



February 26, 2020

The Honorable Eric Adams  
Brooklyn Borough President  
Brooklyn Borough Hall, 209 Joralemon Street  
Brooklyn, NY 11201

Mr. Robert Perris  
District Manager, Community Board 2  
350 Jay Street, 8<sup>th</sup> Fl.  
Brooklyn, NY 11201

Re: Pedestrian Plaza Concession

Dear Borough President Adams and Mr. Perris:

Pursuant to Title 12, Section 1-16 of the Concession Rules of the City of New York, the New York City Department of Transportation ("DOT") intends to seek approval from the Franchise and Concession Review Committee to utilize a different procedure to negotiate a Sole Source License Agreement with an organization (the "Concessionaire") for the operation and management of a pedestrian plaza located at DeKalb Avenue between Fulton Street, Bond Street and Albee Square in the borough of Brooklyn ("Licensed Plaza") and maintenance and/or repair of certain amenities installed within the Licensed Plaza, including through City-approved plaza events, sponsorships, gifts, market concession(s) and sub concessions, including but not limited to providing for the sale of any of the following: prepared food, beverages, locally grown produce or locally manufactured products, merchandise (such as souvenirs or T-shirts), and other similar merchandise within the Licensed Plaza.

DOT has identified the Fulton Mall Improvement Association, Inc. as a potential Concessionaire, but DOT will consider additional expressions of interest from other qualified and experienced organizations. As such, a public notice is being placed in the City Record to inform other qualified organizations of this opportunity.

This concession has been determined not to be a major concession as defined in Chapter 7 of the Rules of the City Planning Commission.

Should you have any questions, please feel free to contact Mr. Brandon Budelman, Project Manager, at (212) 839-9625.

Sincerely,

A handwritten signature in blue ink that reads "Keith Bray".

Keith Bray  
Brooklyn Borough Commissioner

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

<b>AGENCY:</b> New York City Department of Transportation (DOT)	<b>CONCESSION TITLE/DESCRIPTION:</b> Operation and management of a pedestrian plaza located at DeKalb Avenue between Fulton Street, Bond Street and Albee Square in the borough of Brooklyn; and maintenance and/or repair of certain amenities installed within the pedestrian plaza
<b># VOTES required for proposed action =</b> 4 <input type="checkbox"/> N/A	<b>CONCESSION IDENTIFICATION #</b> 2020Con1

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

Competitive Sealed Bids (CSB)
  Competitive Sealed Proposals (CSP)\*

Different Procedure \* ( Sole Source Agreement  Other \_\_\_\_\_)

Negotiated Concession\*

Recommended Concessionaire: Fulton Mall Improvement Association, Inc.  EIN  SSN # 11-6259160

Attach Memo(s) \*

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

**CONCESSION TYPE (Check all that apply)**

> **Significant Concession:**

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

> **Major Concession:**

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

**NOTIFICATION REQUIREMENTS**

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

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

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

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

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

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

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

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

**AUTHORIZED AGENCY STAFF**

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

Name Michelle Craven Title Assistant Commissioner for Cityscape and Franchises

Signature \_\_\_\_\_ Date \_\_/\_\_/\_\_

**CITY CHIEF PROCUREMENT OFFICER**

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

Signature \_\_\_\_\_ Date \_\_/\_\_/\_\_

**City Chief Procurement Officer**

## CONCESSION PRE-SOLICITATION REVIEW MEMORANDUM

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

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

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

- Specifications cannot be made sufficiently definite and certain to permit selection based on revenue to the City alone.
- Judgment is required in evaluating competing proposals, and it is in the best interest of the City to require a balancing of revenue to the City, quality and other factors.
- The agency will be pursuing a negotiated concession for the reasons listed in section (B)(3)(b)
- Other (Describe):**

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

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

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

Subject to Franchise and Concession Review Committee ("FCRC") Step 1 authorization, DOT intends to negotiate the Agreement with the Fulton Mall Improvement Association, Inc. ("FMIA") for the operation and management of a pedestrian plaza located at DeKalb Avenue between Fulton Street, Bond Street and Albee Square in the borough of Brooklyn ("Licensed Plaza"); and maintenance and/or repair of certain amenities installed within the Licensed Plaza.

