



BID C-104-08

**CONCESSION BID FOR THE OPERATION AND MANAGEMENT OF A CAFETERIA AT  
THE POLICE ADMINISTRATION BUILDING  
8<sup>TH</sup> AND RACE STREET  
PHILADELPHIA, PA**

SYLVESTER JOHNSON  
POLICE COMMISSIONER

JANET HAGAN  
ACTING PROCUREMENT COMMISSIONER

PROCUREMENT DEPARTMENT  
1<sup>ST</sup> FLOOR, MUNICIPAL SERVICES BUILDING  
1401 JOHN F. KENNEDY BLVD.  
PHILADELPHIA, PA 19102-1685

**SEALED BIDS WILL BE RECEIVED UNTIL 10:30 AM PREVAILING LOCAL TIME IN  
ROOM 170A, MUNICIPAL SERVICES BLDG, 1401 J.F.K. BLVD, PHILA., PA 19102 AND  
WILL BE OPENED IMMEDIATELY THEREAFTER ON NOVEMBER 13, 2007**

QUESTIONS REGARDING THIS BID MUST BE DIRECTED TO THE PUBLIC INFORMATION UNIT  
(215- 686-4720), PROCUREMENT DEPARTMENT, ROOM 170, MUNICIPAL SERVICES BUILDING,  
PHILA. PA. 19102

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## 1. GENERAL BID INFORMATION

- 1.1 The City of Philadelphia (the "City") intends to award a Contract to the highest responsible bidder (hereinafter called "Concessionaire") for the exclusive right (except as otherwise set forth in the Contract) to operate and manage the cafeteria at the Police Administration Building (PAB) at 8<sup>th</sup> and Race Streets, Philadelphia, Pennsylvania ("Concession Premises"). The Concession Agreement as set forth in Attachment "A" will grant the Concessionaire a non-exclusive license to exercise the rights and perform the duties as described.
- 1.2 The Contract shall be for a term of one (1) year, unless sooner terminated as provided in this bid, and with the option to renew, at the sole discretion of the City, for three (3) additional one (1) year periods.
- 1.3 Satisfactory evidence of the following qualifications must accompany each bid:
  - 1.3.1 Cafeteria operation, for at least three (3) years, and within the past five (5) years similar to that contemplated by this Bid Specification.
  - 1.3.2 Possession of pecuniary resources and requisite capabilities sufficient to fulfill all conditions of the Contract.
- 1.4 Final approval of qualifications in paragraphs 1.3.1 and 1.3.2, above, will be given by the Procurement Commissioner of the City of Philadelphia with consideration given to the recommendation of the Commissioner of the Police Department.
- 1.5 The Procurement Commissioner reserves the right to reject any or all bids and to re-advertise when it will be in the best interest of the City of Philadelphia to do so, and further reserves the right, prior to awarding any contract, to require additional information, by questionnaire or otherwise, as to the qualifications and capabilities of bidder.
- 1.6 Bidders may inspect the Concession Premises by contacting Mr. Tom DeWaele at 215-686-1223 for an appointment.
- 1.7 Concessionaire shall at all times comply with all applicable laws, ordinances, rules, regulations, order and tax requirements of the Federal Government, Commonwealth of Pennsylvania and the City of Philadelphia.
- 1.8 All requirements of federal, state and local law and regulations pertinent to or affecting the handling, sale and disposal of food and beverages sold or served must be complied with. The Concessionaire must, at its own cost and expense, procure and keep in force during the entire period of the Contract all permits and licenses required by such laws and regulations.
- 1.9 Each bidder must submit with its bid a refundable Certified Treasurer's or Cashier's

Check, U S Postal Money Order, or Bank Money Order, made payable to the “City of Philadelphia” in the amount of \$500.00 (Bid Deposit). Any bid that is not accompanied by the required bid deposit may be rejected.

- 1.10 No bid will be accepted from or concession awarded to, any person, firm, or corporation that is in arrears or is in default to the City of Philadelphia of any debt, including without limitation tax delinquencies, or contract, or is a defaulter as surety or otherwise, upon obligations to the City, or has failed to perform faithfully any previous contract with the City, or has failed to execute a contract with the City. Nor shall any bid be accepted from, or contract awarded to, any City employee or official who submits a bid or solicits any contract in which he or she may have any direct or indirect financial interest.
- 1.11 Bids will be received in the form of an offer to pay a specific percentage of Gross Revenue as the concession fee to operate a cafeteria concession at the PAB concession premises.
- 1.12 The concessionaire by submitting a bid, expressly acknowledges and agrees to all terms and conditions set forth in this bid, including without limitation, those terms and conditions set forth in the Concession Agreement attached as Attachment “A”.
- 1.13 Concessionaire shall, at its sole cost and expense, procure and maintain in full force and effect, covering the performance of the services required under this Agreement, the types and minimum limits of insurance specified in Attachment “A”. Certificates of insurance evidencing the required coverages must specifically reference the City Contract Number for which they are being submitted and shall be submitted to the operating department and the City's Risk Manager (One Parkway Building, 14<sup>th</sup> Floor, Philadelphia, Pennsylvania 19102) at least ten (10) days before concession operations commence and at least ten (10) days before each insurance renewal date. The ten (10) day requirement for advance documentation of coverage may be waived in situations where such waiver will benefit the City, but under no circumstances shall Concessionaire actually begin operations (or continue operations, in the case of insurance renewal) without providing the required evidence of insurance. The City reserves the right to require Concessionaire to furnish certified copies of the original policies of all insurance required under the Contract at any time upon ten (10) days prior written notice to Concessionaire. The insurance requirements set forth herein are not intended and shall not be construed to modify, limit or reduce the indemnifications made in the Contract by Concessionaire to the City or to limit Concessionaire’s liability under the Contract to the limits of the policies of insurance required to be maintained by Concessionaire hereunder.
- 1.14 Where one Concessionaire succeeds another Concessionaire, the previous Concessionaire shall have a period of not more than fifteen (15) days after the termination of the Contract to remove its equipment and personal property for the concession premises. There shall be no liability on the part of the City in the event that

the new Concessionaire is unable to operate the concession for the first fifteen (15) days of the Contract Term.

- 1.15 City reserves the right to immediately terminate the Contract, upon five (5) days notice, for breach of any of the terms or conditions herein stated.
- 1.16 The Contract may be terminated by City for the convenience of City prior to the expiration of the Contract, as of the end of any calendar month, by giving to Concessionaire notice of its intention to terminate the Contract at least thirty (30) days in advance.
- 1.17 In the event the Contract is terminated for any reason, City shall not be liable for any damages, including damages for loss of profits, that might have been realized had this Contract not been terminated.
- 1.18 In the operation of the Concession it shall be understood and agreed that the Concessionaire is an independent contractor and not an agent of the City.
- 1.19 The Concessionaire agrees that it will not discriminate against any employee or applicant for employment to be employed in the performance of the Contract with respect to hire, tenure, terms, conditions or privileges of employment because of race, color, sex, religion, national origin or ancestry. Breach of this covenant may be regarded as material breach of the Contract.
- 1.20 For purposes of this Bid and the Concession Agreement, Gross Revenues means all revenues and income, however characterized, that Concessionaire derives from the operation of the Refreshment Concession. Gross Revenues as defined above, however, will not include:
  - 1.20.1 sales or excise taxes collected by Concessionaire from customers and paid by Concessionaire to any governmental authority;
  - 1.20.2 any actual refunds or credits made by Concessionaire to any customer, the sale of which was previously included in Gross Revenues;
  - 1.20.3 the amount of tips and gratuities collected by Concessionaire for the benefit of Concessionaire's employees;
  - 1.20.4 the sale of any trade fixtures, machinery, and equipment after it has been used by the Concessionaire in connection with the Concession or any sale of trade fixtures, machinery, or equipment otherwise not in the ordinary course of Concessionaire's business.

## 2. CONDITIONS OF BIDDING

- 2.1 Upon award of its bid, the successful bidder shall, provide a certified check in the amount of One Thousand Dollars (\$1,000.00) as security for the faithful performance of and compliance with all the terms and conditions of the Contract.
- 2.2 In accordance with Chapter 17-400 of The Philadelphia Code, the Concessionaire agrees that its payment or reimbursement of membership fees or other expenses associated with participation by its employees in an exclusionary private organization, insofar as such participation confers an employment advantage or constitutes or results in discrimination with regard to hiring, tenure of employment, promotions, terms, privileges or conditions of employment on the basis of race, color, sex, sexual orientation, religion, national origin or ancestry constitutes a substantial breach of the Contract entitling the City to all rights and remedies provided in the Contract or otherwise available in law or equity.

The Concessionaire agrees to include the immediately preceding paragraph, with appropriate adjustments for the identity of the parties, in all subcontracts which are entered into for work to be performed pursuant to the Contract. The Concessionaire further agrees to cooperate with the Commission on Human Relations of the City of Philadelphia in any manner which the said Commission deems reasonable and necessary for the Commission to carry out its responsibilities under Chapter 17-400 of The Philadelphia Code. Failure to so cooperate shall constitute a substantial breach of the Contract entitling the City to all rights and remedies provided herein or otherwise available in law or equity.

- 2.3 A Business Privilege License ("BPL") is required for every person desiring to engage in any business within the City of Philadelphia, whether or not such person maintains a place of business in the City. The Concessionaire will be required to furnish a BPL number at the time of award, but no later than before the Notice to Proceed is issued. The BPL is a one-time license (no expiration date). Only one license is needed for multiple locations or for multiple businesses for the same person. If you have never had a BPL assigned, you may request one by filing a Miscellaneous License Application. Applications may be obtained from the Department of Licenses and Inspections, License Issuance Unit, 1401 John F. Kennedy Boulevard, Municipal Services Building, Concourse Level, Philadelphia, Pa. 19102. For further information call (215) 686-2491.

### 2.4 Certification of Non-Indebtedness

- 2.4.1 Concessionaire, by submission of this Bid, hereby certifies and represents that Concessionaire and Concessionaire's parent company(ies) and subsidiary(ies) are not currently indebted to the City and will not at any time during the term of the Agreement (including any extensions or renewals thereof) be indebted to the City, for or on account of any delinquent taxes

(including, but not limited to, taxes collected by the City on behalf of the School District of Philadelphia), liens, judgments, fees, or other debts for which no written agreement of payment plan satisfactory to the City has been established. In addition to any other rights or remedies available to the City at law or in equity, Concessionaire acknowledges that any breach or failure to conform to this certification may, at the option of the City, result in the termination of this Agreement for default (in which case Concessionaire shall be liable for all excess costs and other damages resulting from the termination).

