



**THE CITY OF NEW YORK
OFFICE OF THE COMPTROLLER**

INTERNAL CONTROL AND ACCOUNTABILITY DIRECTIVES

**DIRECTIVE #26: REGISTRATION OF FRANCHISES,
CONCESSIONS, AND REVOCABLE CONSENTS**

INTRODUCTION

The purpose of this Directive is to provide agencies with guidelines for the registration of Franchises, Concessions, and Revocable Consents. Agencies are not permitted to implement agreements with business entities, not-for-profit organizations, or individuals unless the agreement is first registered with the Office of the Comptroller (the "Comptroller").

This Directive is issued in accordance with Sections 93 (p) and 328 of the [*New York City Charter*](#), which require the Comptroller to register all contracts; Section 375, which requires the Comptroller to register Franchises, Concessions, and Revocable Consents; and Section 334 (b), which enables the Comptroller to request documentation relating to the solicitation or award of any City contract. In addition to the Charter provisions, Local Law 52 of 1987 requires the Comptroller to maintain a computerized database and to publish a yearly summary report on every Franchise and Concession entered into by the City.

This Directive is issued pursuant to the authority of the Office of the Comptroller as provided in Chapter 5, Section 93 of the [*New York City Charter*](#).

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1. GENERAL INFORMATION

1.1 Effective Date

This Directive is effective immediately.

1.2 Assistance

Questions or comments concerning this Directive should be addressed via [Technical Policy & Support Unit Email](mailto:directives@comptroller.nyc.gov) (directives@comptroller.nyc.gov); by telephone at: (212) 669-3675; or by mail to: The Office of the Comptroller, Attention: Technical & Professional Standards Unit, Bureau of Accountancy, David N. Dinkins Municipal Building, One Centre Street, Room 200 South, New York, NY 10007.

1.3 Comptroller's Internal Control and Accountability Directives

An inventory of existing [Comptroller's Internal Control and Accountability Directives](#) is available on the [Comptroller's Website](#).

2. DEFINITIONS

For the purpose of this Directive and the [*New York City Charter*](#), the terms listed below have the following definitions:

- “Concession” means a grant made by a Responsible Agency for the private use of City-owned property for which the City receives compensation other than in the form of a fee to cover administrative costs, except that Concessions shall not include Franchises, Revocable Consents and leases.
- “Franchise” means a grant by a Responsible Agency of a right to occupy or use the inalienable property of the City to provide a public service.
- “Responsible Agency” means:
 - a) With respect to a Franchise, the Responsible Agency designated by the mayor pursuant to Sections 363 or 378 of the Charter as the Responsible Agency having primary expertise and responsibility for the type of Franchise involved;
 - b) With respect to a Revocable Consent, the Responsible Agency authorized to grant a Revocable Consent of the type involved pursuant to Section 364 of the Charter; or
 - c) With respect to a Concession, the Responsible Agency granting a Concession.
- “Revocable Consent” means a grant by the City of a right, revocable at will:
 - a) To any person to construct and use for private use pipes, conduits, and tunnels under, railroad tracks upon, and connecting bridges over inalienable property;
 - b) To an owner of real property or, with the consent of the owner, to a tenant of real property to use adjacent inalienable property for such purposes as may be permitted by rules of the department of transportation or the Department of Information Technology and Telecommunications; or
 - c) To a public service corporation for facilities ancillary to, but not within, a Franchise granted prior to the effective date of this section.

3. COMPTROLLER AUTHORITY

Section 328 of the New York City Charter states that no contract or agreement shall be implemented until:

- A copy has been filed with the Comptroller, and
- Either the Comptroller has registered it, or thirty days have elapsed from the date of filing, whichever is sooner, unless an objection has been filed, or the Comptroller has grounds for not registering the contract.

Section 375 of the Charter states that “... all agreements memorializing the terms of Franchises, Revocable Consents, or Concessions...” shall be registered with the Comptroller.

4. REGISTRATION

4.1 Purpose

Registration is a key control for ensuring that entities of the City of New York are in compliance with the City's policies for entering into agreements with outside parties as expressed in the Charter.

Registration further provides the Comptroller the means to:

- Maintain a comprehensive record of all City contracts and other agreements and prepare yearly summary reports;
- Present objections if, in the Comptroller's judgment, there is sufficient reason to believe that the proposed holder of the Concession, Revocable Consent or Franchise is involved in corrupt activity or there was corruption in the letting of the agreement;
- Accumulate, monitor, and project revenues associated with City revenue agreements.

4.2 Requests for Registration

All requests for registration, including all documentation required by this Directive, must be submitted to: The Office of the Comptroller, Bureau of Contract Administration, Municipal Building, One Centre Street, Room 1005, New York, NY, 10007, or via [Bureau of Contract Administration email \(contract@comptroller.nyc.gov\)](mailto:contract@comptroller.nyc.gov).

