



BID C-101-10

**BID FOR THE OPERATION OF A REFRESHMENT CONCESSION  
AT THE ROBIN HOOD DELL EAST  
33<sup>rd</sup> Street and Ridge Avenue  
Philadelphia, PA**

SUSAN SLAWSON  
RECREATION COMMISSIONER

HUGH ORTMAN  
PROCUREMENT COMMISSIONER

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

**A Pre-Bid Meeting & Site visit will be held on Friday, May 7, 2010 at 10 AM, at the Robin Hood Dell East, 33<sup>rd</sup> Street & Ridge Avenue, Phila PA**

**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 TUESDAY, MAY 18, 2010**

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 the Refreshment Concession at the Robin Hood Dell East located at 33<sup>rd</sup> Street and Ridge Avenue, Philadelphia, Pennsylvania ("Concession Premises"). A portable refreshment cart may be used by Concessionaire in a location approved in advance by the City. Concessionaire may carry sale items through the aisles and audience during the intermissions, before and after the events and at other times, all at the discretion of the City.
- 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 To be eligible for award under this Concession Bid, the successful bidder must demonstrate that it can provide, as a prime contractor, total responsibility for all requirements set forth in this bid, assuming single source responsibility as the sole point of contact for all contractual matters.
- 1.4 Satisfactory evidence of the following qualifications must accompany each bid:
  - 1.3.1 Active operation, for at least three (3) years, of refreshment concession 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.
- 1.5 Final approval of qualifications in paragraphs 1.3.1 and 1.3.2, above, will be given by the City of Philadelphia Procurement Commissioner, with consideration given to the recommendations made by the Recreation Department Commissioner.
- 1.6 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.
- 1.7 A Pre-Bid meeting & Site visit will be held Friday, April 7, 2010 at 10 AM, at the Robin Hood Dell East Refreshment Concession, 33<sup>rd</sup> Street and Ridge Avenue, Phila PA. All questions pertinent to the bid process will be entertained at this meeting. The City will issue a written response in answer to all questions by way of an addendum. The City, however, is not obligated to answer or respond to questions received after the Pre-Bid meeting date, nor will the City be bound by verbal responses made by any City employee to any such questions.

- 1.8 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, including those regulations pertinent to or affecting the handling, sale and disposal of food and beverages. The concessionaire must, at it's own 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 \$250.00 (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, whichever amount is greater, a specific percentage of Gross Revenue or \$1,000, per event, as the concession fee to operate a refreshment concession at the Concession Premises during the summer season ("Concession Fee"). Each season will consist of an anticipated minimum of eight (8) events ("event"), each with an average attendance of 2,500, and the possibility of four (4) miscellaneous events ("miscellaneous event"), with an average attendance of 500. The City will not be liable to Concessionaire or any of Concessionaire's subcontractors, suppliers or agents for cancellation of any event or reduction of the season. For any miscellaneous events which may be scheduled by the City, the Concession Fee shall be the percentage of Gross Revenue bid ("Miscellaneous Event Concession Fee). Concessionaire will make payment of Concession Fee no later than forty-eight (48) hours of the conclusion of each event. Payment shall be made by check payable to the "City of Philadelphia and submitted to the Department of Recreation, attention: Janice Chen, Administrative Services Director, 10<sup>th</sup> Floor, 1515 Arch Street, Philadelphia, PA 19102.
- 1.12 The City may approve, in writing, ancillary sale(s) by Concessionaire or subcontractor or vendor of Concessionaire. Ancillary sales are the sale of items during events that are not included in those approved products sold through Concessionaire's operation of the refreshment concession and may include, without limitation, licensed souvenirs such as t-shirts, programs, posters and audio and visual media (e.g. CDs and DVDs), ("ancillary products"). In the event City approves an ancillary sale, Concessionaire shall, in addition to payment of the Concession Fee, pay to the City an amount equal to thirty

percent (30%) of the gross sales receipts related to the ancillary sale(s) (“Ancillary Sales Fee”). Concessionaire will make payment of Ancillary Sales Fee to City, in the same manner and at the same time of payment of the Event Concession Fees or Miscellaneous Event Concession Fees which shall occur no later than forty-eight (48) hours after the event. The City's approval of ancillary sales(s) shall not be construed to create an agency relationship between City and any vendor or subcontractor of Concessionaire. Without limiting the foregoing, City shall not be financially obligated to Concessionaire or any vendor or subcontractor of Concessionaire for any compensation or payment related to ancillary sale(s) nor shall City be liable to Concessionaire or any vendor or subcontractor of Concessionaire for any act, omission, fault or negligence of City, including but not limited to, casualty loss or loss of profits related to ancillary sale(s). The City's approval of ancillary sale(s) by Concessionaire shall not be construed to create an exclusive right in Concessionaire to sell such ancillary products; the City reserves the right to contract directly with vendors of ancillary products for ancillary sale(s) on the Concession Premises during events.

- 1.13 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”.
- 1.15 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 Recreation Department (Attention: Janice Chen) 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.
- 1.15 Where one Concessionaire succeeds another Concessionaire, the previous Concessionaire shall have a period of not more than forty-eight (48) hours after the termination of the Contract to remove its trade fixtures, and personal property from the Concession Premises; if any property remains at the expiration of this period, City shall have the right to remove all such property at the expense of Concessionaire or, in City's

sole discretion, to regard such property as property of the City.

