



**Notice of Solicitation**  
**SOLICITATION # 2018-M5-SB**

To: All Prospective Proposers

Subject: Request for Proposals for the Operation and Maintenance of Two Existing Food Kiosks in the Bosque at The Battery, Manhattan

Date: March 21, 2018

The Battery Conservancy (TBC) is issuing, as of the date of this notice, a Request for Proposals (RFP) for the operation and maintenance of two existing food kiosks in the Bosque at The Battery, Manhattan.

All proposals responding to this RFP must be submitted by Friday, April 6 at 3pm. There will be a recommended proposer meeting and site tour on Tuesday, March 27 at 10am, assembling at the Bosque fountain at The Battery. If you are considering responding to this RFP, please make every effort to attend this recommended meeting.

This RFP is available for download, commencing on March 21, from TBC's website ([www.thebattery.org](http://www.thebattery.org)). To download the RFP, click on "Bosque Kiosks RFP" hyperlink.

For more information, prospective proposers may contact Hope Cohen, TBC's Chief Operating Officer, at 917.409.3710 or [hope.cohen@thebattery.org](mailto:hope.cohen@thebattery.org).

TELECOMMUNICATION DEVICE FOR THE DEAF (TDD): 212.504.4115

**SOLICITATION # 2018-M5-SB**

**REQUEST FOR PROPOSALS**

***FOR***

**THE OPERATION OF TWO FOOD KIOSKS  
IN THE BOSQUE**

**AT**

**THE BATTERY  
MANHATTAN**



**ISSUE DATE:**

March 21, 2018

## Request for Proposals (RFP)

The Battery Conservancy (TBC) and the New York City Department of Parks & Recreation (DPR) request proposals for the operation of two food service kiosks within the four-acre Bosque gardens in The Battery, Manhattan.

We seek talented and experienced food service professionals whose ideas, capabilities, and resources will make the kiosks in the Bosque a unique culinary option appealing to New York City commuters as well as tourists, and drawing new visitors to The Battery, the 25-acre public park at the southern tip of Manhattan.

### TERM

TBC is seeking a concessionaire beginning approximately June 1, 2018 through February 26, 2019 (with up to two optional renewal years, to be exercised at the mutual agreement of TBC and the concessionaire), the latter of which is the termination date of TBC's Sole Source License Agreement with DPR. No longer term will be considered. An incumbent concessionaire operates the kiosks through May 31, 2018. The concession will be operated pursuant to a sub-license agreement with TBC and will also be subject to the requirements of two license agreements between DPR and TBC; no leasehold or other proprietary right is offered.

### PROJECT MANAGER

The TBC Project Manager for this concession is Hope Cohen, TBC's Chief Operating Officer. All RFP questions and/or inquiries should be directed to her. She may be reached at:

**Phone: 917.409.3710**

**Email: [hope.cohen@thebattery.org](mailto:hope.cohen@thebattery.org)**



*If you have a hearing impairment, please call the following toll-free number and leave a message on the Telecommunication Device for the Deaf (TDD). The TDD number is (212) 504-4115.*

### RFP TIMETABLE

**RFP Release Date:** **March 21, 2018**

**Proposer Meeting and Site Tour:** **March 27, 2018 at 10am**

**Proposals Due:** **April 6, 2018 at 3pm**



*If you have a physical disability and cannot deliver your proposal to the TBC office, please contact the Project Manager(s) at least 48 hours prior to the deadline to make alternative arrangements.*

There will be an optional proposer meeting and site tour. We will be meeting at the Bosque Fountain in The Battery. Those considering responding to this RFP should plan to attend this meeting and site tour.

## PROJECT BACKGROUND

The Battery Conservancy was established in 1994, in partnership with the New York City Department of Parks & Recreation, to rebuild and revitalize The Battery, the 25-acre park at the southern tip of Manhattan that overlooks the New York Harbor. As the front lawn of Downtown and a hub of harbor access and cultural tourism, The Battery is the largest and most dynamic public open space in Lower Manhattan. Over seven million people, including residents, office workers, school groups, and tourists from around the world, visit the park and its major landmark, Castle Clinton National Monument, every year.

The Battery Conservancy seeks qualified, creative food-service professionals whose work features:

- seasonality and the use of regional ingredients
- ingredients sourced from local farms, suppliers, and purveyors
- nutritious, healthy choices
- menus with a range of prices, making sure the kiosks are relevant to all
- solid and demonstrable business experience, including food service in an outdoor setting

## PROJECT COMPONENTS

### *A. OPERATIONAL OVERVIEW*

The Bosque kiosks and their surrounding outdoor cafe space are owned by the City of New York, administered by the New York City Department of Parks & Recreation (DPR), and licensed to The Battery Conservancy (TBC).

The successful proposer will be awarded concession rights to provide food service at the Bosque kiosks and to reserve a cordoned portion of each kiosk to seat customers who purchase alcoholic beverages from the concession.

Please refer to Attachment #2 for a detailed site plan delineating licensed premises of the Bosque.

### *1. Operational Plan*

Proposers should submit a detailed operational plan for the entire Licensed Premises. This plan should include, but not be limited to, hours of operation, services to be provided, any plans to install energy efficient appliances that have the Energy Star seal of approval and/or water conserving appliances, and any plans to use “Green Seal” or other environmentally friendly products or devices, staffing plans, safety and security plans, menu, merchandise to be sold, programming plans, mechanisms to measure customer satisfaction, a detailed list of all proposed fees and prices, and a maintenance plan including snow removal, rubbish removal, and cleaning schedules.