FMIA would have the right to provide for the operation and management of the Licensed Plaza in exchange for maintenance and/or repair of certain amenities installed within the Licensed Plaza, including through City-approved plaza events, sponsorships, gifts, market concession(s) and subconcessions, including but not limited to providing for the sale of any of the following: prepared food, beverages, locally grown produce or locally manufactured products, merchandise (such as souvenirs or T-shirts), and other similar merchandise within the Licensed Plaza. Subconcessions would be awarded based on solicitations issued by FMIA in the basic form of Request for Proposals or Request for Bids, and subject to DOT's prior written approval of both solicitation and award.

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

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

It is in the City's best interest to enter into the Agreement using a different procedure with FMIA because this not-for-profit organization's mission is to improve and enhance the neighborhood in which the Licensed Plaza is located. FMIA was created and is funded by the property owners surrounding the Licensed Plaza. This organization directly represents the neighborhood that it will serve and has a specific interest in the Licensed Plaza.

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

On May 13, 2020, DOT intends to seek FCRC authorization to negotiate the Agreement with FMIA for the operation and management of the Licensed Plaza; and the maintenance and/or repair of certain amenities within the Licensed Plaza ("Step 1"). Pending FCRC Step 1 approval, DOT intends to negotiate the terms of the Agreement with FMIA.

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

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

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

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

**Approved by CCPO:** \_\_\_\_\_ **on** \_\_\_/\_\_\_/\_\_\_.

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

**CITY OF NEW YORK**

**FRANCHISE AND CONCESSION REVIEW COMMITTEE**

**(Cal. No. )**

**BE IT RESOLVED** that the Franchise and Concession Review Committee (FCRC) hereby authorizes the New York City Department of Transportation (DOT) to utilize a different procedure, pursuant to Section 1-16 of the Concession Rules of the City of New York, to negotiate a Sole Source License Agreement (Agreement) with the Fulton Mall Improvement Association, Inc., (“FMIA”), for the operation and management of a pedestrian plaza located at DeKalb Avenue between Fulton Street, Bond Street and Albee Square in the borough of Brooklyn (“Licensed Plaza”); and maintenance and/or repair of certain amenities installed within the Licensed Plaza, including through City-approved plaza events, sponsorships, gifts, market concession(s) and subconcessions, including but not limited to providing for the sale of any of the following: prepared food, beverages, locally grown produce or locally manufactured products, merchandise (such as souvenirs or T-shirts), and other similar merchandise within the Licensed Plaza. Subconcessions would be awarded based on solicitations issued by FMIA in the basic form of Request for Proposals or Request for Bids, subject to DOT’s prior written approval of both solicitation and award.

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

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

**May 13, 2020**

Date: \_\_\_\_\_

Signed: \_\_\_\_\_

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



**Memorandum**

**To:** Hon. Ruben Diaz, Jr., President of the Borough of the Bronx  
Hon. Eric Adams, President of the Borough of Brooklyn  
Hon. Gale Brewer, President of the Borough of the Manhattan  
Hon. Melinda Katz, President of the Borough of Queens  
Hon. James Oddo, President of the Borough of Staten Island  
All Community Boards

**From:** Michelle Craven, Assistant Commissioner 

**Re:** Pedestrian Plaza Concessions

**Date:** February 28, 2020

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Pursuant to Title 12, Section 1-16 of the Rules of the City of New York (“RCNY”), the New York City Department of Transportation (“DOT”) intends to seek Franchise and Concession Review Committee approval to utilize a different procedure to negotiate concession agreements with applicant organizations for the operation and management of pedestrian plazas (“Licensed Plazas”) and maintenance and/or repair of certain amenities installed within the Licensed Plazas, including through City-approved plaza events, sponsorships, gifts, market concession(s) and subconcessions, including but not limited to providing for the sale of any of the following: prepared food, beverages, locally grown produce or locally manufactured products, merchandise (such as souvenirs or T-shirts), and other similar merchandise within the Licensed Plazas. Concessionaires for the Licensed Plazas have been or will be selected through a competitive application process in accordance with Section 19-157 of the New York City Administrative Code and Title 34, Section 4-16 of the RCNY.

If you have any questions, please feel free to contact me at 212-839-6550.

