



**MTA REAL ESTATE DEPARTMENT**

**POLICIES AND PROCEDURES**

**FOR THE**

**LEASING-OUT AND SALE**

**OF REAL PROPERTY**

**EFFECTIVE AS OF**

**March 22, 2017**

METROPOLITAN TRANSPORTATION AUTHORITY  
REAL ESTATE DEPARTMENT  
POLICIES AND PROCEDURES FOR THE LEASING-OUT  
AND SALE OF REAL PROPERTY

March 2017

TABLE OF CONTENTS

- i -

<b>INTRODUCTION.....</b>	<b>1</b>
<b>MTA REAL ESTATE DEPARTMENT .....</b>	<b>1</b>
<b>SCOPE OF POLICIES AND PROCEDURES .....</b>	<b>1</b>
<b>LEASE/SALE RFP PROCESS .....</b>	<b>2</b>
<b>LEASE/SALE NEGOTIATION PROCESS:.....</b>	<b>2</b>
<b>APPRAISAL REQUIREMENT .....</b>	<b>3</b>
<b>CHAPTER I - INQUIRIES.....</b>	<b>4</b>
<b>CHAPTER II – ASSESSMENT OF OPPORTUNITIES .....</b>	<b>6</b>
<b>SITE ANALYSIS .....</b>	<b>6</b>
<b>PRELIMINARY FAIR MARKET VALUE ANALYSIS .....</b>	<b>9</b>
<b>CONCLUSION OF SITE AND PRELIMINARY FAIR MARKET VALUE ANALYSIS.....</b>	<b>9</b>
<b>CHAPTER III –REQUESTS FOR PROPOSALS (RFPS) .....</b>	<b>11</b>
<b>RFP PUBLICATION .....</b>	<b>11</b>
<b>DETERMINATION OF WHETHER TO UTILIZE SINGLE-STEP OR MULTI-STEP LEASE/SALE RFP PROCESS .....</b>	<b>14</b>
<b>SINGLE-STEP LEASE/SALE RFP PROCESS .....</b>	<b>14</b>
<b>MULTI-STEP LEASE/SALE RFP PROCESS .....</b>	<b>15</b>
<b>EARNEST MONEY DEPOSITS .....</b>	<b>15</b>
<b>OPENING PROPOSALS.....</b>	<b>16</b>
<b>EVALUATING PROPOSALS .....</b>	<b>16</b>
<b>SELECTION CRITERIA .....</b>	<b>18</b>
<b>SELECTION PROCESS .....</b>	<b>20</b>
<b>CHAPTER IV – AUTHORIZATION TO NEGOTIATE (ATN) .....</b>	<b>23</b>
<b>CHAPTER V – APPRAISALS AND FAIR MARKET VALUE .....</b>	<b>26</b>
<b>CHAPTER VI - ANALYSIS OF PROPOSER’S FINANCIAL CAPABILITY .....</b>	<b>29</b>
<b>CHAPTER VII – BOARD APPROVAL PROCESS .....</b>	<b>31</b>
<b>CONDITIONAL DESIGNATION LETTERS.....</b>	<b>31</b>
<b>STAFF SUMMARIES.....</b>	<b>32</b>
<b>BOARD APPROVAL .....</b>	<b>33</b>
<b>CHAPTER VIII - PREPARATION OF FORMAL AGREEMENTS.....</b>	<b>35</b>
<b>DRAFT FORMAL AGREEMENT .....</b>	<b>35</b>
<b>INTERNAL REVIEW.....</b>	<b>35</b>
<b>DOCUMENT PREPARATION HISTORY FORM .....</b>	<b>35</b>
<b>EXECUTION BY PURCHASER OR TENANT.....</b>	<b>36</b>
<b>EXECUTION BY DIRECTOR OF REAL ESTATE .....</b>	<b>36</b>
<b>REQUIRED DELIVERIES.....</b>	<b>36</b>
<b>PROPOSER’S FAILURE TO EXECUTE.....</b>	<b>37</b>
<b>CHAPTER IX - TENANT INFORMATION TRANSFER.....</b>	<b>38</b>
<b>DOCUMENTATION.....</b>	<b>38</b>
<b>INSURANCE COORDINATION .....</b>	<b>39</b>
<b>PLANNING &amp; CONSTRUCTION.....</b>	<b>39</b>
<b>MAINTENANCE OF MARKETABLE PROPERTY LIST .....</b>	<b>40</b>
<b>CHAPTER X - CONSTRUCTION MANAGEMENT .....</b>	<b>41</b>