All plans, schedules, services, menu items, merchandise, prices and fees, and hours of operation are subject to TBC’s and DPR’s prior written approval.

## *2. Hours of Operation*

The Bosque is open from early morning until midnight every day of the year. TBC and DPR encourage proposals to include breakfast, lunch, and evening food service, 7 days per week, from the start date of this concession, June 1, 2018, through at least October 31, 2018.

Proposers should submit their intended hours of operation, which will be subject to approval by TBC and DPR. Any changes to operating hours/schedule must be approved by TBC and DPR and do not relieve the concessionaire from any other obligations under the sub-license, including the payment of all fees.

## *3. The Food Service Kiosks*

The concessionaires will be required to operate and maintain food service kiosks at a high standard of quality. The food service kiosks should contribute to the ambience of the park and surrounding area while providing a convenient service to the public.

Proposers should submit a menu and price list in their proposals that demonstrates quality, variety, and affordability. Proposers should include some low-cost items on their menus. TBC and DPR will view favorably proposals which incorporate healthy food choices, such as fresh fruit, yogurt, nuts, granola bars, protein bars, bottled water, juices, smoothies, etc., as well as diversity of ethnic origin, reflective of New York's cultural multiplicity. All prices and menu items are subject to TBC's and DPR's prior written approval.

As this concession will be a sublicense of the TBC license from DPR, further sublicensing of food services by the concessionaire will not be permitted.

### *DEPARTMENT OF HEALTH AND MENTAL HYGIENE (DOHMH) INFORMATION*

Any staff assigned by the concessionaire to sell food and beverages to the public must possess all Federal, State, and City authorizations, and possess, and at all times display, appropriate New York City Department of Health and Mental Hygiene (DOHMH) permits. **The concessionaire may only operate the food service kiosks if he or she has obtained the appropriate, valid permits and authorizations required by DOHMH.** At all times that the food service kiosks are operating, a staff person with a valid DOHMH food handler's license must be present.

(To obtain a DOHMH license, contact the Citywide Licensing Center, 42 Broadway, 5th floor, Monday through Friday 9:00 am to 5:00 pm, or by phone at 311 or 212-New York. Note: Offices are closed during City/Public Holidays. Vendors should be aware that applying for a DOHMH license for the first time can take six weeks or more. Vendors operating without all necessary permits may be subject to fines and/or confiscation of merchandise and inventory.)

**DOHMH Letter Grades: Food Facilities (i.e. Snackbars, Restaurants, etc.)** Proposers should note that this food facility is subject to a Department of Health and Mental Hygiene letter grading program. The current program is codified in Health Code Article 81.51 and Chapter 23 of Title 24 of the Rules of the City of New York and is described at: <http://www1.nyc.gov/site/doh/business/food-operators/letter-grading-for-restaurants.page>

#### *4. Alcoholic Beverages*

Alcoholic beverages may be served to complement the food service, provided that the concessionaire obtains the appropriate license(s) from the State Liquor Authority (SLA). Alcoholic beverages may only be served in the immediate vicinity of the Licensed Premises and within in a designated, cordoned-off area. All efforts must be made to keep alcohol consumption discreet. The operator must keep in mind that this is a public park and the consumption of alcohol should be encouraged only as an accompaniment to the cuisine.

#### *5. Tables & Chairs*

TBC will equip each kiosk with chairs and tables. As of the issuance of this RFP, there are a total of 30 tables and 144 chairs. The concessionaires will be responsible for placing the tables and chairs out for use by the public in the outdoor seating area. With the exception of a cordoned-off area for alcohol consumption, the operator must ensure free and open public access to the seating areas. The concessionaire will also be responsible for stacking and securing tables and chairs at the close of business, in a manner developed with, and approved by, TBC and DPR.

TBC does not envision the need for additional tables and chairs other than those already provided by TBC; however, the concessionaire may propose using additional tables, chairs, and other equipment. The design, color, placement, and number of all tables, chairs and equipment are subject to TBC and DPR's prior written approval.

#### *6. Vehicle Access*

The concessionaire will not be allowed to bring trucks or automobiles into the park. Deliveries must be unloaded outside the park and brought in by foot or handcart. There is no parking available at the Licensed Premises for facility staff and patrons. Parking is available at several nearby parking garages.

#### *7. Staff*

The concessionaire will be required to have sufficient staff available at the Licensed Premises during regular operating hours to ensure proper operation of the concession. TBC and DPR reserve the right to require that all staff wear uniforms that have been approved in writing by TBC and DPR.

#### *8. Storage and Inventory*

The Bosque Kiosks have extremely limited storage space. The concessionaire shall be responsible, at its sole cost and expense, for obtaining any additional storage space required for the operation of the concession. The concessionaire must also develop a system for deliveries to ensure that adequate inventories of food and beverages are maintained at all times, particularly during peak service hours.

The concessionaire shall not store any equipment or supplies at the Licensed Premises without the prior written approval of TBC and DPR. No item shall be placed upon any public space, including the ground adjacent to the Licensed Premises, without TBC and DPR's prior written

approval. The concessionaire will be required to securely store all outdoor equipment, tables and chairs on a nightly basis and whenever the concession is closed.

