatures.

In Writing. "In writing" shall include paper or electronic documents, as defined in the solicitation, unless otherwise stated.

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

Major concession. "Major concession" shall mean a concession that has significant land use impacts and implications, in accordance with rules adopted by the City Planning Commission, or for which the preparation of an environmental impact statement is required by law.

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 mean an offer made by one person to another as a basis for negotiations for entering into a concession, and 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 that it is to the best advantage of the City to grant the concession to one source.

VENDEX. "VENDEX" shall mean a computerized citywide system providing comprehensive contract management information.

§ 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 Responsiveness of Bids/Proposals.

(a) *Policy.* The award of concessions shall be made only to bids/proposals received that are responsive to the solicitation, as set forth below.

- (1) A bidder/proposer must submit a responsive bid/proposal in order to be considered for award.
- (2) The concession manager must make a written determination of responsiveness for every concession award.

(b) *Standards.*

(1) A responsive bid/proposal is one which conforms to the material terms and conditions of the solicitation documents and all material requirements of the specifications.

(2) Factors affecting the responsiveness of bids/proposals include:

- (i) Compliance with all material requirements of the specifications;
- (ii) Compliance with all material terms and conditions of the solicitation;
- (iii) Submission of bids/proposals in the form specified in the solicitation;
- (iv) Submission of bids/proposals by the time and date and at the place specified in the solicitation;
- (v) Submission of bid/proposal deposits, if required by the solicitation;
- (vi) Submission of samples, literature or other information, if required by the solicitation;
- (vii) Submission of all required disclosure statements; and

(viii) Attendance at a pre-bid or pre-proposal conference or site inspection, if required. Bids/proposals that fail to conform with one or more of the standards set forth above shall be rejected.

(c) *Written determination of non-responsiveness required.* If the bid(s) offering the highest revenue, or in the case of other competitive solicitations, any proposal 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.

(d) *Notice.* A copy of the determination of non-responsiveness shall be immediately sent to the non-responsive bidder/proposer. Notice to the non-responsive bidder/proposer must be mailed no later than two business days after the determination of non-responsiveness is made and must inform the bidder/proposer 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/proposer 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, New York, New York 10007, (212) 669-2323.

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

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

(1) *Time for appeal.* Any bidder/proposer whose bid/proposal 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/proposer 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.

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

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

(4) *Notification to bidder/proposer of Agency Head decision.* A copy of the decision of the Agency Head shall be sent to the bidder/proposer.

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

(6) *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.

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

(g) *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. A copy of the determinations of the concession manager and the Agency Head shall be forwarded to the Committee.

§ 1-07 Concessionaire Responsibility.

(a) *Policy.* Concessions shall be awarded to responsible prospective concessionaires only.

(b) *General standards.*

(1) A responsible concessionaire is one which has the capability in all respects to perform fully the concession requirements. Factors affecting a prospective concessionaire 's responsibility may include:

(i) Financial resources;

(ii) Technical qualifications;

(iii) Experience;

(iv) 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;

(v) A satisfactory record of performance;

(vi) A satisfactory record of business integrity;

(vii) Where the concession includes provisions for compensation 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;

(viii) Compliance with requirements for the utilization of small minority-owned and women-owned businesses as subcontractors, if any.

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

(c) *Special standards.*

(1) 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.

(2) The special standards shall be set forth in the solicitation (and so identified) and shall apply to all prospective concessionaires.

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

(d) *Ability to meet standards.*

(1) The prospective concessionaire may demonstrate the availability of necessary financing, equipment, facilities, expertise, and personnel by submitting upon request:

(i) Evidence that such prospective concessionaire possesses such necessary items, or can obtain them;

(ii) A documented commitment from, or explicit arrangement with, a satisfactory source to provide the necessary items.

(2) 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 prospective concessionaire's control or that the prospective concessionaire has taken appropriate corrective action. Past failure to apply sufficient tenacity and perseverance to perform acceptably is strong evidence of non-responsibility.

(e) *Making the responsibility determination.*

(1) *VENDEX questionnaires.*

(i) In the case of concession awards where the concession has a value that, when aggregated with the value of all other City concessions, franchises and contracts held by the same concessionaire, is valued at one hundred thousand dollars or more, questionnaires, known as "VENDEX questionnaires" seeking background information about the prospective concessionaire and its principals, owners, officers, affiliates and subcontractors shall be completed. The apparent high bidder or proposed concessionaire and, at the discretion of the concession manager, any other responsive prospective concessionaire, shall be required to complete the VENDEX questionnaires so as to assist the concession manager in making the determination of responsibility and to permit compliance with local law concerning creation and maintenance of a computerized database concerning concessionaire background.

(ii) 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. Each prospective concessionaire shall certify at the time of award of each concession that all the information submitted within such three year period is current, accurate and complete. In the event that changes have occurred within the three year period, the prospective concessionaire shall update, prior to concession award, any previously-submitted VENDEX questionnaire to supply any changed information, and shall certify that both the updated and unchanged information is current, accurate and complete.

(iii) 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. The Department of Investigation shall undertake the review expeditiously and provide an explanation to an agency if its review is not completed within thirty calendar days of the request. 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.

(iv) Subcontractors/subconcessionaires. Where appropriate, City concession agreements shall contain a clause requiring concessionaires to notify subcontractors/subconcessionaires of their obligation to complete and file VENDEX questionnaires within thirty days after the concession manager has granted preliminary approval of the identified subcontractor/subconcessionaire, if the aggregate value of City contracts, franchises, and concessions awarded to a subcontractor/subconcessionaire during the immediately preceding twelve-month period equals or exceeds \$100,000.

(2) The concession manager should use the following sources of information to support determinations of responsibility or non-responsibility:

(i) VENDEX listings of debarred, suspended and ineligible contractors and concessionaires;

(ii) VENDEX and other records or evaluation of performance, if available, as well as verifiable knowledge of agency personnel;

(iii) Determinations of violations of employment-related federal, state, or local law or executive order, including but

not limited to those relating to equal employment opportunity, prevailing wage, workplace health and safety, employee benefits, and employee wages and hours, if any;

(iv) Information supplied by the prospective concessionaire, including bid/proposal information, VENDEX questionnaires 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.

