



CITY OF ATLANTA

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Mayor

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Adam L. Smith, Esq., CPPO, CPPB, CPPM, CPP,
CIPC, CISCC, CIGPM
Chief Procurement Officer
asmith@atlantaga.gov

December 15, 2015

INTERESTED PROPONENT:

Re: FC-8510, Branded Coffee Concession- Concourse A

Attached is one (1) copy of **Addendum No. 4**, which is hereby made a part of the above-referenced project.

For additional information, please contact the following personnel for the respective solicitation: Mano Smith, CPPO, CPPB, CPPM, CPP, Contract Administrator, at (404) 330-6351, or via email at mosmith@atlantaga.gov.

Sincerely,


Adam L. Smith

ALS:mas

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Addendum No. 4

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This Addendum forms a part of the Request for Proposal and modifies the original solicitation package as noted below.

- **The time period to submit questions has been re-opened. The last day for questions is Friday, December 18, 2015 at 5 pm.**

- **Responses to Questions**

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Proposals are due **Wednesday, January 13, 2016**, and should be time stamped no later than 2:00 p.m. EST on this day, and delivered to the address below:
Adam L. Smith, Esq., CPPO, CPPB, CPPM, CPP, CIPC, CISCC, CIGPM
Chief Procurement Officer
Department of Procurement
55 Trinity Avenue, S.W.
City Hall South, Suite 1900
Atlanta, Georgia 30303

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*****All other information remains unchanged*****

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Acknowledgement of Addendum No. 4

Proponents must sign below and return this form with its proposal to the Department of Procurement, 55 Trinity Avenue, City Hall South, Suite 1900, Atlanta, Georgia 30303 as acknowledgement of receipt of this addendum on this ____ day of _____, 20____.

Legal Company Name of Respondent

Signature of Authorized Representative

Title

Date

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The following questions and/or clarifications were requested by various Proponents:

1. Can an ACDBE propose on two separate proposals with two different non-ACDBEs who are proposing different brands for the same opportunity?

Response: Yes, the ACDBE may be included on two separate proposals with two different non-ACDBE primes that are proposing different brands for the same opportunity.

2. I had a client at the pre-bid who did register for site visit, and was not on the list. When can we have another site visit?

Response: See Addendum #2.

3. ACDBE forms for clarification- we do not have to fill out ACDBE forms if we are 100% ACDBE Firm? Nor do you have to engaged any additional ACDBE firms for work or good faith effort?

Response: A) The ACDBE proponent must fill out the forms and list themselves as self-performing the work. B) The ACDBE proponent does not have to engage in good faith efforts if they are self-performing 100% of the work.

4. Additional time, I would like to request the Dec 2nd date to be move back an additional 2 weeks.

Response: See Addendum #3.

5. If a proposer is an LLC with multiple members, and one of the members is a WBE that has applied for its ACDBE Certification, can the entity include the WBE member's share toward the overall ACDBE credit percentage?

Response: The WBE Company which has applied for ACDBE Certification participation can only be counted if the company is going to self-perform as a sub-contractor.

6. If the member applies for the ACDBE Certification before the RFP submission deadline, must the applicant receive the Certification prior to the award announcement for the entity to meet the ACDBE participation percentage?

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Response: The company seeking ACDBE certification will receive conditional status; however, such company must be ACDBE certified by the time the notice to proceed is issued.

7. How do I request the plans and the PPT slides for:

Concourse-A Coffee

Both inclusive of the MAG, SqFt. Etc.

The plans of the space during the pre-bid are different from what is in the bid package, my client would like a copy of those design plan for Hamburger A and Coffee A.

Response: The PowerPoint slides at the Pre-Proposal Conference were highlights taken from the RFP document. Please refer to the RFP document for dimensions of space, MAG and square footage. CAD files will be provided to the winning proponent prior to design and construction.

8. Please consider extending the deadline for proposal submission to December 11, 2015 or later. The schedule, as currently defined, allows for questions to be submitted up to November 13, 2105. Presuming that it will take a few days for the City to provide answers, there would be less than a week for respondents to make all necessary changes – no matter how extensive – in order to ship before the Thanksgiving holiday. Shipping after the holiday is impossible because it does not allow for lost shipments, damaged shipments, etc.

Response: See Addendum #3.

9. The following language is in Exhibit A – Scope of Services: “The successful Proponent will be required to operate and manage these locations providing food and beverage on a non-exclusive basis. All items sold must meet Federal Aviation Administration (FAA) security regulations. Other than the items listed, no other product, merchandise or service shall be sold or offered by the Proponent without the written consent of the Aviation General Manager. In the event any question or dispute arises as to the sale of any specific item or category of items on the premises, the Proponent may submit a request in writing to the Aviation General Manager asking that the matter be reviewed. The Aviation General Manager shall give a decision in writing and such determination is the final authority in the matter. The Proponent shall abide by and conform to the decision of the General Manager.” Please add language to the effect that actions by the AGM shall be made in a reasonably timely manner.

Response: The language will not be changed or edited.

