



CITY OF ATLANTA

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Mayor

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

December 15, 2015

INTERESTED PROPONENT:

Re: FC-8512, Branded Hamburger Concession- Concourse B

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



Addendum No. 4

Re: FC- 8512, Branded Hamburger Concession- Concourse B

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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. Is it possible to have another airport site tour added and if so, is it possible to push the due date back to accommodate the new tour date?

Response: See Addendum #2 and Addendum #3.

2. Is there storage space for hamburger B if so where and how much? Can we see it?

Response: There is limited storage space available at the Airport and storage space is not guaranteed. It is recommended that storage space be incorporated into the leased premises.

3. 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.

4. 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 form 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.

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

Response: See Addendum #3.

6. I am requesting more time to prepare the RFP and additional time to have a site visit for the above 2 bids due December 2, 2015.

Response: See Addendum #3.

7. Was this bid open to the public or was it a private/closed invitation only bid? The reason I ask that question is because I do not see the bid information listed on either The Hartsfield Jackson site nor on the City of Atlanta's website.

Response: This RFP is open to all qualified firms. The RFP document is posted on the City's website (www.atlantaga.gov).

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8. Can you extend the time for the RFP from Dec 2, 2015 to a date in the future?

Response: See Addendum #3.

9. 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.

10. 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?

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.

11. Will location be allowed to use the existing grease trap that services the Food Court? If so, will there be any fees or costs associated with using the existing grease trap?

Response: Yes. The Concessionaire will be responsible for costs to connect to the existing grease trap.

12. If a new grease trap is required, will the concessionaire be reimbursed for the grease trap fees by the City?

Response: N/A

13. Please confirm that only 9 years of projections are required since the term ends in 2025.

Response: Yes, projections are required for the years 2016-2025.

14. Will there be any storage area designated for this location?

Response: See response to question #2.

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15. Can you propose a newly developed concept? (i.e. Operators have the required experience but want to go with a concept that is new)

Response: No. This location is required to be a National or Regional Branded Hamburger concept. National Branded Hamburger is a food and beverage brand with multiple street-side units in two or more of the five specific regions as shown in Exhibit A.3. Regional Branded Hamburger is a food and beverage brand with multiple street-side units in multiple states within the Southeast regions as shown in Exhibit A.3.

16. Are we required to provide the Financial Statement Notes and/or Cashflow Statement under option (b) of Section B: Financial Information of Form 4?

Response: Please see the instructions on Form 4, Part B, paragraph 1, which state that proponents must select one of the three groups of requests (a, b, or c) and provide the supporting documentation related to the group selected with its proposal.

17. Will the MAG be evaluated for Year 1 only or for the entire term of the contract?

Response: The first years Minimum Annual Guarantee is the only one evaluated, refer to Exhibit A.1 Financial Offer Form for instructions.

18. Please postpone the RFP due date.

o Bidders do not have enough time to submit a responsive, complete proposal with the time given. We will lose almost a week of work due to Thanksgiving Holiday.
o The City's answers to our questions are pivotal, and the way in which we produce our RFP proposals hinges on your answers. Even though this is a re-bid of the Hamburger RFPs, we still need ample time (30 days) after the answers are published to submit our proposals.

Response: See Addendum #3.

19. When working on the prior hamburger RFPs (FC-7845 and FC-7847) we secured required letters and endorsements. Are we permitted to provide these same letters and endorsements that we submitted in the prior RFPs, or do you require new ones with more recent dates? Many of the letters and endorsements I have are dated in February and March of 2015. Examples include: Surety Bond Letters, Reference Letters, Letters of Endorsement, Letters of Credit from our Bank, Letters of Intent (ACDBE Form-4 does not list and FC number, so there wouldn't be any confusion) etc. If you require us to obtain

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new letters, it will be very difficult to get them in time to respond to these new RFPs, given the current due date.

Response: Proponents must provide updated information responsive to this solicitation.

20. Form 1: Does the proposing entity (i.e. LLC) and the companies included in the entity (i.e. JV partners) need to submit separate copies of Form 1?

Response: Please refer to the instructions on page one of Form 1. See example 1 in paragraph 3. If Proponent is a newly formed limited liability company (LLC) then the LLC must enroll in the E-verify program and submit a single Contractor Affidavit in the name of the LLC.

21. Form 1: Is it necessary to include Subcontractor and Sub-Subcontract Affidavit forms if it does not apply to your entity, or should these forms be included for consistency?