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

(f) *Written determination of non-responsibility required.*

(1) If a prospective concessionaire 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.

(2) A copy of the determination of non-responsibility shall be immediately sent to the non-responsible prospective concessionaire. Notice to the non-responsible prospective concessionaire must be mailed no later than two business days after the determination of non-responsibility is made and must inform the prospective concessionaire of the right to appeal the determination to the Agency Head or designee and subsequently to the CCPO, and of the procedure for taking such appeals. The notification shall also contain the following statement: The prospective concessionaire 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, New York, New York 10007, (212) 669-2323.

(3) The written determination of non-responsibility shall be made part of the concession file, delivered to the Mayor's Office of Contract Services and included in the VENDEX database.

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

(1) *Time for appeal.* Any prospective concessionaire 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 prospective concessionaire 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.

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

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

(4) *Notification to prospective concessionaire of Agency Head decision.* A copy of the decision of the Agency Head shall be sent to the prospective concessionaire. If the Agency Head upholds the concession manager's finding of non-responsibility, the Agency Head shall inform the prospective concessionaire of the right to appeal the decision to the CCPO, and of the procedure for taking such an appeal.

(5) *Finality.* The Agency Head's decision of an appeal from a determination of non-responsibility shall be final unless further appealed to the CCPO.

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

(h) *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 concession manager makes a written determination that execution of the concession without delay is necessary to protect substantial City interests.

(i) *Appeal to the CCPO.* Appeals to the CCPO of the Agency Head decision upholding a determination of non-responsibility shall be made pursuant to the following procedure:

(1) *Time for Appeal.* Any prospective concessionaire who wishes to appeal the decision of the Agency Head shall be allowed ten calendar days from receipt of the Agency Head's notification to file a written appeal of that determination with

the CCPO. Receipt of notification by the prospective concessionaire 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 CCPO.

(2) *Form and Content of Appeal by Prospective Concessionaire.* The appeal by the prospective concessionaire shall be in writing and shall briefly state all the facts or other basis upon which the prospective concessionaire contests the agency finding of non responsibility. Supporting documentation shall be included.

(3) *CCPO Determination.* The CCPO shall consider the prospective concessionaire's appeal, and shall make a prompt written decision with respect to the merits of the prospective concessionaire's appeal. The CCPO, in the CCPO's sole discretion, may meet with the prospective concessionaire to discuss the appeal.

(4) *Notification to Prospective Concessionaire of CCPO Decision.* A copy of the decision of the CCPO shall be sent to the prospective concessionaire.

(5) *Finality.* The decision by the CCPO of a prospective concessionaire's appeal from an Agency Head decision concerning non-responsibility shall be final.

(j) *Stay of Award of Concession Pending Decision By CCPO.* Award of the concession shall be stayed pending the rendering of a decision by the CCPO, unless the concession manager has made a determination pursuant to these Rules that the execution of the contract without delay is necessary, or the CCPO, in the CCPO's discretion, determines that it is in the best interests of the City to go forward with the award of the contract.

(k) *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. Copies of these documents shall be sent to the Mayor's Office of Contract Services for inclusion in the VENDEX data base. A copy of the determinations of the concession manager, Agency Head and CCPO shall be forwarded to the Committee.

§ 1-08 Protest of Solicitations and Awards of Concessions.

(a) *Protests.* Any actual or prospective bidder or proposer may protest any determination regarding a concession, unless another appeal or protest provision is provided in these Rules. The protestor shall send a copy of its protest to the New York City Comptroller, for informational purposes, at the Office of the New York City Comptroller, Office of Contract Administration, 1 Centre Street, New York, New York 10007, (212) 669-2323.

(1) *Time for protest.* A protest shall be submitted in writing to the Agency Head within ten days after the protesting party knows or should have known of the facts that prompted the protest but no later than ten (10) days after the publication of the notice of award of 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 invite written comment from the selected concessionaire (if any) or other interested party, convene an informal conference with the protestor, the selected concessionaire, any other interested party and/or 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. Copies of these documents shall be sent to the Mayor's Office of Contract Services and to the Comptroller.

§ 1-09 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, shall be posted on the City's website in a location that is accessible by the public simultaneously with its publication, and a copy shall be provided to the members of the Committee within five days of its publication.

(b) Such notice shall include:

(1) Agency name;

(2) Location of the awarded concession;

(3) Summary of the terms and conditions of the proposed concession agreement, including the revenue anticipated to be received by the City;

(4) Name and address of concessionaire; and

(5) Method by which concession was solicited.

§ 1-10 Annual Report, Concession Plan and Opportunity for Public Comment.

(a) The CCPO shall submit an annual report to the Committee no later than each September 1st summarizing the currently effective concessions awarded pursuant to this Chapter. The summary shall include the date each concession was submitted to the Comptroller for registration, a brief description of each concession awarded, the method by which each concession was awarded and the approximate gross revenues received by the City for each concession during the prior fiscal year.

(b) (1) Annually, the concession manager of each agency awarding concessions shall review its entire portfolio of significant concession agreements, including all existing significant concessions and anticipated new significant concessions that may occur over the course of the upcoming fiscal year, and shall produce a plan ("Plan") detailing the actions anticipated with respect to each such concession agreement set to expire and/or planned for continuation, and each new significant concession agreement planned for solicitation or initiation during the upcoming year. In addition, the concession manager may include in the Plan the actions anticipated with respect to each non-significant concession agreement set to expire and/or planned for continuation, and each new non-significant concession agreement planned for solicitation or initiation during the upcoming year.

(2) The form and content of the Plans shall be prescribed by the CCPO. The Plans shall include, but not be limited to: the borough, address location(s) (including name of parks, if applicable) and community district(s) of the planned concessions, descriptions of the planned concessions, anticipated term and revenue (including a range, if appropriate) of the planned concessions, the name and address of the current concessionaires (if any), the business name of the current concession (if any), an indication of whether each concession is a major concession, the month and year (if available) of the next planned solicitation or initiation for such concession, the selection method to be employed for any concession, the justification for the method to be employed if not a bid or an RFP, and a brief summary of the terms and conditions of such solicitation.