METROPOLITAN TRANSPORTATION AUTHORITY  
REAL ESTATE DEPARTMENT  
POLICIES AND PROCEDURES FOR THE LEASING-OUT  
AND SALE OF REAL PROPERTY

March 2017

TABLE OF CONTENTS

- ii -

<b>PLAN SUBMISSION</b> .....	41
<b>CONSTRUCTION MONITORING</b> .....	42
<b>CONSTRUCTION COMPLETION</b> .....	42
<b>CHAPTER XI – NEW YORK STATE PROCUREMENT LOBBYING LAW</b> .....	<b>44</b>
<b>DEFINITIONS</b> .....	44
<b>APPLICABILITY</b> .....	45
<b>COMMUNICATIONS NOT PROHIBITED BY THE PROCUREMENT LOBBYING LAW</b> .....	45
<b>PROCEDURES FOR REPORTING POTENTIAL VIOLATIONS OF POLICY REGARDING CONTACT DURING RESTRICTED PERIOD</b> 47	
<b>CONTRACT REQUIREMENTS</b> .....	48
<b>RESPONSIBILITY DETERMINATION</b> .....	48
<b>TERMINATION</b> .....	49
<b>GLOSSARY</b> .....	<b>50</b>
<b>ATTACHMENT 1</b> .....	<b>55</b>
<b>FIGURES</b> .....	<b>63</b>

METROPOLITAN TRANSPORTATION AUTHORITY  
REAL ESTATE DEPARTMENT  
POLICIES AND PROCEDURES FOR THE LEASING-OUT  
AND SALE OF REAL PROPERTY

March 2017

INTRODUCTION

Page 1

## INTRODUCTION

**MTA Real Estate Department:** The MTA Real Estate Department (“RED”)<sup>1</sup> handles real-estate-related transactions for the MTA and all of the MTA agencies, which include: MTA New York City Transit, Manhattan and Bronx Surface Transit Operating Authority, MTA Metro-North Railroad, MTA Long Island Rail Road, MTA Bridges and Tunnels, MTA Staten Island Railway, MTA Bus and MTA Capital Construction (each, an “MTA Agency”, and, collectively with the MTA, the “MTA Agencies”).

**Scope of Policies and Procedures:** These Policies and Procedures apply only to the leasing-out or sale of MTA Agency real property (including interests in real property such as easements). Licensing-out (pursuant to licenses that the MTA may terminate at will in the MTA’s sole and absolute discretion upon not more than sixty (60) days’ notice without repayment of any unamortized tenant improvement costs) is not subject to the mandates of Section 2897 of the Public Authorities Law (“PAL”) because it does not constitute a disposition of an interest in real property. Such licensing-out is subject to the RED Policies and Procedures for the Licensing of Real Property dated November 29, 2011, as amended (the “Licensing-Out Policies and Procedures”). As a general rule, leases rather than licenses should be used for what are traditional retail uses to incentivize prospective tenants to make their strongest financial offers when a significant capital investment is required, knowing that they may be terminated only for specified reasons, and, if so terminated, may be compensated for the unamortized value of improvements they make as warranted. If a license agreement provides that the third party’s right of use and occupancy is subject to termination only for specified reasons or upon payment of compensation by the MTA, then it is not a license for purposes of these Policies and Procedures and the requirements of these Policies and Procedures for leasing-out must be satisfied.