**cc:** Borough Commissioner Nivardo Lopez  
Borough Commissioner Keith Bray  
Borough Commissioner Ed Pincar Jr.  
Borough Commissioner Nicole Garcia  
Borough Commissioner Tom Cocola  
Emily Weidenhof  
N. Patricia Browne

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

<b>AGENCY</b> Dept. of Transportation	<b>CONCESSION TITLE/DESCRIPTION:</b> NYC Plaza Program Concessions
<b># VOTES required for proposed action = 4</b> <input type="checkbox"/> N/A	<b>CONCESSION IDENTIFICATION #</b> _____

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

Competitive Sealed Bids (CSB)
  Competitive Sealed Proposals (CSP)\*

Different Procedure \* ( Sole Source Agreement  Other: Application procedure to be approved by FCRC)

Negotiated Acquisition\*

Recommended Concessionaire Selected Applicants to the NYC Plaza Program  EIN   
 SSN # \_\_\_\_\_

Attach Memo(s) \*

<p align="center"><b>CONCESSION AGREEMENT TERM</b></p> Initial Term: <u>To be negotiated</u> Renewal Option(s) Term: <u>To be negotiated</u> Total Potential Term: <u>To be negotiated</u>	<p align="center"><b>ESTIMATED REVENUE/ANTICIPATED BUSINESS TERMS</b> (Check all that apply)</p> <p align="center"><input type="checkbox"/> Additional description attached</p> <p><input type="checkbox"/> Annual Minimum Fee(s) \$ _____</p> <p><input type="checkbox"/> % Gross Receipts _____%</p> <p><input type="checkbox"/> The Greater of Annual Minimum Fee(s of \$_____ v. _____% of Gross Receipts</p> <p><input checked="" type="checkbox"/> Other formula <u>Maintenance costs</u></p>
<p><b>LOCATION OF CONCESSION SITE(S)*</b> <input checked="" type="checkbox"/> N/A</p> Address: To be determined	
Borough _____ C.B. ____ Block # <u>NA</u> Lot # <u>NA</u>	

**CONCESSION TYPE (Check all that apply)**

> **Significant Concession:**

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

> **Major Concession:**

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

**NOTIFICATION REQUIREMENTS**

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

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

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

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

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

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

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

The agency certifies that each affected CB has received/will receive written notice at least 40 days in advance of the FCRC meeting at which the agency will seek approval to use a different selection procedure.

The agency certifies that based on exigent circumstances it has requested/will request unanimous approval of the FCRC to waive advance written notice to each affected CB.

The agency certifies that each affected CB(s)/BP will receive written notice that the concession was determined to be non-major along with a summary of the terms and conditions of the proposed concession upon publication

of a Notice of Intent to Enter into Negotiations. The agency further certifies that it will send a copy of this notice to the members of the Committee within five days of the notice to the CB(s)/BP.

**AUTHORIZED AGENCY STAFF**

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

**Name** Michelle Craven **Title** Assistant Commissioner for Cityscape and Franchises

**Signature** \_\_\_\_\_ **Date**  / /

**CITY CHIEF PROCUREMENT OFFICER**

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

**Signature** \_\_\_\_\_

**Date**  / /

**City Chief Procurement Officer**

# CONCESSION PRE-SOLICITATION REVIEW MEMORANDUM

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

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

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

- Specifications cannot be made sufficiently definite and certain to permit selection based on revenue to the City alone.
- Judgment is required in evaluating competing proposals, and it is in the best interest of the City to require a balancing of revenue to the City, quality and other factors.
- The agency will be pursuing a negotiated concession for the reasons listed in section (B)(3)(b)
- Other (Describe):**

The New York City Department of Transportation ("DOT") will be pursuing concession agreements pursuant to Title 12, Section 1-16 of the Rules of the City of New York ("RCNY") for the reasons listed in section (B)(2) below.

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

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

Subject to Franchise and Concession Review Committee ("FCRC") Step 1 authorization, DOT intends to negotiate concession agreements with applicant organizations for the operation and management of pedestrian plazas ("Licensed Plazas") and maintenance and/or repair of certain amenities installed within the Licensed Plazas, including through City-approved plaza events, sponsorships, gifts, market concession(s) and subconcessions, including but not limited to providing for the sale of any of the following: prepared food, beverages, locally grown produce or locally manufactured products, merchandise (such as souvenirs or T-shirts), and other similar merchandise within the Licensed Plazas. Subconcessions would be awarded based on solicitations issued in the basic form of Request for Proposals or Request for Bids, subject to DOT's prior written approval of both solicitation and award.