(3) Each agency shall submit its Plan to the Committee no later than May 1st, provide copies of the Plan to each affected community board and Borough President and consult, on request, with each affected community board and Borough President on developing the scope of any solicitations for significant concessions relevant to each that are included in the Plan, at least thirty (30) days in advance of such solicitations.

(4) The Committee shall hold a public hearing on the Plans no later than June 15th, and shall at the same hearing further solicit comment about the provisions of 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*, in appropriate newspapers and trade publications, shall be posted on the City's website in a location that is accessible by the public simultaneously with its publication, and a copy shall be provided to the members of the Committee within five days of its publication. 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. Such notice shall include:

(i) Name of each agency that submitted a Plan;

(ii) A brief description of the portfolio of concessions covered by the Plans;

(iii) How interested parties may obtain a copy of the Plans;

(iv) A description of any additional issues on which the Committee wishes to solicit public comment; and

(v) The date, time, and place of public hearing.

(5) 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 Ratification of Minor Rules Violations.

(a) *Prior to Registration.* If, prior to registration, it is determined by the concession manager that a violation of these Rules has occurred and the violation has been deemed to have had no significant, adverse impact on the competitive process, then as soon as practicable after discovery, the concession manager shall either:

(i) Revise the concession to comply with these Rules, or

(ii) If the minor Rules violation(s) cannot be corrected to comply with these Rules, make a written application to the CCPO, who may ratify the concession provided it is in the best interest of the City to do so, and provided such ratification will not violate any law applicable to the concession process. Such application and ratification shall include the justification(s) therefor. The CCPO shall provide a copy of the application to each member of the Committee, and may not ratify the concession prior to the expiration of ten (10) business days from the date such copies are received. If an application is made prior to public hearing and/or FCRC meeting regarding the concession, if any, the Committee shall be informed of such application before such hearing or meeting.

(b) *After Registration.* If, after registration, it is determined that a concession is in violation of these Rules:

(i) If the selected concessionaire has not acted fraudulently or in bad faith:

(A) The minor Rules violation may be ratified and the concession affirmed, provided it is determined by the concession manager and approved by the CCPO that doing so is in the best interests of the City and provided such ratification will not violate any law applicable to the concession process; such determination and approval shall include the justification(s) therefor; and provided further that the CCPO shall provide a copy of the determination to each member of the Committee, and may not affirm the concession prior to the expiration of ten (10) business days from the date that such copies are received, or

(B) The concession may be terminated by the concession manager in accordance with applicable law or contract terms.

(ii) If the selected concessionaire has acted fraudulently or in bad faith:

(A) The concession may be declared null and void by the concession manager; in such event the concessionaire's name shall be entered as a caution in the VENDEX database, or

(B) The minor Rules violation may be ratified and the concession affirmed, provided it is determined by the concession manager and approved by the CCPO that doing so is in the best interests of the City, including the reasons therefor and provided such ratification will not violate any law applicable to the concession process. The CCPO shall provide a copy of the determination to each member of the Committee, and may not affirm the concession prior to the expiration of ten (10) business days from the date such copies are received. Such ratification shall not prejudice the City's rights to damages as may be appropriate.

(c) *Public Notice.* Notice of the ratification of a minor Rules violation shall be submitted to the Committee and published at least once in the City Record within ten days after the CCPO's ratification determination and posted on the City's website in a location that is accessible by the public simultaneously with its publication. Such notice shall include the name of the concessionaire (when applicable); a brief description of the concession; the dollar amount; the duration of the concession; and the nature of and justification for the ratification of the rules violation.

(d) *Standard.* In no event shall the failure to (1) have a required public hearing, (2) receive required Committee approval, or (3) advertise a public hearing or Committee meeting required for the concession for which the Concession Manager is seeking such ratification or affirmation be considered a minor Rules violation that may be ratified or affirmed.

§ 1-12 Competitive Sealed Bids.

(a) *General.*

(1) Concessions shall be awarded in accordance with competitive sealed bidding procedures whenever practicable and 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 12 RCNY § 1-13(a). Such determination must be approved in writing by the agency head and must be included in the concession file. 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. Such determination shall be approved in writing by the agency head and shall be included in the concession file. 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 of its determination that the concession is not a major concession to each affected community board and Borough President at least forty (40) days prior to issuance of a solicitation, and shall provide a copy of such notification to the members of the Committee within five days of provision to the community board(s) and Borough President, provided however, that inclusion of the concession in the agency's Plan pursuant to 12 RCNY § 1-10 shall constitute notice to the affected community board and Borough President for purposes of this requirement, and no copy need be provided to the members of the Committee in such circumstance. 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, provided however, that inclusion of the concession in the agency's Plan pursuant to 12 RCNY § 1-10 shall constitute consultations with the affected community board and Borough President for purposes of this requirement.

(b) *Preparation of invitation to bid.*

(1) At least three months prior to the expiration date of a concession and/or prior to the anticipated start date of a new 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 resolicitation 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) Instructions and information to bidders concerning the bid submission requirements, including the time and date set for receipt of the bids; requirements for the electronic submission of bids, if any; time, date, and location of any pre-bid conferences (and a statement whether such conferences are mandatory), and an invitation to inspect the premises, as applicable; and the address where bids are to be delivered;

(ii) Location and a brief description of the proposed concession, its size, its prior use and/or other possible usage of the premises, any fixtures, or equipment, on the premises and its surrounding area, including any special instructions or information necessary, and appropriate materials such as maps, plans or photographs;

(iii) The term of the concession and any terms and conditions upon its award, including warranty and bonding or other security requirements, and a description of any legal restrictions on the use of the location;

(iv) A statement that award shall be made to the highest responsive and responsible bidder;

(v) If not included in the bid documents, a notice of where bidders may obtain a copy of all terms and conditions or other material relating to the proposed concession;

(vi) A provision that bidders should give specific attention to the identification of those portions of their bids that they deem to be confidential proprietary information or trade secrets and provide any justification why such materials, upon request, should not be disclosed by the City. Such information must be easily separable from the non-confidential sections of the bid;

(vii) A notice of the bidder's rights to appeal certain decisions as specified in these rules;

(viii) A statement that bidders should contact the agency prior to submission of bids to verify that all amendments issued have been received, and a requirement for acknowledgment of amendments;

(ix) A notice that the concession award is subject to applicable provisions of federal, State, and local laws and executive orders requiring affirmative action and equal employment opportunity;

(x) Where applicable, a notice that concession award is subject to completion of a VENDEX questionnaires and review of that information by the Department of Investigation;

(xi) The name, address, and telephone number of a contact person to whom questions and correspondence

relating to the bid solicitation can be addressed;

(xii) 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

(xiii) 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, New York, New York 10007; telephone number (212) 669-2323.