Response: Please refer to the instructions on page one of Form 1. See paragraph 7 which states, in part, that subcontractor and sub-subcontractor affidavits are not required at the time of response submission.

22. Form 2: Does the proposing entity (i.e. LLC) and the companies included in the entity (i.e. JV partners) need to submit separate copies of Form 2 and supporting documents?

Response: Please refer to the instructions on page one of Form 2 which state, in part, that if the Proponent is a limited liability company (LLC), then an authorized representative of that entity must complete and sign a Contractor Disclosure Form where indicated. The instructions further state that if the LLC is a newly formed entity (formed within the last three years), then each of the members must also complete and sign separate Contractor Disclosure Forms where indicated.

23. Form 2: Should the Joint Venture partners submit two separate copies of Form 2 and supporting documents (i.e. one copy per partner); listing the name of the entity as the respondent and indicating the Joint Venture partner's name in parentheses? For example, ABC LLC is the respondent and 123 Inc is one of the JV partners. It would read as follows: ABC LLC (123 Inc).

Response: See the Response to question no. 14 above. Using this example, and the responsive information provided above, a newly formed Joint Venture (JV) proponent should submit three Contractor Affidavit Forms with its proposal: one Form for the JV partnership as a whole, a second Form for JV partner 1 (ABC LLC) and a third Form for JV partner 2 (123 Inc).

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24. Form 5: What supporting documentation is needed for Form 5?

Response: Form 5 (Acknowledgement of Insurance and Bonding Requirements) does not require any supporting documentation. It is a representation that each proponent makes to the City and submits with its proposal.

25. Form 9: Can you please define "the total amount of contracting including change orders?" (i.e. sales, capital invested, etc.)

Response: "Total Amount of Contract Including Change Orders" means the total value of the contract between proponent and the particular reference provider, including any value changes based on any amendments to such contract.

26. 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.

27. 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.

28. 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

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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.

29. Exhibit A and Exhibit A-2 offer slightly different figures for the size of this space. Please clarify the official size for our use in forms and investment calculations.

Response: Exhibit A.2 reflects the approximate dimensions of the location, total square feet of 887.75.

30. 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.”

31. 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.

32. 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

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Clause shall not apply to and Concessionaire shall not be relieved of its 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.”

- 33. 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).

- 34. 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**

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as conveniently possible, but in no case later than thirty (30) days 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.

35. 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.

36. Section 3.16 (Food Court) – Section notes that Concessionaire must pay Prime Tenant “approximately \$7,600 to \$8,000 per month” as its proportionate share of the unamortized cost of original Food Court build out. There is no end date for this payment – please clarify how long this provision will be in effect. Additionally, because the amounts given appear to be estimates, please clarify that Concessionaire will be able to determine the amount with the Prime Tenant and the City to the satisfaction of all parties.

Response: This amount is the estimated pro-rata share of the original food court cost build-out as described in section 3.16 of the Lease Agreement. The allocated amount will be based on the actual expenditure for the build out and the required refurbishment. A similar amount should be included throughout the term of the agreement.

37. 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.

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

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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.

39. 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.

40. 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 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.).

41. 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.

42. 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.

43. 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.

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44. 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.

45. 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.

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.

46. 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.

47. 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.”

48. 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.

49. 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.

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

50. 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.

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

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.”

52. For the branded hamburger concessions, are the locations supposed to be national or regional brands?

Response: Yes. This location is required to be a National or Regional Branded Hamburger concept. National Branded Hamburger is a food and beverage brand with multiple street-side units in two or more of the five specific regions as shown in Exhibit A.3. Regional Branded Hamburger is a food and beverage brand with multiple street-side units in multiple states within the Southeast regions as shown in Exhibit A.3.

53. Are there liquor licenses that can be associated with the hamburger concessions?

Response: No.

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54. 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-8512 replaces a closed food & beverage unit.

55. Are those burgers places existing locations?

Response: See response to question #54.

56. What are the sales for those locations?

Response: Refer to Exhibit A.3 for historical revenues for this location.

57. What airlines flies out of there?

Response: Currently, Delta Air Lines operates on Concourse B.

58. What are the enplanement last year and next year?

Response: Refer to Exhibit A.3 for historical enplanements for Concourse A. Projected enplanements are not available.

59. What are your projections for sales for the locations?

Response: The City does not provide projected sales.

60. What is the cost of construction in Atlanta?

Response: The public visible area of the Premises shall be improved at a Minimum Investment of three hundred and fifty dollars (\$350) per square foot.