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OFFICE OF THE MAYOR

EXECUTIVE ORDER NO. 9

MARCH 16, 1978

BY THE POWER VESTED IN ME AS MAYOR OF THE CITY OF NEW YORK,
it is hereby ordered:

Section 1. No City department, administration, commission or other agency (hereinafter called a contracting agency) which, pursuant to the City Charter or other provisions of law, is authorized to enter into any agreement (hereinafter called a concession agreement) permitting the use of property under its jurisdiction for the operation or management of an enterprise for profit shall enter into any such agreement without public bidding unless the Concessions Review Committee created under section 2 of this Order approves a different procedure as being in the best interests of the City.

§ 2. A Concessions Review Committee (hereinafter called the Committee) is hereby created in the Office of the Mayor. The Committee shall consist of the following officials or their designees: The Mayor, the Director of the Office of Management and Budget, the Corporation Counsel, and, if they consent to serve, the Comptroller, the President of the City Council and the Vice Chairman of the City Council.

§ 3. If the Committee approves a different procedure, that procedure shall be published in THE CITY RECORD. In addition, the contracting agency shall subsequently report to the Committee as to how the procedure has been applied in each case and shall submit the concession agreement it proposes to enter into as a result of that procedure for prior approval by the Committee. No such concession agreement shall go into effect until the Committee has approved it. A contracting agency shall not conclude a concession agreement which is exempt from public bidding under section 5 of this Order unless a summary description of the terms and conditions of such agreement shall have been published in THE CITY RECORD.

§ 4. If public bidding on a concession agreement results in less than three bids meeting the requirements of Section 7 of this Order or the contracting agency proposes to award a concession to other than the highest bidder, the contracting agency shall submit to the Committee the concession agreement it proposes to enter into and such other information concerning the granting of that concession as the Committee may require. No such agreement shall go into effect until the Committee has approved it.

§ 5. Notwithstanding Section 1 of this Order, public bidding shall not be required for concession agreements providing a concession of less than 30 days duration, provided that the concession is not subject to renewal (such agreements being hereinafter called short-term concession agreements). If at the time a contracting agency enters into a short-term concession agreement, it has entered into three or more such agreements with the same person (or an affiliate of such person) within the previous two year period, it shall include such fact as part of the summary description published in THE CITY RECORD required by Section 3 of this Order with respect to such short-term concession agreement.

§ 6. (a) The Committee may establish procedures and other requirements with respect to requests for waivers of public bidding and general criteria for granting such waivers. The Committee may also direct particular contracting agencies to develop guidelines for public bidding any may review such guidelines and their application.

(b) Action by the Committee shall require four affirmative votes.

§ 7. All contracting agencies shall implement the following requirements with respect to bids and concession agreements:

(a) No bid shall be valid unless accompanied by a reasonable deposit as specified in

the project solicitation. Upon the award of a concession agreement, the deposits of the unsuccessful bidders shall be returned to them. The deposit of the successful bidder shall be returned to such bidder upon completion or termination of the agreement, provided that timely payments as prescribed by the agreement have been made by the successful bidder and it has complied with all the other terms and conditions of the agreement.

(b) Every proposal for bids shall contain a provision that in the event of the failure of a successful bidder to execute a concession agreement in accordance with its bid such bidder's deposit shall be retained by the City.

(c) Every bid shall contain verified statements of the applicant and its principals covering the matters set forth in the two Questionnaires attached hereto as Appendix A. The Committee may alter from time to time the form or content of those Questionnaires. This requirement may be waived by a contracting agency for bids for short-term concession agreements or by the Committee for minor concession agreements or categories of concession agreements where the combination of the Questionnaires would impose an undue burden on the concessionaire.

(d) No concession agreement shall be for a term longer than two years unless the concessionaire is required by the agreement to make an investment of more than fifty thousand dollars, in which event the term may not exceed four years, provided that in any case the Committee may approve a longer term if it determines that such longer term would be in the best interests of the City.

(e) Every concession agreement shall contain a provision that no consent to the abatement, forgiveness or downward adjustment of sums provided therein to be paid to the City may be consented to by the contracting agency without approval by the Committee.

(f) Rights under a concession agreement shall not be sold, assigned or otherwise transferred without approval of the Committee.

§ 8. Executive Order No. 72 of 1976 is hereby revoked.

§ 9. This Executive Order shall take effect immediately.

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EDWARD I. KOCH, Mayor.

Amended by Executive #6, dated March 13, 1980

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