When agreements are submitted for registration, the full value of the agreement must be disclosed on the *Advice of Award of Revenue Agreement*.

5. REQUIRED DOCUMENTATION

To ensure that all appropriate steps have been taken in the award of the agreement, specific documentation must be included with all registration requests. Compliance with these guidelines for required documentation will assist in the timely registration of agreements.

The date that the Comptroller receives the request for registration, complete with all required documentation, is defined as the Date of Filing. The Comptroller will not consider the request for registration complete until all documentation is received. If the Comptroller finds that the documentation submitted is incomplete or inaccurate, it is essential that the entity provide the missing documentation or correct the error immediately. The Bureau of Contract Administration (BCA) will return registration requests to the originating Responsible Agency or other entity if the information requested is not provided within 24 hours. No agreement will be registered until the Comptroller is satisfied that all required documentation, as described below, has been properly submitted.

The Comptroller has 30 calendar days to register the agreement from the Date of Filing. In general, within the 30 calendar days, the Comptroller must either register, object to, or refuse to register the agreement.

5.1 *Online Entry for Advices of Award*

The *Advices of Award of Revenue Agreement* must be submitted electronically through online entries into the Financial Management System (FMS).

Note: For detailed information about FMS Training and Reference Materials, please refer to the [FISA Applications Portal](#).

Agencies that do not currently have the capability to submit Advices of Award electronically should contact: The Office of the Comptroller, Bureau of Contract Administration, Municipal Building, One Centre Street, Room 1005, New York, NY, 10007, or via [Bureau of Contract Administration email](mailto:contract@comptroller.nyc.gov) (contract@comptroller.nyc.gov).

5.2 Documentation Requirements for Franchises, Concessions, and Revocable Consents

5.2.1 Franchise Agreements

The following documentation must be submitted with all requests to register Franchise agreements:

1. Notarized original executed agreement, including all Exhibits and Appendixes.
2. A fully completed *Advice of Award of Revenue Agreement* (See Attachment A).
3. Copies of any related written statements, determinations and reports required by the Charter specific to the Franchise agreement being registered, including any disapproval by the Mayor and subsequent City Council override, if any (Charter, Section 197-d (e), (f) and (g)).
4. Copies of any approvals necessary by the City Council and the City Planning Commission for Franchises, including those required for land use related projects.
5. Copies, including the date of approval and the agenda number, of any approvals or other determinations made by the Committee.
6. The VENDEX business entity, principal, not-for-profit organization and/or individual questionnaire(s). (Note: The VENDEX questionnaires will be required only until they are all routinely made available to the Comptroller prior to registration through the VENDEX Computer System. To avoid needless delay it is commended that a copy of the most recent VENDEX questionnaire be presented along with the contract package.)
7. Original Corporation Counsel certification that the Responsible Agency has legal authority to award the agreement (Charter, Section 327 (b)).
8. Original Corporation Counsel approval as to form of the Franchise agreement (Charter, Section 394 (b)).
9. If a land use related project, documentation of notification to each affected Community Board and Borough President.
10. For agreements awarded through a competitive sealed bid process, the number of responses and the prices quoted for each bid opened. The bid tabulation sheet may be submitted to meet this requirement.

11. For agreements awarded through a Request for Proposal process, the number of proposals received, the overall technical rating for each proposal and the proposed price for each proposal opened.
12. Statement that agreement was presented, duly certified, to the Mayor for approval, including the date it was presented (Charter, Section 372).
13. Copies, including date of approval, of approval by the Mayor (Charter, Section 372).

5.2.2 Concession Agreements

The following documentation must be submitted with all requests to register Concession agreements, as required by the Concession Rules of the Franchise and Concession Review Committee:

1. Notarized original executed agreement including all *Exhibits* and *Appendixes*.
2. A fully completed *Advice of Award of Revenue Agreement*.
3. Copies of any related written statements, determinations, and reports required by the rules of the Committee specific to the Concession agreement.
4. Copies, including the date of approval and the agenda number, of any approvals made by the Committee.
5. Copies of any approvals of major Concessions by the City Council and the City Planning Commission.
6. The VENDEX business entity, principal, not-for-profit organization, and/or individual questionnaire(s). (Note: The VENDEX questionnaires will be required only until they are all routinely made available to the Comptroller prior to registration through the VENDEX Computer System. To avoid needless delay, it is recommended that a copy of the most recent VENDEX questionnaire be presented along with the contract package.)
7. Original Corporation Counsel certification that the Responsible Agency has legal authority to award the agreement (Charter, Section 327 (b)).
8. Original Corporation Counsel approval as to form of the Concession agreement (Charter, Section 394 (b)).
9. Documentation of notification to each affected Community Board and Borough President, if the Responsible Agency has determined that the Concession is not a major Concession.