Insofar as leases and sales of MTA Agency property are concerned, these Policies and Procedures supersede the RED Policies and Procedures for the Leasing-Out and Sale of Real Property dated March 23, 2016. Insofar as licenses are concerned, all references in the Licensing-Out Policies and Procedures to earlier iterations of these guidelines will now be deemed to refer to these Policies and Procedures.

Insofar as leases at Grand Central Terminal are concerned, these Policies and Procedures have been supplemented by the Guidelines for Selection of Tenants for Grand Central Terminal that were adopted by the MTA Board on November 18, 2009, as amended (the “GCT Leasing Guidelines”). In the event of any inconsistency or conflict between these Policies and Procedures and the GCT Leasing Guidelines, the GCT Leasing Guidelines shall govern. A copy of the current GCT Leasing Guidelines is attached hereto as Attachment 1.

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<sup>1</sup> A glossary of defined terms used in these Policies and Procedures appears at the end of these Policies and Procedures.

METROPOLITAN TRANSPORTATION AUTHORITY  
REAL ESTATE DEPARTMENT  
POLICIES AND PROCEDURES FOR THE LEASING-OUT  
AND SALE OF REAL PROPERTY

March 2017

INTRODUCTION

Page 2

Section 2897 of the Public Authorities Law, as amended, stipulates that, as a general rule, any leasing-out or sale of real property can only be undertaken after public advertising for bids and for not less than fair market value. However, these limitations do not apply in certain circumstances, which are specified below. Accordingly, although most dispositions by sale or lease will be made pursuant to the request for proposals process that is described in Chapter III of these Policies and Procedures (the “Lease/Sale RFP Process”), others may be made pursuant to direct negotiations as described in Chapter IV of these Policies and Procedures (the “Lease/Sale Negotiation Process”).

These Policies and Procedures are intended only for the internal guidance of MTA staff, and are not intended to establish expressly or by implication any rights or privileges. Except to the extent prohibited by law, any provision of these Policies and Procedures may be waived by the MTA Board (by ratification or otherwise) or by the Chairman and Chief Executive Officer.

**Lease/Sale RFP Process:** The Lease/Sale RFP Process is designed, among other things, to give effect to the following requirements under PAL Section 2897:

- the advertisement for proposals must be made prior to the leasing-out or sale, through the methods authorized by these Policies and Procedures;
- all proposals must be publicly disclosed at the time and place stated in the advertisement; and
- the award must be made with reasonable promptness by notice to the responsible proposer whose proposal will be most advantageous to the State, price and other factors considered; provided, however that all proposals may be rejected when it is in the public interest to do so.

The Lease/Sale RFP Process can be single-step or multi-step as described in Chapter III of these Policies and Procedures.

**Lease/Sale Negotiation Process:**

PAL Section 2897 specifies that the Lease/Sale Negotiation Process can only be utilized under the following circumstances:

- (a) the estimated fair market value of the property to be leased-out or sold does not exceed \$15,000, or
- (b) proposal prices after advertising are not reasonable, either as to all or some part of the property, or have not been independently arrived at in open competition; or

METROPOLITAN TRANSPORTATION AUTHORITY  
REAL ESTATE DEPARTMENT  
POLICIES AND PROCEDURES FOR THE LEASING-OUT  
AND SALE OF REAL PROPERTY

---

March 2017

INTRODUCTION

Page 3

---

- (c) the disposition will be to the State or any political subdivision, and the estimated fair market value of the property and other satisfactory terms of disposal are obtained by negotiation; or
- (d) the transferee is a government or other public entity, and the terms and conditions of the transfer require that the ownership and use of the asset will remain with the government or any other public entity;
- (e) the purpose of the transfer is within the purpose, mission or governing statute of the public authority; or
- (f) such action is otherwise authorized by law

In the case of (a), (b) or (c) above, the disposition must be for no less than fair market value. In the case of (d) or (e), it can be for less than fair market value.

An “explanatory statement” is required if a leasing-out or sale pursuant to the Lease/Sale Negotiation Process meets certain criteria, as described in Chapter IV of these Policies and Procedures. Each such explanatory statement must be transmitted to the New York State Comptroller, Director of the Budget, the Authorities Budget Office, the Commissioner of General Services and Legislature not less than ninety (90) days in advance of such disposition, and a copy thereof must be kept in the project file.