- 2.4.2 Concessionaire shall require all subcontractors performing work in connection with the Agreement to be bound by the following provision and Concessionaire shall cooperate fully with the City in exercising the rights and remedies described below or otherwise available at law or in equity:

Subcontractor hereby certifies and represents that Subcontractor and Subcontractor's parent company(ies) and subsidiary(ies) are not currently indebted to the City and will not at any time during the term of Concessionaire's Agreement with the City, including any extensions or renewals thereof, be indebted to the City, for or on account of any delinquent taxes (including, but not limited to, taxes collected by the City on behalf of the School District of Philadelphia), liens, judgments, fees, or other debts for which no written agreement or payment plan satisfactory to the City has been established. In addition to any other rights or remedies available to the City at law or in equity, Subcontractors acknowledges that any breach or failure to conform to this certification may, at the option and direction of the City, result in the termination of Subcontractor for default (in which case Subcontractor will be liable for all excess costs and other damages resulting from the termination).

## 2.5 Businesses Doing Business in Northern Ireland.

- 2.5.1 In accordance with Section 17-104 of The Philadelphia Code, Concessionaire by submission of this Bid, certifies and represents that (I) Concessionaire (including any parent company, subsidiary, exclusive distributor or company affiliated with Concessionaire does not have, and will not have at any time during the term of this Agreement (including any extensions thereof), any investments, licenses, franchises, management agreements or operations in Northern Ireland and (ii) no product to be provided to the City under this Agreement will originate in Northern Ireland, unless Concessionaire has implemented the fair employment principles embodied in the MacBride Principles.
- 2.5.2 In the performance of the Agreement, Concessionaire agrees that it will not utilize any suppliers, subcontractors, or subconsultants at any tier (I) who

have (or whose parent, subsidiary, exclusive distributor or company affiliate have) any investments, licenses, franchisee, management agreements or operations in Northern Ireland or (ii) who will provide products originating in Northern Ireland unless said supplier, subconsultant or subcontractor has implemented the fair employment principles embodied in the MacBride Principles. Concessionaire further agrees to included the provisions of this subparagraph (b), with appropriate adjustments for the identity of the parties, in all subcontracts and supply agreements which are entered into in connections with the performance of the Agreement.

- 2.5.3 Concessionaire agrees to cooperate with the City's Directory of Finance in any manner which the said Director deems reasonable and necessary to carry out the Director's responsibilities under Section 17-104 of The Philadelphia Code. Concessionaire expressly understands and agrees that any false certification or representation in connection with this Paragraph 9 and/or any failure to comply with the provisions of this Paragraph 9 shall constitute a substantial breach of the Agreement entitling the City to all rights and remedies provided in the Agreement or otherwise available in law (including, but not limited to, Section 17-107 of The Philadelphia Code) or equity. In addition, it is understood that false certification or representation is subject to prosecution under Title 18 Pa.C.S.A. Section 4904.

## 2.6 Participation of Minority, Woman And Disabled Owned Business Enterprises In City Contracts

- 2.6.1 This Bid is subject to the Mayor's Executive Order, No.02-05. See Attachment "B" for the document entitled "Participation of Minority, Woman and Disabled Owned Business Enterprises in City Contracts" and the requirements that apply to this Bid.

## 2.7 Ethics Requirements

- 2.7.1 To preserve the integrity of City employees and maintain public confidence in the competitive Request for Bid system, Mayor's Executive Order No. 02-04 prohibits City officials and employees from soliciting or accepting anything of value from any person seeking to initiate or maintain a business relationship with City of Philadelphia departments, boards, commissions and agencies. Executive Order No.02-04 is intended to apply to any person(s) whose business or activities are inspected or regulated by any City agency, engaged as either principal or attorney in proceedings before any City agency or court of law in which the City is an adverse party, or whose interests may be affected by the performance or nonperformance of any employee's official duties.

2.7.2 All City employees have been instructed, when presented with gifts or gratuities as indicated by Executive Order No.02-04, to report those actions to the appropriate authorities who will in turn act to the fullest extent of City policies and regulations governing those practices. All Bidders, their employees, agents or intermediaries, who are solicited for gifts or gratuities by City employees, are urged to report those incidents to the Inspector General's Office at (215) 592-4990, or to forward documented incidents to the attention of the Inspector General, ARA Tower, Third Floor, 11th & Markets Streets, Philadelphia, PA 19107. A complete copy of Executive Order No.02-04 is available for inspection in the Procurement Information Office, Room 170, Municipal Services Building, 1401 John F. Kennedy Boulevard, Philadelphia, PA, between the hours of 9:00 A.M. and 4 P.M.

## 2.8 Tax Requirements

2.8.1 Any contractor, vendor of goods, or provider of services, who bids on and is awarded a contract by the City and/or the School District of Philadelphia, is subject to Philadelphia's business tax ordinances and regulations. The City Solicitor has ruled that anyone who is awarded a contract by the City and or the School District pursuant to a bid or request for bids has entered into a contract within the City, and the subsequent delivery of goods into the City or performance of service within the City constitutes "doing business" in the City, and subjects the successful bidder to City tax requirements, including without limitation one or more of the following taxes:

- a. Business Privilege Taxes
- b. Net Profits Tax
- c. City Wage Tax

2.8.2 The Concessionaire, if not already paying the taxes listed above, will be required to apply to the City of Philadelphia Department of Revenue, Municipal Services Building, Public Service Concourse, 1401 John F. Kennedy Blvd., Philadelphia, PA 19102, for a tax account number and to file appropriate business tax returns as required by Applicable Law. Questions about the application and the taxes should be directed to the Taxpayer Service Unit at: (215) 686-6600.

2.8.3 In addition to the City's tax requirements, the Concessionaire must timely pay all federal, state, and local taxes, assessments, and levies, however characterized, that apply to the Concession, the Concession Agreement, and the Concessionaire's activities under these Specifications and the Concession Agreement.

2.8.4 Any failure by the Concessionaire to comply with the requirements set forth in these Specifications regarding payment of taxes, or

Concessionaire's failure to otherwise pay taxes as required by Applicable Law, is a default of the Concession Agreement.

## 2.9 Fidelity Bond

- 2.9.1 The successful concessionaire shall, at its sole cost and expense, obtain and maintain during the initial term and any renewal term(s) of the Agreement, a Fidelity Bond in an amount of Twenty Five Thousand Dollars (\$25,000) covering concessionaire's employees who have financial responsibilities related to the receipt and disbursement of funds under the Agreement. The Fidelity Bond shall name the City as a beneficiary. Evidence of existence of the Fidelity Bond shall be submitted to the City prior to the commencement of services.

## 3. BID SPECIFICATIONS

- 3.1 The Concessionaire shall agree, immediately upon issuance of a Notice to Proceed by the City, to operate and maintain the cafeteria as detailed in this bid. The cafeteria operation contemplated by these specifications is for a regular cafeteria in which food is prepared on site and dispensed by cafeteria personnel. Bidders may not substitute vending machines to replace the present cafeteria operation.
- 3.2 All Products pertinent to or affecting the handling, sale, and disposal of food and beverages sold, served, or kept for sale, shall be of the highest quality, wholesome and pure, and shall conform to all applicable federal, state, and local laws, acts, ordinances and regulations. No substitutes for advertised products, fillers, dilutants or reduction in size of standard manufactured or processed food products shall be sold. All meats shall be U.S. Government inspected. All items available for sale must be named brand products, i.e., Coke, Pepsi, etc. Upon request of the City of Philadelphia, "local brand" products may be included in the inventory of products sold on City facilities. In addition, if the City enters into a city wide pouring rights agreement, the successful Bidder agrees to comply with all of the aspects of the agreement. No adulterated or misbranded article shall be sold or kept for sale, and all merchandise kept on hand shall be stored and handled with due regard for spoilage and sanitation. The City shall have the right, but not the obligation, at all times during the Term and any and all Renewal Terms, whether the Concession is in operation or not, to inspect products to be sold by Concessionaire and to approve or reject them if they do not conform with the provisions of the Agreement or bid. In the event the City notifies Concessionaire of the rejection of non-conforming products, the Concessionaire shall immediately cause such products to be removed and shall not permit them to be sold.
- 3.3 If the Concessionaire desires to offer for sale any article other than food or beverages, the Concessionaire must first obtain the prior written approval of the City as to item and price. At the time of the submission of bids, the Bidder shall submit copies of its proposed menus and the prices to be charged for food to be served in the cafeteria. The

Bidder shall indicate quality, weight of portions and price of each meal or a la carte items. The Bidder must also include a list of the number and types of meals, daily specials, and a la carte items it will serve, and must list the frequency within which various types of meals will be served within a given time cycle. At least one cooked special is to be offered on a daily basis. Prices for meals and a la carte items must be posted on menu boards in the cafeteria. There must be an adequate number of servings or portions of the cooked special available at both breakfast and luncheon times. One variety of hot soup is to be offered on a daily basis. Concessionaire must maintain sufficient stock levels of basic foodstuffs such as, but not limited to: tomatoes, cheese, lunchmeats, hamburgers, steak sandwiches, eggs, french fries, etc.; to guarantee availability of standard menu offerings for customers on a daily basis. All food and drink products sold must meet the applicable standards of federal, state, and municipal authorities. No intoxicating beverage of any kind shall be kept, sold, given away or used in the cafeteria. No adulterated or misbranded article shall be sold or kept for sale, and all merchandise kept on hand shall be stored and handled with due regard for spoilage and sanitation. Any proposed changes in prices or substitutions of items during the initial term of the agreement (or any renewal term) shall be submitted to, and approved by, the Police Commissioner, in writing, prior to the enactment of the change and/or substitution.

- 3.4 Concessionaire shall not make any arrangements for power, electrical, plumbing, or structural changes in or to the locations. Request for these changes must be made through the Police Department, subject to approval and execution by the City of Philadelphia.
- 3.5 No signs, posters, or advertising shall be erected (other than price list and schedule of operating hours) without prior approval of the City. City has the right, but not the obligation, to inspect all concession facilities prior to use at the cafeteria.
- 3.6 Concessionaire is responsible for maintaining personnel in sufficient numbers as to provide adequate service. All pertinent sanitary and health rules and regulations are to be strictly adhered to in the hiring and maintaining of such personnel. Concessionaire must ensure that all personnel are to wear clean, appropriate attire. Concessionaire shall not employ any person who shall use improper language or act in a loud and boisterous manner and shall remove any employee who acts in an inappropriate manner. The Concessionaire must limit the movements of its employees to those areas of Police Headquarters designated by the Police Commissioner.
- 3.7 The manual counter of the cafeteria will be in operation from: 6:00 AM to 3:00 PM, Monday through Friday; and closed on weekends and all City observed holidays. The Concessionaire will require the prior written approval of the Police Commissioner prior to the implementation of any additional hours.
- 3.8 Bids will be received in the form of an offer to pay a percentage of Gross Revenue. The Concessionaire shall pay, no later than the fifteenth day of each month, without demand

or setoff, the Bid percentage of Gross Revenue accrued the previous month for each month of the Term and any and all Renewal Terms. Checks shall be made payable to "Fund for Philadelphia" attention: Police Finance, Room 307, Police Administration Building, 8<sup>th</sup> and Race Street, Philadelphia, PA 19106.