10. For agreements awarded through a competitive sealed bid process, the number of responses and the prices quoted for each bid opened. The bid tabulation sheet may be submitted to meet this requirement.
11. For agreements awarded through a Request for Proposal process, the number of proposals received, the overall technical rating for each proposal and the proposed price for each proposal opened.

5.2.3 Revocable Consents

The following documentation must be submitted with all requests to register Revocable Consents:

1. Notarized original executed agreement, including all Exhibits and Appendixes.
2. A fully completed *Advice of Award of Revenue Agreement*.
3. Copies of any related written statements, determinations and reports required by the Charter specific to the Revocable Consent being registered, including any disapproval by the Mayor and subsequent City Council override, if any (Charter Section 197-d (e), (f), and (g)).
4. Copies of any approvals necessary of the City Council and the City Planning Commission for Revocable Consents, including those required for land use related projects, if any.
5. Copies, including the date of approval, of any approvals or other determinations made by the Responsible Agency and the Department of Transportation (Charter, Section 364 (c)).
6. Corporation Counsel certification that the Responsible Agency has legal authority to award the agreement (Charter, Section 327b).
7. Corporation Counsel approval as to form of the Revocable Consent (Charter, Section 394 (b)).
8. If a land use related project, documentation of notification to each affected Community Board, Borough President and Borough Board.
9. Statement that agreement was presented, duly certified, to the Mayor for approval, including the date it was presented (Charter, Section 372).
10. Copies, including date of approval, of approval by the Mayor (Charter, Section 372).

5.2.4 Amendments, Changes, and Modifications to Franchises, Concessions, or Revocable Consents

The following documentation must be submitted with all requests to register an amendment, change, or modification to any Franchise, Concession, or Revocable Consent. This documentation is required for increases, decreases and changes that do not affect value:

1. New Advice of Award of Revenue Agreement, including when the changes do not affect the value of the Concession, Franchise or Revocable Consent.
2. Agreement pages which were changed, amended, or modified.
3. Justification for the change, amendment or modification.

5.2.5 Renewal Options

The documentation required when a Responsible Agency chooses to exercise an option to renew clause for an agreement originally registered in accordance with Subsections 5.2.1 through 5.2.3 above, is:

1. New Advice of Award of Revenue Agreement for option period;
2. Justification letter for renewing the agreement as opposed to awarding a new agreement;
3. Revised terms and conditions for renewal period.
4. Copy of Original Agreement.

5.3 Requests for Additional Documentation

After registration the Comptroller may, on a case-by-case basis, request additional information. Section 334 (b) of the Charter of the City of New York provides that, "Whenever an elected official of the City requests documentation relating to the solicitation or award of any City contract, the Mayor, other independently elected officials and City agencies shall promptly provide such documentation as is requested or promptly respond to the requesting official with reason why such documentation cannot be provided."

6. COMPTROLLER ACTION ON REGISTRATION REQUESTS

Upon receipt of the request to register the agreement, the Comptroller will review the documentation for completeness. If the documentation is not complete, the Comptroller will request that the Responsible Agency submit the missing documentation. After reviewing the agreement and all the documentation required by this Directive, the Comptroller may:

- Register the agreement;
- Object to the registration of the agreement; or
- Refuse to register the agreement.

6.1 Comptroller Registration of the Agreement

Registration takes effect only by direct Comptroller action. If thirty days have passed since the Date of Filing and the Comptroller has neither objected to nor refused to register the agreement, the Responsible Agency may choose to implement the agreement.

The Comptroller's registration of an agreement does not constitute an approval of it or the process by which it was reached, and does not preclude subsequent audits or objection.

6.2 Comptroller Objection to the Registration of the Agreement

Within thirty days of the Date of Filing of the agreement, the Comptroller may object to its registration if in the Comptroller's judgment, there is sufficient reason to believe that:

- There is possible corruption in the letting of the agreement; or
- The proposed holder of the Franchise, Concession or Revocable Consent to the agreement is involved in corrupt activity.

Such objection will be made in writing to the Mayor, or other independently elected official, Commission or Board who presented the registration request. The Mayor or other independently elected official, Commission or Board must respond in writing to the Comptroller by describing the corrective actions, if any, that have been taken or will be taken in response to the Comptroller's objections or the reasons why they disagree with the Comptroller. The Comptroller will register the agreement within ten days of the receipt of such response.

6.3 Comptroller Refusal to Register the Agreement

The Comptroller may refuse to register the agreement if:

- The party to the agreement has been suspended or debarred from doing business with the City; or
- The Comptroller has not received a copy of the agreement and related materials as described herein.