**Appraisal Requirement:** PAL Section 2897 provides that any real property that is to be leased-out or sold must be independently appraised, regardless of whether the Lease/Sale RFP Process or the Lease/Sale Negotiation Process is used and regardless of the estimated fair market value of the property. Policies and procedures with respect to appraisals are set forth in Chapter V of these Policies and Procedures.

METROPOLITAN TRANSPORTATION AUTHORITY  
REAL ESTATE DEPARTMENT  
POLICIES AND PROCEDURES FOR THE LEASING-OUT  
AND SALE OF REAL PROPERTY

March 2017

CHAPTER I - INQUIRIES

Page 4

**CHAPTER I - INQUIRIES**

**Scope** - This chapter establishes guidelines for responding to verbal and written inquiries made to the RED regarding the disposition of MTA Agency property (“Inquiries”).

**Responsibilities** - The RED is responsible for coordinating all responses to Inquiries. The RED’s responsibilities include researching the ownership status of specific properties, contacting the applicable MTA Agencies to determine whether property is available and responding to inquirers.

**Objective** - To provide prompt, courteous and accurate responses to Inquiries.

**Procedures** – Except for Inquiries relating to the leasing of space at Grand Central Terminal, which should be referred to the Director, GCT Development, all Inquiries should be referred to the Director, Leasing & Acquisitions, who should either respond directly or else charge an appropriate deputy with doing so. In the first instance, the Director, Leasing & Acquisitions should ascertain:

- (1) precisely what property the inquirer is referring to, and which MTA Agency controls it;
- (2) whether the applicable MTA Agency owns such property or merely leases it and, in the case of leased property, to what extent subletting of such property is permissible;
- (3) what use the inquirer proposes to make of the property and whether such use would be compatible with MTA Agency use of any MTA facilities that adjoin such property;
- (4) whether the RED has already been authorized to dispose of such property or (if not) whether the applicable MTA Agency might be amenable to disposing of such property; and
- (5) what restrictions would need to apply to any such disposition.

If the Director, Leasing & Acquisitions determines that the subject property is available for purchase or lease, he or she (or his or her deputy or deputy’s designee) should so inform the inquirer, taking care to stipulate that (except as otherwise herein described) any such sale or lease may be undertaken only in accordance with the Lease/Sale RFP Process, and should see to it that the inquirer is provided in due course with an opportunity to participate in the Lease/Sale RFP Process with respect to such property. If the Director, Leasing & Acquisitions determines that the subject property is available for license but not for purchase or lease, he or she (or such deputy or deputy’s designee) should so explain to the inquirer, and in that case the Licensing-Out

METROPOLITAN TRANSPORTATION AUTHORITY  
REAL ESTATE DEPARTMENT  
POLICIES AND PROCEDURES FOR THE LEASING-OUT  
AND SALE OF REAL PROPERTY

---

March 2017

CHAPTER I - INQUIRIES

Page 5

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Policies and Procedures shall apply to such property. Otherwise, the Director, Leasing & Acquisitions (or such deputy or designee) should inform the inquirer that the subject property is not available on any terms and invite the inquirer to register their interest on RED's website for purposes of alerting the inquirer to other opportunities.

For templates for appropriate written responses, see Figures 2 – 6.



## **CHAPTER II – ASSESSMENT OF OPPORTUNITIES**

**Scope** – This chapter establishes guidelines for the assessment of opportunities to sell or lease MTA-controlled property that is not needed for operational purposes.

**Responsibilities** – The RED is responsible for encouraging the MTA Agencies to identify MTA-controlled property that is either never going to be needed by the MTA Agency for operational purposes or not expected to be needed for such purposes until sometime in the future; for assessing the marketability of such property for sale, lease or license, as appropriate (taking into account relevant legal constraints, physical conditions and real estate market conditions); and for coordinating with the MTA Agencies to facilitate the disposition of such property when and as feasible.