(xiv) Where applicable, for concessions that entail construction, the following information shall be additionally included:

(A) A statement establishing minimum insurance requirements which the City will require of the bidder if successful; and

(B) A statement that the bidder will be required to meet all licensing or permit requirements required to perform the construction.

(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*, and a notice of the availability of such solicitation of bids shall be posted on the City's website in a location that is accessible by the public simultaneously with its publication. A copy of such notice shall be provided to the members of the Committee and each affected Community Board within five days of its publication. Consideration shall also be given to soliciting bids by public advertisement in appropriate newspapers and trade publications, 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 shall be documented by the concession manager and included in the concession file. Agencies shall provide for special outreach to minority and women owned business enterprises certified by the City of New York as such entities are defined in Charter § 1304. Current lists of bidders shall be maintained in accordance with 12 RCNY § 1-12(c).

(ii) The advertisement shall include:

(A) The place the Invitation for Bids may be obtained, and the required fee or deposit amount, if any, for obtaining the Invitation for Bids;

(B) The time, date, and location of any pre-bid conference or site visit, if any, and if attendance is mandatory;

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

(D) A brief description of the concession under consideration for resolicitation or initial award; and

(E) The name and phone number of the agency contact person.

(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.

(c) *Soliciting mailing lists.*

(1) *Establishment of lists.*

(i) Solicitation mailing lists may be established by concession managers, and shall be established for any type of concession for which the agency reasonably anticipates soliciting multiple concessions of a similar nature during a given year. 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* at least once annually for five consecutive editions and shall post on the City's website in a location that is accessible by the public simultaneously with its publication, a notice soliciting the names of entities interested in being included on the solicitation mailing list. A copy of such notice shall be furnished to each affected Borough President, each affected Community Board, and the members of the Committee within five days of its publication. Applications for inclusion on such solicitation mailing list shall be continuously available.

(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 for any other reason 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 upon the entity's written request.

(3) *Reinstatement on solicitation mailing list.* An entity that has been removed from a solicitation mailing list may be reinstated upon written request or by response to a solicitation.

(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) *Pre-Bid Conferences.* Pre-bid conferences may be conducted by the concession manager to explain the agency's requirements. Written notice of any conference shall be provided to all prospective bidders. A pre-bid conference should be held long enough after the Invitation for Bids has been issued to allow bidders to become familiar with it, but sufficiently before bid opening to allow consideration of the conference results in preparing their bids. Nothing stated at the pre-bid conference shall change the Invitation for Bids unless a change is made by amendment as provided in this section. A summary of the conference shall be prepared and if a transcript is made, it shall be a public record. A record of attendance shall be kept of all conferences.

(e) *Amendments and addenda to the invitation for bid.*

(1) *Authority.* The concession manager shall authorize the issuance of any amendment, including addenda.

(2) *Form.* Each amendment or addendum to an Invitation for Bids shall be identified as such, shall be set forth in writing, and shall require that the bidder acknowledge receipt of all amendments and addenda issued as a condition for consideration of its bid. An amendment shall reference the portion of the Invitation for Bids it amends.

(3) *Distribution.* Amendments and addenda shall be sent to all prospective concessionaires known to have received an Invitation for Bids. Agencies must maintain a list of all entities that were issued a solicitation. Amendments and addenda must be distributed to all potential bidders who were issued the initial Invitation for Bid and to potential bidders who attended a mandatory pre-bid conference or site visit, if applicable.

(4) *Timeliness.* Amendments shall be distributed within a reasonable time to allow prospective bidders to consider them in preparing their bids. If the time and date set for receipt of bids will not permit such preparation, such time shall be increased to the extent necessary, and stated in the amendment or, if necessary, by electronic mail, if consented to by the bidder, facsimile, or telephone and confirmed in the written amendment. Once an addendum has been sent, it is presumed to have been received by potential bidders. Agencies have no obligation beyond assuring that the correspondence has been sent. Agencies may wish to distribute addenda to potential bidders using either "return receipt requested" or express mail courier services.

(5) 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.

(6) Agencies must require that bidders acknowledge the receipt of all the amendments as part of their bids. Failure to

acknowledge the receipt of all amendments 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 amendments 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.

(f) *Bid deposits.* The concession manager may establish a reasonable bid deposit requirement. Where a deposit amount is specified in the Invitation for Bid, no bid shall be valid unless accompanied by such deposit. 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, any such deposit shall be retained by the City unless the bid has been permitted to be withdrawn.

(g) *Submission of bids.* The Invitation for Bids shall provide a form on which the bidder shall insert the bid price (i.e., proposed revenue) and shall sign and submit along with all other necessary submissions. Bids shall be typewritten or written legibly in ink. Erasures or alterations shall be initialed by the signer in ink. All bids shall be signed in ink. If so provided in the solicitation, sealed bids may be submitted electronically. 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.

(h) *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. Before bid opening the agency may not disclose the identity of any bidder.

(i) *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, the attendance form and opened bids shall be included in the concession file, and shall be available for public inspection at a reasonable time after business opening, but in any case before concessionaire selection, except to the extent the bidder designates trade secrets or other proprietary data to be confidential. Material so designated shall accompany the bid and shall be readily separable from the bid in order to facilitate public inspection of the nonconfidential portion of the bid. The concession manager shall examine the bids to determine the validity of any requests for nondisclosure of trade secrets and other proprietary data identified in writing. Nondisclosure is permissible only if approved by Agency Counsel, and does not restrict disclosure of such materials to the members of the Committee who, nonetheless, shall remain under a duty of confidentiality except if required by law to disclose such materials. Any decision not to honor a request for confidentiality shall be communicated in writing to the bidder making the submission.