- 1.16 City reserves the right to immediately terminate the Contract for an event of default which in the City's sole determination, creates an emergency, otherwise Concessionaire shall be given a five (5) day period to cure an event of default after notice by the City.
- 1.17 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.
- 1.18 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.
- 1.19 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.
- 1.20 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, gender identity, religion, national origin or ancestry. Breach of this covenant may be regarded as a material breach of the Contract.
- 1.21 For purposes of this Bid and the Concession Agreement, Gross Revenue means all revenue and income, however characterized, that Concessionaire derives from the operation of the Concession. Gross Revenues will not include:
  - 1.21.1 sales or excise taxes collected by Concessionaire from customers and paid by Concessionaire to any governmental authority;
  - 1.21.2 any actual refunds or credits made by Concessionaire to any customer, the sale of which was previously included in Gross Revenues;
  - 1.21.3 the amount of tips and gratuities collected by Concessionaire for the benefit of Concessionaire's employees;
  - 1.21.4 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, at its sole cost and expense, provide the City with a performance bond, as prepared by the Law Department of City, in the amount of Two Thousand Five Hundred Dollars (\$2,500.00) as security for the faithful performance of and compliance with all the terms and conditions of the Contract. The performance bond shall be with a surety acceptable to the City and shall name the City as obligee thereon. The performance bond required by this section shall be for the duration of the term, or shall be renewed in a sequence to achieve such duration. In lieu of the performance bond the City may elect, in its sole discretion, to accept a refundable cash deposit in the amount of Two Thousand Five Hundred Dollars (\$2,500.00) as security for 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 obligation and/or any failure to comply with the provisions of this obligation 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 Business, Corporate and Slavery Era Insurance Disclosure.

- 2.6.1 In accordance with Section 17-104 of The Philadelphia Code, Concessionaire, after execution of the Contract, will complete an affidavit certifying and representing that Concessionaire (including any parent company, subsidiary, exclusive distributor or company affiliated with Concessionaire) has searched any all records of the Concessionaire or any predecessor business entity regarding records of investments or profits from slavery or slaveholders described in those records must be disclosed in the affidavit.

2.6.2 The Concessionaire expressly understands and agrees that any false certification or representation in connection with this paragraph and/or any failure to comply with the provisions of this Paragraph shall constitute a substantial breach of the contract entitling the City to all rights and remedies provided in this contract or otherwise available in law (including but not limited to Section 17-104 of The Philadelphia Code) or equity and the contract will be deemed voidable. In addition, it is understood that false certification or representation is subject to prosecution under Title 18 Pa C.S.A. Section 4904.

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

2.7.1 This Bid is subject to the Mayor's Executive Order, No.02-05 and 14-08. See Attachment "C" for the document entitled "Participation of Minority, Woman and Disabled Owned Business Enterprises in City Contracts" and the requirements that apply to this Bid; compliance with this program is a matter of bid responsiveness and responsibility.

## 2.8 Ethics Requirements

2.8.1 To preserve the integrity of City employees and maintain public confidence in the competitive bidding 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.

2.8.2 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.

## 2.9 Tax Requirements

2.9.1 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

2.9.2 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.

2.9.3 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.

2.9.4 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.

### **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 Concession Premises at the Robin Hood Dell East as detailed in this bid. The Concessionaire may use up to four (4) portable refreshment carts in locations within the Concession Premises and approved in advance by the City.
- 3.2 This concession privilege is exclusively for the sale of comestibles, soft drinks and other appropriate merchandise, including ancillary products, approved by City. Ethnic foods may be presented as appropriate. During all hours of operation, a full and complete store of all approved items shall be on sale. No beverage shall be sold or dispensed in glass bottles. The sale or storage of malt, vinous or spirituous beverages is strictly forbidden except with the prior written approval of City and such sale, if approved by City, shall be in accordance with all laws pertaining to the sale of alcoholic beverages and will require Concessionaire's maintenance, at Concessionaire's sole expense, of Host Liquor Liability Insurance in coverage and amounts as determined by the City's Department of Risk Management. For the sale of soft drinks (e.g., soda, bottled water, fruit juices, fountain sodas, etc.), the City will designate exclusive pouring rights to an entity and Concessionaire is permitted to dispense and sell only those soft drink products so designated by the City.
- 3.3 All products sold or kept for sale, shall be of the highest quality, wholesome and pure and shall conform with 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 of nationally distributed brand names. 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 at all times during the term of the Contract, and whether the Concession is in operation or not, to inspect products to be sold by Concessionaire.
- 3.4 A list identifying brand name, size and/or weight, and suggested selling price of all articles offered for sale must be submitted to the City for approval at least three weeks prior to the start of operations and a copy of the approved list must be posted in a conspicuous spot on the outside of the concession location(s). Changes in prices may not be made unless first approved in writing by the City. Changes will be limited to those prices agreed to by City and no changes shall be made in excess of that amount. City reserves the right to terminate the Contract in the event that Concessionaire is found to be charging prices in excess of those approved by the City.
- 3.5 The days and hours of operation of the concession must conform to the days and hours of operation of the Robin Hood Dell East. Any change in the hours of operation of the concession must first be approved by the City.