- 3.9 Gross Revenue shall mean the total amounts actually charged for gross sales from all business conducted at the cafeteria by or on behalf of the Concessionaire, whether such sales may have been conducted for cash or credit, and whether such amounts are collected or uncollected. "Gross Revenue" from the cafeteria only shall not include any sum collected by or on behalf of Concessionaire from its customers pursuant to the provisions of a state sales tax law as a separate and distinct amount in addition to the regular price of the business conducted, provided such sum is paid by Concessionaire to the appropriate governmental authority.
- 3.10 A gross revenue statement shall be submitted no later than the fifteenth (15) day after the close of the preceding month. The gross receipts statement shall consist of a listing of all gross revenue itemized daily for the cafeteria and for each cash register within the cafeteria. The cash register internal journal tape for each day of operation shall be submitted at the end of each day. Concessionaire shall submit, no later than sixty (60) days after the end of each year of the Term and any and all Renewal Terms, an annual statement of gross revenue, certified by the concessionaire to be true and correct. In addition Concessionaire shall submit on an annual basis its latest financial statements compiled in accordance with generally accepted accounting principles.
- 3.11 In the event the Concessionaire fails to make the payments as required herein and fails to cure same after five (5) days' written notice from the City informing Concessionaire of such default, then the City may terminate the Concession Agreement immediately without any liability on its part. In such event, Concessionaire shall continue to be subject to any and all liabilities of the Concessionaire, actual or contingent, which may have arisen on or before such termination date, and City reserves to itself all of the remedies available in law or equity or contained in these Specifications or in the Concession Agreement. In the event the Agreement is terminated for any reason, City shall not be liable for any damages, including damages for loss of profits that might have been realized had this Agreement not been terminated. In the operation of the Concession it shall be understood and agreed that the Concessionaire is an independent contractor and not an agent of the City.
- 3.12 All revenue paid monthly to the "Fund for Philadelphia" will be reduced by a \$150.00 Police Department Administrative Fee payable to the Philadelphia Police Department by the fifteenth day of the month. This administrative fee will be subject to percentage increases over the life of the contract, not to exceed 3% in any one contract year. In the event that the Police "Fund for Philadelphia" terminate operations or cease to exist, the revenue paid by the Concessionaire to the Fund will revert to the Police Department. The same percentage of revenue previously paid to the Pension Fund will be forwarded to the Police Department during the life of contract. In this case, the administrative fee

will not apply.

- 3.13 Concessionaire shall supply and use one or more receipt-issuing cash registers, which, simultaneously with the issuance of a customer's receipt for a sale, shall print on an internal journal tape a duplicate record of each transaction along with a daily total of all sales. Each customer must be given a receipt. Concessionaire shall insure that the journal tape is maintained in the machine and that a supply is always available for replacement. The registers supplied and used by the Concessionaire shall have the ability to consecutively print or count internally the number of transactions recorded. This counting device shall be non-resettable by the Concessionaire.
- 3.14 Concessionaire shall agree that during the term of the Agreement and for at least three (3) years thereafter, to keep and preserve at its office; balance sheets, statements of earnings, general ledger, receipts and disbursement journals, sales records, cleaning and service records, and other supporting documentation which shall disclose in detail all information required to permit the City of Philadelphia the ability to verify contract performance and payment of all amounts due or required to be paid hereunder and which shall conform to and be in accordance with generally accepted accounting principles.
- 3.15 Concessionaire shall procure and maintain all necessary permits and licenses for the lawful operation of its business and the machines including, but not limited to, the procurement of a Department of Licenses and Inspections *Food Preparing and Serving License*. In the event Concessionaire is cited by any City or other regulatory agency for violation of any health codes or regulations, Concessionaire shall, within twenty-four (24) hours of receipt of notice of violation, provide notification and submit a plan listing steps to correct the violation(s) to the Police Department Contract Administrator.
- 3.16 It is the Concessionaire's responsibility to insure that City facilities will have a continuous supply of products and service. It is also the responsibility of the Concessionaire to reflect this condition in the percentage of gross revenue submitted with the bid.

### **3.17 *Management Reports***

The successful Bidder will be required to furnish monthly reports that detail all of the activity of the reporting month.

#### **3.17.1 *Summary Report (Monthly)***

An account summary showing sales period, current month, gross sales, current month concession fee paid, prior month gross sales, prior month concession fees paid, year-to-date gross sales, year-to-date concession fees paid. Included also would be any narrative appropriate to the account.

#### **3.17.2 *Yearly Report***

A report that details: the gross and net sales by month for the cafeteria, the gross and net sales by month for each product sold.

### 3.18 *Equipment, Maintenance and Service.*

#### 3.18.1 Equipment

3.18.1.1 The following manual cafeteria equipment is owned by the City and is available for use by the Concessionaire: manual cafeteria lines; manual cafeteria counter line and drop-in units (deli bar/hot well); beverage station; three well sinks; single well hand sink in food preparation area; exhaust hood, Ansel system, griddle, fryers, hotplate, refrigerated sandwich unit, self serving counter, convection oven and ice maker. The City makes no representation or warranties, express or implied, with respect to the condition of such equipment, including but not limited to, implied warranties of merchantability or fitness for a particular purpose. All equipment owned by the City for purposes of this concession must be accepted and used by the Concessionaire on an "as-is" basis.

3.18.1.2 The Concessionaire shall provide all necessary equipment, furniture, china, glassware, paper materials, cutlery, cooking utensils, etc., for the efficient operation of the cafeteria. All equipment, etc., whether owned by the City or the Concessionaire, shall be kept in good working order and repair throughout the term of the agreement and any renewal terms. Upon the expiration or earlier termination of the agreement, the Concessionaire shall replace any merchandise, furniture, equipment, and other items belonging to the City which have been lost, stolen, damaged, destroyed, or otherwise not returned to the City in the condition in which it was presented to the Concessionaire.

3.18.1.3 In the event Concessionaire does not, within fifteen (15) days following the termination of the Agreement, remove all equipment and personal property owned by Concessionaire, the City shall have the right to remove all such equipment and personal property at the expense of Concessionaire, or, in its sole discretion, to regard such equipment or personal property left on the premises as its own. Failure of Concessionaire to remove Concessionaire's equipment and personal property shall be deemed a breach of the Agreement.

#### 3.18.2 Maintenance and Service

3.18.2.1 Concessionaire shall be responsible for all repairs and maintenance to all equipment, fixtures and kitchen area. The Concessionaire must

maintain all equipment installed by Concessionaire, including Condiment Stands, and surrounding areas and fixtures, in a good, clean, and attractive condition and repair at all times. Concessionaire shall maintain the Concession Premises and fixtures in good, clean and attractive condition at all times. Cleanliness of the cafeteria serving counters, refrigerators, frozen food storage, stoves, grinders, dish washing machine, food preparation, tables, pots, pans, serving trays, silver and china, and other food preparation and serving equipment will be the responsibility of the concessionaire. The concessionaire will also be responsible for keeping the cafeteria free from vermin and rodents and to that end must retain the services of a competent firm, approved by the City, to provide pest control services on a monthly basis or more as needed to keep the cafeteria free from vermin and rodents. The concessionaire must work with the exterminator to assure proper handling of food products, garbage and trash disposal are consistent with the Department of Health Standards. The concessionaire will also hire a contractor to clean the grease trap in accordance with the Department of Health Standards. The concessionaire must also agree to keep trash and garbage separate, as required by City regulations, and make trash and garbage conveniently available for regular removal from the site, on a daily basis, by the concessionaire. The garden entrance to the cafeteria, the storage shed areas, and the trash and garbage storage areas are to be kept clean and litter-free at all times by the concessionaire.

- 3.18.2.2 The Concessionaire shall provide for the maintenance and repair of any operating equipment which is the property of City, including but not limited to, stoves, counter serving facilities, refrigerators, and dish washing equipment including the detergent and sanitation system of the dish washing machine. In the event that the operating equipment owned by the City, including but not limited to, those listed above becomes non repairable, the Concessionaire will agree to replace such equipment at his/her expense. If the equipment was deemed non repairable due to misuse or neglect of the Concessionaire, the replaced equipment will become the property of the City. In the event that the equipment outlived its useful lifespan and was replaced due to normal operating wear and tear, the equipment will remain the property of the Concessionaire. The City will have the option to purchase said equipment at the end of the contract at Fair Market Value.

The City reserves the right to approve any and all repairs prior to work being performed. Any renovations, modifications, or alterations to the cafeteria facility will be performed at the Concessionaire's expense and must be approved by the City prior to any work being performed.

- 3.18.2.3 Concessionaire must maintain detailed records of cleaning schedules and service calls. Concessionaire must meet the sanitary standards, prescribed for cafeteria employees by all present and future laws, statutes, ordinances, orders, rules, regulations; and requirements of all federal, state and municipal governments, courts, departments, commissions, boards, and other bodies exercising functions similar to the foregoing. All cafeteria personnel must be supplied by the concessionaire with clean uniforms and disposable plastic gloves. The concessionaire must insure that all foods will be handled in the appropriate manner, insuring the highest health standards and practices. Plastic gloves must be used by all personnel to handle and prepare non-packaged foods. The cashier, in addition to the concessionaire's entire staff, is not permitted to handle non-packaged foods without the use of plastic gloves, and will not use the gloves when handling money. Plastic gloves are also to be worn to refill the condiment bins, plastic utensil reservoirs, napkin dispensers, etc. Adequate staffing levels must be maintained to ensure prompt, efficient service. Effective measures must be taken to guarantee that patrons are served in a timely manner. The concessionaire shall not employ any person or persons in or about the cafeteria who shall use improper language or act in a loud or boisterous manner, and shall upon the request of the Police Department separate from the cafeteria staff any employee whom the Police Department deems an unsuitable person to be employed in the Police Administration Building. The concessionaire must limit the movements of its employees to the ground floor area of the Police Administration Building. All other areas of the Police Headquarters Building are restricted access and entrance will not be permitted.
- 3.18.2.4 The Concessionaire shall respond promptly to all requests for maintenance and/or service within 24 hours of request for all equipment installed by the Concessionaire.
- 3.18.2.5 Concessionaire shall provide a complete and proper arrangement at the Concession Premises, for the frequent and adequate sanitary handling and disposal of all trash, garbage, and other refuse caused as a result of the operation of the Concession, in a manner approved by the City of Philadelphia. Piling of boxes, cartons, barrels, pallets, or other similar items, in an unsightly or unsafe manner on or about the Concession Premises, is forbidden.
- 3.18.2.6 The Concessionaire shall be solely responsible for maintaining the cleanliness of the cafeteria kitchen, including but not limited to,

serving counters, refrigerators, frozen food storage areas, stoves, grinders, dish washing machines, food preparation and serving equipment and the dining room tables and floors. Service to bus and clean cafeteria tables during and following meals shall be provided by the concessionaire. The cafeteria floors must be kept in a clean, non-hazardous condition at all times. Concessionaire must have sufficient personnel on-site to immediately clean areas in which food is dropped or liquid spilled. Janitorial service for cleaning the floors of the cafeteria dining area, kitchen, and terrace shall also be provided by the concessionaire on a continuous basis. Concessionaire is also responsible for the prompt removal of all trash from the cafeteria dining area, throughout each day of operation, on an “as-needed” basis.