(j) *Late bids and modifications.*

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

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

(i) may be considered when the late bid or modification is received within 48 hours after the opening of bids and is the only bid received. (See 12 RCNY § 1-12(m))

(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. 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.

(k) *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. If a

bid is withdrawn in accordance with this section, the bid security, if any, shall be returned to the bidder. 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 with a copy thereof forwarded to the bidder.

(l) *Mistake in bid.* Allegations of mistakes in bids shall be processed by the concession manager according to 9 RCNY § 3-02(m) of the Rules of the Procurement Policy Board ("PPB Rules"). A written determination shall be made and shall be included in the concession file.

(m) *Single 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 concession may either be pursued, subject to the approval of the concession manager, by the solicitation of new bids or the concession 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.

(n) *Award and processing.*

(1) The apparent high bidder must submit VENDEX Questionnaires 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. 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. All bidders shall be notified of the reason for such action.

(3) *Tie bids.*

(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 minority- and women-owned business enterprises as such entities are defined in Charter § 1304.

(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 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 describing how the tie was broken.

(4) If the highest bidder is determined by the agency not to be a responsible bidder pursuant to 12 RCNY § 1-07 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 12 RCNY § 1-06, the agency making such determination may award the concession to the next highest responsive and responsible 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. 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. 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.

(o) *Bid retention.* The agency must retain all submitted bids and modifications in the permanent concession file. 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. When bids are rejected or a solicitation canceled after bids are received, the bids shall be retained and the bid security, if any, shall be promptly returned, and the file so documented.

§ 1-13 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. 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. Such determination shall be approved in writing by the agency head and shall be included in the concession file. 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 that the concession is not a major concession to each affected community board and Borough President at least forty days prior to issuance of a solicitation, and shall provide a copy of such notification to the members of the Committee within five days of notification of the community board(s) and Borough President, provided however, that inclusion of the concession in the agency's Plan pursuant to 12 RCNY § 1-10 shall constitute notice to the affected community board and Borough President for purposes of this requirement, and no copy need be provided to the members of the Committee in such circumstance. 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, provided however, that inclusion of the concession in the agency's Plan and consultations pursuant to 12 RCNY § 1-10 shall constitute consultations with the affected community board and Borough President for purposes of this requirement.

(b) *Preparation of the request for proposals.* At least three months prior to the expiration date of any concession and/or prior to the anticipated start date of a new 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 resolicitation 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) Instructions and information to proposers concerning the proposal submission requirements, including the time and date set for receipt of the proposals; requirements for the electronic submission of proposals, if any; time, date, and location of any pre-proposal conferences (and a statement whether such conferences are mandatory), and an invitation to inspect the premises, as applicable; and the address where proposals are to be delivered;

(2) Location, and a brief description of the proposed concession, its size, its prior use and/or other possible usage of the premises, any fixtures, or equipment, on the premises and its surrounding area, including any special instructions or information necessary, and appropriate materials such as maps, plans or photographs;

(3) The term of the concession and any terms and conditions upon its award, including warranty and bonding or other security requirements, amount of proposed capital investment and a description of any legal restrictions on the use of the location;

(4) The evaluation criteria that will be applied to the evaluation of all proposals, their relative importance and/or assigned weight (as applicable) and descriptions of minimum qualification requirements and of the Selection Committee (See 12 RCNY § 1-13(o)(6));

(5) A provision that proposers should give specific attention to the identification of those portions of their proposals that they deem to be confidential proprietary information or trade secrets and provide any justification why such materials, upon request, should not be disclosed by the City. Such information must be easily separable from the non-confidential sections of the proposal;

(6) A notice that although discussions may be conducted with offerors submitting acceptable proposals, award may be made without any discussions;

(7) A notice of the proposer's rights to appeal certain decisions as specified in these rules;

(8) A statement that proposers should contact the agency prior to submission of proposals to verify that all amendments issued have been received, and a requirement for acknowledgment of amendments;

(9) A notice that the concession award is subject to applicable provisions of federal, State, and local laws and executive orders requiring affirmative action and equal employment opportunity;

(10) Where applicable, a notice that concession award is subject to completion of VENDEX questionnaires and review of that information by the Department of Investigation;

(11) The name, address, and telephone number of a contact person to whom questions and correspondence relating to the RFP can be addressed;

(12) 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

(13) 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, New York, New York 10007, telephone number (212) 669-2323.

(14) Where applicable, for concessions that entail construction, the following information shall be additionally included:

(A) A statement establishing minimum insurance requirements which the City will require of the proposer if successful; and

(B) A statement that the proposer will be required to meet all licensing or permit requirements required to perform the construction.

(c) *Publicizing the request for proposals.*

(1) Requests for proposals for concessions shall be solicited by public advertisement in at least 10 successive issues of the *City Record*. The text of such RFP shall be posted on the City's website in a location that is accessible by the public simultaneously with its publication. A copy of such RFP shall be sent to the members of the Committee and each affected Community Board within five days of publication. Consideration shall also be given to soliciting proposals by public advertisement in appropriate newspapers and trade publications, 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 shall be documented by the concession manager and included in the concession file. Agencies shall provide for special outreach to minority and women owned enterprises as such entities are defined in Charter § 1304.

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

(i) The place a paper copy of the RFP may be obtained and the amount of any required fee or deposit,

(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 twenty (20) 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.

(d) *Solicitation mailing lists.* Concession managers shall establish, maintain, and use lists of potential sources in accordance with 12 RCNY § 1-12(c).

(e) Pre-proposal conferences may be held in accordance with the procedures set forth in 12 RCNY § 1-12(d).

(f) Amendments and addenda to the RFP may be made in accordance with the procedures set forth in 12 RCNY § 1-12(e).

(g) *Proposal deposits.* Proposal deposits may be required in accordance with the procedures set forth in 12 RCNY § 1-12(f).

(h) *Receipt of proposals.*

(1) Concession managers shall establish procedures for receipt and safeguarding of proposals in accordance with those specified for bids in 12 RCNY § 1-12(h) and (i). 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.

(i) *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.

