

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 agency will be pursuing a sole source concession because there is only one vendor capable of fulfilling the needs of the City with regard to the proposed concession agreement.**

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.*

The parties are negotiating and considering a nine-year concession term. A nine-year term is long enough for Ancestry to digitize, index, and publish selected images of historical records (voter registration records and some vital records). At the end of the term, DORIS will receive the digitized images and Ancestry will retain the indices. Ancestry will retain ownership of the index but will license it to DORIS for any length desired by the agency. Ancestry's position is that ownership is necessary to recoup their investment.

DORIS negotiated a flat fee. Ancestry also agreed to house the ledgers to be digitized for the duration of the project which releases DORIS from the cost of storage, a considerable savings for the City.

The parties agreed to discrete mutual infringement indemnification. If someone comes forward and says that they own rights in the birth, death, marriage or voter records, then the City/DORIS will indemnify for that. We feel fairly-certain no other party has any intellectual property rights in any of the records to be digitized. However, due to the volume of the records, we cannot inspect every single page of every single book; therefore, we cannot know for sure there are no intellectual property rights attached to any of the materials. The only records that will be returned after digitization are the vital records and a small sampling of the voter books.

Attached are copies of the previous RFP and other solicitation documents.

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

Previously the agency issued a notice of solicitation for Competitive Sealed Proposals in Fall of 2020 and spent a year and a half going through the CSP Concession process. The recommended concessionaire was the sole proposer and was determined to be the only technically qualified proposer, and the agency certifies that all entities had a reasonable opportunity to propose; the agency made inquiries of representative firms as to why they chose not to submit proposals; the submitted proposal met minimum requirements for award; re-solicitation was not in the City's best interest, and the Concession Manager documented all of the above. The Concession made it all the way to Comptroller review. However, the Comptroller determined that the concession agreement differed too much from the RFP or published answers to vendor questions regarding the Concession requirements. The agency pulled the Concession from Comptroller review. The agency consulted with MOCS and the Law department and was advised to reach out to all vendors that originally expressed interest in the solicitation and ask if they could undertake the Concession for a longer term or if renewal terms were possible, allowing more time to turn a profit. Then, if all vendor responses were negative, the agency would have documented not only that any deviation from the RFP or published answers to vendor questions had no bearing on the competitive process, but that a sole source agreement was the most appropriate procurement method because no other vendor is able to perform the Concession. The agency has documented its outreach to all vendors and their responses supporting a decision not to re-solicit Competitive Sealed Proposals and to instead pursue a sole source agreement.

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

DORIS is requesting step 1 approval for different procedures for a Concession to digitize, index and host the internet publication of selected historical documents from the collections of the Municipal Archives. DORIS would like to pursue a Concession agreement with a sole source vendor..

The agency previously reached out to all MWBE vendors and then again to all vendors that originally expressed interest in the solicitation and asked if they could undertake the Concession for a term longer than three years or if renewal terms were possible, allowing more time to turn a profit.¹

Previous Specific Outreach to MWBEs Performed in 2021

DORIS performed outreach to six MWBEs that the New York City Department of Small Business Services identified as qualified for the 2020 concession: 1) E.D. Harris, Inc.; 2) Nora Ligorano; 3) Accelerated Information Systems, Inc.; 4) Alternative Micrographics, Inc. ; 5) National Reprographics, Inc.; and 6) Team Patti, LTD.

DORIS asked each of the six MWBEs if they would be interested or able to undertake this concession. DORIS emailed each MWBE and followed up with phone calls, where a phone number was available. For the MWBEs that did not have phone numbers on file with SBS, DORIS emailed them requesting their current phone number so that DORIS could follow up with them via email and phone. Four of the six MWBE vendors determined they were not able to undertake the concession and notified DORIS of this fact via email. Two of the vendors emailed DORIS expressing their interest in learning more about the opportunity. DORIS spoke with those two vendors by phone. After speaking with Patti Kanner of Team Patti, Ltd and Ethel Harris of E.D. Harris, Inc., separately on the phone, each concluded she was unable to undertake the concession opportunity. After the phone calls, DORIS emailed each of the two vendors, summarizing their phone conversation and confirmed that they had concluded they were unable to undertake the concession. Patti Kanner replied to DORIS' email and further confirmed in writing that she was unable to undertake the concession.

¹ Email communication was sent to all vendors on

Spring 2022 Outreach to the Six MWBES plus all other vendors that in 2020 expressed interest in a Concession Opportunity at DORIS

DORIS asked 43 vendors, including the six MWBES, if they would be interested or able to undertake this concession if the term of years was lengthened and renewal terms were possible. Initial communication was sent via email and then multiple subsequent email outreach efforts were undertaken, as was phone outreach to each vendor. All but 3 vendors responded by email or phone followed by a confirmation email of the phone conversation sent by DORIS, to communicate that they were not able to undertake the concession and so were not interested in the concession opportunity. The remaining three vendors are: s2ssoft (an IT staffing company); Fin O'Driscoll, a recent college graduate and photographer; and Seven Outsource. Extensive effort was made to reach out to these individuals and organizations. After determining that email outreach was not working, DORIS performed an internet search for additional or updated contact information to enhance outreach efforts. Updated email addresses and or phone numbers were found for each of the three prospective vendors. Continued extended outreach was conducted via email and phone for each of the vendors, except for Fin O'Driscoll because no phone number could be found for him. Email outreach was conducted to Fin on both the original email the agency had on file and the updated email found through an internet search. Each of the 3 remaining unresponsive vendors were sent a final email communication and voicemail (except no voicemail for Fin O'Driscoll due to not having a phone number on file) letting them know the agency had been trying to reach them almost daily over a 2-week period and that if the agency did not hear from them either through email or phone communication by close of business, then the agency would assume that they were not interested in the concession opportunity. None of the 3 vendors responded by the communicated deadline.

All vendor responses received confirmed that the vendor was unable and or not interested in undertaking the Concession opportunity even with an extended term of years and renewal options, or the vendor was unresponsive even after multiple attempts by the agency to contact them, as described above. The agency has documented all of these vendor communication in writing, supporting a conclusion that a sole source agreement is the most appropriate procurement method ²because no other vendor is able to perform the Concession besides Ancestry.com Operations, Inc. The agency has documented its outreach to all vendors and their responses supporting a decision not to re-solicit Competitive Sealed Proposals and to instead pursue a sole source agreement.

Ancestry.com Operations, Inc. is the only vendor capable of performing and completing this project because it is the only vendor with expertise in digitization, indexing and publication of these types of records AND has the infrastructure already in place to monetize the records, the ability to cover the enormous start-up cost to get the project up and running, and turn a profit. Ancestry.com provides a subscription service to its customers. For customers who have already found most of their family history records Ancestry currently has on its site, Ancestry needs to constantly acquire new content to make it exciting and worth the continued subscription cost to keep those customers subscribing. Even though the bulk of the records to be digitized are not vital records, the type of records Ancestry's customers typically seek to purchase copies of, the voter registration records allow Ancestry.com to market that they have added millions of new records to their database, fully indexed and ready for searching. Another vendor would have trouble making money from the publication of the voter registration records because they are not as interesting as the vital records and so people are less willing to pay for copies of them. But for Ancestry there is still enough value for it to be worthwhile for them to take on the cost of this project because their product is a subscription to one of the largest online databases of family history records in the world.

² Please see attached Excel spreadsheet documenting email and phone outreach to each vendor; and copies of the vendor outreach email communications that were sent in Spring 2022.

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**