3.18.2.7 Waste management trucks will be the only type of manager vehicle permitted to use the Race Street side of the building, via the sidewalk, to facilitate refuse removal. Concessionaire is responsible for directing all other deliveries and/or services to use either the 8<sup>th</sup> Street loading dock area, or the building's parking area nearest the garden entrance of the cafeteria. Parking will not be permitted on the Race Street sidewalk at any time.

3.18.2.8 The Concessionaire shall keep trash and garbage separate, as required by City regulations, and make them conveniently available for removal, at least three times a week, at the Concessionaire’s sole cost and expense.

3.18.2.8 Where appropriate, the City shall provide the following services to Concessionaire without charge, provided that the Concessionaire uses such services in reasonable amounts and in a reasonable manner acceptable to the City:

- electricity
- heat
- ventilation
- water and steam
- elevator
- lavatory

#### **4. MINIMUM QUALIFICATIONS**

**(Bidders must provide satisfactory evidence of the following qualifications and furnish the requested information to the Bid Form Attachment “C”)**

- 4.1 Cafeteria operation, for at least three (3) years, and within the past five (5) years, similar to that contemplated by this Bid Specification.
- 4.2 Possession of pecuniary resources and requisite capabilities sufficient to fulfill all conditions of the contract.
- 4.1 Provide a brief history of your organization and an executive summary that describes your company's qualifications. This summary shall include number of employees, number of years in business, and resume of the Concession Manager.
- 4.2 Provide evidence of financial capability and stability; this should include audited financial statements, or business tax returns for the last year, letters of credit, etc. List bank reference(s), suppliers, name and accounts, loans or lines of credit and relevant dates that accounts were established.
- 4.3 If you are a partnership or a joint venture, give the date of agreement, County and State where agreement was filed, and name and address of each partner. If you are a corporation, give the date and state of organization and the names and addresses of the officers.
- 4.4 List all bankruptcy actions against you, your company or related companies in the last five (5) years.
- 4.5 List the Surety companies which have heretofore issued performance bonds to you for prior contracts. Give names and addresses of each Surety company, amount of each bond and the term of each bond. List any performance bonds that were called the last five (5) years due to unsuccessful completion of the contract.

**CONCESSION BID FORM**

**BID NO. C- 104-08**

**BID OPENING DATE** \_\_\_\_\_

**CONCESSION BID FOR THE OPERATION AND MANAGEMENT OF CAFETERIA  
AT THE POLICE ADMINISTRATION BUILDING  
8<sup>TH</sup> AND RACE STREET  
PHILADELPHIA, PA**

**Sealed bids will be received until 10:30 AM prevailing local time in Room 170A, Municipal Services Building, 1401 J.F.K Boulevard, Philadelphia, PA 19102**

The undersigned acknowledges that it has read the concession agreement (Agreement”) attached to these bid specifications as “Attachment A”, and agrees, if this bid is accepted within sixty (60) days from the date of opening of bids, to fully execute the agreement deliver all insurance certificates, bonds, etc, required by the bid specification and contract.

Accompanying this bid is a check in the amount of Five Hundred Dollars (\$500.00) payable to the City of Philadelphia (the "Bid Deposit"). All bid surety shall be submitted in the form of a certified check, treasurer’s check, bank check, bank money order or U.S. Postal money order.

The bidder agrees to pay to the City of Philadelphia: \_\_\_\_\_% of Gross Revenue as the “Concession Fee” as defined in Section 4 of the Concession Agreement throughout the term of the contract.

**SUBMIT SEALED BIDS ON THIS FORM**

**BIDDERS MUST FURNISH THE FOLLOWING INFORMATION**

**NAME:**

Corporation - Partnership - Individual - Trade Name (Circle One)

**ADDRESS OF PRINCIPAL OFFICE:**

**CITY:**

**STATE:**

**ZIP CODE**

**BUSINESS PHONE:**

**FACSIMILE NUMBER:**

If Corporation, are you authorized to do business in Pennsylvania?

Brief Summary of Previous Experience (See Section 2 of Bid Specification):

REFERENCES: (Three companies with whom you have had dealings for 1 year or more)

COMPANY	ADDRESS	CONTACT NAME	TELEPHONE #
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**SIGNING OF BIDS:**

**If bid is by an INDIVIDUAL or a PARTNERSHIP, date and sign the bid here, with original signatures, in ink.**

This \_\_\_\_ day of \_\_\_\_\_, 2007

\_\_\_\_\_  
(Signature of Owner, Partner)

\_\_\_\_\_  
(Business name of Bidder)

\_\_\_\_\_  
(Address, including Zip Code)      \_\_\_\_\_  
(Telephone Number, including Area Code)

**If bid is by a CORPORATION, date and sign the bid here with original signatures, in ink, by (a) President or Vice-President of the corporation AND (b) Secretary, Assistant Secretary, Treasurer or Assistant Treasurer of the corporation; and (c) affix the seal of the corporation. If the form is not signed by the President or a Vice-President and Secretary, Assistant Secretary, Treasurer or Assistant Treasurer, attach a duly certified corporate resolution authorizing the person signing in place of such officers to execute this bid for the corporation.**

**CORPORATE SEAL**

**This \_\_\_\_ day of \_\_\_\_\_, 2007**

\_\_\_\_\_

**(Corporate or Business name of Bidder)**

\_\_\_\_\_

**(Address, including Zip Code)**

**Telephone Number, including Area Code)**

\_\_\_\_\_

**(Signature of President or a Vice-President)**

\_\_\_\_\_

**(Signature of Secy., Asst., Secy., Treas., or Asst., Treas.)**

**ATTACHMENT "A"**

CONCESSION AGREEMENT

THIS AGREEMENT, made this \_\_\_\_\_ day of \_\_\_\_\_ 2007, by and between THE CITY OF PHILADELPHIA, a municipal corporation, ("City") and \_\_\_\_\_ ("Concessionaire").

1. Recital.

The Concessionaire is the successful bidder to Bid No. C-104-08 for the operation and management of a cafeteria located at the Police Administration Building, 8<sup>th</sup> and Race Street, Philadelphia Pennsylvania, as described in the Bid Specification and any attachments or addenda to Bid No. C-104-08 ("Bid Specification") attached hereto and which are made a part hereof this concession agreement ("Contract").

2. Grant of Concession.

The City hereby grants to Concessionaire the privilege to manage and operate the cafeteria within the ("Cafeteria Premises") in strict and exact accordance with the terms and conditions of this Contract. The grant of these privileges by the City to Concessionaire may be referred to in this Contract as the "Concession." In the operation of the Concession it is acknowledged and understood that Concessionaire is an independent contractor and not an agent of City.

3. Term.

The term ("Term") of the Agreement shall be for a period of one (1) year, unless sooner terminated as provided in this contract, and may be renewed in the sole discretion of the City, for up to three (3) additional one (1) year periods.

4. Concession Fee.

(a) Beginning with the second calendar month of the Term, and every month thereafter, Concessionaire shall, without demand, notice or setoff, no later than the fifteenth (15) day of each calendar month, pay the amount(s) equal to a percentage of Gross Revenue from all operations at the Cafeteria Premise, as defined below and identified in Manager's Proposal, received or collected by Concessionaire during the preceding calendar month ("Concession Fee"). The Concessionaire's payment of the Concession Fee for the final calendar month or partial calendar month of the Term shall be made within thirty (30) days after the expiration or termination of the Agreement. The Concessionaire shall remit Concession Fees by bank check, cashier's check, or certified check made payable to the appropriate City Employee Managed Fund or such other account as the Procurement Commissioner shall designate.

(b) "Gross Revenue" means all revenue received or collected by Concessionaire or arising out of the privileges granted hereunder whether such revenue is received in the form of cash, credit, exchange or otherwise, without reserve or deduction for failure or inability to collect. No franchise or capital stock tax and no income or similar tax based on income or profits shall be deducted from Gross

Revenue.

(c) In addition to any of the rights and remedies set forth elsewhere in this Agreement or available in law or equity, in the event Manager fails to make payments as required herein on the due date, the City may impose an interest charge of one hundred and twenty-five percent (125%) per annum of the prime rate of Wachovia Bank (or its equivalent in the event there shall be no prime rate) on all amounts due from the due date until paid.

5. Compliance with Laws.

Concessionaire shall observe and comply with all present and future laws, ordinances (including, but not limited to, the Fair Practices Ordinance, The Philadelphia Code, Chapter 9-1100), statutes, orders, rules, regulations, and requirements of all federal, state, and municipal governments, courts, departments, commissions, boards, or any other body exercising functions similar to those of any of the foregoing, which may be applicable to Concessionaire, including but not limited to, building security rules and health and sanitation standards ("Applicable Laws").

6. Taxes.

Concessionaire shall pay before delinquency all taxes, of any and all governmental authorities, that may be levied, assessed, or charged against the Concessionaire's interest in this Agreement, against the personal property of Concessionaire within the Cafeteria Premises, or upon the rights of Concessionaire to occupy the Cafeteria Premises as provided in this Agreement or upon the Concessionaire's income from the operation of this privilege.

7. Products, Prices, etc.

All prices charged by Concessionaire for the sale of Products from the cafeteria shall be in conformity with the prices as set forth in the Concessionaire's bid. Any changes to these prices shall be subject to the prior written approval of the City. The types of products, portion sizes, and product standards shall be determined as set forth in the Bid and Agreement. Concessionaire may substitute or add items to be sold only with the prior written approval of the City.

8. Quality of Products; Right to Inspect Products and Equipment.

All products sold by Concessionaire at the Cafeteria Premises shall be of the highest quality and shall conform with this Agreement and all applicable federal, state, local laws, acts, ordinances and regulations. City shall have the right, but not the obligation, at all times during the term and whether the privilege granted hereunder is in operation or not, to inspect products to be sold by the Concessionaire and to approve them or reject them if they do not conform with the provisions of this Agreement. In the event that the City shall notify Concessionaire of City's rejection of nonconforming products, Concessionaire shall immediately cause such nonconforming products to be removed from the Cafeteria Premises and shall not permit them to be sold on the Cafeteria Premises. Any sale of such nonconforming products by Concessionaire after the receipt of such notice shall constitute a material breach of this Agreement. City shall also have the right, but not the obligation, to inspect Concessionaire's equipment and request the immediate removal from the Cafeteria Premises of any equipment that, in the City's sole determination, does not meet the conditions of this Agreement.