#### *9. Maintenance*

The concessionaire will be required, at its sole cost and expense (or through arrangements with third parties), to fit-out, operate, and maintain the Licensed Premises in good and safe condition and in accordance with industry standards. This includes, but is not limited to, the maintenance and repair of the entire Licensed Premises, all interior and exterior structures, interior fit-out of flooring, cabinetry, storage and kitchen equipment, building systems, utility systems and connections, sewer systems and connections, equipment, lighting, sidewalks, paved areas, stone screenings, vaults, gutters, curbs and fixtures. In addition, all signs and structures on the Licensed Premises must be kept in good condition and free of graffiti. The erecting of any ancillary structures at the Licensed Premises shall be subject to TBC's and DPR's prior written approval.

#### *10. Rubbish Removal & Recycling*

The concessionaire will be responsible, at its sole cost and expense, for clean-up and removal of all waste water, waste, garbage, refuse, rubbish and litter from the Licensed Premises and the area within fifty (50) feet of the Licensed Premises. The concessionaire will be required to provide adequate and easily accessible waste and recycling receptacles, approved by TBC and DPR, and have these receptacles emptied on a daily basis, or more frequently as needed. The location and placement of all waste and recycling receptacles is subject to TBC's and DPR's prior written approval. The concessionaire will be required to comply with all City, State, and Federal regulations regarding recycling. In addition, the concessionaire will be required to demonstrate to TBC and DPR's satisfaction, through a detailed maintenance plan, that it will keep and maintain the site in excellent condition throughout the license term.

#### *11. Signage and Advertising*

Concessionaire will be prohibited from displaying, placing or permitting the display or placement of advertisements in the Premises without the prior written approval of TBC and DPR. The display or placement of tobacco advertising shall not be permitted. The display or placement of advertising of alcoholic beverages shall not be permitted but Licensee may display signage approved by TBC and DPR setting forth its offerings of alcoholic beverages. The following standards will apply to all allowed advertising: Any type of advertising which is false or misleading, which promotes unlawful or illegal goods, services or activities, or which is otherwise unlawful, including but not limited to advertising that constitutes the public display of offensive sexual material in violation of Penal Law Section 245.11, shall be prohibited. Advertising of product brands is prohibited without DPR's and TBC's prior written approval. Any and all signage is subject to TBC and DPR's prior written approval. The design and placement of all signage, including signage which includes the concessionaire's name, trade name(s) and/or logos, is subject to TBC's and DPR's prior written approval. Concessionaire will be prohibited from placing advertisements on the exterior of its licensed premises. Any prohibited material displayed or placed shall be immediately removed by the concessionaire upon notice from TBC and DPR at the concessionaire's sole cost and expense.

#### *12. Internal Controls*

Throughout the License term, the concessionaire will be required to use such accounting and internal control methods and procedures and keep such books and records as may be reasonably



prescribed by the City of New York, DPR, any other governmental authority and/or TBC from time to time. This internal control system must maintain detailed sales information from each sales transaction. Specifically, sales information must be recorded electronically, via a point-of-sale system, and must include, but is not limited to, details on each sales transaction, the item(s) sold, time, date of sale and price of the item sold. The concessionaire must also establish a dedicated bank account for all deposits related to this concession's revenue. All accounting and internal control related records shall be maintained for a minimum of ten (10) years from the date of creation of the record. TBC shall have the right to provide full access to agents of the City, DPR, any other governmental authority and/or TBC to examine the recordkeeping procedures of the concessionaire in order to assure that the concessionaire's means, methods and procedures are adequate to reveal the true, correct and entire business conducted by the concessionaire. In addition to and without limiting the foregoing, TBC shall have the right to provide, at the concessionaire's sole cost and expense and with the concessionaire's full cooperation and assistance, representatives (including, but not limited to, auditors) of the City, DPR, any other governmental authority and/or TBC, full and free access, for inspection, examination, audit and/or other compliance purposes, to any of said materials during the term of the License Agreement and during such subsequent period.

### *13. Naming of the Concession*

Proposers should be aware that DPR may require that TBC and the City own the portion of any new name selected by the successful proposer for the Licensed Premises that indicates DPR property or a preexisting facility name. The City will not own any portion of a new name that consists of the name, portrait or signature of a living or deceased individual or a restaurant identifier that is not otherwise associated with DPR's property. TBC and DPR reserve the right to approve of any name selected by the concessionaire for the concession.

### *14. Utilities*

TBC makes no representations regarding the adequacy of utilities that will be in place at the Licensed Premises. The concessionaire will be required to connect to any existing utility service and obtain the appropriate permits and approvals. This includes establishing a dedicated meter and/or submeter that captures electricity usage on the licensed premises and an account with Con Edison (or other relevant providers) as appropriate. The concessionaire will be required to pay for any and all utility costs connected with the operation of this concession during the License term. These utility costs include, but are not limited to, paying all water and sewer charges that the New York City Department of Environmental Protection (DEP) assesses for water usage.

### *15. Drought & Water Conservation Issues*

The concessionaire will be required to adhere to all DEP directives and restrictions regarding drought and water conservation issues during the License term. Proposals should include any plans to employ methods and equipment which will conserve water.

## *16. Environmental Considerations*

As protectors and providers of green spaces, TBC and DPR are deeply committed to respecting the environment. Therefore, all proposed operational plans should include a detailed description of environmentally friendly practices planned for the Licensed Premises. Practices may include, but are not limited to, the installation of Energy Star, compliant appliances, the use of energy efficient, non-polluting, low noise generators, the employment of energy efficient and water conservation measures, the use of low toxicity chemicals, the preservation of natural areas, and the use of environmentally friendly products.