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10. Exhibit A also includes the following: “The Aviation General Manager shall have the right, at his sole discretion, at any time prior to or during the term of the Lease, to expand, reduce or otherwise modify the products or menu offerings.” Many concessionaires have license and/or brand agreements that govern what products may be carried. Please confirm the City understands that brand and licensing agreements cannot be violated during the term of the Lease.

Response: The City of Atlanta understands that the concessionaire may be bound by such licensing agreements.

11. Exhibit C – Definitions: “City Security Policies” refers to Exhibit E, but it may be that it should refer to Exhibit F.

Response: The definition of “City Security Policies” contained in Exhibit C (Definitions) will be edited to read as follows, “City Security Policies means the policies set forth in Exhibit F.”

12. Exhibit C – Definitions: The definition of “Confidential Information” in Exhibit C conflicts with the existing provision in the lease regarding confidentiality (Section 17). Please clarify which controls. Also note that the Exhibit C definition is broadly worded and could be construed, in conjunction with Section 17, to give the City access to information that concessionaires cannot legally provide (brand/franchise agreements, license agreements, partners’ proprietary information, etc.)

Response: The language will not be changed or edited.

13. Exhibit C – Definitions: The definition of “Force Majeure” in Exhibit C conflicts with the existing Force Majeure provision (Section 21.22) in the lease. Please confirm that Section 21.22 controls.

Response: Section 21.22 of the Concessions Lease Agreement will be edited to read as follows:

“Neither party shall be deemed to be in breach of this Agreement by reason of a failure to perform any of its obligations hereunder to the extent that such failure is caused by a Force Majeure Event. If either party claims the occurrence of a Force Majeure Event, such party must promptly give notice to the other of the existence of such Force Majeure Event, the nature and extent thereof, the obligation hereunder effected thereby and the actions to be taken to abate or terminate such event. Notwithstanding the existence of any Force Majeure Event, this Clause shall not apply to and Concessionaire shall not be relieved of its

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obligation to pay rent or other sums due hereunder, such obligation being absolute and unconditional.

The definition of “Force Majeure Event(s)” contained in Exhibit C (Definitions) will be edited to read as follows:

“Force Majeure Event(s) means strike or labor troubles, unavailability of materials or utilities, acts of war, domestic and/or international terrorism, insurrection, invasion, civil riots or rebellions, quarantines, embargoes, action or interference of governmental authorities and other similar unusual governmental actions, extraordinary elements or nature or acts of God or any other cause whether similar or dissimilar to the foregoing which is reasonably beyond the control of the parties.”

14. Exhibit D-1 is written as though for a service agreement. As such, we do not understand the use of “contract value” when considering Payment Bonds. Please clarify the intent of this Exhibit.

Response: The Payment Bond requirement (see City Code sec. 2-1197) is intended to protect all persons supplying labor and/or materials to the Concessionaire or sub-concessionaire for the performance of the work provided for in the contract, equal to 100 percent of the price specified in the contract (e.g., penal sum will equal the minimum annual guarantee).

15. Exhibit E appears to be one typically included in service contracts, not concession contracts. Please consider deleting.

Response: The language of Exhibit E (Dispute Resolution Procedures) will be edited to read as follows:

- 1. The parties are fully committed to working with each other throughout the Term of this Agreement and agree to communicate regularly with each other at all times so as to avoid or minimize disputes or disagreements. If disputes or disagreements do arise, Concessionaire and City each commit to resolving such disputes or disagreements in an amicable, professional and expeditious manner so as to avoid unnecessary losses, delays and disruptions to the provision of concessions services.**
- 2. If a dispute or disagreement cannot be resolved informally, Concessionaire’s Authorized Representative and City’s Authorized Representative, upon the request of either party, shall meet as soon as conveniently possible, but in no case later than thirty (30) days**

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after such a request is made, to attempt to resolve such dispute or disagreement. Prior to any meetings between the Authorized Representatives, the parties will exchange relevant information that will assist the parties in resolving their dispute or disagreement.

16. Section 2.2 (Term) – Regarding rent commencement: The last sentence of 2.2 says rent commences on date “City makes such portion(s) of the Premises available to Concessionaire.” Section 5.1.4 says rent begins/starts accruing on the earlier of the 181st day after the Commencement Date or the date the concession opens. Section 7.2.1.5 says “Concessionaire shall begin paying rent on the Commencement Date. Mr. Judd indicated strongly at the pre-proposal conference that the Section 5.1.4 approach was the City’s intent. Please confirm.

Response: Rent will accrue on the 181st day following the Commencement Date or on the date the concession location opens for business, whichever occurs first.

17. In Section 5.1.3 (Gross Receipts) – “Gross Receipts” is the defined term in the lease, but elsewhere in the lease (in Section 5.2, for example) the term “Gross Revenues” is used. Please revise the document to use one term, or otherwise confirm that the terms are interchangeable.

Response: The terms “Gross Receipts” and “Gross Revenues” may be used interchangeably.

18. In Section 5.1.3 (Gross Receipts) – Please remove “and/or” from the first line, as it leaves the meaning of this sentence unclear.

Response: Section 5.1.3 of the Concessions Lease Agreement will be edited to remove the “and/or” from the first line of that section.