**Objective** – To generate revenues for the MTA, consistent with the fulfillment of the MTA’s operating purposes.

**Procedures** – In response to Inquiries, on its own initiative and/or at the request of the MTA Agencies, the RED should evaluate MTA-controlled properties for their revenue-generating potential. To the extent that MTA-controlled property holds such potential, whether best to realize that potential by sale, lease or license will depend on an assessment of (a) the desirability and feasibility of sub-dividing and physically separating such property from adjoining MTA-controlled property, (b) the extent, if any, to which any future operational MTA Agency use of the property is or can be envisioned, (c) whether (in any case) it will be necessary or desirable for the MTA Agency to maintain long-term control over the ownership and/or use of the property, (d) whether the MTA Agency owns the property or merely leases it, and the extent, if any, to which disposition of the property is limited by reason of the terms of any lease pursuant to which the MTA Agency controls the property or by reason of any other title encumbrances, and (e) the potential revenues to be realized. With respect to each property to be evaluated, the Director, Leasing & Acquisitions should refer such property to the appropriate Deputy Director, who will designate a RE Manager to conduct the evaluation under his or her supervision. In certain cases the Director, Leasing and Acquisitions, will consult with and in some cases refer the inquiry to the Director, Transit Oriented Development.

### **A. Site Analysis**

The RE Manager shall conduct a site inspection with a representative of RED Tenant Management (or Tenant’s Management’s contracted property management firm) and the appropriate personnel of the MTA Agency in order to evaluate the condition of the property, the surrounding area, ascertain what utility services may be available for the site and identify what code compliance concerns may need to be addressed. As a part of this inspection, the RE Manager should assess the need for and extent to which improvements might be required, and consult with appropriate personnel of the applicable MTA Agency concerning the feasibility and potential costs of such improvements, and (assuming that the cost of such improvements would

METROPOLITAN TRANSPORTATION AUTHORITY  
REAL ESTATE DEPARTMENT  
POLICIES AND PROCEDURES FOR THE LEASING-OUT  
AND SALE OF REAL PROPERTY

March 2017

CHAPTER II – ASSESSMENT OF OPPORTUNITIES

Page 7

be justified by the revenue-generating potential of the property) whether it would be most efficient and cost-effective for the applicable MTA Agency to make such improvements (either in anticipation of rental or license fee income or at the direct cost of a lessee, licensee or purchaser) or for the making and/or cost of such improvements to be left to the purchaser, lessee or licensee. The RE Manager should also consult with Information Management and MTA Legal to ensure that the RE Manager is aware of any contractual or other legal limitations that would affect the MTA Agency's ability to dispose of the subject property.

In order to determine the marketability of a property, the following (where applicable) should be considered:

- Present use/condition of site
- Accessibility
- Visibility
- Surrounding uses
- Size, shape and physical characteristics of site
- Condition of street and station improvements
- Impact of any MTA Agency restrictions
- Availability of utility services
- Extent to which improvements are needed and MTA Agency funds are available to pay for such improvements
- Easements or restrictive covenants
- Traffic patterns/passenger volume counts - peak and off peak
- Existing retail at station
- Consumer activity during rush and non-rush hour periods
- Condition of neighboring properties
- Existing vacancies in the area
- New/potential development nearby
- Any operating issues noted by RED Tenant Management
- Adequacy of storage space
- Environmental matters

Generally, the leasing-out or sale of MTA Agency real property constitutes an "action" under the State Environmental Quality Review Act (SEQRA) and thus is subject to SEQRA's requirements. SEQRA requires review of actions to determine whether they may have a significant adverse environmental impact and, if so, preparation of an environmental impact statement before the action may be approved and undertaken. While most lease renewals will be Type II actions under SEQRA regulations – actions which the State Department of Environmental Conservation has found to have no significant adverse impacts – and thereby exempt from review, and some new leases may also fall within a Type II category, the RE Manager should consult with the MTA Legal Department's attorneys as early in the process as practical to determine what measures are necessary to ensure SEQRA compliance. Further