(j) *Late proposals and modifications.*

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

(2) (i) A late proposal, received before proposals have been opened, may only be accepted and evaluated when the concession manager determines that it is in the best interests of the City to do so. In such event, the concession manager may hold open the receipt of proposals by no more than three hours during which time no other competing proposal may be opened. Where a concession manager has determined that it is in the best interests of the City to accept a late proposal, any other late proposal received during the period of extension shall be similarly accepted.

(ii) If, based on the above, a late proposal or modification is accepted and evaluated, the concession manager must document the circumstances in writing and maintain such documentation as part of the concession file. 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.

(k) *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. If a proposal is withdrawn in accordance with this section, the proposal deposit, if any, shall be returned to the proposer. 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 with a copy thereof forwarded to the proposer.

(l) *Mistake in proposal.* Allegations of mistakes in proposals shall be processed by the concession manager according to 9 RCNY § 3-03(i) of the PPB Rules. A written determination shall be made and shall be included in the concession file.

(m) *Single 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 concession may either be pursued, subject to the approval of the concession manager, by the solicitation of new proposals or the concession 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.

(n) *Proposal retention.* The agency must retain all submitted proposals and modifications in the permanent concession file. 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. When proposals are rejected or a solicitation canceled after proposals are received, the proposals shall be retained and the proposal deposit, if any, shall be promptly returned, and the file so documented.

(o) *Evaluation process.*

(1) The RFP must set forth the factors or criteria the agency will use in evaluating proposals. No other factors or criteria shall be used in the evaluation and award of the concession except those specified in the RFP.

(2) Prior to the release of the RFP, the Agency awarding the concession shall determine the evaluation criteria that will be applied to the evaluation of all proposals, their relative importance or assigned weight, the minimum qualification requirements and the composition of the Selection Committee (See 12 RCNY § 1-13(b)(4) and (o)(6)). Compensation to the City shall be considered in every concession selection. Evaluation criteria that may apply to particular concessions include, but are not limited to, revenue, other (non-cash) compensation to the City, technical excellence, experience, and qualifications.

(3) *Minimum qualification requirements.* The Agency may establish, as minimum qualification requirements, objective standards that all proposers must meet in order to be considered for award. Minimum qualification requirements may neither be waived nor supplemented after proposals have been opened. A proposer's failure to satisfy a minimum qualification requirement shall render the proposal non-responsive, in accordance with 12 RCNY § 1-06.

(4) The concession manager shall document the evaluation criteria, their relative importance and/or assigned weight (as applicable) and all other determinations concerning the evaluation process in the concession file.

(5) *Rating sheet.* Rating sheets or other written evaluation forms shall be used to evaluate proposals and shall be signed and dated by all members of the evaluation committee. Initial ratings may be amended and the amended ratings recorded on amended ratings sheets. Copies of all initial and amended rating sheets or evaluation forms shall be maintained.

(6) *Selection Committee.*

(i) The Selection Committee is responsible for evaluating proposals based on the established criteria and recommending a proposal based on the best combination of quality, compensation to the City and the other criteria enumerated in the RFP. 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. Personnel who were involved in developing the RFP specifications may be part of the Selection Committee. 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 the following affidavit to this effect when completing the rating sheet:

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.

(ii) 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 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. The documentation shall list all proposals that failed to meet the minimum qualification requirements with reasons to justify this determination. The concession manager shall make such determination in accordance with 12 RCNY § 1-06.

(iii) 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. All Selection Committee members must sign and date their initial individual rating sheets. The concession manager shall compile the individual ratings of the members of the Selection Committee, in accordance with the criteria specified in the RFP. Upon completion of the initial independent evaluations the Selection Committee may meet to review and discuss the ratings. After such discussions, 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. All Selection Committee members must sign and date their individual rating sheets each time they are amended. 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.

(iv) (A) Following the Selection Committee's initial discussions, if any, of the individual ratings and any amended ratings that may result therefrom, the Selection Committee may: determine that award should be made on the basis of initial proposals; determine that it is not in the best interests of the City to award solely on the basis of initial proposals, and that best and final offers should be solicited and/or discussions or negotiations should be initiated with all responsive proposers or with a selected group of proposers; or may determine that it is in the best interest of the City to not make an award and to either cancel or resolicit the RFP. In the latter case, such determination must be in writing, approved by the Agency Head and included in the concession file. All proposers should be notified of such action.

(B) If the Selection Committee decides that best and final offers should be solicited and/or discussions or negotiations should be initiated, it may limit such process to those proposers whose proposals are acceptable or are reasonably likely to be made acceptable for the purpose of promoting understanding of the City's requirements and the proposals and/or the proposers' capabilities; obtaining the best compensation proposal for the City; and arriving at a concession that will be most advantageous to the City taking into consideration the evaluation factors set forth in the RFP.

((a)) Proposers shall be accorded fair treatment with respect to any opportunity for discussions and revisions of proposals. Proposers not selected for best and final offers, discussions or negotiations should be notified.

((b)) The Selection Committee shall establish an agenda and schedule for conducting discussions, if any. Any oral clarification of a proposal shall be confirmed in writing by the proposer.

((c)) The Selection Committee may also request best and final offers from proposers prior to, following or in lieu of discussions with individual proposers. The concession manager shall establish a common date and time for the submission of best and final offers. The Selection Committee may request best and final offers on the whole proposal or on any one or combination of its component parts (e.g., revenue, technical qualifications, approach, and/or capability). The request shall be the same for all proposers included in the best and final offer process. Best and final offers shall be submitted only once unless the concession manager makes a determination that it is in the City's best interest to conduct additional discussions and/or require another submission of best and final offers, which may be limited to those proposers deemed by the Selection Committee to have a reasonable chance of obtaining the concession award. Proposers shall be informed that if they do not submit a notice of withdrawal or another best and final offer, their immediate previous offer will be construed as their best and final offer.

((d)) Once discussions are commenced with any proposer or after best and final offers are requested, such proposer may correct any mistake in its proposal by modifying or withdrawing the proposal until the time and date set for receipt of best and final offers.