- 3.6 Concessionaire will make payment of the Event Concession Fee or Miscellaneous Event Concession Fee and any Ancillary Sales Fee no later than forty-eight (48) hours of the conclusion of each event. Payment shall be made by check payable to the "City of Philadelphia" and should be submitted to the Department of Recreation, Attention: Janice Chen, Administrative Services Director, 1515 Arch Street, 10<sup>th</sup> Floor, Philadelphia, Pa. 19102. 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 Contract 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 this Bid Specification or in the Contract.
- 3.7 Concessionaire shall supply and use, at the Concession Premises, one or more receipt-issuing cash register(s) 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 register 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 Concessionaire.
- 3.8 Full, complete and accurate records of the volume of business done, including tax payments for the entire duration of the Contract, must be maintained subject to regular periodic audit by the Commissioner of the Department of Recreation, or his/her representative. For each event, including any miscellaneous events, Concessionaire shall provide the City with reports of all itemized gross revenues, generated by Concessionaire's business operations and a separate report of all gross revenues generated by the sale of Ancillary products by Concessionaire or its subcontractors or other vendors. Two (2) copies of both reports shall be submitted to the City with each payment of Event Concession Fees or Miscellaneous Event Concession Fees and Ancillary Sales Fees. These reports shall be certified by the Concessionaire to be true and correct and shall be compiled in accordance with generally accepted accounting principles. Such reports shall be accompanied by all of the cash registers internal journal tapes for each event or miscellaneous event.
- 3.9 Concessionaire is responsible for maintaining personnel in sufficient numbers as to provide adequate service. All pertinent health rules and regulations are to be strictly adhered to in the hiring and maintaining of such personnel. Concessionaire shall not employ any person in or about any refreshment concession facility(s) who shall use improper language or act in a loud and boisterous manner.

- 3.10 It shall be the responsibility of the Concessionaire to insure that the concession area, and the grounds immediately adjacent (within twenty-five (25) feet), are kept in a clean, trim fashion, free of all waste, rubbish, garbage, papers and other debris. All such debris and refuse is to be removed from the premises by the Concessionaire. Trash and waste receptacles must be provided by the Concessionaire.
- 3.11 No signs, posters, or advertising shall be erected (other than price list and schedule of operating hours) without prior approval of the City.
- 3.12 City reserves the right to inspect all refreshment concession facilities prior to use at the facility.
- 3.13 Power, light and water will be supplied by the City at no cost to Concessionaire.
- 3.14 Concessionaire is responsible for providing, installing, maintaining and removing at his own expense, all appropriate fixtures and equipment, subject to the approval of the City. In the event Concessionaire does not, within forty-eight (48) hours following the termination of the Contract, 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 Concession Premises as its own. Failure of Concessionaire to remove Concessionaire's equipment and personal property shall be deemed a breach of the Contract.
- 3.15 City will supply the following equipment: one (1) 28 cubic feet commercial refrigerator , one (1) stand-up freezer unit, four (4) electric fryers (two (2) for use and two (2) for back-up), and one (1) flat top fry grill. All such equipment is supplied by the City in good working order at the commencement of the Concession. Any equipment failure which occurs during the Dell Season, must be repaired by the Concessionaire, at it's sole expense, and serviced by repair personnel authorized by the City.
- 3.16 Any stand, construction, or other equipment which may be supplied by the City shall be returned to the City in good order, condition, and repair upon expiration or earlier termination of the Contract.
- 3.17 (a) Concessionaire shall not make any repairs, alterations or improvements to any stand or structure without first obtaining the written approval of the City. Further, any equipment supplied by the City shall not be repaired, altered or improved without the written consent of the City. All repairs, alterations or improvements herein mentioned shall become the absolute property of the City at the termination of the Contract, without reimbursement to the Concessionaire.
- (b) In the event that the City and Concessionaire agree that it is desirable or necessary to make permanent improvements to the concession, Concessionaire shall submit a proposal to the City for such improvements, for the City's review and approval,

which shall include a plan of the proposed improvements and a statement of the actual costs thereof, supported by written estimates of at least two contractors, one of whom will complete the work for the amount submitted. If the City approves the proposed improvements, Concessionaire shall be required to increase the amount of the performance bond by the dollar amount of such improvements and obtain a labor and materialmen's bond in such form as approved by the City with an approved surety company for the dollar amount of such improvements.

- 3.18 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 Department of Recreation's Operations Manager for the Dell East.

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

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

- 4.1 Active operation, for at least three (3) years of Refreshment Concession, 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.
- 4.3 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.
- 4.4 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.
- 4.5 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.
- 4.6 List any debarments and all bankruptcy actions against you, your company or related companies in the last five (5) years.
- 4.7 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- 101-10**

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

**BID FOR THE OPERATION OF A REFRESHMENT CONCESSION AT  
ROBIN HOOD DELL EAST, 33RD STREET AND RIDGE AVENUE**

**Issued by:  
City of Philadelphia Procurement Department**

**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 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". Bid submissions which are determined to be non-responsive for reason of offering counter terms and conditions shall be rejected without notice. The decision by the City is final.

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, and deliver all insurance certificates, bonds, etc, required by the bid specification and contract.