9. Insurance, Performance Security and Fidelity Bond.

(A) Insurance

Concessionaire shall, at its sole cost and expense, obtain and maintain during the Term of this Agreement and for the period of time following the Term of this Agreement, as is required to fulfill Concessionaire's indemnification obligations hereunder, the following insurance policies in the following minimum amounts:

- (i) Workers Compensation and Employers' Liability:
  - (1) Workers Compensation: Statutory limits
  - (2) Employer's Liability:  
\$500,000 each accident - bodily injury by accident;  
\$500,000 each employee - bodily injury by disease;  
\$500,000 policy limit - bodily injury by disease;
  - (3) Other States' coverage and Pennsylvania Endorsement
  
- (ii) General Liability Insurance:
  - (1) Limit of Liability: \$1,000,000 per occurrence combined single limit for bodily injury (including death) and property damage liability; \$1,000,000 personal and advertising products and completed operations.
  - (2) Coverage: Premises operations; blanket contractual liability; personal injury liability (employee exclusion deleted); products and completed operations; independent contractors; employees and volunteers as additional insured; cross liability; and broad form property damage (including completed operations).
  
- (iii) Automobile Liability
  - (1) Limit of Liability; \$1,000,000 per occurrence combined single limit for bodily injury (including death) and property damage liability.
  - (2) Coverage: Owned, non-owned and hired vehicles.
  
- (iv) Property All Risk in an amount sufficient to cover Concessionaire's

equipment.

All insurance shall be procured from reputable insurers authorized to do business in the Commonwealth of Pennsylvania and acceptable to the City. All insurance required herein shall be written on an "occurrence" basis and not a "claims-made" basis. In no event shall services commence until the required evidence of insurance has been furnished. If Concessionaire fails to obtain or maintain the required insurance, the City shall have the right to treat such failure as a material breach of this Agreement and to exercise all appropriate rights and remedies. The insurance shall provide for at least thirty (30) days prior written notice to be given to the City in the event coverage is materially changed, cancelled or non-renewed. The City of Philadelphia, its officers, employees, agents and representatives are to be named as additional insured on the General Liability Insurance policy. Also, an endorsement is required stating that the coverage afforded the City and its officers, employees, agents and representatives as additional insured will be primary to any coverage available to them. Certificates of insurance evidencing the required coverage must specifically reference the City Contract number for which they are being submitted and shall be submitted to the operating department and the City's Risk Manager (14<sup>th</sup> Floor, One Parkway Building, 1515 Arch Street, Philadelphia, PA.19102) upon execution of the Agreement, and at least ten (10) days before each renewal date. The City reserves the right to

require Concessionaire to furnish certified copies of the original policies of all insurance required under this Agreement at any time upon ten (10) days prior written notice to Concessionaire. The insurance requirements set forth herein are not intended and shall not be construed to modify, limit or reduce the indemnifications made by Concessionaire to the City or to limit Concessionaire's liability under this Agreement to the limits of the policies of insurance required to be maintained by Concessionaire. If Concessionaire, during the Term of the Agreement neglects or refuses to maintain any of the insurance required herein, or fails to submit proof of such insurance as required herein and fails to cure same after five (5) days written notice from the City informing Concessionaire of such default, then the City may terminate this Agreement immediately without any liability on its part. In such event, Concessionaire shall continue to be subject to any and all liabilities of Concessionaire, actual or contingent, which may have arisen on or before such termination date, and City reserves to itself all of the remedies available in law or in equity or contained in this Agreement.

(B) Performance Security

Upon award of its bid, the successful bidder shall, provide a certified check in the amount of One Thousand Dollars (\$1,000.00) as security for the faithful performance of and compliance with all the terms and conditions of the Contract.

(C) Fidelity Bond.

Concessionaire shall, at its sole cost and expense, obtain and maintain during the Term and any renewal Terms of this Agreement, a fidelity bond in an amount of Twenty Five Thousand Dollars (\$25,000), covering Concessionaire's employees who have financial responsibilities related to the receipt and disbursement of funds under this Agreement. In lieu of a fidelity bond, Concessionaire may obtain coverage for crime insurance with limits of \$25,000. The fidelity bond or crime insurance, whichever is obtained by Concessionaire, shall name the City as a beneficiary. Evidence of the existence of the fidelity bond or crime insurance shall be submitted to the City prior to the commencement of Services.

10. Indemnification of City.

Concessionaire agrees to defend, indemnify, and hold harmless the City, its officers, employees and agents from and against any and all losses, costs (including, but not limited to, litigation and settlement costs and counsel fees), claims, suits, actions, damages, expenses and liabilities, occasioned wholly or in part by Concessionaire's act or omission or negligence or fault or the act, omission, negligence or fault of Concessionaire's agents, Subcontractors, employees or servants in connection with the privileges granted hereunder, including, but not limited to, those in connection with loss of life, bodily injury, personal injury, damage to property, contamination or adverse effects on the environment, failure to pay such Subcontractors and suppliers, any breach of the Agreement, and any infringement or violation of any proprietary right (including, but not limited to, patent, copyright, trademark, service mark and trade secret). The obligation to indemnify, defend and hold harmless City, its officers, employees and agents, shall survive the termination of this Agreement.

11. Entry on Cafeteria Premises by the City.

The City may enter the Cafeteria Premises at all times, for any purpose, including,

but not limited to:

(A) Inspecting the Cafeteria Premises products or equipment in order to determine whether the Concessionaire has complied or is complying with the terms and conditions of this Agreement;

(B) Exercising any matters pursuant to the City's governmental functions;

(C) Carrying out any purpose necessary, incidental, or connected with the performance of the City's obligations hereunder;

(D) Making any repairs to the Cafeteria Premises.

12. Destruction of Cafeteria Premises.

(A) If all or any part of the Cafeteria Premises is destroyed by fire or other casualty, so that Concessionaire is unable to provide services required by this Agreement, the City may, in its sole discretion, either (i) terminate this Agreement in full or in part by terminating any obligations with respect to the destroyed Cafeteria Premises, either termination without liability on the part of the City, or (ii) repair damage after the occurrence of the casualty. The City shall notify Concessionaire of its election in a reasonable period of time after the occurrence of the casualty.

(B) If the City elects to terminate this Agreement, Concessionaire shall be liable to the City for the Concession Fees for the month in which the casualty occurred, in an amount equal to the Concession Percentage times the Gross Revenue received by the Concessionaire in the portion of the calendar month before the occurrence of the casualty.

(C) If the City elects to repair the damage, the obligation of Concessionaire to pay the Concession Fees shall be suspended from the date of the casualty until the City has notified Concessionaire that the Cafeteria Premises are ready for resumption of services.

(D) Concessionaire hereby releases the City from any and all claims for damage, loss, or compensation, including, but not limited to claims for interruption of business or loss of profits, arising from the destruction of or damage to the Cafeteria Premises or Concessionaire's equipment and products by fire, flood, vandalism or other casualty, whether or not such casualty was insured or uninsurable.

13. Records; Inspection.

(A) Maintenance of Records

Concessionaire shall keep and preserve at its office during the term of this Agreement and for at least three years after the termination or expiration of this Agreement, balance sheets, statements of earnings, general ledger, receipts and disbursement journals, sales records, cleaning and service records and other supporting documentation which shall disclose in detail all information required to permit City to verify contract performance and payment of all amounts due or required to be paid under this Agreement. All financial records maintained by Manager shall be in accordance with generally accepted accounting principles.

(B) Inspection.

The City shall have the right to inspect and review the Concessionaire's books of account, and other records maintained as required by this Agreement, at all reasonable times and at such place as the City may prescribe.

14. Surrender of Cafeteria Premises.

Concessionaire shall on the last day of the Term or upon any earlier termination

of this Agreement, immediately vacate the Cafeteria Premises without delay, leaving said Cafeteria Premises in good order, condition and repair and free and clear of all lettings, occupancies, liens, and encumbrances other than those, if any, created by the City. No further notice to vacate the Cafeteria Premises shall be required. Concessionaire shall remove any and all equipment installed by Concessionaire. Concessionaire shall cooperate with any succeeding concessionaire prior to the last day of the Term in order to effectuate a smooth, orderly, and uninterrupted transition in the operation of the concession services.

15. Default and Termination of the Agreement.

(A) Any failure by Concessionaire to comply with any provision of the Agreement may, in the sole discretion of the City, constitute an event of default. In the event of a default by Concessionaire, City shall give Concessionaire written notice of such default and permit Concessionaire, within a period of five (5) days thereafter, or such additional cure period as City may authorize, to correct the default; provided, however, that no such notice from City shall be required nor shall City permit any period for cure if the event of default creates an emergency which requires, in City's sole discretion, immediate exercise of City's rights or remedies. After providing such notice and grace, the City may terminate the Agreement if Concessionaire, in the City's sole judgment, has failed to satisfactorily cure such default. No extension or indulgence granted to Concessionaire shall operate as a waiver of any of City's rights in connection with the Agreement. The right to terminate the Agreement shall not be exclusive and is in addition to any other rights or remedies available to City under this Agreement, at law or in equity.

(B) In addition to termination for default, the City shall have the right to terminate this Agreement at any time during the term of the Agreement, for any reason, including, without limitation, its own convenience. If the Agreement is terminated solely for the City's convenience, the City shall issue a written notice to Concessionaire, no less than ninety (90) days prior to the effective date of such termination.

(C) If the Agreement is terminated, the Concession Fees for the entire unexpired balance of the Term, as well as all other charges, payments, costs, and expenses herein agreed to be paid by Concessionaire or, at the option of the City, any part thereof, in addition to any and all installments of the Concession Fees already due and payable and in arrears shall be taken to be immediately due and payable by the terms and provisions of this Agreement.

16. Covenants of Concessionaire.

(A) Concessionaire covenants that it will not:

(i) Occupy the Cafeteria Premises in any way, or for any purpose, other than as herein provided.

(ii) Assign, mortgage, pledge, encumber, underlet, or sublet the Cafeteria Premises or any part thereof.

(iii) Vacate the Cafeteria Premises or remove therefrom any goods or property otherwise than in the ordinary and usual course of the Concessionaire's operation, service, and maintenance of the equipment without having first paid and satisfied the City in full for all Concession Fees and other charges then due or thereafter becoming due until the expiration of the then current Term.

(iv) Furnish, maintain, store, or cause or permit to be furnished, maintained or stored, gasoline, fuels, lubricants, or other flammable materials at the Cafeteria Premises without the prior written consent of the City.

(B) Concessionaire covenants that it will:

(i) Keep the Cafeteria Premises in good repair, maintenance and condition at all times during the Term, at its sole cost and expense. The Concessionaire shall keep all equipment, fixtures and furnishings of any nature used in connection with its operation, whether owned by the Concessionaire or the City, in good condition, order and repair at all times. Should damage occur, repair, and/or replacement shall be made by Concessionaire at its own expense at the election and to the satisfaction of the City, in accordance with specifications approved in writing by the City. All equipment, fixtures, and furnishings of any nature which, in the opinion of the City, are worn or damaged so as not to present a good appearance, or become incapable of being kept in good working order, must be removed and replaced by Concessionaire upon receipt of written notice to that effect from the City, in accordance with specifications approved in writing by the City.

(ii) Use every reasonable precaution against fire.

(iii) Furnish good, prompt, and efficient service, adequate to meet all the demands for its service at the Cafeteria Premises, furnish said service on a fair, equal, and nondiscriminatory basis to all users thereof.