TBC and DPR will view favorably the installation of Energy Star approved appliances and equipment such as vending machines and commercial refrigerators at the Licensed Premises. Proposers should state whether they intend to install products that have the Energy Star seal of approval. Energy Star products and environmentally friendly practices can be found at: <http://www.energystar.gov>.

TBC and DPR will also view favorably proposals that include plans to use “Green Seal” eco-friendly products such as soaps, cleaners, light bulbs, paper towels, toilet paper and paint. A list of “Green Seal” certified products can be found at <http://www.greenseal.org/findgreensealproductsandservices.aspx>. A list of environmentally friendly products and materials is also available at the following website: <http://www1.nyc.gov/site/mocs/resources/environmental-preferable-purchasing.page>.

Proposers should state whether they intend to utilize or install “Green Seal” or other environmentally friendly products, devices, or methods for cleaning and operational purposes. Proposers should also state in their proposals whether they intend to utilize or install LED products.

TBC and DPR will encourage the successful proposer to use chlorine-free, biodegradable products such as paper towels, napkins, utensils and plates if the proposer intends to utilize any disposable products for food service at the Licensed Premises. Additionally, TBC and DPR will encourage the use of environmentally friendly cleaners and the selling of sustainable food products. Proposers can consult the website of the Green Restaurant Association (GRA) to locate GRA-endorsed products (<http://www.dinegreen.com>). In addition to the use of environmentally friendly products, TBC and DPR will encourage the successful proposer to train staff on environmentally friendly food service practices and to use TBC’s composting facility to dispose of food waste.

## *17. Special Events*

Subject to prior written approval from TBC and DPR, the concessionaire may conduct special events or programs (e.g., either arranged by Licensee or by reservation of all or part of the Licensed Premises through Licensee by third parties) at the Licensed Premises. The concessionaire shall submit to TBC and DPR for approval all plans for any events or programs at the Licensed Premises. The Licensed Premises shall not be closed to conduct private activities during public hours of use unless such activities are specifically approved or sponsored by TBC and DPR and such a closure has been announced to the public at least two weeks in advance of the date of the activity. Concessionaire must document each Special Event via signed sequentially pre-numbered contracts that capture event information, including the time and date of the event, the number of attendees and required payment. All revenue generated through such special events must be reported to TBC and DPR as Gross Receipts.

TBC and DPR, acting on behalf of the City of New York, reserve the right to host a limited number of events, including benefits and other non-profit or public events, at the Licensed Premises. The dates of such events shall be mutually agreed upon by all parties and shall be reserved in writing not less than one month in advance.

#### *18. Security*

Pursuant to a plan approved in writing by Parks and TBC, the concessionaire, at its sole cost and expense, shall be responsible for all security at the Licensed Premises and surrounding parkland year round. The concessionaire will be required to secure the Licensed Premises and any other equipment every evening. The concessionaire will be required to provide two (2) 24-hour contact numbers in the event of an emergency.

#### *19. Safety*

Since safety is of the utmost concern, proposers with prior experience in operating this type of facility or similar facilities should submit their personal and/or company safety record. Each proposal should include a detailed outline of maintenance schedules and safety precautions required for the operation of the Licensed Premises as well as any applicable staff qualifications and certifications. Proposers should also provide descriptions of the locations and types of facilities they have operated, including a list of references. The concessionaire will be required to comply with all national safety guidelines and Federal, State and City laws, rules and regulations related to the development, operation and maintenance of the Licensed Premises.

#### *20. Community Relations*

TBC and DPR will view favorably proposals that demonstrate an awareness of the role of the concession as an integral part of the surrounding community. TBC and DPR will view favorably proposals that show a commitment to cooperate with and support park administrators, park users, other licensed concessionaires in the park, and the community.

TBC and DPR will view favorably proposals that demonstrate how the concessionaire will work with TBC and DPR staff to address maintenance issues. The concessionaire should employ preventative maintenance techniques to discourage litter in the gardens. These techniques should be outlined in each proposal.

#### *21. Customer Service*

TBC and DPR expect the concessionaire to create and maintain a high-quality amenity for the public. TBC and DPR encourage proposers to implement customer service mechanisms that will enhance and maintain the satisfaction of patrons. These mechanisms should be outlined in each proposal.

#### *22. Identification & Address*

23. The successful proposer will be required to present picture identification (such as a driver's license or a passport) and proof of address (such as a utility bill) in order to execute the License Agreement. In addition, all proposers will be expected to provide TBC and DPR with at least two (2) telephone numbers for contact purposes. The successful proposer shall notify the DPR Revenue office and TBC immediately of any changes to the successful proposer's address or phone number.*Access to Licensed Premises*

The concessionaire will be required to provide TBC, DPR, the City and any other governmental authority with full and free access, at all times, to the Licensed Premises for any purpose.

#### *24. No Exclusive Vending Rights*

Proposers should note that the License Agreement will not grant the concessionaire exclusive rights to sell in The Battery. Moreover, TBC and DPR may grant other permits to vendors to sell the same or similar items authorized under this License Agreement within The Battery. TBC and DPR do not guarantee that illegal vendors, persons unauthorized by DPR or TBC, or disabled veteran vendors will not compete with the successful proposer in operating near the Licensed Premises. TBC and DPR encourage concessionaires to report illegal vendors by calling 311.