Accompanying this bid is a check in the amount of Two Hundred Fifty Dollars (\$250.00) payable to the City of Philadelphia (the "Bid Deposit"). All bid security 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 undersigned bidder hereby agrees, if this bid is accepted, within thirty (30) days from the date of opening of bids, to deliver all insurance certificates, bonds, or security, etc., required by the Bid Specification and contract.

Bidder agrees to pay to the City of Philadelphia: \_\_\_\_\_ % of Gross Revenues (or \$1,000.00, whichever amount is greater) for each event commencing June 30, 2010 through September 30, 2010 derived from the operation of the Refreshment Concession. The stated percentage of Gross Revenue and all other terms and conditions of the Bid shall remain in effect for any subsequent renewal periods. Bidder agrees to pay Ancillary Sales Fees at 30% of gross sales receipts. For any Miscellaneous Event(s) scheduled by the City, bidder agrees to pay the percentage of Gross Revenue bid.

**SUBMIT SEALED BIDS ON THIS FORM**

## SIGNING OF BIDS

This contract consists of the Bid Specifications (including exhibits and attachments thereto), any addenda thereto issued by the City and the agreement in Attachment "A" (collectively, the "Contract") and contains all the terms, conditions and requirements agreed upon by the parties. The terms "contract" and "agreement," whether capitalized or uncapitalized, shall have the foregoing meaning wherever they are used in the Bid Specifications, addenda thereto, the agreement and this page. No other contract or agreement, oral or otherwise, regarding the subject matter of the contract shall be deemed to exist or to bind any party hereto or to vary any of the terms contained in the contract.

This contract may not be changed, amended or renewed, in whole or in part, except by a written amendment signed by the parties. No waiver by the City of any breach or noncompliance by the undersigned with any provision of this contract shall relieve the undersigned of any of its obligations or representations made under this contract.

This contract and all disputes arising under this contract shall be governed, construed and decided in accordance with the laws of the Commonwealth of Pennsylvania. The parties agree that any lawsuit, action, claim or legal proceeding involving, directly or indirectly, any matter arising out of or related to this contract or the relationship created or evidenced thereby, shall be brought exclusively in the United States District Court for the Eastern District of Pennsylvania or the Court of Common Pleas of Philadelphia County. It is the express intent of the parties that jurisdiction over any lawsuit, action, claim, or legal proceeding shall lie exclusively in either of these two forums. The parties further agree not to raise any objection to any lawsuit, action, claim or legal proceeding which is brought in either of these two forums and the parties expressly consent to the jurisdiction and venue of these two forums. The parties further agree that service of original process in any such lawsuit, action, claim or legal proceeding may be duly effected by mailing a copy thereof, by certified mail, postage prepaid to the addresses specified in the Bid and/or this page.

**NOTE: ANY BID THAT IS NOT EXECUTED IN ACCORDANCE WITH THE INSTRUCTIONS PROVIDED BELOW OR THAT DOES NOT INCLUDE STREET ADDRESS, CITY, STATE AND PHONE NUMBER, MAY, IN THE SOLE DISCRETION OF THE PROCUREMENT COMMISSIONER, BE REJECTED.**

**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 \_\_\_\_\_, 2006**

---

**(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 \_\_\_\_\_, 2010**

---

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

---

**(Address, including Zip Code)**

**Telephone Number, including Area Code)**

---

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

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

## ATTACHMENT "A"

### CONCESSION AGREEMENT

THIS AGREEMENT, made this \_\_\_\_\_ day of \_\_\_\_\_ 2010, 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-101-10 for the operation of a refreshment concession at the Robin Hood Dell East, located at 33rd Street and Ridge Avenue, Philadelphia Pennsylvania ("Concession Premises"), as described in the Bid Specification and any exhibits, attachments or addenda to Bid No. C-101-10 ("Bid Specification") attached hereto and which are made a part hereof of this concession agreement ("Contract").

2. Grant of Concession.

The City hereby grants to Concessionaire the privilege to operate a refreshment concession for the sale of food and beverages at the Concession Premises in strict and exact accordance with the terms and conditions of this Contract. In addition to the fixed counter space at the Concession Premises, the Concessionaire may use up to four (4) portable refreshment carts in locations within the Concession Premises, with the prior approval of the City. The Concessionaire may also carry sales items through the aisles and audience seating area during the intermission(s), before and after the events, all at the discretion of the City. 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, commencing on the date a Notice to Proceed has been issued by the City and covering one summer season: June 2010 through September 2010. This Contract may be amended, in the City's sole discretion, for up to three (3) additional one (1) year terms (e.g., covering seasons, June 2011 through September 2011, June 2012 through September 2012, June 2013 through September 2013).

4. Concession Fee.

(a) Concessionaire, in consideration for the privileges and facilities granted hereunder, agrees to pay to City a concession fee (the "Concession Fee") for each event and any miscellaneous event. The Concession Fee shall be the amount set forth in the Bid Form and shall be made payable in accordance with the Bid Specification.

(b) In addition to payment of the Concession Fees, Concessionaire, subject to the prior written approval of City, may sell ancillary products as more fully described in the Bid Specification, and shall pay to City, in accordance with the Bid Specification, an amount equal to

thirty percent (30%) of the gross sales receipts related to such ancillary sale(s) ("Ancillary Sales Fees").

