



NEW YORK CITY DEPARTMENT OF

HEALTH AND MENTAL HYGIENE

Ashwin Vasan, MD, PhD

Commissioner

MEMORANDUM

TO: All Borough Presidents
All Community Boards

FROM: Cynthia Mont-Burbon, Director of Contracts *Cynthia Mont-Burbon*
Center for Health Equity and Community Wellness (CHECW)

SUBJECT: Franchise and Concession Review Committee approval of a different procedure to negotiate an amendment to the concession agreement between the City of New York acting by and through the Department of Health and Mental Hygiene and OptumRx Discount Card Services, LLC to develop, operate and administer the NYC Drug Discount Card Program available to all New York City residents, known as the Big Apple Rx.

DATE: **April 1, 2022**

In accordance with Section 1-16 of the Concession Rules of the City of New York, this is to notify all Borough Presidents and Community Boards that the New York City Department of Health and Mental Hygiene (DOHMH) is seeking Franchise and Concession Review Committee approval to negotiate an amendment to the concession agreement with OptumRx Discount Card Services, LLC to develop, operate and administer the NYC Drug Discount Card Program available to all New York City residents, known as the Big Apple Rx.

This amendment to the concession agreement will extend the agreement for an additional eighteen (18) months in order to ensure continuous operation of the NYC Drug Discount Card program for such period while the DOHMH selects a new concessionaire through a request for proposal process.

The concession has been determined not to be a major concession as defined in Chapter 7 of the Rules of the City Planning Commission.

If you have any questions or comments, please contact Cynthia Mont-Burbon by telephone at (347) 396-4242 or via e-mail at cmontbur@health.nyc.gov.

Thank you.

CONCESSION AGREEMENT PRE-SOLICITATION REVIEW MEMORANDUM COVER SHEET
 (Complete and attach a CPSR Memorandum only if the selection procedure will be other than Competitive Sealed Bids)

AGENCY: DOHMH	CONCESSION TITLE/DESCRIPTION: <u>To develop, operate and administer the NYC Prescription Drug Discount Card Program</u>
# VOTES required for proposed action = <u>4</u> <input type="checkbox"/> N/A	CONCESSION IDENTIFICATION # <u>11HM000701R2T04</u>

SELECTION PROCEDURE
 (* City Chief Procurement Officer approval of CPSR required)

Competitive Sealed Bids (CSB) Competitive Sealed Proposals (CSP)*

Different Procedure * (Sole Source Agreement Other Intent to negotiate an amendment to the concession agreement with OptumRx Discount Card Services, LLC to develop, operate and administer the NYC Prescription Drug Discount Card Program available to all NYC residents.

Negotiated Concession*

Recommended Concessionaire OptumRx Discount Card Services, LLC EIN SSN # 31-1728846
 Attach Memo(s) *

<p align="center">CONCESSION AGREEMENT TERM</p> <p>Initial Term: <u>To be negotiated</u></p> <p>Renewal Option(s) Term: <u>To be negotiated</u></p> <p>Total Potential Term: <u>To be negotiated</u></p>	<p align="center">ESTIMATED REVENUE/ANTICIPATED BUSINESS TERMS (Check all that apply)</p> <p align="center"><input type="checkbox"/> Additional description attached)</p> <p><input type="checkbox"/> Annual Minimum Fee(s) \$ _____</p> <p><input type="checkbox"/> % Gross Receipts _____%</p> <p><input type="checkbox"/> The Greater of Annual Minimum Fee(s of \$_____ v. _____% of Gross Receipts</p> <p><input checked="" type="checkbox"/> Other formula <u>To be negotiated</u></p>
<p>LOCATION OF CONCESSION SITE(S)* <input checked="" type="checkbox"/> N/A</p> <p>Address _____</p> <p>Borough _____ C.B. _____</p> <p>Block # _____ Lot # _____</p> <p><small>*Attach additional sheet</small></p>	

CONCESSION TYPE (Check all that apply)

> **Significant Concession:**

NO

YES Basis:

Total potential term =>10 years Projected annual income/value to City >\$100,000 Major Concession

> **Major Concession:**

NO

YES - Award will be subject to review and approval pursuant to Sections 197-c and 197-d of NYC Charter.