(iv) Procure and maintain quality products and equipment in sufficient supply to meet the reasonable needs and requests of the City and maintain the highest degree and standards of sanitation and service.

(v) Give to the City without demand within three (3) days of such occurrence, notice of any theft, accident, fire, or damage occurring on, or to, the Cafeteria Premises.

(vi) Peaceably deliver up and surrender possession of the Cafeteria Premises to the City at the expiration or other termination of this Agreement in as good order and condition as the same now are or may hereafter be improved by Concessionaire or the City, all to the satisfaction of the City.

17. Force Majeure.

Anything in this Agreement to the contrary notwithstanding, the City shall not be responsible or liable for failure to fulfill any of its obligations set forth in this Agreement (including the Bid) occasioned by acts of God, acts of public enemy, riot, freight embargo, strike, other work stoppage, government action, breakdown or failure of apparatus, equipment or machinery employed in supplying required services or any act or condition beyond the reasonable control of the City.

18. Assignment and Transfer; Subcontracting

(A) Assignment and Transfer

(1) Concessionaire may not transfer or assign this Agreement, either in whole or in part, without the prior written consent of the City. If the City approves any transfer or assignment of this Agreement, Concessionaire will, nevertheless, remain liable for the performance of all the obligations of the Concessionaire under this Agreement. The Concessionaire will require any transferee or assignee to execute and deliver to the City an assumption of liability agreement, in form satisfactory to the City, including without limitation, the assignee's ratification of and agreement to be bound by all of the provisions of this Agreement. The consent of the City to one or more assignments or transfers of this Agreement shall not be construed as a consent to any other assignment or transfer of this Agreement.

(2) The City may assign, transfer, or encumber the City's interest in this

Agreement at any time without notice to Concessionaire. Concessionaire waives any requirements under the laws of the Commonwealth of Pennsylvania regarding the witnessing or execution of assignments.

(B) Subcontracting

(1) Concessionaire shall not delegate or enter into any subcontracts for the performance of its obligations under the Agreement, in whole or in part, without on each occasion obtaining the prior written consent of the City. Concessionaire shall submit to the City, copies of all proposed subcontract(s) to be entered into by Concessionaire, along with Concessionaire's written request for the City's consent. All such subcontracts must specify that the City is designated as a third party beneficiary of the subcontract and services provided by the subcontractor shall be in accordance with the terms of this Agreement. The subcontract(s) must also specify that the subcontractor shall be bound by the same requirements as Concessionaire under this Agreement including, without limitation, indemnification of City, insurance, maintenance and preservation of records and audit by City.

(2) The City's consent to or approval of any subcontract shall not create any obligation of the City to any subcontractor and there is no agency between City and subcontractor(s).

(3) Upon request by the City (at the City's sole option) and upon receipt of written notice from the City stating that the Agreement between the City and Concessionaire has been terminated, the subcontractor(s) agrees that it will continue to perform its obligations under its subcontract for the benefit of the City in accordance with the terms and conditions of this Agreement.

(4) No permitted subcontract(s) shall relieve Concessionaire of any obligation under this Agreement. Concessionaire shall be as fully responsible for the acts and omissions of its subcontractors or persons either directly or indirectly employed by them, as it is for the acts and omissions of Concessionaire or persons directly or indirectly employed by Concessionaire.

(5) Any purported subcontract(s) in violation of this Section or of any other Section in this Agreement shall be of no force and effect.

19. No Lease.

This Agreement creates a personal contractual obligation of Concessionaire. Nothing in this Agreement shall be construed as granting a leasehold interest in the Concession Premises to the Concessionaire. Concessionaire is an independent contractor and not an agent, partner, or employee of the City.

20. Condemnation.

If the Cafeteria Premises or any part of the Cafeteria Premises, are taken under condemnation proceedings by any government authority, the City may, at the City's option, delete the vending location or terminate this Agreement as of the date of the taking. All damages awarded for such taking shall belong to and become the property of the City. Concessionaire shall have no claim against the City by reason of such taking, termination or deletion of location and shall not have any claim or right to any portion of the amount that may be awarded or paid to the City as a result of any such taking.

21. No Delinquencies.

Concessionaire and any entities under common control with Concessionaire or controlled by Concessionaire are not currently indebted to the City, and will not at any time

during the term of this Agreement (including any renewal Term(s)) be indebted to the City, for or on account of any delinquent taxes (including, but not limited to, taxes collected by the City on behalf of the School District of Philadelphia), water bills, sewer bills, liens, judgments, fees or other debts for which no written agreement or payment plan satisfactory to the City has been established. Concessionaire shall remain current during the term of this Agreement with all such payments and shall inform the City in writing of Concessionaire's receipt of any notices of delinquent payments within five (5) days after receipt. In addition to any other rights or remedies available to the City at law or in equity, Concessionaire acknowledges that any breach or failure to conform to this representation and covenant may, at the option of the City, result in the withholding of payments otherwise due to Concessionaire and, if such breach or failure is not resolved to the City's satisfaction within a reasonable time frame specified by the City in writing, may result in the offset of any such indebtedness against said payments and/or the termination of this Agreement for default (in which case Concessionaire shall be liable for all excess costs and other damages resulting from the termination). In addition, it is understood that false certification or representation is subject to prosecution under Title 18 Pa.C.S.A. § 4904.

22. Agreement Binding.

This Agreement is binding upon the parties, their heirs, executors, administrators, successors, and assigns, subject to the provisions of Section 20 of this Agreement.

23. Notices; Approvals.

All notices, requests, and other communications under this Agreement shall be in writing and shall be sent by United States regular, registered or certified mail, return receipt requested, postage prepaid, addressed as follows:

If intended for the City:

Sandra I Early, Deputy Procurement Commissioner  
1401 J.F.K. Blvd.  
Municipal Services Building - Room 120  
Philadelphia, PA 19102

If intended for Concessionaire:

24. Captions and Section Numbers.

The captions, article numbers, and paragraph numbers appearing in this Agreement are inserted only as a matter of convenience and in no way shall be construed as defining or limiting the scope or intent of the provisions of this Agreement nor in any way affecting this Agreement.

25. Partial Invalidity.

If any term, covenant, or condition of this Agreement or the application thereof to any party or circumstance shall, to any extent, be held invalid, or unenforceable, the remainder of this Agreement or the application of such term, covenant or condition to parties or

circumstances other than those to which the Agreement was held invalid or unenforceable, shall not be affected thereby and each remaining term, covenant, or condition of this Agreement shall be valid and

be enforced to the fullest extent permitted by law.

26. No Third Party Beneficiary.

Nothing contained in this Agreement is intended to or shall be deemed to confer a third party beneficiary right upon any person, firm, or corporation.

27. Participation of Disadvantaged Business Enterprises

In accordance with Executive Order 02-04, the City established ranges relating to the participation of Minority (M-DBE) Owned Business Enterprises in this Agreement. Manager covenants and represents that it will utilize the following M-DBE(s) as contract participants under this Agreement for the work/supply effort and in the dollar amount and percentage specified:

<u>Name of M -DBE</u>	<u>Dollar/Percentage Amount</u>	<u>Work/Supply Effort</u>
-----------------------	---------------------------------	---------------------------

The contract provisions contained in Attachment “B” to the Bid and entitled “Participation of Minority, Women and Disabled Owned Business Enterprises in City Contracts, Instructions, Forms and Contract Provisions” are a material part of this Agreement. Likewise, the disadvantaged business enterprise participation commitments made by Concessionaire and enumerated above are also a material part of this Agreement. If Concessionaire fails to comply with any of these contract provisions and requirements, City may hold Concessionaire in default and City shall be entitled to all rights and remedies available under this Agreement, at law or in equity, including, but not limited to, the liquidated damages remedy contained in Attachment “B” to the Bid.

28. Nondiscrimination.

(A) This Agreement is entered into under the terms of the Philadelphia Home Rule Charter and, in its performance, Concessionaire shall not discriminate nor permit discrimination against any person because of race, color, sex, religion, national origin, or ancestry. In the event of such discrimination, the City may terminate this Agreement forthwith.

(B) In accordance with Chapter 17-400 of The Philadelphia Code, Concessionaire agrees that its payment or reimbursement of membership fees or other expenses associated with participation by its employees in a exclusionary private organization, insofar as such participation confers a employment advantage or constitutes or results in discrimination with regard to hiring, tenure of employment, promotions, terms, privileges, or conditions of employment on the basis of race, color, sex, sexual orientation, religion, national origin, or ancestry constitutes a substantial breach of this Agreement entitling the City to all rights and remedies provided in this Agreement or otherwise available in law or equity.

(C) Concessionaire agrees to include the immediately preceding paragraph, with appropriate adjustments for the identity of the parties, in all subcontracts which are entered into for supplies or work to be performed pursuant to this Agreement. Concessionaire further agrees to cooperate with the Commission on Human Relations of the City of Philadelphia in any

manner which the said Commission deems reasonable and necessary for the Commission to carry out its responsibilities under Chapter 17-400 of The Philadelphia Code. Failure to so cooperate shall constitute a substantial breach of this Agreement entitling the City to all rights and remedies provided herein or otherwise available in law or equity.

29. The Philadelphia Code, Section 17-104; MacBride Principles.

(A) In accordance with Section 17-104 of The Philadelphia Code, Concessionaire by execution of this Agreement certifies and represents that (1) Concessionaire (including any parent company, subsidiary, exclusive distributor or company affiliated with Concessionaire) does not have, and will not have at any time during the term of this Agreement (including any extensions thereof), any investments, licenses, franchises, management agreements or operations in Northern Ireland and (2) no product to be provided to the City under this Agreement will originate in Northern Ireland, unless Concessionaire has implemented the fair employment principles embodied in the MacBride Principles.

(B) In the performance of this Agreement, Concessionaire agrees that it will not utilize any suppliers, subcontractors or subconsultants at any tier (1) who have (or whose parent, subsidiary, exclusive distributor or company affiliate have) any investments, licenses, franchises, management agreements or operations in Northern Ireland or (2) who will provide products originating in Northern Ireland unless said supplier, subconsultant or subcontractor has implemented the fair employment principles embodied in the MacBride Principles.

(C) Concessionaire agrees to cooperate with the City's Director of Finance in any manner which the said Director deems reasonable and necessary to carry out the Director's responsibilities under Section 17-104 of The Philadelphia Code. Concessionaire expressly understands and agrees that any false certification or representation in connection with this Section and/or any failure to comply with the provisions of this Section shall constitute a substantial breach of this Agreement entitling the City to all rights and remedies provided in this Agreement or otherwise available in law (including, but not limited to, Section 17-104 of The Philadelphia Code) or equity. In addition, it is understood that false certification or representation is subject to prosecution under Title 18 Pa.C.S.A. § 4904.

30. Complete Agreement; Governing Law.

This Agreement sets forth all the promises, agreements, conditions, and understandings between the City and Concessionaire relating to the subject matter thereof. There are no promises, agreements, conditions, or understandings, either oral or written, between the City and Concessionaire other than those set forth in this Agreement. This Agreement may only be amended, modified, or supplemented by agreement in writing signed by both the City and Concessionaire. This Agreement is governed by the laws of the Commonwealth of Pennsylvania.