(c) Checks are to be made payable to the "City of Philadelphia" and submitted to the Department of Recreation, Attention: Janice Chen, Administrative Services Director, 10th Floor, 1515 Arch Street, Philadelphia, Pa. 19102. In the event Concessionaire fails to make payments as required herein on the due date, the City will notify the Concessionaire in writing that Concessionaire is in default. The City may impose an interest charge of one hundred and twenty-five percent (125%) per annum of the prime rate of Citizens Bank, (or its equivalent in the event there shall be no prime rate) on all amounts due from the due date until paid. If the default is not rectified within five (5) days from receipt of notice, this Contract may be terminated by the City and the City may exercise all of the rights and remedies set forth in this Contract or available at law or in equity.

5. City Right of Entry and Inspection of Concession Premises and Products.

City may enter the Concession Premises at any time for any purpose necessary, incidental to or connected with the performance of its obligations hereunder, in the exercise of its governmental functions, in making any repairs to the Concession Premises or as may be required in the operation, maintenance, or development of the Concession, or to determine whether Concessionaire has complied or its complying with the terms and conditions of this Contract. City shall also have the right, but not the obligation, at all times during the term of this Contract and whether the Concession granted hereunder is in operation or not, to inspect products to be sold by the Concessionaire or by Concessionaire's vendors or subcontractors and to approve such products or reject them if they do not conform with the provisions of this Contract or are in nonconformity with any law, ordinance or regulation. In the event the City shall notify Concessionaire of its rejection of nonconforming products, the Concessionaire shall immediately cause such nonconforming products to be removed from the Concession Premises and shall not permit them to be sold at the Concession Premises. Any sale of such nonconforming products by the Concessionaire after the receipt of such notice shall constitute a material breach of this Contract.

6. Affirmative Covenants of Concessionaire.

(a) 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 the Concessionaire, including, but not limited to health and sanitation standards ("Applicable Laws"). Concessionaire must, at its own cost and expense, procure and keep in force during the entire period of the Agreement all permits and licenses required by such laws and regulations, including but not limited to a Food Preparing and Serving License as issued by the City's Department of Licenses and Inspections. In the event Concessionaire is cited by City or any 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 Department of Recreation's Operations

Manager.

(b) 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 Contract, against the personal property of the Concessionaire within the Concession Premises, or upon the rights of Concessionaire to occupy the Concession Premises as provided in this Contract or upon the Concessionaire's income from the operation of the Concession.

(c) Concessionaire shall supply and use at the Concession Premises, one or more receipt-issuing cash register(s) 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 register 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 Concessionaire.

(d) Concessionaire shall, at its sole cost and expense, obtain and maintain during the term of this Agreement, during any renewal term(s) and for the period of time following the termination or expiration 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: \$100,000 each accident - bodily injury by accident; \$100,000 each employee - bodily injury by disease; \$500,000 policy limit - bodily injury by disease;

(3) Other States coverage including Pennsylvania.

ii Commercial General Liability

(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 insureds; cross liability; and broad form property damage including completed operations); and Host Liquor Liability.

- 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 furnishings and 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 work be performed 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 contract 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 insureds 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 insureds will be primary to any coverage available to them. 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(1515 Arch Street, 14<sup>th</sup> Floor, Philadelphia, PA. 19102) upon execution of the Contract, and at least ten (10) days before any Contract 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 the Concessionaire during the term of the Contract 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 Contract immediately without any liability on its part. In such event, the 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 in equity or contained in this Contract.

(e) Concessionaire agrees to defend, indemnify, and hold harmless the City, its officers, employees, subcontractors 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, contractors, guests, invitees, licensees, assigns, subcontractors, vendors, suppliers, employees or servants in connection with the Concession, 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, vendors and suppliers, any breach of the Concession 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 Contract.

(f) Concessionaire shall pay the Concession Fee and any other fee(s) or charges arising under this Contract, without demand or setoff, at such time and place as the same are made payable.

(g) Concessionaire shall remove any and all liens of any nature arising out of or because of any construction performed by Concessionaire or its contractors or subcontractors at the Concession Premises, or arising out of or because of any performance of any labor by or for it or them, or the furnishing of any materials to it or them for use at said Concession Premises, reserving to Concessionaire, however, the right to contest the validity of such liens. Concessionaire further agrees that prior to the performance of any work at the Concession Premises, it will file of record a waiver of mechanics' liens in form satisfactory to City. Concessionaire agrees to completely indemnify and hold City harmless from any and all claims for labor and/or material that may be incurred during the performance of any work on the said improvements. Prior to making final payment to any contractor, subcontractor or material men with respect to any work done or materials furnished in, on or about the Concession Premises, Concessionaire shall obtain and furnish to City written release of mechanics' liens with respect to all such work and/or materials.

(h) Concessionaire shall use every reasonable precaution against fire.

(i) Concessionaire shall furnish good, prompt, and efficient service adequate to meet all the demands for its service at the Concession Premises, furnish said service on a fair, equal and nondiscriminatory basis to all users thereof, and charge fair, reasonable and non-discriminatory prices for each unit of sale or service. 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 supplied with clean uniforms. 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 the Concession Premises designated by the City.