Concessionaires for the Licensed Plazas have been or will be selected through a competitive application process in accordance with Section 19-157 of the New York City Administrative Code and Title 34, Section 4-16 of the RCNY. ("NYC Plaza Program").

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

The NYC Plaza Program is a DOT strategic initiative to enhance safety, accessibility, and walkability in neighborhoods across all 5 boroughs. The NYC Plaza Program was developed by DOT to provide for a competitive application process allowing applicant organizations to propose pedestrian plaza sites throughout the city. DOT prioritizes sites that are in neighborhoods that lack open space, are within close proximity to transit and commercial hubs, and partners who demonstrate that they are willing to operate, maintain, and manage these spaces so they are vibrant pedestrian plazas.

The NYC Plaza Program is an established open competitive application process that allows DOT to choose both the sites for pedestrian plazas and the plaza partners simultaneously in lieu of soliciting competitive sealed proposals.

Accordingly, a determination was made not to solicit Competitive Sealed Proposals.

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

On May 13, 2020, DOT intends to seek FCRC authorization to negotiate concession agreements with concessionaires for the operation and management of the Licensed Plazas and maintenance and/or repair of certain amenities installed within the Licensed Plazas. Concessionaires and their respective Licensed Plazas have been or will be selected through DOT's NYC Plaza Program, a competitive application process authorized in Section 19-157 of the New York City Administrative Code and regulated by Title 34, Section 4-16 of the RCNY.

To be eligible, applicants must operate within the City of New York and must be incorporated in New York State and must have a mission that serves or relates to the geographical areas of the proposed pedestrian plaza. Applicants are required to submit the following: completed application form, list of names and titles of the applicants' employees who work in community development, list of names and titles of members of the applicant's Board of Directors or similar governing members, financial information based on the applicant's operating budget, at least eight letters of support from community stakeholders, and three photographs of the site proposed to be a pedestrian plaza.

DOT reviews and evaluates the applications based on the following criteria: open space, community initiative, site context, organizational and maintenance capacity, and income eligibility.

In no event shall a proposed Licensed Plaza cause any threshold of the major concession rules promulgated by the City Planning Commission, codified in 62 RCNY Chapter 7, to be exceeded, or require the preparation of an Environmental Impact Statement (EIS). In the event that DOT determines that a proposed Licensed Plaza would cause any such threshold to be exceeded or would cause the preparation of an EIS, DOT will inform the concessionaire, and the concessionaire may amend its proposal within a reasonable time period set by DOT.

Concessionaires will be notified of this process through advertising in the City Record, postings on the DOT website, email blast to DOT listservs, and through targeted public informational presentations. In addition, a notice will be sent by email to Local Development Corporations and Business Improvement Districts citywide as identified by the Department of Small Business Services.

DOT will submit each concession agreement that it proposes to enter into with the concessionaires to the FCRC for approval. If any of the proposed concession agreements are determined by DOT to be significant, the agency and the FCRC will hold a joint Public Hearing on each proposed concession agreement before presenting them to the FCRC for "Step 2" approval at a second meeting. If any of the proposed concession agreements are determined by DOT to be non-significant, they will be presented to the FCRC along with a request for the required FCRC authorization to enter into the concession agreements directly (without the need for initial public hearings).

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

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

- The agency has an opportunity to obtain significant revenues that would be lost or substantially diminished should the agency be required to solicit the concession by competitive sealed bids or competitive sealed proposals and the diminished revenue does

not relate only to the present value of the revenue because of the additional time needed to solicit competitive sealed bids or competitive sealed proposals; *[Explain]*

- An existing concessionaire has been terminated, has defaulted, has withdrawn from, or has repudiated a concession agreement, or has become otherwise unavailable; *[Explain]*
- The agency has decided, for unanticipated reasons, not to renew an existing concession in the best interest of the City and requires a substitute/successor concessionaire. *[Explain]*
- DCAS is awarding a concession to an owner of property adjacent to the concession property, or to a business located on such adjacent property, and has determined that it is not in the best interest of the City to award the concession pursuant to a competitive process because of the layout or some other characteristic of the property, or because of a unique service that can be performed only by the proposed concessionaire. *[Explain]*