19. In Section 5.1.4 (Rent) – Please confirm that the word “it” in the last line refers to “the City.”

Response: Yes. The word “it” in the last line of section 5.1.4 of the Concessions Lease Agreement refers to the City.

20. Section 5.2.4 (Provision of Annual and Other Reports upon Request) – The last sentence says Concessionaire’s obligation under this Section shall survive termination, cancellation or expiration of this Agreement.” As written, City would be able to request new information or reports for an infinite amount of time after lease termination. Please confirm that the intent is that if there are outstanding reports due for the final

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year, then the obligation survives termination/expiration, not that the City desires to request additional new reports or new information beyond lease termination.

Response: Yes. An unqualified Gross Revenues report will be due to the Aviation General Manager within ninety (90) days following the termination or expiration of the Agreement. The City reserves the right to seek information that should be available through any applicable statute of limitation (e.g., document retention statutes, contract claims, etc.).

21. Section 6 (taxes) – We note that Possessory Tax language (in some older ATL leases) is not in this draft lease. This remains a complicated issue, so we ask the City to please clarify its position on this matter or indicate a willingness to re-visit the issue after award.

Response: The City has no intention of including any language related to possessory taxes into the Concessions Lease Agreement.

22. Relating to Section 7.1.2 (Delays); Section 7.2.1.3 (Amount of Time to Complete Improvements); and Section 7.2.1.5 (Rent Commencement) – Section 2.2 of the lease provides for the possibility of a delay in turn-over, however Sections 7.1.2; 7.2.1.2; and 7.2.1.5 contain no references that such a delay would likewise delay rent start and completion of improvements. Please clarify the City’s intent.

Response: The language will not be changed or edited.

23. Section 7.2.1.3 (Minimum Investment) - “Equipment” is not included in the list of items to be included in the \$350/sf minimum spend. It is an industry standard to include equipment expenditures in this calculation; please add “equipment” to this Section.

Response: This language will not be changed or edited.

24. Section 7.2.1.4 (Minimum Investment) – Certifying costs requires several layers of invoicing and payments and cannot be accomplished in 30 days, especially when multiple subcontractors are involved. Please revise this term to be ninety (90) days so all elements of the certification process can be completed.

Response: This language will not be changed or edited.

25. Section 7.2.3 (Minimum Reinvestment) – We are confused by the inclusion of both a 30-day requirement and a 150-day requirement as it relates to refurbishment. Please clarify the City’s intent.

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Response: Refurbishment must be completed within one hundred and fifty days (150) of the 5th anniversary or within such time period as may be approved by the Aviation General Manager.

26. Section 7.2.4 (Liquidated Damages) – The first sentence is repeated verbatim in the second sentence of this section.

Response: Section 7.2.4 of the Concessions Lease Agreement will be edited to remove the duplicate sentence.

27. Section 11.1.1 (Affected Concourse) – This section limits the location of an affected concourse to only the Atrium, Concourse E, or Concourse F. This RFP is for a space on Concourse A. Please clarify that in this case, and Affected Concourse may be Concourse A.

Response: Section 11.1.1 of the Concessions Lease Agreement will be edited to read as follows:

“Affected Concourse means Concourse A.”

28. Relating to Section 13.1 (Termination by City for Cause), Section 13.2 (Re-procurement Costs), and Section 13.3 (Termination by City for Insolvency) – These sections contradict/conflict with Section 12, et. seq. (the existing standard default provisions which already detail defaults). These sections are also broad and vague (they allow, for example, termination of the lease for a “material breach” without defining what that is).

Response: This language will not be changed or edited.

29. Section 13.5 (Termination for Lack of Appropriations) – The term “Maximum Payment Amount” is not defined. Please clarify its meaning, and explain why the lease terminates if this amount isn’t appropriated.

Response: Section 13.5 (Termination for Lack of Appropriations) may be deleted from the Concessions Lease Agreement as inapplicable.

30. Section 13.6 (Effect of Termination) – This section appears to be more related to a service contract, such as consulting. Please delete.

Response: This language will not be changed or edited.

31. The following terms are capitalized in the Lease but not defined - “Effective Date,” “Tenant,” “Space Improvements,” and “Investment.” Please provide definitions.

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Response: The Concessions Lease Agreement may be edited prior to being finalized to clarify the following:

“Effective Date,” when referring to the effective date of the Concessions Lease Agreement, whether capitalized or not, shall mean the **“Commencement Date.”**

“Tenant,” when capitalized, shall mean the **“Concessionaire.”**

Section 7.2.2 of the Concessions Lease Agreement shall be edited to remove the words **“Concessionaire Space Improvements”** and replace with the words **“Concessionaire’s Improvements.”**

Section 7.2.1.4 of the Concessions Lease Agreement shall be edited to remove the words **“actual Investment cost”** and replace with the words **“actual investment.”**

32. I would like to know if the concessions will replace currently operating food & beverage and/or retail units, currently closed food & beverage and/or retail units, or if they will be completely new units?

Response: The location offered in the Request for Proposals FC-8510 replaces a closed food & beverage unit.