

# CONCESSION AGREEMENT PRE-SOLICITATION REVIEW MEMORANDUM

**A. DETERMINATION TO UTILIZE OTHER THAN COMPETITIVE SEALED BIDS  N/A**

*Instructions: Attach copy of draft RFP or other solicitation document, and check all applicable box(es) below.*

**The Agency has determined that it is not practicable or advantageous to use Competitive Sealed Bids because:**

- Specifications cannot be made sufficiently definite and certain to permit selection based on revenue to the City alone.
- Judgment is required in evaluating competing proposals, and it is in the best interest of the City to require a balancing of revenue to the City, quality and other factors.
- The agency will be pursuing a negotiated concession for the reasons listed in section (B)(3)(b)
- Other (Describe)

The New York City Department of Citywide Administrative Services, Real Estate Services ("DCAS/RES") will be pursuing a Sole Source Occupancy Permit ("Occupancy Permit") pursuant to Section 1-16 of the Concession Rules of the City of New York ("Different Procedure") for the reasons listed in Section (B)(2) below.

**B. DETERMINATION TO USE OTHER THAN COMPETITIVE SEALED PROPOSALS  N/A**

- 1. Briefly summarize the terms and conditions of the concession.** *Add additional sheet(s), if necessary.*

To be determined at a later date—when/if the Franchise and Concession Review Committee ("FCRC") approves the use of a Different Procedure to negotiate an Occupancy Permit ("Second Occupancy Permit") with Emmons Avenue Marina, LLC ("Emmons"). DCAS/RES anticipates that the Second Occupancy Permit will provide for a term of one year, commencing on April 1, 2018, with two (2) one-year renewal options, exercisable at the City's sole discretion.

- 2. Briefly explain the basis for the determination not to solicit Competitive Sealed Proposals.**

Marina Holding ("Marina") entered into an Occupancy Permit with DCAS for City Block 8844, Lots 50 and 375 in the Borough of Brooklyn. The permit commenced on January 1, 2003 and terminated on December 31, 2003, with two (2) renewal terms ending on December 31, 2005. Marina owned the adjacent Lot 10 and operated a marina. Upon the expiration of the permit, the parties could not agree upon the terms of a new permit. The premises were included in a lease auction, but there were no bidders. There was a dispute concerning the boundary lines of Lot 50; the matter was referred to the Law Department for resolution.

On December 15, 2008, Marina transferred title of its Lot 10 to Emmons, and Emmons began to occupy Lot 50. The Law department negotiated, and the Office of the Comptroller approved, a settlement with Emmons for retroactive use and occupancy. The following occurred after the settlement agreement was executed: (1) Emmons made the City whole for use and occupancy of Lot 50 for the period from December 15, 2008 through April 15, 2015; (2) Emmons entered into an Occupancy Permit for Lot 50, subject to the approval of FCRC, which Permit term commenced April 15, 2015 ("First Occupancy Permit"); (3) FCRC approved the issuance of the First Occupancy Permit to Emmons, and Emmons paid the City permit fees retroactive to April 15, 2015; (4) Following the execution of the First Occupancy Permit, Emmons paid the City permit fees retroactive to March 31, 2018. If FCRC approves the issuance of the Second Occupancy Permit to Emmons, Emmons will pay the City permit fees retroactively for the period from April 1, 2018 to March 31, 2021.

DCAS/RES has determined that the only entity that can utilize Lot 50 is the owner of the adjacent Lot 10, as demonstrated by the absence of any bidders when the premises were included in a lease auction.

Based upon the foregoing, DCAS/RES believes it is in the best interest of the City to award the concession through a Different Procedure and not a competitive solicitation process.

**3a. Briefly explain the selection procedure that will be utilized.**

DCAS/RES is requesting FCRC authorization to use a Different Procedures, pursuant to Section 1-16 of the Concession Rules of the City of New York, to negotiate an Occupancy Permit with Emmons, which will go before the FCRC on June 6, 2022 (Step 1). DCAS/RES has determined this to be a significant concession, since it is anticipated that the annual fee will be over \$100,000. Therefore, DCAS/RES and FCRC will hold a joint public hearing on the proposed Occupancy Permit before presenting the proposed Occupancy Permit to the FCRC for "Step 2" approval at a second public meeting.

**3b. If the selection procedure is a negotiated concession, check the applicable box:  N/A**

*The Agency made a determination that it is not practicable and/or advantageous to award a concession by competitive sealed bidding or competitive sealed proposals due to the existence of a time-sensitive situation where a concession must be awarded quickly because:*

- The Agency has an opportunity to obtain significant revenues that would be lost or substantially diminished should the agency be required to solicit the concession by competitive sealed bids or competitive sealed proposals and the diminished revenue does not relate only to the present value of the revenue because of the additional time needed to solicit competitive sealed bids or competitive sealed proposals; *[Explain]*
- An existing concessionaire has been terminated, has defaulted, has withdrawn from, or has repudiated a concession agreement, or has become otherwise unavailable; *[Explain]*
- The Agency has decided, for unanticipated reasons, not to renew an existing concession in the best interest of the City and requires a substitute/successor concessionaire. *[Explain]*
- DCAS is awarding a concession to an owner of property adjacent to the concession property, or to a business located on such adjacent property, and has determined that it is not in the best interest of the City to award the concession pursuant to a competitive process because of the layout or some other characteristic of the property, or because of a unique service that can be performed only by the proposed concessionaire. *[Explain]*

**Approved by CCPO:** \_\_\_\_\_ **on** \_\_\_/\_\_\_/\_\_\_.

4. If the Agency has/will request unanimous FCRC approval to waive advance written notice each affected CB/BP that a selection procedure other than CSB or CSP will be utilized, explain the exigent circumstances.  **N/A**