(j) Concessionaire shall peaceably deliver up and surrender possession of the Concession Premises to the City at the expiration or earlier termination of this Contract in as good order and condition as the same now are or may hereafter be improved by Concessionaire or City, reasonable wear and use thereof excepted. In the event that Concessionaire does not, within forty-eight (48) days following expiration or termination of this Contract, remove, at its sole cost and expense, all trade fixtures, equipment and other personal property owned by

Concessionaire, City shall have the right to remove all such property at the expense of Concessionaire or, in City's sole discretion, to regard such property as property of the City.

(k) Concessionaire shall procure and maintain quality food and beverages in sufficient supply to meet the reasonable needs and requests of its clientele and maintain the highest degree and standards of service.

(l) Concessionaire shall give to the Operations Manager within twenty-four (24) hours of such occurrence, notice of to any accident, fire or damage occurring on or to the Concession Premises.

(m) Concessionaire must ensure that the refreshment stand, bathroom, the portable refreshment cart sites and the grounds immediately adjacent to such areas (i.e., within twenty-five (25) feet) are kept in a clean, trim fashion, free of all waste, rubbish, garbage, papers and other debris. Concessionaire shall provide a complete and proper arrangement for the frequent and adequate sanitary handling and disposal, of all trash, garbage and other refuse caused as a result of the operation of its business. Concessionaire must provide and use suitable covered metal receptacles for all such garbage, trash and other refuse including, but not limited to cooking oils. All such material, including discarded cooking oil, must be removed from the premises by Concessionaire within three (3) hours of the close of each day of operation. Piling of boxes, cartons, barrels, pallets or other similar items in an unsightly or unsafe manner on or about the Facility, is forbidden. Concessionaire shall be responsible for keeping the refreshment stand free from vermin, insects and rodents. To that end Concessionaire, at its sole cost and expense, may be requested by City to retain the services of a licensed exterminator, to be approved by the City, to provide regular exterminating services; copies of tickets from the approved exterminator will be provided monthly to the Operation Manager showing that the refreshment stand has been treated. City or its authorized agents may, at any reasonable time, without notice, enter the Concession Premises to determine if reasonable satisfactory maintenance for a facility of this type is being performed. If it is determined that said maintenance is not satisfactory, City shall so notify Concessionaire in writing. If said maintenance is not performed by Concessionaire within five (5) days of written notice by the City, in addition to any other rights or remedies which the City may have under this Contract or in law or at equity, City, or its agents, shall have the right, but not the obligation, to enter the Concession Premises and perform the maintenance therefore. The cost for the performance of such maintenance by City shall be borne by Concessionaire.

7. Quality of Products; Right to Inspect Products.

All products sold by the Concessionaire at the Concession Premises shall be of the highest quality and shall conform with the Bid Specifications and all applicable federal, state, local laws, acts, ordinances and regulations. The City shall have the right, but not the obligation, at all times during the term and whether the Concession 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 Contract. In the event that City shall notify the Concessionaire of its rejection of nonconforming products, the Concessionaire shall immediately cause such nonconforming products to be removed from the Concession Premises and shall not

permit them to be sold on the Concession Premises. Any sale of such nonconforming products by the Concessionaire after the receipt of such notice shall constitute a material breach of this Contract.

8. Destruction of Concession Premises.

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

(b) If the City elects to terminate this Contract, the Concessionaire shall be liable to the City for any outstanding Concession Fees and Ancillary Sales Fees.

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

9. Reports; Records; Inspection of Records.

(a) Reports. The Concessionaire shall provide the City with reports of all itemized gross revenues, generated by Concessionaire's business operations at the Concession Premises and a separate report of all gross revenues generated by the sale of ancillary products by Concessionaire or Concessionaire's subcontractors or vendors. Two (2) copies of both reports shall be submitted to the Operations Manager with each payment of Concessionaire Fees and any Ancillary Sales Fees. The reports shall be certified by the Concessionaire to be true and correct and shall be compiled in accordance with generally accepted accounting principles. Such weekly reports shall be accompanied by the cash register internal journal tape for each event or miscellaneous event.

(b) Maintenance of Records. The Concessionaire shall keep and preserve at its office during the term of this Contract and for at least three years after the termination or expiration of this Contract, balance sheets, statements of earnings, general ledger, receipts and disbursement journals, sales records, cleaning, extermination and service records, information relating to any commitments with minority, woman or disabled business enterprises (e.g., copies of subcontracts, correspondence, cancelled checks, invoices, telephone logs) 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 Contract. All financial records maintained by Concessionaire shall be in accordance with generally accepted accounting principles.

(c) Inspection of Records. The City shall have the right to inspect and audit the Concessionaire's books of account, and other records maintained as required by this Contract, at all reasonable times and at such place as the City may prescribe.

10. Surrender of Concession Premises.

The Concessionaire shall on the last day of the Term or upon any earlier termination of this Contract, immediately vacate the Concession Premises without delay, leaving said Concession 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 Concession Premises shall be required. The Concessionaire shall remove, at its sole cost and expense, any and all equipment installed by the Concessionaire. The Concessionaire shall cooperate with the 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.

11. Default and Termination of the Contract; Termination For Convenience.

(a) Any failure by Concessionaire to comply with any provision of the Contract 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 Contract 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 Contract. The right to terminate the Contract shall not be exclusive and is in addition to any other rights or remedies available to City under this Contract, at law or in equity.