### *B. OPERATIONAL ENFORCEMENT*

Inspectors from DPR will visit the site unannounced to inspect operations and ensure proper maintenance of the concession site. Based on their inspections, DPR may issue directives regarding deficiencies the concessionaire must rectify in a timely fashion. Violations of the terms of the License Agreement may result in the assessment of liquidated damages which, if not paid promptly, may be deducted from the concessionaire's security deposit. If the concessionaire fails to provide the cleaning, maintenance, and operational services required by the License Agreement, DPR shall notify the concessionaire in writing, and the concessionaire shall be required to correct such shortcomings within the timeframe set forth in such notice. If the concessionaire fails to cure the violation within the timeframe set in the notice, DPR may, at its option, in addition to any other remedies available to it, assess liquidated damages and/or suspend or terminate the License Agreement. DPR may impose a \$250 administrative fee for reinstatement of a suspended license. Liquidated damages may be assessed in accordance with the following schedule:

| <b>Provision</b>                                                        | <b>Liquidated Damages per Occurrence</b> |
|-------------------------------------------------------------------------|------------------------------------------|
| Unauthorized Menu Items or Merchandise                                  | \$150                                    |
| Missing or Unauthorized Price List                                      | \$250                                    |
| Overcharging                                                            | \$350                                    |
| Blocked Exits                                                           | \$350                                    |
| Improper Disposal (noxious liquids, debris, etc.)                       | \$350                                    |
| Unauthorized tapping into utilities used, operated or owned by the City | \$350                                    |
| Unauthorized Advertising                                                | \$350                                    |
| Improper Storage                                                        | \$350                                    |
| Graffiti or Dirty Facility and/or Equipment                             | \$350                                    |
| Unauthorized Vehicular Activity                                         | \$350                                    |
| Operating Without Applicable DOHMH or Parks Permit(s) or License(s)     | \$350                                    |
| 311 Sign Not Displayed                                                  | \$250                                    |
| Damaged Equipment or Structure(s)                                       | \$350                                    |

The concessionaire may appeal the imposition of such assessments according to the following procedure:

#### *1. Filing an Appeal*

If the concessionaire wishes to appeal the assessment, a notice of appeal must be delivered to DPR within ten (10) days along with a statement of reasons why the concessionaire believes the assessment was erroneous. The statement of reasons must be notarized. Any evidence supporting the concessionaire's appeal (e.g., photographs, documents, witness statements) should also be included.

The appeal shall be sent to the Director of Operations Management & Planning, with offices at the Arsenal, 830 Fifth Avenue, New York, NY 10065.

If no appeal is received within 10 days of the date the assessment is mailed, the assessment shall be considered final and charged to the concessionaire's account.

## 2. Adjudication of Appeal

The Commissioner has designated the Director of Operations Management & Planning to decide on the merits of these appeals. The decision of the Director of Operations Management & Planning shall constitute the final decision of DPR.

The Director of Operations Management & Planning is authorized to investigate the merits of the appeal, but is not required to hold a hearing or to speak to the concessionaire in person.

### *C. CAPITAL IMPROVEMENTS*

TBC and DPR do not currently anticipate a need for capital investment by the concessionaire, other than for outfitting and/or upgrading the kitchen equipment in the kiosks. Should more extensive capital work be needed ("Supplemental Capital Work"), the concessionaire will be required to perform such work and its cost will be supplemental to the yearly operation fee ("Minimum Guaranteed License Fee") and will not be deducted, reduced, or offset against such Minimum Guaranteed License Fee. The concessionaire will also be required to obtain prior written approval from TBC and DPR to retain a professional licensed engineer or registered architect approved by TBC and DPR to oversee construction. This supervising architect or engineer will be required to ensure that all construction conforms to the plans approved by TBC and DPR.

All capital improvements and fixed equipment become the property of DPR upon installation. The concessionaire will be required to supply all additional equipment and materials necessary for the successful operation of the concession. As a TBC and DPR concessionaire, you may request a sales tax waiver for all sales tax costs associated with the capital expenditures on your DPR concession.

All necessary permits and approvals for capital work and design must be obtained from the New York City Department of Buildings (DOB) including, but not limited to, obtaining a Certificate of Occupancy, Public Assembly Permit or Letters of No Objection, as needed. Additionally, all designs and construction to be performed on the structure shall be prepared by licensed architects or engineers and will require prior written approval from TBC, DPR, DOB, and/or any other agency having jurisdiction. The concessionaire will be required to provide TBC and DPR with all plans and specifications upon completion of construction documents.