**Approved by CCPO:** \_\_\_\_\_ **on** \_\_\_/\_\_\_/\_\_\_.

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

**CITY OF NEW YORK**

**FRANCHISE AND CONCESSION REVIEW COMMITTEE**

(Cal. No. \_\_\_\_)

**BE IT RESOLVED** that the Franchise and Concession Review Committee hereby authorizes the New York City Department of Transportation (“DOT”) to utilize a different procedure, pursuant to Title 12, Section 1-16 of the Rules of the City of New York (“RCNY”), to negotiate concession agreements with applicant organizations for the operation and management of pedestrian plazas (“Licensed Plazas”) and maintenance and/or repair of certain amenities installed within the Licensed Plazas, including through City-approved plaza events, sponsorships, gifts, market concession(s) and subconcessions, including but not limited to providing for the sale of any of the following: prepared food, beverages, locally grown produce or locally manufactured products, merchandise (such as souvenirs or T-shirts), and other similar merchandise within the Licensed Plazas. Subconcessions would be awarded based on solicitations issued in the basic form of Request for Proposals or Request for Bids, subject to DOT’s prior written approval of both solicitation and award.

Concessionaires for the Licensed Plazas have been or will be selected through a competitive application process in accordance with Section 19-157 of the New York City Administrative Code and Title 34, Section 4-16 of the RCNY.

**BE IT FURTHER RESOLVED** that DOT shall submit the concession agreements it proposes to enter into to the Franchise and Concession Review Committee for approval.

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

May 13, 2020

Date: \_\_\_\_\_

Signed: \_\_\_\_\_

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



NYC & Company  
810 Seventh Avenue  
New York, NY 10019

+1 212 484 1200 tel  
+1 212 246 6310 fax

# Memo

**To:** All NYC Borough Presidents  
All NYC Community Board Presidents

**From:** Courtney Kaadi  
NYC & Company Inc.

**CC:** Tia Pierce  
Department of Small Business Services

Gregg Alleyne  
Mayor's Office of Contract Services

Natalie Koepff  
NYC & Company Inc.

**Date:** April 3, 2020

**Re:** Notice of Intent to Seek FCRC approval to utilize a different procedure to negotiate a Sole Source License Agreement with Mattel, Inc. for the non-exclusive use of city-owned trademarks on merchandise

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Dear NYC Borough Presidents and NYC Community Board Presidents:

Pursuant to §1-16 of the Concession Rules of the City of New York, this is to notify the affected Borough Presidents and Community Boards that NYC & Company Inc., on behalf of the NYC Department of Small Business Services, intends to seek Franchise and Concession Review Committee approval to utilize a different procedure to negotiate a sole source license agreement with Mattel, Inc. for a non-significant concession for the non-exclusive use of city-owned trademarks on merchandise.

The proposed concession has been determined not to be a major concession as defined in Chapter 7 of the Rules of the City Planning Commission.

If you have any questions or comments, please contact me by e-mail at [Ckaadi@nycgo.com](mailto:Ckaadi@nycgo.com)

Best,  
Courtney Kaadi

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

<b>AGENCY:</b> NYC & Company on behalf of NYC Department of Small Business Services	<b>CONCESSION TITLE/DESCRIPTION:</b> Non-Exclusive Use of City-Owned Trademarks on Merchandise  <b>CONCESSION IDENTIFICATION #</b> NYCCO-2020-005
<b># VOTES required for proposed action =</b> 4 <input type="checkbox"/> N/A	

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

Competitive Sealed Bids (CSB) (CSP)\*
  Competitive Sealed Proposals

Different Procedure \* ( Sole Source Agreement  Other \_\_\_\_\_)

Negotiated Concession\*

Recommended Concessionaire: Mattel, Inc.  EIN  SSN # 95-1567322  
 Attach Memo(s) \*