(b) This Contract may be terminated by City for the convenience of City at any time prior to its expiration, by giving to Concessionaire notice of its intention to terminate the Agreement at least thirty (30) days in advance. The exercise of any such right of termination on the part of the City, shall be without liability against the City for any damage or loss of profit which Concessionaire may suffer by reason of the termination.

(c) If the Contract is terminated for any reason, any outstanding Concession Fees and/or Ancillary Sales Fees, as well as all other charges, payments, costs, and expenses herein agreed to be paid by the Concessionaire shall be immediately due and payable to City. o

12. Covenants of Concessionaire.

Concessionaire covenants that it will not:

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

(ii) Mortgage, pledge, encumber, underlet, or sublet the Concession Premises or any part thereof or assign this Contract unless it receives the prior written approval of City.

(iii) Vacate the Concession Premises or remove there from 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 Concession Premises without the prior written consent of the City.

(v) Install, maintain, or operate any coin-operated device or any machine for the vending of food, beverages, tobacco or merchandise of any kind unless expressly authorized so to do by City.

13. Special Events.

Notwithstanding the grant of Concession, the City reserves the right to permit non-profit organizations holding events or otherwise conducting authorized activities within the Robin Hood Dell East to sell food, beverages, novelties, etc., either directly or through concessionaires of their own choosing, as an incident to and in the course of such events or activities. The granting of such permission (which shall be in the sole and absolute discretion of the Recreation Commissioner) shall not constitute a violation of this Contract with Concessionaire or give rise to any claims for loss of profits or damages against the City.

14. Force Majeure.

Anything in this Contract to the contrary notwithstanding, the City shall not be responsible or liable for failure to fulfill any of its obligations set forth in this Contract 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.

15. Assignment and Transfer.

(a) The Concessionaire

The Concessionaire may not transfer or assign this Contract, either in whole or in part, without the prior written consent of the City. If the City approves any transfer or assignment of this Contract, the Concessionaire will, nevertheless, remain liable for the performance of all the obligations of the Concessionaire under this Contract. 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 Contract. The consent of the City to one or more assignments or transfers of this Contract shall not be construed as a consent to any other assignment or transfer of this Contract.

(b) The City

The City may assign, transfer, or encumber the City's interest in this Contract at any time without notice to the Concessionaire. The Concessionaire waives any requirements under the laws of the Commonwealth of Pennsylvania regarding the witnessing or execution of assignments.

16. Participation of Disadvantaged Business Enterprises

This Invitation to Bid is issued under the Anti-Discrimination Policy described in the Mayor's Executive Order 02-05 and 14-08 (the "Antidiscrimination Policy"). The City, acting through its Office of Economic Opportunity ("OEO"), has established an antidiscrimination policy that relates to the solicitation and inclusion of Minority Business Enterprises ("MBE"), Women Business Enterprises ("WBE"), and Disabled Business Enterprises ("DSBE") (collectively, "M/W/DSBE"), in City contracts. The purpose of this Antidiscrimination Policy is to ensure that all business desiring to do business with the City have an equal opportunity to compete by creating access to the City's procurement process and meaningfully increasing opportunities for the participation by M/W/DSBEs in City contracts at all tiers of contracting, as prime contractors, subcontractors and joint venture partners. For this Contract the following M/W/DSBEs are participants under this Contract for the services and in the dollar amount(s) specified.

17. Concession not Lease.

This Contract creates a personal contractual obligation of Concessionaire. Nothing in this Contract 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.

18. Condemnation.

If the Concession Premises or any part of the Concession Premises, are taken under condemnation proceedings by any government authority, the City may, at the City's option, terminate this Contract as of the date of the taking. All damages awarded for such taking shall belong to and become the property of the City. The Concessionaire shall have no claim against the City by reason of such taking or termination 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.

19. Complete Agreement; Governing Law.

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

20. Contract Binding.

This Contract is binding upon the parties, their heirs, executors, administrators, successors, and assigns, subject to the provisions relating to assignment.

21. Notices; Approvals.

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

If intended for the City:

Janice Chen  
Administrative Services Director  
1515 Arch Street  
10<sup>th</sup> Floor – Recreation Department  
Philadelphia, PA 19102

If intended for the Concessionaire:

22. Captions and Section Numbers.

The captions, article numbers, and paragraph numbers appearing in this Contract 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 Contract nor in any way affecting this Contract.

23. Partial Invalidity.

If any term, covenant, or condition of this Contract or the application thereof to any party or circumstance shall, to any extent, be held invalid, or unenforceable, the remainder of this Contract or the application of such term, covenant or condition to parties or circumstances other than those to which the Contract was held invalid or unenforceable, shall not be affected thereby and each remaining term, covenant, or condition of this Contract shall be valid and be enforced to the fullest extent permitted by law.

24. No Third Party Beneficiary.

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

25. Nondiscrimination.

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

(b) 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 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 Contract entitling the City to all rights and remedies provided in this Contract or otherwise available in law or equity.

(c) 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 supplies or work to be performed pursuant to this 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 this Contract entitling the City to all rights and remedies provided herein or otherwise available in law or equity.

IN WITNESS WHEREOF, the City and the Concessionaire have executed this Agreement as of the date first above written and intend to be legally bound thereby.