### *D. ADDITIONAL REQUIREMENTS DURING THE LICENSE TERM*

1. The concessionaire will be required to develop, operate, and maintain the Licensed Premises as a concession for the use and enjoyment of the general public.
2. The concessionaire accepts the Licensed Premises in its “as-is” condition.
3. The concessionaire will be required to submit a security deposit of 25% of the highest year’s Minimum Guaranteed License Fee, which will be required for the duration of the term of the license. This security deposit, which may be in the form of an interest-bearing account or other format approved by TBC and DPR, will be due upon signing.
4. If any fees or other charges or sums payable by concessionaire to TBC shall be overdue and unpaid for at least thirty (30) days, a two percent (2%) late fee penalty shall be added for each 30 day period that the payment is overdue and unpaid.
5. The concessionaire will be required to carry Commercial General Liability insurance, dedicated to the Licensed Premises and concessionaire’s operations there in the amount of \$2,000,000, per occurrence, and Worker’s Compensation, Employer’s Liability and Disability Benefits Insurance as required by the laws of the State of New York. All insurance policies other than Employer’s Liability, Worker’s Compensation, and Disability Benefits Insurance must name TBC and the City of New York, including its officials and employees, as an additional insured with coverage at least as broad as Insurance Services Office (ISO) Form GC 20 26. All Risk Insurance equal to the replacement cost value of the structures will also be required, with the City of New York named as sole loss payee. Proposers are on notice that the City may require higher liability limits and other terms if, in the opinion of the Parks Commissioner, the proposed program warrants it.
6. The concessionaire will be required to submit monthly statements of gross receipts from all categories of income in a format approved by TBC and DPR. Within sixty (60) days following the end of each operating year, the concessionaire will be required to submit a detailed income and expense statement for the past year’s operation. Such statements shall include the salaries of all paid staff and all costs associated with the maintenance and repair of the Licensed Premises. The concessionaire will be required to maintain an internal control system to ensure the accurate and complete recording of all revenues, as described under “Internal Controls” in Section A(12) above.
7. The concessionaire will be required to pay all taxes applicable to the operation of the concession. Gross receipts shall exclude the amount of any federal, state, or city sales taxes which are paid by the concessionaire.
8. The concessionaire will be responsible for regular pest control inspections and extermination, as needed. To the extent that the concessionaire applies pesticides to any property owned or leased by the City, concessionaire or any subcontractor hired by concessionaire shall comply with Chapter 12 of Title 17 of the New York City Administrative Code and limit the environmental impact of its pesticide use.
9. The concessionaire will be prohibited from cutting down, pruning or removing any trees on the Licensed Premises without prior written approval from TBC and DPR. Any attachments to the trees, such as lights, will not be permitted.
10. The concessionaire will be required to cooperate with TBC and DPR during special and other unanticipated events.

11. Smoking in any building or anywhere inside the park is strictly prohibited. The concessionaire will be required to adhere to and enforce this policy.
12. Pursuant to DPR's policy citywide, the concessionaire will be prohibited from selling any beverages in glass bottles. All beverages will be required to be in non-glass, shatter-proof containers. Also, the use of polystyrene packaging or food containers will be prohibited in the operation of the concession.
13. The selling and/or advertisement of cigarettes, electronic cigarettes, cigars, or any other tobacco products is strictly prohibited. The concessionaire will be required to adhere to and enforce this policy.
14. The concessionaire will be required to indemnify the TBC and the City of New York for losses associated with the concessionaire's actions under the License Agreement, pursuant to a provision to be included in the License Agreement.
15. The concessionaire must obtain the prior written approval of TBC and DPR prior to entering into any marketing or sponsorship agreement.
16. The concessionaire will be required to operate and occupy the Licensed Premises in accordance with all applicable law and shall, at its sole cost and expense, obtain all licenses and permits that may be required to operate the Licensed Premises in accordance with applicable law, including if necessary a Certificate of Occupancy. Concessionaire shall at all times operate the Licensed Premises in accordance with the provisions of any required licenses or permits. The concessionaire is required to obtain a Temporary Certificate of Occupancy for the installation and operation of temporary structures.
17. The concessionaire will faithfully conform and cause its agents, employees, and invitees to conform to all laws, rules, regulations, and orders now prescribed or which may hereafter be prescribed by the Commissioner and comply with all laws, regulations, rules, and orders of any kind whatsoever and of any agency or entity of government whatsoever applicable to the Licensed Premises and/or the concessionaire's and DPR's use and occupation thereof. This includes, but is not limited to, applicable tax and labor laws relating to non-discrimination in employment, and laws protecting youths from child abuse and maltreatment.
18. The concessionaire will be responsible for obtaining all necessary permits, licenses and approvals from all City, State and Federal agencies having jurisdiction for the operation and maintenance of the Licensed Premises. The concessionaire will also be responsible for obtaining, amending and complying with the sign-offs, public assembly permits, DOHMH permits, fire department certificates and all other permits including, but not limited to, DEP, New York State Department of Environmental Conservation (NYS DEC), and/or other government agency approvals and permits necessary for any alterations to the existing premises.
19. The concessionaire will obtain all necessary approvals and permits for, and repair, service, and maintain, exhaust and fire suppression equipment.
20. The concessionaire shall be required to provide Americans with Disabilities Act (ADA) accessibility throughout the Licensed Premises, including, but not limited to, providing ADA signage, ADA accessible counters in the café area and ramps as needed. The concessionaire shall comply with all City, State, and Federal requirements to provide safe and accessible recreational opportunities for everyone, including persons with disabilities. The concessionaire is encouraged

to exceed accessibility requirements whenever possible, and not simply provide the minimum level required.



## RFP PROCEDURE

### *A. PROPOSAL SUBMISSION INSTRUCTIONS*

The proposal should be printed on both sides of 8 ½" x 11" paper. Pages should be numbered. TBC and DPR request that all proposals be submitted on paper with no less than 30% post-consumer material content, i.e., the minimum recovered fiber content level for reprographic papers recommended by the United States Environmental Protection Agency (for any changes to that standard please consult: <https://www.epa.gov/smm/comprehensive-procurement-guidelines-paper-and-paper-products>

The proposer should state whether its response is printed on recycled paper containing the minimum percentage of recovered fiber content as requested by the City in these instructions. Failure to comply with any of the instructions set forth in this paragraph will be considered non-responsive.