<p align="center"><b>CONCESSION AGREEMENT TERM</b></p> <p><b>Initial Term:</b> to be negotiated</p> <p><b>Renewal Option(s) Term:</b> to be negotiated to be negotiated</p> <p><b>Total Potential Term:</b> to be negotiated</p>	<p align="center"><b>ESTIMATED REVENUE/ANTICIPATED BUSINESS TERMS</b> (Check all that apply)</p> <p align="center"><input type="checkbox"/> Additional description attached</p> <p><input type="checkbox"/> Annual Minimum Fee(s) \$ _____</p> <p><input type="checkbox"/> % Gross Receipts _____%</p> <p><input type="checkbox"/> The Greater of Annual Minimum Fee(s of \$_____ v. _____% of Gross Receipts</p> <p><input checked="" type="checkbox"/> Other formula: to be negotiated</p>
<p><b>LOCATION OF CONCESSION SITE(S)*</b> <input checked="" type="checkbox"/> N/A</p> <p><b>Address</b> _____</p> <p><b>Borough</b> _____ <b>C.B.</b> _____</p> <p><b>Block #</b> _____ <b>Lot #</b> _____</p> <p><small>*Attach additional sheet</small></p>	

**CONCESSION TYPE (Check all that apply)**

**> Significant Concession:**

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

**> Major Concession:**

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

**NOTIFICATION REQUIREMENTS**

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

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

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

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

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

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

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

The Agency certifies that each affected CB/BP has received/will receive written notice at least 40 days in advance of the FCRC meeting at which the agency will seek approval to use a different selection procedure.

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

**AUTHORIZED AGENCY STAFF**

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

Name \_\_\_\_\_ Title \_\_\_\_\_

Signature \_\_\_\_\_ Date \_\_/\_\_/\_\_

**CITY CHIEF PROCUREMENT OFFICER**

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

Signature \_\_\_\_\_ Date \_\_/\_\_/\_\_

City Chief Procurement Officer

# CONCESSION AGREEMENT PRE-SOLICITATION REVIEW MEMORANDUM

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

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

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

- Specifications cannot be made sufficiently definite and certain to permit selection based on revenue to the City alone.
- Judgment is required in evaluating competing proposals, and it is in the best interest of the City to require a balancing of revenue to the City, quality and other factors.
- The agency will be pursuing a negotiated concession for the reasons listed in section (B)(3)(b)
- Other (Describe)

NYC & Company Inc. on behalf of New York City Department of Small Business Services (SBS), intends to seek Franchise and Concession Review Committee approval to utilize a different procedure to negotiate a non-exclusive, sole source license agreement with Mattel, Inc. pursuant to Section 1-16 of the Concession Rules of the City of New York (different procedures) for the reasons listed in Section (B)(2) below.

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

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

To be determined at a later date- when/if the Franchise and Concession Review Committee (FCRC) approves the use of a different procedure to negotiate an agreement with Mattel, Inc.

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

Mattel, Inc. is one of the largest manufacturers of toys, games and toy vehicles worldwide. Mattel, which has been in business for 75 years, owns multiple well-known brands, such as Matchbox, Barbie, Hotwheels, and Fisher-Price. Since our current sole source agreement is expiring at the end of the year, it would be in the City's best interest to take the opportunity and allow for the capabilities to expand from just Matchbox, into other brands, to expand on an already successful relationship. Therefore, it is in the City's best interest to negotiate a sole source agreement with Mattel, Inc. for toys, games and toy vehicles. This proposed non-exclusive license agreement will not bar opportunities for other types of toy, game, and toy vehicle manufacturers.

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

NYC & Company Inc./SBS is requesting authorization to utilize a different procedure, pursuant to Section 1-16 of the Concession Rules of the City of New York, to negotiate a sole source agreement with Mattel, Inc. for the non-exclusive use of City-owned trademarks on toys, games and toy vehicles. We intend to bring this matter before the FCRC on May 13<sup>th</sup>, 2020 ("Step 1"). Once negotiated and if determined by NYC & Company Inc./SBS to be a significant concession, NYC & Company Inc./SBS and the FCRC will hold a joint public hearing on the proposed Agreement before presenting it to the FCRC for ("Step 2") approval at a second public meeting. If NYC & Company Inc./SBS determines the concession to be non-significant, NYC & Company Inc./SBS will present the fully negotiated Agreement directly (without need for an initial joint public hearing).