NOTIFICATION REQUIREMENTS

Subject concession will be awarded by CSB or CSP. YES NO

If YES, check the applicable box(es) below:

The subject concession is a Significant Concession and the Agency has/will complete its consultations with each affected CB/BP regarding the scope of the solicitation at least 30 days prior to its issuance.

The subject concession is a Significant Concession and the Agency provided notification of such determination to each affected CB/BP by inclusion of this concession in the Agency's Plan pursuant to §1-10 of the Concession Rules.

The subject concession has been determined not to be a Major Concession and the Agency has sent/will send written notification of such determination to each affected CB/BP at least 40 days prior to issuance of the solicitation.

The subject concession has been determined not to be a Major Concession and the Agency provided notification of such determination to each affected CB/BP by inclusion of this concession in the Agency's Plan pursuant to §1-10 of the Concession Rules.

If NO, check the applicable box below:

The Agency certifies that each affected CB/BP has received/will receive written notice at least 40 days in advance of the FCRC meeting at which the agency will seek approval to use a different selection procedure.

The Agency certifies that based on exigent circumstances it has requested/will request unanimous approval of

the FCRC to waive advance written notice to each affected CB/BP.

- The Agency certifies that each affected CB/BP will receive written notice that the concession was determined to be non-major along with a summary of the terms and conditions of the proposed concession upon publication of a Notice of Intent to Enter into Negotiations. The agency further certifies that it will send a copy of this notice to the members of the Committee within five days of the notice to each affected CB/BP.

AUTHORIZED AGENCY STAFF

This is to certify that the information presented herein is accurate.

Name _____ Title _____

Signature _____ Date __/__/__

CITY CHIEF PROCUREMENT OFFICER

This is to certify that the agency's plan presented herein will comply with the prescribed procedural requisites for the award of the subject concession.

Signature _____ Date __/__/__

City Chief Procurement Officer

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 Prescription 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 December 31, 2021. DOHMH anticipated releasing a Request for Proposal and selecting a new concessionaire on or before December 2021. 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 July 1, 2023.

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. Since its debut in May 2011, BigAppleRx has saved New Yorkers over \$57 million as compared to retail prices of medications purchased, a reported overall savings of 40 percent, based on data reported by the Pharmacy Benefit Manager (PBM) for the BigAppleRx program. 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. IDNYC was scheduled to issue new cards in 2020

to cardholders who signed up at the program's inception in 2015. BARx remains an embedded feature on IDNYC cards and cardholders continue to have access to discounted drugs under the program. DOHMH-IDNYC coordination to minimize potential disruptions and transition of services for a potential vendor change is on-going. In addition, BARx RFP program requirements include PBM outreach to IDNYC cardholders and updating IDNYC cardholders' BigAppleRx Bin/Group/PCN numbers on cardholders' cards. 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 Prescription 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 December 31, 2021. 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

CITY OF NEW YORK

FRANCHISE AND CONCESSION REVIEW COMMITTEE

(Cal. No. 1)

RESOLVED, that the Franchise and Concession Review Committee authorizes the New York City Department of Health and Mental Hygiene (“DOHMH”) to utilize a different procedure, pursuant to Section 1-16 of the Concession Rules of the City of New York, to negotiate an amendment to the existing concession agreement with OptumRx Discount Card Services, LLC (formerly known as Catamaran Discount Card Services, LLC) to develop, operate and administer the NYC Drug Discount Card Program available to all New York City residents. DOHMH anticipates that the amendment, will extend the expiration date of the concession agreement from December 31, 2021 to June 30, 2023.

BE IT FURTHERED RESOLVED, that DOHMH shall submit the amendment to the concession agreement it proposes to enter into with OptumRx Discount Card Services LLC to the FCRC for approval.

**THIS IS A TRUE COPY OF THE RESOLUTION ADOPTED BY THE
FRANCHISE AND CONCESSION REVIEW COMMITTEE ON**

May 11 , 2022

Date: _____

Signed: _____

Title: Director of the Mayor’s Office of Contract Services