THE CITY OF PHILADELPHIA

By: \_\_\_\_\_  
Procurement Commissioner

CONCESSIONAIRE

By: \_\_\_\_\_  
President/Vice President

Attest: \_\_\_\_\_  
Secretary/ Treasurer

Approved as to form:

\_\_\_\_\_  
City Solicitor

**ATTACHMENT B**

**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 \_\_\_\_\_

**1.1 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>
_____	_____	_____
_____	_____	_____
_____	_____	_____

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

Yes ( ) No ( )

b. **If so, insert brief summary of previous experience:**

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**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) \_\_\_\_\_

**ATTACHMENT C**

**CITY OF PHILADELPHIA**

**OFFICE OF ECONOMIC OPPORTUNITY**

**ANTIDISCRIMINATION POLICY- MINORITY, WOMEN 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), Women (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 Office of Economic Opportunity (OEO) 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 OEO are true and correct and is notified that the submission of false information by Bidder is subject to the penalties of 18 Pa.C.S. Section 4904 relating to unsworn falsification to authorities.

**A. PARTICIPATION RANGE**

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

MBE: \_\_\_\_\_ to \_\_\_\_\_ %  
WBE: \_\_\_\_\_ to \_\_\_\_\_ %  
DSBE: \_\_\_\_\_ to \_\_\_\_\_ %

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

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

2. Only firms that are certified by the OEO 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 OEO and is available online at [www.phila.gov/OEO/directory](http://www.phila.gov/OEO/directory) or in printed form at the OEO 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 OEO 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.

5. 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 OEO 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 OEO 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.

## B. RESPONSIVENESS

1. Any bid that the OEO 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 OEO that the bidder did not discriminate. Although the City reserves the right to allow post-bid opening submission of OEO 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 OEO 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 OEO, 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. OEO 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 OEO 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 OEO 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 OEO 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. OEO 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 OEO 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 OEO 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. OEO will ascertain whether bidder selected portions of work or material needs consistent with the capacity of available M/W/DSBE subcontractors and suppliers. OEO 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 OEO deems relevant to its evaluation, the OEO will make a written determination that will be forwarded to the Procurement Commissioner or his/her designee (the "Commissioner").

- a. a. If the apparent low bidder's bid is determined nonresponsive by the OEO, the bidder will be notified and may file a written appeal with the OEO within forty-eight (48) hours of the date of notification. The decision of the OEO may be appealed in writing within forty-eight (48) hours of the date of the OEO's decision to the Director of Commerce or his/her designee whose decision shall be final.

### C. 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 OEO.

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 OEO 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 OEO may recommend to the Director of Commerce 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 OEO 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 OEO 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 OEO and/or other appropriate City officials. The successful bidder agrees to submit reports and other documentation to the OEO as deemed necessary by the OEO 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 Commerce 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 (CONCESSION) <i>Minority (MBE), Women (WBE), and Disabled (DSBE) Business Enterprises</i>				COMMERCE DEPARTMENT <i>OFFICE OF ECONOMIC OPPORTUNITY (OEO)</i>					
BID TITLE - Operation & Management of Vending Program				Name of Respondent		Proposal Submission Date			
List below ALL MBE/WBE/DSBEs that were solicited regardless of whether a commitment resulted therefrom. - Photocopy this form as necessary.									
<input type="checkbox"/> MBE		<input type="checkbox"/> WBE		<input type="checkbox"/> DSBE		Work to be Performed	Date Solicited	Commitment Made	Give Reason(s)
Company Name					By Phone	By Mail	Yes (If Yes, give date)	NO	If No Commitment
Address									
Contact Person					Quote Received	Amount Committed To			
Telephone Number		Fax #			YES	NO	Dollar Amount		
MBEC CERTIFICATION #							\$		
						Percent of Total Proposal			
<input type="checkbox"/> MBE		<input type="checkbox"/> WBE		<input type="checkbox"/> DSBE		Work to be Performed	Date Solicited	Commitment Made	Give Reason(s)
Company Name					By Phone	By Mail	Yes (If Yes, give date)	NO	If No Commitment
Address									
Contact Person					Quote Received	Amount Committed To			
Telephone Number		Fax #			YES	NO	Dollar Amount		
MBEC CERTIFICATION #							\$		
						Percent of Total Proposal			
<input type="checkbox"/> MBE		<input type="checkbox"/> WBE		<input type="checkbox"/> DSBE		Work to be Performed	Date Solicited	Commitment Made	Give Reason(s)
Company Name					By Phone	By Mail	Yes (If Yes, give date)	NO	If No Commitment
Address									
Contact Person					Quote Received	Amount Committed To			
Telephone Number		Fax #			YES	NO	Dollar Amount		
MBEC CERTIFICATION #							\$		
						Percent of Total Proposal			
<input type="checkbox"/> MBE		<input type="checkbox"/> WBE		<input type="checkbox"/> DSBE		Work to be Performed	Date Solicited	Commitment Made	Give Reason(s)
Company Name					By Phone	By Mail	Yes (If Yes, give date)	NO	If No Commitment
Address									
Contact Person					Quote Received	Amount Committed To			
Telephone Number		Fax #			YES	NO	Dollar Amount		
MBEC CERTIFICATION #							\$		
						Percent of Total Proposal			