No proposals should be submitted in plastic sleeves or spiral binders. Illustrations may be included. Oversized drawings may be submitted, but must be accompanied by 8½" x 11" sectionals or reductions to 8½" x 11". No telegraphic or facsimile proposals will be accepted. The proposal will be evaluated on the basis of its content, not length.

**Please submit four (4) copies of your proposal. The following information should be printed on the outside of the envelope:**

**Proposer's Name & Address**

**Solicitation No.:** 2018-M5-SB  
**Proposals Due:** Friday April 6, 2018 at 3pm  
**Location of Submission:** The Battery Conservancy  
One Whitehall Street, 17<sup>th</sup> floor  
New York, NY 10004

### *B. PROPOSAL SUBMISSION REQUIREMENTS*

**Each proposal submitted must meet the following requirements. Failure to comply will result in the automatic disqualification of a submission from further consideration.**

1. All proposers must submit a proposal that includes a fee offer for each year of the operating term. At TBC's and DPR's request, each proposer shall submit documentation, satisfactory to TBC and DPR, demonstrating that it has the financial capability to pay the fees set forth in its proposal. Failure to provide such documentation will result in a determination of non-responsiveness.
2. All proposers are required to submit as a proposal deposit a certified bank check, official bank check, or cashier's check in the amount of \$10,000 (payable to The City of New York – Department of Parks & Recreation). Personal or business checks will not be accepted. In the event of the failure of a successful proposer to execute a concession agreement in accordance with the terms of its proposal, the deposit shall be retained by TBC unless the proposal has been permitted to be withdrawn. Proposal deposits will be returned to unsuccessful proposers after the concession agreement is signed with the successful proposer.
3. All proposals must be submitted in a sealed envelope and received in the offices of The Battery Conservancy, One Whitehall Street, 17<sup>th</sup> Floor, New York, NY 10004.

4. All proposals must be received by 3pm on April 6, 2018. Hand delivery to the Conservancy's offices before the deadline is recommended to ensure consideration of your proposals. **Proposals and modifications received after the time and date listed above will be considered late, will be returned to the proposer unopened and will not be considered for award, except as provided for in Section 1-13(j)(2)(i) of the Concession Rules.**
5. Pursuant to Local Law 34 of 2007, amending the City's Campaign Finance Law, the City is required to establish a computerized database containing the names of any "person" that has "business dealings with the city" as such terms are defined in the Local Law. In order for the City to obtain necessary information to establish the required database, proposers responding to this solicitation are required to complete the attached Doing Business Data Form and return it with this proposal and should do so in a separate envelope. (If the responding proposer is a proposed joint venture, the entities that comprise the proposed joint venture must each complete a Data Form.) If the City determines that a proposer has failed to submit a Data Form or has submitted a Data Form that is not complete, the proposer will be notified by the agency and will be given four (4) calendar days from receipt of notification to cure the specified deficiencies and return a complete Data Form to the agency. Failure to do so will result in a determination that the proposal is non-responsive. Receipt of notification is defined as the day notice is e-mailed or faxed (if the proposer has provided an e-mail address or fax number), or no later than five (5) days from the date of mailing or upon delivery, if delivered.

### *C. PROPOSAL CONTENT GUIDELINES*

Each proposal is expected to include the following:

1. Fee Offer
  - All proposers must submit a proposal that includes a fee offer for each year of the operating term. The fee offer should state the highest sum each proposer is prepared to pay as a license fee, expressed as a guaranteed annual minimum fee plus a percentage of gross receipts. TBC urges that there be an escalation of at least five percent (5%) per year (compounded annually) in the guaranteed minimum fee over the license term.
2. Operating Experience
  - Proposers should submit a resume or detailed description of the proposer's professional qualifications, demonstrating extensive experience in the industry, including any work with City agencies, and/or access to individuals and/or firms with such expertise. Include the names and addresses of all corporate officers of the entity submitting the proposal. If any principal owner and/or officer of the submitting entity is currently or has been a principal officer of another entity or entities within the last five (5) years, that entity or entities (including applicable tax identification numbers) should be identified as well.

Proposers should demonstrate experience with offsite catering and experience in food service in an outdoor setting.

- Proposers should attach a list of at least three (3) recent relevant references, with whom the proposer has previously worked and/or who can describe such matters as the proposer's financial, operational and construction capability. One of the three references should be from a financial institution that has extended credit to the proposer. Include the name of the reference entity, a description of the nature of the listed reference's experience with the

proposer and the name, title, address, and telephone number of a contact person at the reference entity.