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

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

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

**Approved by CCPO:** \_\_\_\_\_ **on** \_\_\_/\_\_\_/\_\_\_.

4. If the Agency has/will request unanimous FCRC approval to waive advance written notice each affected CB/BP that a selection procedure other than CSB or CSP will be utilized, explain the exigent circumstances. *[Explain]*     **N/A**

**CITY OF NEW YORK**

**FRANCHISE AND CONCESSION REVIEW COMMITTEE**

(Cal. No. \_\_)

**RESOLVED**, that the Franchise and Concession Review Committee (“FCRC”) authorizes the NYC & Company, Inc. on behalf of New York City Department of Small Business Services (“SBS”) to utilize a different procedure, pursuant to Section 1-16 of the Concession Rules of the City of New York, to negotiate a non-exclusive, Sole Source License Agreement with Mattel, Inc. (“Mattel”) for the non-exclusive use of city-owned trademarks on merchandise.

**BE IT FURTHER RESOLVED**, that NYC & Company, Inc. on behalf of SBS shall submit the License Agreement SBS proposes to enter into with Mattel to the FCRC for approval.

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

**May 13, 2020**

Date: \_\_\_\_\_

Signed: \_\_\_\_\_

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

# Memo

**To:** All NYC Borough Presidents  
All NYC Community Board Presidents

**From:** Courtney Kaadi  
NYC & Company Inc.

**CC:** Tia Pierce  
Department of Small Business Services

Gregg Alleyne  
Mayor's Office of Contract Services

Natalie Koepff  
NYC & Company Inc.

**Date:** April 3, 2020

**Re:** Notice of Intent to Seek FCRC approval to utilize a different procedure to negotiate a Sole Source License Agreement with Xcel Brands, Inc. for the non-exclusive use of city-owned trademarks on merchandise

---

Dear NYC Borough Presidents and NYC Community Board Presidents:

Pursuant to §1-16 of the Concession Rules of the City of New York, this is to notify the affected Borough Presidents and Community Boards that NYC & Company Inc., on behalf of the NYC Department of Small Business Services, intends to seek Franchise and Concession Review Committee approval to utilize a different procedure to negotiate a sole source license agreement with Xcel Brands, Inc. for a non-significant concession for the non-exclusive use of city-owned trademarks on merchandise.

The proposed concession has been determined not to be a major concession as defined in Chapter 7 of the Rules of the City Planning Commission.

If you have any questions or comments, please contact me by e-mail at [Ckaadi@nycgo.com](mailto:Ckaadi@nycgo.com)

Best,  
Courtney Kaadi

**CONCESSION AGREEMENT PRE-SOLICITATION REVIEW MEMORANDUM COVER SHEET**

*(Complete and attach a CPSR Memorandum only if the selection procedure will be other than Competitive Sealed Bids)*

<b>AGENCY:</b> NYC & Company, Inc. on behalf of NYC Department of Small Business Services	<b>CONCESSION TITLE/DESCRIPTION:</b> Non-Exclusive Use of City-Owned Trademarks on Merchandise  <b>CONCESSION IDENTIFICATION #</b> NYCCO-2020-006
<b># VOTES required for proposed action =</b> 4 <input type="checkbox"/> <b>N/A</b>	

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

Competitive Sealed Bids (CSB) (CSP)\*
  Competitive Sealed Proposals

Different Procedure \* ( Sole Source Agreement  Other \_\_\_\_\_)

Negotiated Concession\*

Recommended Concessionaire: Xcel Brands, Inc.  EIN  SSN # 76-0307819  
 Attach Memo(s) \*

<p align="center"><b>CONCESSION AGREEMENT TERM</b></p> <p><b>Initial Term:</b> to be negotiated  <b>Renewal Option(s) Term:</b> to be negotiated</p> <p><b>Total Potential Term:</b> to be negotiated</p>	<p align="center"><b>ESTIMATED REVENUE/ANTICIPATED BUSINESS TERMS</b> (Check all that apply)</p> <p align="center"><input type="checkbox"/> Additional description attached</p> <p><input type="checkbox"/> Annual Minimum Fee(s) \$ _____</p> <p><input type="checkbox"/> % Gross Receipts _____%</p> <p><input type="checkbox"/> The Greater of Annual Minimum Fee(s of \$_____ v. _____% of Gross Receipts</p> <p><input checked="" type="checkbox"/> Other formula: to be negotiated</p>
<p><b>LOCATION OF CONCESSION SITE(S)*</b> <input checked="" type="checkbox"/> <b>N/A</b></p> <p><b>Address</b> _____</p> <p><b>Borough</b> _____ <b>C.B.</b> _____</p> <p><b>Block #</b> _____ <b>Lot #</b> _____</p> <p><small>*Attach additional sheet</small></p>	