((e)) Following discussions and/or best and final offers, if any, the Selection Committee may elect to enter into negotiations for a concession award with one or more of the highest rated proposers. Auction techniques (revealing one proposer's revenue proposal to another) and disclosure of any information derived from competing proposals are prohibited. The concession manager shall document the process of best and final offers, discussions and negotiations in the concession file.

((f)) With respect to competitive sealed proposal awards where the concession has a value that when aggregated with the value of all other City concessions, franchises and contracts held by the same concessionaire is valued at one hundred thousand dollars or more, at any point during the process of best and final offers, discussions or negotiations, the concession manager may require those proposers deemed by the Selection Committee to have a reasonable chance of obtaining the concession award to complete VENDEX questionnaires.

(C) When an agency determines that there is a need for minor modifications in its requirements during the process of conducting best and final offers, discussions or negotiations, those modifications must be communicated in writing to all of the proposers included in such process. 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.

(p) *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.

(3) Once the concession manager receives the final recommendation from the Selection Committee, together with any documentation from any individual member of the Selection Committee who disagrees with such final recommendation, the concession manager shall proceed to determine responsibility of the prospective concessionaire, in accordance with the procedures set forth in 12 RCNY § 1-07.

(4) If VENDEX questionnaires have not previously been requested from proposers, the concession manager shall require the highest rated proposer to complete such questionnaires. The Department of Investigation shall review the names on the questionnaires to ascertain whether the business or its affiliated individuals are or have been the subject of an investigation by the Department, in accordance with 12 RCNY § 1-07(e)(1)(iii).

(q) *Public hearings on significant concession awards.*

(1) Prior to an Agency granting any significant concession to be awarded by competitive sealed proposals, the 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. A record of comments received at the hearing shall be maintained in the concession file. A notice of each such public hearing, containing a summary of the terms and conditions of the proposed concession and stating the time, date and location of the public hearing, shall be published once in the *City Record* not less than 15 days prior to the hearing date or a shorter period approved by the CCPO, and shall be given to each affected Community Board, each affected Borough President, and the members of the Committee not less than 15 days prior to the date of the public hearing.

(2) For concessions where the total value of the compensation to the City will not exceed one million dollars, such notice may include a provision that if the agency does not receive, within 10 days after publication of such notice, from any individual a written request to speak at such hearing or a request from a member of the Committee for the agency to appear at such hearing, then such hearing need not be conducted. Should the decision be made not to hold such hearing, the agency shall publish a notice in the *City Record* canceling such hearing, and shall send a copy of such notice to all members of the Committee.

(r) *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 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.

§ 1-14 Negotiated Concessions.

(a) *Policy.* Agencies may award negotiated concessions under the circumstances and subject to the conditions set

forth in this section.

(b) *Procedures.*

(1) *Preliminary Discussions.* An agency may engage in preliminary discussions with a potential concessionaire to explore the feasibility of a proposed concession. Discussions are not negotiations for the selection of a concessionaire.

(2) The concession manager shall justify the award of a negotiated concession by making 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: an 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, provided, however, that revenue shall not be considered "substantially diminished" where the diminishment is only to the present value of the revenue because of the additional time needed to solicit competitive sealed bids or competitive sealed proposals; or an existing concessionaire has been terminated, has defaulted, has withdrawn from, or has repudiated a concession agreement, or has become otherwise unavailable; or an agency has decided, for unanticipated reasons, not to renew an existing concession in the best interest of the City and the agency requires a substitute or successor concessionaire.

(3) The CCPO shall approve the use of the negotiated concession method for a particular concession or for a particular type of concession prior to the agency's conduct of negotiations with potential concessionaires. The CCPO shall state the reasons that permitting the use of such method serves the best interests of the City and shall provide a copy of this determination and of the request by the concession manager to the members of the Committee within five days of its issuance.

(4) The agency shall negotiate with all qualified potential concessionaires that have expressed interest unless the concession manager determines for a particular concession or for a particular type of concession that it is in the City's best interest to negotiate with fewer potential concessionaires, and the CCPO approves such determination.

(5) The concession manager shall maintain a written record of the conduct of negotiations and the basis for every determination to continue or suspend negotiations with each potential concessionaire.

(6) The concession manager shall make a determination that award of the concession is in the best interest of the City and the basis thereof.

(c) *Public Notice of Intent to Enter into Negotiations.*

(1) *Frequency.* Notice of intent to enter into negotiations shall be published in the *City Record* for five consecutive editions, shall be posted on the City's website in a location that is accessible by the public simultaneously with its publication, and a copy shall be provided to the members of the Committee within five days of its publication. The last date of publications of such notice shall appear no fewer than ten days before negotiations are expected to begin.

(2) *Content.* Such notice of intent shall include:

(i) Agency name;

(ii) Brief description of the proposed concession, its size and its location;

(iii) Projected concession revenue, if any;

(iv) Summary of the basis of the determination to award the concession as a negotiated concession;

(v) Projected concession term start and expiration dates;

(vi) Instructions and information to potential concessionaires concerning how they may express interest in the proposed concession, and how they may obtain additional information concerning the proposed concession, including but not limited to, its prior use and/or other possible usage of the premises, any fixtures or equipment on the premises and its surrounding area, appropriate materials such as maps, plans or photographs; and any terms and conditions upon its award, including warranty and bonding or other security requirements, amount of proposed capital investment and a description of any legal restrictions on the use of the location;

(vii) The evaluation criteria that will be applied to the evaluation of all proposals;

(viii) A notice that the concession award is subject to applicable provisions of federal, State, and local laws and executive orders requiring affirmative action and equal employment opportunity;

(ix) Where applicable, a notice that concession award is subject to completion of a VENDEX questionnaires and review of that information by the Department of Investigation;

(x) The name, address, and telephone number of a contact person to whom questions and correspondence relating to the potential concession award can be addressed; 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 proposal process should inform the Comptroller, Office of Contract Administration, 1 Centre Street, New York, New York 10007, telephone number (212) 669-2323.

(3) *Major concession.* Prior to publishing a notice of intent to enter into negotiations, the agency shall make a written determination as to whether a concession is a major concession. Such determination shall be approved in writing by the agency head and shall be included in the concession file. 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 concessionaire. If a concession is not determined to be a major concession an agency may proceed with negotiations pursuant to paragraph (1) of this subdivision, but shall provide written notification of its determination that the concession is not a major concession to each affected community board and Borough President at the time that notice of intent to enter into negotiations is published, and shall provide a copy of such notification to the members of the Committee within five days of notification of the community board(s) and Borough President. The written notification shall include a summary of the terms and conditions of the proposed concession.