### 3. Planned Operations

- Proposers should submit a detailed operational plan for the entire Licensed Premises, including but not limited to intended use of the facility, hours of operation, services to be provided, menu items and merchandise to be sold, whether ethnically diverse and/or healthy food choices will be provided, a detailed list of all proposed prices and rates, maintenance, rubbish removal, cleaning schedules, safety and security plans, any plans to install energy efficient appliances or appliances that have the Energy Star seal of approval and/or water conserving appliances, and any plans to use “Green Seal” or other environmentally friendly products or devices. All plans, schedules, services, menu items, merchandise, prices and rates, and hours of operation are subject to TBC’s and DPR’s prior written approval.
- Proposers should submit an estimated number of full-time and seasonal employees and the positions these employees will fill.
- DPR is charged with improving customer satisfaction with the services provided at facilities on parkland. Therefore, TBC and DPR would like proposers to explain in their submissions the mechanisms they would use to measure customer satisfaction with the services offered by this concession. Such mechanisms might include customer evaluations or survey forms. Further, TBC and DPR would like proposers to explain how they would improve the quality of services offered if the above mechanisms indicate a need to do so.
- Proposers should include a comprehensive pro-forma income and expense projection for each year of operation. This pro-forma projection should include explanations for all the assumptions used in its formulation.
- TBC and DPR will view favorably proposals that demonstrate an awareness of the role of the concession as an integral part of the surrounding community. DPR will view favorably proposals that show a commitment to cooperate with and support park administrators, park users, other licensed concessionaires, and the community.

### 4. Financial Capability

- Proposers should include a financial statement or statements prepared in accordance with standard accounting procedures. Financial statements should include, but are not limited to, annual income and net worth (assets and liabilities), including a breakdown of liquid and non-liquid assets. Proposers should include supporting documentation of their financial worth, including but not limited to Certified Financial Statements, Balance Sheets and Income Statements and tax returns from the past three (3) years (corporate and/or personal).

Proposers should identify the intended source of all funds proposed to be invested in the Licensed Premises.

## EVALUATION AND SELECTION PROCEDURES

Proposals will be evaluated by a selection committee composed of a minimum of three (3) TBC, DPR or other City employees and, possibly, independent (non-government employed) professionals with relevant

expertise, in accordance with procedures established by the Franchise and Concession Review Committee, based on the criteria listed below. The concession will be awarded to the proposer whose submission the selection committee judges best overall based on these criteria.

#### *A. PROPOSAL EVALUATION CRITERIA*

In evaluating proposals, the Selection Committee members will use the following criteria:

- Fee Offer: 30%
- Operating Experience: 25%
- Planned Operations: 25%
- Financial Capability: 20%

#### *B. EVALUATION PROCEDURES*

TBC and DPR will only consider proposals that meet satisfactory levels of the above criteria. TBC and DPR are not required to accept the proposal that includes the highest fee offer. Acceptance of a proposal by TBC and DPR does not imply that every element of that proposal has been accepted.

TBC and DPR cannot consider any proposal that does not comply with the “Submission Requirements” section of this RFP. Proposals that do not meet these requirements will not be evaluated. When feasible, employees of TBC and DPR will visit facilities operated by proposers.

### OTHER GENERAL RFP REQUIREMENTS AND CONDITIONS

TBC and DPR reserve the right to postpone or cancel this RFP or reject all proposals, if in their judgment they deem it to be in the best interest of The Battery Conservancy or the City of New York to do so.

Proposers are advised that TBC and DPR have the option of selecting the proposer without conducting discussions or negotiations. Therefore, proposers should submit their best proposals initially, since discussions or negotiations may not take place.

Proposers are also advised that the award of this concession is subject to applicable provisions of Federal, State, and local laws and executive orders requiring affirmative action and equal employment opportunity.

All RFP submission materials become the property of TBC, the City of New York and DPR.

TBC and DPR shall not be liable for any costs incurred by proposers in the preparation of proposals or for any work performed in connection therein.

A proposer may submit a modified proposal to replace all or any portion of a proposal submitted up until the proposal submission deadline. TBC and DPR will only consider the latest version of the proposal. Late proposals and late modifications will not be considered for evaluation, except as provided for in Section 1-13(j)(2)(i) of the Concession Rules. Proposers may withdraw their proposals from consideration at any time before the proposal submission deadline by submitting written notice to TBC and DPR. A proposer may not withdraw its proposal before the expiration of forty-five (45) calendar days after the date of the opening of proposals; thereafter a proposer may only withdraw its proposal by submitting written notice to DPR in advance of an actual grant of a concession.

Technical addenda issued by TBC and DPR will be the only authorized method for communicating clarifying information to all potential proposers. Proposers should contact TBC before submitting a proposal to verify that they have received any addenda issued. Proposers shall acknowledge the receipt of any addenda in their proposal submissions.

Proposers should be aware that, upon Parks' and TBC's request, proposer(s) will be required complete an online Procurement and Sourcing Solutions Portal (PASSPort) Vendor and Principal Questionnaires (formerly known as Vendor Information Exchange System (VENDEX) forms) to the Mayor's Office of Contract Services (MOCS). In addition, any person or entity with at least a 10% ownership interest in the submitting vendor (including a parent company), is required to complete PASSPort Questionnaires (Principal Questionnaire for any person and Vendor Questionnaire for any entity with at least a 10% ownership interest in the submitting vendor). The concession award will be subject to completion of the PASSPort questionnaires and review of certain information contained therein by the Department of Investigation. To submit the questionnaires to MOCS, create an account and submit the vendor enrollment package in PASSPort through the NYC website at <http://www.nyc.gov/passport>

The Comptroller of the City of New York is charged with the audit of concession agreements in New York City. Any person or entity that believes that there has been unfairness, favoritism or impropriety in the proposal process should inform the Comptroller's Office of Contract Administration, 1 Centre Street, Room 835, New York, New York 10007. This office may be reached at (212) 669-2323.