

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)

For the reasons stated below, the New York City Department of Health and Mental Hygiene ("DOHMH") seeks Franchise and Concession Review Committee ("FCRC") approval to use a different procedure, pursuant to Section 1-16 of the Concession Rules ("different procedure"), to negotiate an amendment to the concession agreement with OptumRx Discount Card Services, LLC, for the development, operation and administration of the NYC Drug Discount Card Program available to all NYC residents.

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.*

When/if the FCRC approves the use of a different procedure to negotiate an amendment to the concession agreement with OptumRx Discount Card Services, LLC, DOHMH anticipates that this amendment will extend the NYC Drug Discount Card Program for an additional eighteen (18) months.

2. Briefly explain the basis for the determination not to solicit Competitive Sealed Proposals. *[Explain]*

Pursuant to a competitive RFP process, DOHMH entered into a concession agreement, effective February 17, 2011, with Catamaran Discount Card Services, LLC (formally known as HealthTran, LLC dba HealthTrans), now known as OptumRx Discount Card Services, LLC ("OptumRx"), to develop, operate and administer the NYC Drug Discount Card Program to be made available to all NYC residents, known as the BigAppleRX. This agreement was amended previously to extend the term to August 16, 2018. DOHMH anticipated releasing a Request for Proposal and selecting a new Concessionaire on or before August 2018. However, because of unforeseen delays in the development of the RFP due to changes in the scope of services, DOHMH now anticipates that a new Concessionaire will be in place by February 2020.

While DOHMH develops the RFP and completes the competitive solicitation process, there is a continued need to ensure that NYC residents have access to pharmaceutical drugs at discount prices. Currently, over ~~800,000~~ 1 million IDNYC cards have been issued by the City with the BigAppleRX benefit feature on the card, enabling cardholders to purchase pharmaceutical drugs at discount prices provided by OptumRx (also referred to as "BigAppleRX provider"). Those IDNYC cards will remain in effect until 5 years after their effective date. Given that the BigApple RX benefit is linked to these IDNYC cards, transitioning to a new provider will be administratively complicated and time consuming. *In addition, the Mayor's Office of Immigrant Affairs has launched the ActionHealthNYC program ("Program"), which will provide uninsured low-income immigrant*

~~New Yorkers with better access to health care services. Participants in the Program will either have an IDNYC card or will be issued one, and the prescription drug benefit of BigAppleRX will be a key feature of the health care access provided under the Program. The Program will continue during the period of the proposed eighteen (18) month extension. Maintaining the current BigAppleRX provider in place will make those benefits available to Participants in the Program without administrative interruption and will give DOHMH time to select a new concessionaire.~~ Therefore, DOHMH believes that the City will be best served by negotiating an amendment to the concession agreement with OptumRx to enable the residents of New York City to continue to have access to pharmaceutical drugs at discount prices without interruption while DOHMH initiates a new competitive request for proposal process to select a new concessionaire.

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

In order to sustain uninterrupted services for the NYC Drug Discount Card Program (Step 1). DOHMH intends to seek FCRC authorization to negotiate an amendment to the concession agreement with OptumRx to extend the agreement for an additional eighteen (18) months, as the existing agreement expired on August 16, 2018. Pending FCRC Step 1 approval, DOHMH intends to negotiate the terms of an extension with OptumRx.

Once negotiated and if determined by DOHMH to be a significant concession, DOHMH and the FCRC will hold a joint Public Hearing on the proposed amendment to the concession agreement before presenting it to the FCRC for "Step 2" approval at a second meeting. If DOHMH determines that the amendment to the concession to be non-significant, the agency will present the full negotiated amendment to the concession agreement with OptumRx to the FCRC and request the required FCRC authorization to enter into the amendment directly (without the need for an initial public hearing).

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. [Explain] N/A

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)

For the reasons stated below, the New York City Department of Health and Mental Hygiene ("DOHMH") seeks Franchise and Concession Review Committee ("FCRC") approval to use a different procedure, pursuant to Section 1-16 of the Concession Rules ("different procedure"), to negotiate an amendment to the concession agreement with OptumRx Discount Card Services, LLC, for the development, operation and administration of the NYC Drug Discount Card Program available to all NYC residents.

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.*

When/if the FCRC approves the use of a different procedure to negotiate an amendment to the concession agreement with OptumRx Discount Card Services, LLC, DOHMH anticipates that this amendment will extend the NYC Drug Discount Card Program for an additional eighteen (18) months.

2. Briefly explain the basis for the determination not to solicit Competitive Sealed Proposals. *[Explain]*

Pursuant to a competitive RFP process, DOHMH entered into a concession agreement, effective February 17, 2011, with Catamaran Discount Card Services, LLC (formally known as HealthTran, LLC dba HealthTrans), now known as OptumRx Discount Card Services, LLC ("OptumRx"), to develop, operate and administer the NYC Drug Discount Card Program to be made available to all NYC residents, known as the BigAppleRX. This agreement was amended previously to extend the term to August 16, 2018. DOHMH anticipated releasing a Request for Proposal and selecting a new Concessionaire on or before August 2018. However, because of unforeseen delays in the development of the RFP due to changes in the scope of services, DOHMH now anticipates that a new Concessionaire will be in place by February 2020.

While DOHMH develops the RFP and completes the competitive solicitation process, there is a continued need to ensure that NYC residents have access to pharmaceutical drugs at discount prices. Currently, over 1 million IDNYC cards have been issued by the City with the BigAppleRX benefit feature on the card, enabling cardholders to purchase pharmaceutical drugs at discount prices provided by OptumRx (also referred to as "BigAppleRX provider"). Those IDNYC cards will remain in effect until 5 years after their effective date. Given that the BigApple RX benefit is linked to these IDNYC cards, transitioning to a new provider will be administratively complicated and time consuming. Therefore, DOHMH believes that the City will be best served by negotiating an amendment to the concession agreement with OptumRx to enable the residents of New York City

to continue to have access to pharmaceutical drugs at discount prices without interruption while DOHMH initiates a new competitive request for proposal process to select a new concessionaire.

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

In order to sustain uninterrupted services for the NYC Drug Discount Card Program (Step 1). DOHMH intends to seek FCRC authorization to negotiate an amendment to the concession agreement with OptumRx to extend the agreement for an additional eighteen (18) months, as the existing agreement expired on August 16, 2018. Pending FCRC Step 1 approval, DOHMH intends to negotiate the terms of an extension with OptumRx.

Once negotiated and if determined by DOHMH to be a significant concession, DOHMH and the FCRC will hold a joint Public Hearing on the proposed amendment to the concession agreement before presenting it to the FCRC for "Step 2" approval at a second meeting. If DOHMH determines that the amendment to the concession to be non-significant, the agency will present the full negotiated amendment to the concession agreement with OptumRx to the FCRC and request the required FCRC authorization to enter into the amendment directly (without the need for an initial public hearing).

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. [Explain] N/A