**CONCESSION TYPE (Check all that apply)**

**> Significant Concession:**

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

**> Major Concession:**

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

**NOTIFICATION REQUIREMENTS**

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

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

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

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

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

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

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

- The Agency certifies that each affected CB/BP has received/will receive written notice at least 40 days in advance of the FCRC meeting at which the agency will seek approval to use a different selection procedure.
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**AUTHORIZED AGENCY STAFF**

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

Name \_\_\_\_\_ Title \_\_\_\_\_

Signature \_\_\_\_\_ Date \_\_/\_\_/\_\_

**CITY CHIEF PROCUREMENT OFFICER**

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

Signature \_\_\_\_\_ Date \_\_/\_\_/\_\_

City Chief Procurement Officer

# CONCESSION AGREEMENT PRE-SOLICITATION REVIEW MEMORANDUM

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

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NYC & Company Inc. on behalf of New York City Department of Small Business Services (SBS), intends to seek Franchise and Concession Review Committee approval to utilize a different procedure to negotiate a non-exclusive, sole source license agreement with Xcel Brands, Inc. pursuant to Section 1-16 of the Concession Rules of the City of New York (different procedures) for the reasons listed in Section (B)(2) below.

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

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

To be determined at a later date- when/if the Franchise and Concession Review Committee (FCRC) approves the use of a different procedure to negotiate an agreement with Xcel Brands, Inc.

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

Xcel Brands, Inc. is an umbrella company that actively promotes the growth of consumer awareness through a wide variety of licensed products and branded partnerships for brands, such as but not limited to Isaac Mizrahi, C. Wonder, and Judith Ripka of which Xcel Brands, Inc. is the brand owner. Xcel Brands is a multi-channel distributor with reach in over 20 countries, including a unique presence on televised platforms such as QVC, which continues to be an increasing source for distribution within the retail industry. Xcel Brands, Inc. is able to promote their brands in over 100 million households across North America and 350 million households worldwide. Under Xcel Brands, Inc. diverse retail distribution strategy the brand is available to multiple retail channels to reach customers wherever they shop including televised platforms, which have become increasingly desirable for consumers. For these reasons it is in the City's best interest to negotiate a sole source agreement with Xcel Brands, Inc. This proposed non-exclusive license agreement will not bar opportunities for other types of apparel and accessories manufacturers.

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

NYC & Company Inc./SBS is requesting authorization to utilize a different procedure, pursuant to Section 1-16 of the Concession Rules of the City of New York, to negotiate a sole source agreement with Xcel Brands, Inc. for the non-exclusive use of City-owned trademarks on apparel and accessories. We intend to bring this matter before the FCRC on May 13<sup>th</sup>, 2020 ("Step 1"). Once negotiated and if determined by NYC & Company Inc./SBS to be a significant concession, NYC & Company Inc./SBS and the FCRC will hold a joint public hearing on the proposed Agreement before presenting it to the FCRC for ("Step 2") approval at a second public meeting. If NYC & Company Inc./SBS determines the concession to be non-significant, NYC & Company Inc./SBS will present the fully negotiated Agreement directly (without need for an initial joint public hearing).

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**Approved by CCPO:** \_\_\_\_\_ **on** \_\_\_/\_\_\_/\_\_\_.

4. If the Agency has/will request unanimous FCRC approval to waive advance written notice each affected CB/BP that a selection procedure other than CSB or CSP will be utilized, explain the exigent circumstances. *[Explain]*     **N/A**

**CITY OF NEW YORK**

**FRANCHISE AND CONCESSION REVIEW COMMITTEE**

(Cal. No. \_\_)

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

May 13, 2020

Date: \_\_\_\_\_

Signed: \_\_\_\_\_

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