(d) *Recommendation of award.*

(1) Once the agency has concluded negotiations and has selected a prospective concessionaire, the concession manager shall proceed to determine responsibility of such prospective concessionaire, in accordance with the procedures set forth in 12 RCNY § 1-07. The concession manager shall document the negotiations in a report, which shall include whether potential concessionaires responded to the notice of intent to enter into negotiations, the number of potential concessionaires the agency negotiated with, and the basis for the selection, including all relevant materials submitted by the potential concessionaires. The concession manager shall file the report in the concession file folder.

(2) The concession manager shall require the prospective concessionaire to complete VENDEX questionnaires, as applicable.

(3) The Department of Investigation shall review the names on the questionnaires to ascertain whether the business or its affiliated individuals are or have been the subject of an investigation by the Department, in accordance with 12 RCNY § 1-07(e)(iii).

(e) *Award and processing.* Once the agency has identified a proposed concessionaire pursuant to the procedures set forth in this Section, the agency may proceed to award the concession, provided, however, that the agency shall submit the concession agreement it proposes to enter into with respect to any negotiated concession for prior approval by the Committee, together with the completed VENDEX questionnaires when the concession has a value that when aggregated with the value of all other City concessions, franchises and 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 12 RCNY § 1-13(q). Notwithstanding the foregoing, the Committee need not review awards of negotiated concessions that are not subject to renewal and have a term of less than 30 days.

(f) *Certain DCAS concessions.* Notwithstanding the provisions of subdivision (b) of this Section, the Department of Citywide Administrative Services ("DCAS") may award certain concessions, as set forth below, pursuant to this Section, upon compliance with subdivisions (c), (d), and (e) of this Section. A concession subject to this subdivision (f) is a concession to be awarded by DCAS to an owner of property that is adjacent to the concession property, or to a business located on such adjacent property, where DCAS has made a determination 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 some unique service that can be performed only by the proposed concessionaire.

§ 1-15 Small Concessions.

(a) *Definition.* Small concessions are those concessions, otherwise deemed by the concession manager to be appropriate for competitive sealed bid, for which the agency anticipates compensation to the City of not more than \$10,000 per year over the course of the concession term, which may not exceed five years. This shall be known as the small concession limit. Small concessions may be awarded only by the method set forth in this Section or by competitive sealed bids as set forth in 12 RCNY § 1-12. The only compensation that may be accepted under the solicitation method set forth in this Section is monetary compensation.

(b) *Application.* A concession shall not be artificially divided in order to meet the requirements of this section. Changes

to and/or renewals of small concessions shall not bring the total value of the concession to an amount greater than the small concession limits. If a concession is solicited pursuant to this rule and results in one or more bids in excess of the small concession limit, the concession may not be awarded pursuant to this rule.

(c) *Scope.*

(1) *Competition Objective.*

(i) Except as specifically set forth in this section, the requirements of these rules shall not be applicable to small concessions awarded pursuant to this section.

(ii) For small concessions awarded pursuant to this section, at least five potential concessionaires shall be solicited at random from the appropriate solicitation mailing list for the type of concession being sought, pursuant to 12 RCNY § 1-12(c), except where such list consists of fewer than five potential concessionaires, in which case all potential concessionaires on the list shall be solicited. The agency may additionally solicit concessionaires who have responded to prior solicitations or whose names have been obtained through referrals from other City agencies, commercial buyers, or general market research. Agencies shall provide for special outreach to minority and women owned business enterprises certified by the City of New York as such entities are defined in Charter § 1304, and may additionally employ any outreach technique sanctioned by DSBS that is not otherwise in violation of these Rules. Responsive bids shall be obtained from at least two potential concessionaires. For purposes of this section, a response of "no bid" is not a responsive bid. If only one responsive bid is received in response to a solicitation, an award may be made to that bidder if the concession manager determines that the award of the concession is in the best interests of the City, that the proposed revenue to the City is appropriate and that other potential concessionaires had a reasonable opportunity to respond.

(2) *Solicitation.*

(i) The agency shall comply with 12 RCNY § 1-12(a)(2) of these rules; provided however, that if a concession is determined to be a major concession, the concession may not be awarded pursuant to this rule.

(ii) Agencies shall use a written request for bids for each small concession awarded pursuant to this section, which shall contain, at a minimum:

- (A) A description of the type of concession requested;
- (B) Time, date, place, and form of requested response;
- (C) Basis for award; and
- (D) Name and telephone number of the concession manager to whom inquiries may be directed.

(d) *Award.* Small concessions shall be awarded to the highest responsive and responsible bidder.

(e) *Record.* The concession file for a small concession awarded pursuant to this section shall include, at a minimum:

- (1) Name of the responsible concession manager;
- (2) Date of concession award;
- (3) Name and address of successful concessionaire;
- (4) Brief description of the small concession;
- (5) Name of the solicitation mailing list used in the solicitation of the small concession;
- (6) Names of solicited potential concessionaires and bid amounts, if any;
- (7) Documentation showing compliance with the requirements of 12 RCNY § 1-12(a)(2);
- (8) Written bids;
- (9) All correspondence;
- (10) Bid tabulations; and
- (11) Written basis of award.

§ 1-16 Committee Approval of Different Procedures.

(a) No agency shall enter into a concession agreement other than through the processes set forth in 12 RCNY §§ 1-12, 1-13, 1-14, and 1-15 of this Chapter unless the 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 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 12 RCNY §§ 1-12 and 1-13, or for not entering into negotiations as set forth in 12 RCNY § 1-14;

(4) A statement that each affected community board and Borough President 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;

(5) A determination as to whether a concession is a major concession. 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 concessionaire; and

(6) 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 questionnaires when the concession has a value that when aggregated with the value of all other City concessions, franchises and 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 12 RCNY § 1-13(q). 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.

§ 1-17 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 12 RCNY § 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 12 RCNY §§ 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.