IN WITNESS WHEREOF, the City and Concessionaire have executed this Agreement as

of the date first above written and intend to be legally bound thereby.

THE CITY OF PHILADELPHIA

By:

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Procurement Commissioner

CONCESSIONAIRE

By:

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President/Vice President

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Secretary/Treasurer

CORPORATE SEAL:

## **ATTACHMENT B**

### **CITY OF PHILADELPHIA MINORITY BUSINESS ENTERPRISE COUNCIL ANTIDISCRIMINATION POLICY- MINORITY, WOMAN AND DISABLED OWNED BUSINESS ENTERPRISES**

#### **FORMS, INSTRUCTIONS AND SPECIAL CONTRACT PROVISIONS<sup>1</sup> FOR BIDS TO BE AWARDED BY THE PROCUREMENT DEPARTMENT (BIDS)**

Under the authority of Executive Order No. 2-05, the City of Philadelphia has established an antidiscrimination policy (“Policy”) relating to the participation of Minority (MBE), Woman (WBE) and Disabled (DSBE) Owned Business Enterprise in City contracts. The purpose of this Policy is to provide equal opportunity for all businesses and to assure that City funds are not used, directly or indirectly, to promote, reinforce or perpetuate discriminatory practices. The City is committed to fostering an environment in which all businesses are free to participate in business opportunities without the impediments of discrimination and participate in all City contracts on an equitable basis. In accordance with the contracting requirements of the City, the City’s antidiscrimination policy is applicable to this Invitation and Bid.

The Minority Business Enterprise Council (MBEC) has approved projected ranges of participation for this Invitation and Bid which serve as a guide in determining each bidder’s responsibility. These ranges represent the percentage of MBE, WBE and/or DSBE (collectively, “M/W/DSBE”) participation that should be attained by M/W/DSBEs from business opportunities existing in the available market absent discrimination in the solicitation and selection of these businesses. These ranges are based upon an analysis of factors such as the size and scope of the contract and the availability of certified M/W/DSBEs to perform various elements of the contract. Please review these forms carefully as the submission of a Solicitation For Participation and Commitment Form and any supporting documentation (more fully discussed below) is an element of responsiveness to the bid and failure to submit the required information will result in rejection of your bid.

Bidder hereby verifies that all forms, information and documentation submitted to the MBEC are true and correct and is notified that the submission of false information by

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<sup>1</sup> These Instructions, Forms and Special Contract Provisions relating to Mayoral Executive Order 02-05 are issued by the Office of The Minority Business Enterprise Council on an interim basis.

Bidder is subject to the penalties of 18 Pa.C.S. Section 4904 relating to unsworn falsification to authorities.

## PARTICIPATION RANGE

1. Under the authority of Executive Order 2-05, the MBEC has approved the following MBE, WBE and DSBE participation ranges for this Invitation and Bid:

MBE Range: Best Effort

WBE Range: Best Effort

DSBE Range: Best Effort

These participation ranges serve exclusively as a guide in determining bidder responsiveness and responsibility.

2. Only firms that are certified by the MBEC at the time of bid opening will be credited toward the participation ranges on City contracts. A list of currently certified firms is maintained by the MBEC and is available online at [www.phila.gov/mbec/directory](http://www.phila.gov/mbec/directory) or in printed form at the MBEC offices, located in the Municipal Services Building, 1401 JFK Blvd. Suite 330, Philadelphia, PA. 19102-1666.

3. No bidder that seeks to meet the participation range(s) for participation by entering into subcontracts with any M/W/DSBE subcontractor shall be considered to meet the range(s) if the M/W/DSBE subcontractor does not perform a commercially acceptable function ("CAF"). A M/W/DSBE is considered to perform a CAF when it engages in meaningful work or supply effort that provides for a distinct element of the subcontract (as required by the work to be performed in accordance with the Bid Specifications), where the distinct element is worthy of the dollar amount of the subcontract and where the M/W/DSBE carries out its responsibilities by actually performing, managing and supervising the work involved. The MBEC may evaluate the amount of work subcontracted, industry practices and any other relevant factors in determining whether the M/W/DSBE is performing a CAF. If it is determined during the review of your Solicitation and Commitment Form that the work described on the Form does not constitute a CAF, your bid may be rejected.

4. In order to maximize opportunities for as many businesses as possible, a firm that is certified in two or more categories (e.g. MBE and WBE and DSBE or WBE and DSBE) will only be credited toward one participation range as either an MBE or WBE or DSBE. The firm will not be credited toward more than one category. Bidders will note with their submission which category, MBE or WBE or DSBE, is submitted for credit.

❖ An MBE/WBE/DSBE submitting as the prime bidder is required, like all other bidders, to submit a bid that is responsive to the Policy and will only receive credit toward the relevant participation ranges (e.g., MBE range or WBE range or DSBE range) for the amount of its own work or supply effort on this Invitation and Bid. In addition, the participation of an M/W/DSBE partner, as part of a joint venture created for this bid, may be credited towards the participation ranges only to the extent of the M/W/DSBE partner's ownership interest in the joint venture in accordance with the following criteria:

- The MBE, WBE or DSBE partner(s) must be certified by the MBEC prior to bid opening;
- The M/W/DSBE partner(s) must derive substantial benefit from the arrangement;
- The M/W/DSBE partner(s) must be substantially involved in all phases of the contract including bidding, planning, staffing and daily management;
- The business arrangement must be customary (i.e., each partner shares in the risk and profits of the joint venture commensurate with their ownership interest, contributes working capital and other resources, etc).

6. M/W/DSBE subcontractors must perform at least fifty percent (50%) of the cost of the subcontract (not including the cost of materials, equipment or supplies incident to the performance of the subcontract) with their own employees.

7. For the purpose of applying the participation ranges on Public Works projects that include add or deduct alternates, commitments listed by bidders on the Solicitation for Participation and Commitment Form should be based upon the base bid. In the event the City elects to award any add or deduct alternates, the City reserves the right to require the apparent lowest responsible bidder to amend its Solicitation for Participation and Commitment Form, to ensure the bidder's continuing responsibility.

8. In listing participation commitments on the Solicitation for Participation and Commitment Form, bidders are required to list a detailed description of the work or supply effort, the dollar amount of the quotation, and percentage of the contract the participation represents. (If the Invitation and Bid is for a requirements-type contract, a percentage amount will suffice.) In calculating the percentage amount, bidders may apply the standard mathematical rules in rounding off numbers. The MBEC reserves the right to request clarifying information from bidder in the event of an inconsistency or ambiguity in the Solicitation For Participation and Commitment Form.

## RESPONSIVENESS

1. Any bid that the MBEC determines is not responsive to the Policy will be rejected, subject to appeal by bidder as more fully discussed below. A bid responsive to the Policy is a bid which contains documentary evidence of the M/W/DSBEs that have been solicited and that will be used by the bidder on the contract, if awarded, where the bid satisfies the M/W/DSBE participation ranges for that contract; the bidder is rebuttably presumed not to have discriminated in its selection of contract participants. When a bidder is unable to achieve the participation ranges, a bid responsive to the Policy contains the required documentary evidence along with a written request for the reduction of part or all of the M/W/DSBE participation ranges, which reduction or waiver is granted based upon a determination by the MBEC that the bidder did not discriminate. Although the City reserves the right to allow post-bid opening submission of MBEC Forms and information responsive to the Policy, a bidder's failure to submit the required information on M/W/DSBE participation or to cooperate with the MBEC will result in rejection of the bid as nonresponsive.

2. Bidders must submit documentary evidence of MBE, WBE and DSBEs who have been solicited and with whom commitments have been made in response to the participation ranges included in this Invitation and Bid. Failure to submit the Solicitation For Participation and Commitment Form will result in the rejection of the bid as nonresponsive although the City, at its sole discretion, may allow bidders to submit or amend the Solicitation For Participation and Commitment Form at any time prior to award. The Solicitation For Participation and Commitment Form must contain the following information:

- Documentation of all solicitations (regardless of whether commitments resulted therefrom) as well as all commitments made prior to bid opening shall be submitted, concurrently with the bid, on the enclosed document entitled "Solicitation For Participation and Commitment Form". A bidder should only make actual solicitations of M/W/DSBEs whose work or materials are within the scope of this Invitation and Bid. Mass mailing of a general nature to M/W/DSBEs or similar methods will not be deemed solicitation, but rather will be treated as informational notification only. A reasonable period of time should be given to all solicited firms to ensure that they have sufficient time to adequately prepare their quotes. The bidder's listing of a commitment with a M/W/DSBE constitutes a representation that the bidder has made a legally binding commitment to contract with such firm, upon receipt of a contract award from the City.

- If the bidder has entered into a joint venture with an MBE, WBE and/or DSBE partner, the bidder should submit along with the Solicitation For Participation and Commitment Form, a document entitled “Joint Venture Eligibility Information Form,” available at the Office of the MBEC, for the City’s review and approval of the joint venture arrangement.

3. If Bidder does not fully meet each of the range(s) for participation established for this Invitation and Bid, bidder must request a reduction of participation, indicating the level of M/W/DSBE participation that has been achieved by bidder and explaining what efforts the bidder made to achieve the M/W/DSBE participation ranges. Bidder must demonstrate, through the submission of documentary evidence, that it took all necessary steps and made reasonable efforts to achieve the M/W/DSBE participation ranges, even if these efforts were not fully successful. MBEC will evaluate the scope, intensity and appropriateness of these efforts to ascertain whether they could reasonably be expected to achieve M/W/DSBE participation commensurate with the ranges. Failure to submit the documentary evidence will result in rejection of the bid as nonresponsive although the City, at its sole discretion, may allow bidders to submit or amend their evidentiary submission at any time prior to award. The submission shall contain and discuss, at a minimum, the following:

- If no MBE/WBE/DSBEs were solicited for the type of services or materials to be contracted, please give reason(s) why no such solicitation was made.
- Document all solicitations and commitments made with non-M/W/DSBEs for services or supplies incident to the performance of the contract; include copies of quotes received.
- Provide reasons for not committing with any MBE/WBE/DSBEs that submitted a quote, regardless of whether the quote was solicited by bidder.
- Provide any additional evidence pertinent to bidder's conduct relating to this bid including sufficient evidence which demonstrates to the MBEC that bidder has not engaged in discriminatory practices in the solicitation of and commitment with contract participants. In describing bidder's efforts to achieve participation within the ranges, bidder may submit any corroborating documentation (e.g., copies of advertisements for participation).
  - a. The bidder's documentary evidence will be reviewed by the MBEC to ascertain whether discrimination has occurred in the solicitation or selection of contract participants. The review will include consideration of the following:

- Whether the bidder's actions were motivated by considerations of race or gender or disability. The MBEC may investigate the bidder's contracting activities and business practices on similar public and private sector contracts. For example, if bidder rejects any M/W/DSBE based on price, bidder must fully document its reasons for the rejection and also demonstrate that bidder subjects non-M/W/DSBEs to the same pricing standards. MBEC will investigate whether there was any attempt at good faith negotiation of price.
  - Whether M/W/DSBEs were treated as equally as other businesses in the solicitation and commitment process. For example, the MBEC will investigate whether M/W/DSBEs are given the same information, access to the bid, plans, specifications, and requirements of the contract and given adequate amount of time to prepare a quote as others who were solicited by bidder. The MBEC will also investigate whether M/W/DSBEs were accorded the same level of outreach as non-M/W/DSBEs, for example whether bidder short listed M/W/DSBEs for participation in contractor negotiated subcontract opportunities or solicited M/W/DSBEs at pre-bid meetings.
  - Whether the bidder's contracting decisions were based upon policies which disparately affect M/W/DSBEs. MBEC will ascertain whether bidder selected portions of work or material needs consistent with the capacity of available M/W/DSBE subcontractors and suppliers. MBEC will consider whether bidder employed policies which facilitate the participation of M/W/DSBEs on City contracts such as segmentation of the contract, prompt payment practices or bonding assistance.
4. After review of the bidder's submission and other information the MBEC deems relevant to its evaluation, the MBEC will make a written determination that will be forwarded to the Procurement Commissioner or his/her designee (the "Commissioner").
- a. If the apparent low bidder's bid is determined nonresponsive by the MBEC, the bidder will be notified and may file a written appeal with the MBEC within forty-eight (48) hours of the date of notification. The decision of the MBEC may be appealed in writing within forty-eight (48) hours of the date of the MBEC's decision to the Director of Finance or his/her designee whose decision shall be final.

## RESPONSIBILITY

1. Upon award, the completed Solicitation For Participation and Commitment Form and accompanying documents regarding solicitation and commitments with MBEs, WBEs and DSBEs become part of the contract. M/W/DSBE percentage commitments are to be maintained throughout the term of the contract and shall apply to the total contract value (including approved change orders and amendments). Any change in commitment, including but not limited to substitutions for the listed firm(s), changes or reductions in the work and/or listed dollar/percentage amounts, must be pre-approved in writing by the MBEC.

2. The successful bidder shall, within five (5) business days after receipt of a payment from the City for work performed under the contract, deliver to its M/W/DSBE subcontractors the proportionate share of such payment for work performed (including the supply of materials) by its M/W/DSBE subcontractors. [For Concession bids, the successful bidder shall deliver payment within ten (10) days after receipt of the M/W/DSBE' invoice] In connection with payment of its M/W/DSBE subcontractors, the successful bidder agrees to fully comply with the City's payment reporting process which may include the use of electronic payment verification systems.

3. No privity of contract exists between the City and any M/W/DSBE subcontractor identified in any contract resulting from this Invitation and Bid. The City does not intend to give or confer upon any such M/W/DSBE subcontractor(s) any legal rights or remedies in connection with the subcontracted services under Executive Order 2-05 or by reason of any contract resulting from the Invitation and Bid except such rights or remedies that the M/W/DSBE subcontractor may seek as a private cause of action under any legally binding contract to which it may be a party.

4. If the MBEC determines that the bidder has discriminated against a M/W/DSBE at any time during the term of the contract, or intentionally excluded a M/W/DSBE from a bid on the basis of minority status, gender or disability, the MBEC may recommend to the Director of Finance the imposition of sanctions on the bidder including debarment of the bidder from submitting and/or participating in future City contracts for a period of up to three (3) years.

## D. ACCESS TO INFORMATION

1. The MBEC shall have the right to make site visits to the bidder's place of business and/or job site and obtain documents and information from any bidder, subcontractor, supplier, manufacturer or contract participant that may be required in order to ascertain bidder's responsiveness and responsibility.

2. Failure to cooperate with the MBEC in its review will result in a determination that the bidder's bid is nonresponsive and its bid will be rejected.

#### E. RECORDS AND REPORTS

1. The successful bidder shall maintain all books and records relating to its M/W/DSBE commitments (e.g. copies of quotations, subcontracts, joint venture agreement, correspondence, cancelled checks, invoices, telephone logs) for a period of at least three (3) years following acceptance of final payment. These records shall be made available for inspection by the MBEC and/or other appropriate City officials. The successful bidder agrees to submit reports and other documentation to the MBEC as deemed necessary by the MBEC to ascertain the successful bidder's fulfillment of its M/W/DSBE commitments.

#### F. REMEDIES

1. The successful bidder's compliance with the requirements of Executive Order 2-05, including the fulfillment of any M/W/DSBE commitments, is material to the contract. Any failure to comply with these requirements constitutes a substantial breach of the contract. It is further understood and agreed that in the event the Director of Finance determines that the successful bidder hereunder has failed to comply with these requirements the City may, in addition to any other rights and remedies the City may have under the contract, any bond filed in connection therewith or at law or in equity, exercise one or more of the following remedies, as deemed applicable, which shall be deemed cumulative and concurrent:

- a. Withhold payment(s) or any part thereof until corrective action is taken.
- b. Terminate the contract, in whole or in part.
- c. Suspend the successful bidder from bidding on and/or participating in any future City contracts for a period of up to three (3) years.
- d. Recover as liquidated damages, one percent of the total dollar amount of the contract for each one percent (or fraction thereof) of the commitment shortfall. (NOTE: The "total dollar amount of the contract" shall include approved change orders, amendments and for requirements contracts shall be based on actual quantities ordered by the City. For Concessions, the "total dollar amount of the contract" shall mean the Concession Fee paid to the City.)

The remedies enumerated above are for the sole benefit of the City and City's failure to

enforce any provision or the City's indulgence of any non-compliance with any provision hereunder, shall not operate as a waiver of any of the City's rights in connection with any contract resulting from this Invitation and Bid nor shall it give rise to actions by any third parties including identified M/W/DSBE subcontractors.

SOLICITATION FOR PARTICIPATION AND COMMITMENT FORM (PROPOSAL) <i>Disadvantaged Minority (M-DBE), Women (W-DBE), and Disabled (DS-DBE) Owned Business Enterprises</i>				DEPARTMENT OF FINANCE <b>MINORITY BUSINESS ENTERPRISE COUNCIL (MBEC)</b>				
Project Title		Name of Proposer		Proposal Submission Date				
List below ALL M-DBE/W-DBE/DS-DBEs that were solicited regardless of whether a commitment resulted therefrom. - Photocopy this form as necessary.								
<input type="checkbox"/> M-DBE	<input type="checkbox"/> W-DBE	<input type="checkbox"/> DS-DBE	Work to be Performed	Date Solicited		Commitment Made		Give Reason(s) If No Commitment
Company Name				By Phone	By Mail	Yes (If Yes, give date)	NO	
Address								
Contact Person				Quote Received		Amount Committed To		
Telephone Number		Fax #		YES	NO	Dollar Amount		
MBEC CERTIFICATION #						\$	Percent of Total Proposal	
						%		
<input type="checkbox"/> M-DBE	<input type="checkbox"/> W-DBE	<input type="checkbox"/> DS-DBE	Work to be Performed	Date Solicited		Commitment Made		Give Reason(s) If No Commitment
Company Name				By Phone	By Mail	Yes (If Yes, give date)	NO	
Address								
Contact Person				Quote Received		Amount Committed To		
Telephone Number		Fax #		YES	NO	Dollar Amount		
MBEC CERTIFICATION #						\$	Percent of Total Proposal	
						%		
<input type="checkbox"/> M-DBE	<input type="checkbox"/> W-DBE	<input type="checkbox"/> DS-DBE	Work to be Performed	Date Solicited		Commitment Made		Give Reason(s) If No Commitment
Company Name				By Phone	By Mail	Yes (If Yes, give date)	NO	
Address								
Contact Person				Quote Received		Amount Committed To		
Telephone Number		Fax #		YES	NO	Dollar Amount		
MBEC CERTIFICATION #						\$	Percent of Total Proposal	
						%		
<input type="checkbox"/> M-DBE	<input type="checkbox"/> W-DBE	<input type="checkbox"/> DS-DBE	Work to be Performed	Date Solicited		Commitment Made		Give Reason(s) If No Commitment
Company Name				By Phone	By Mail	Yes (If Yes, give date)	NO	
Address								
Contact Person				Quote Received		Amount Committed To		
Telephone Number		Fax #		YES	NO	Dollar Amount		
MBEC CERTIFICATION #						\$	Percent of Total Proposal	
						%		

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<sup>1</sup> M-DBE/W-DBE/DS-DBES listed above must be certified by the MBEC prior to proposal submission date.

<sup>2</sup> Failure to give reason may result in rejection of your proposal. Use additional pages if necessary.

**ATTACHMENT C**  
**QUALIFICATION FORM**

**(BIDDERS MUST FURNISH THE FOLLOWING INFORMATION)**

**1. BUSINESS STRUCTURE**

Name: \_\_\_\_\_  
(Corporation – Partnership – Individual – Trade Name)

Address of Principal Office: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_

Fed EIN or Social Security Number: \_\_\_\_\_

Telephone Number \_\_\_\_\_ Fax Number \_\_\_\_\_

**If the bidder is a partnership, joint venture, please provide the following information:**

Date of Organization: \_\_\_\_\_

Partnership/Joint Venture Recorded? Yes ( ) No ( )

Date: \_\_\_\_\_ Book: \_\_\_\_\_ Page: \_\_\_\_\_ County \_\_\_\_\_ State \_\_\_\_\_

Name, address and ownership share of each partner/joint venturer:

<u>Name</u>	<u>Address</u>	<u>%</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____

**2. FINANCIAL INFORMATION**

- 2.1 Bidder must attach evidence of financial capability and stability, this should include; financial statements, or business tax returns for the past year, and letters of credit.
  
- 2.2 The bidder will provide herewith the following list of at least three (3) persons or companies with whom the bidder has conducted significant financial transactions during the past two (2) years or more and who may be contacted by the City:

**Reference Number 1**

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

Company: \_\_\_\_\_ Fax: \_\_\_\_\_

Address: \_\_\_\_\_ City: \_\_\_\_\_ State: \_\_\_\_\_

Telephone: \_\_\_\_\_ E Mail: \_\_\_\_\_

**Reference Number 2**

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

Company: \_\_\_\_\_ Fax: \_\_\_\_\_

Address: \_\_\_\_\_ City: \_\_\_\_\_ State: \_\_\_\_\_

Telephone: \_\_\_\_\_ E Mail: \_\_\_\_\_

**Reference Number 3**

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

Company: \_\_\_\_\_ Fax: \_\_\_\_\_

Address: \_\_\_\_\_ City: \_\_\_\_\_ State: \_\_\_\_\_

Telephone: \_\_\_\_\_ E Mail: \_\_\_\_\_

2.3 The Bidder's Bank References:

**Name:**

**Address:**

1) \_\_\_\_\_

2) \_\_\_\_\_

3) \_\_\_\_\_