METROPOLITAN TRANSPORTATION AUTHORITY  
REAL ESTATE DEPARTMENT  
POLICIES AND PROCEDURES FOR THE LEASING-OUT  
AND SALE OF REAL PROPERTY

March 2017

CHAPTER II – ASSESSMENT OF OPPORTUNITIES

Page 8

consultation may be necessary as a proposal develops or changes over time. Board approval of a lease or sale cannot occur unless SEQRA requirements have been met either through (a) the action being exempt as a Type II action or falling within the PAL § 1266(11) exemption from SEQRA; (b) issuance of a negative declaration, or (c) preparation of a final environmental impact statement. Each proposed lease or sale, whether via RFP or the Lease/Sale Negotiation Process, requires preparation of and sign-off on a Pre-RFP Authorization Memo (Figure 11), as further described in Chapters III and IV. Each Pre-RFP Authorization Memo should note the SEQRA type or NEPA status, and required actions, if any, to be taken before the transaction is presented to the MTA Board.

Additionally, MTA Bond Counsel must review the location(s) being offered in each RFP, with RED providing location-specific information as required, prior to the issuance of the RFP to determine whether there are any tax-exempt bond related tax issues that would arise from private use. Only when MTA Bond Counsel clears such location and use should it be advertised, unless circumstances require advertisement before clearance is given, in which case the RFP must be subject to cancellation if clearance is not given prior to award. The Pre-RFP Authorization Memo contains two (2) boxes which must be checked by the RE Manager indicating that MTA Bond Counsel reviewed the location and use and has given approval to proceed with the RFP. A copy of the MTA Bond Counsel determination should be kept in the RFP file.

Prior to issuing an RFP, the RE Manager should prepare a Parcel Information Sheet (Figure 7) for each property that he or she determines to be marketable. The purpose of the Parcel Information Sheet is to collect information and will ultimately be modified for use in the RFP.

Each Parcel Information Sheet should include information for all applicable fields. A form of Parcel Information Sheet applicable to all agencies may be found in the RED shared folder at S:\RFP Documents and Forms\RFP Boilerplate Forms. The parcel information includes:

- Yardi property identification number and address
- Block and lot number, if applicable
- Site plan
- Site description, including approximate size and any unusual attributes
- Interest (i.e., lease, license, sale) being offered
- Preferred or required uses or any use restrictions
- Utility requirements and availability
- Improvement requirements and associated cost estimates
- Design guidelines (if any)
- RE Manager site visit date

The assessment of potential uses and restrictions on use (including any restrictions on items to be sold at the subject location) should take into account the following considerations, if applicable:

- MTA Agency requirements
- Restrictions in existing MTA Agency licenses or leases at location
- Restrictions in MTA Agency's deed or chain of title
- Land use regulations and building, fire, health and other like codes, to the extent deemed by MTA Legal to be applicable to the subject facilities
- Environmental conditions

## **B. Preliminary Fair Market Value Analysis**

Prior to ordering a formal appraisal or during the period that a formal appraisal is being prepared (see Chapter V), the RE Manager should to the best of his or her ability seek to estimate the fair market value of the subject property. For such purpose, the RE Manager may rely on his or her knowledge of market conditions, information in the Yardi database, the experience of RED colleagues, informal discussions with appraisers, posted broker listings for comparable properties and/or discussions with brokers; provided, however, that any brokers so contacted should be informed that the inquiry is for information purposes only and that the MTA is not (or is not yet) seeking the assistance of such brokers to locate prospective purchasers or tenants. If an estimate of fair market value has already been obtained, the RE Manager should use the information in such report to help inform his or her analysis.

## **C. Conclusion of Site and Preliminary Fair Market Value Analysis**

The RE Manager should prepare a Market Analysis Work Sheet (Figure 8 for a general format) describing his or her analysis of the property and conclusions regarding the marketability of the property. The RE Manager should use such Market Analysis Work Sheet to guide his or her discussions with his or her Deputy Director, and the discussion should encompass the following:

- Parcel Information Sheet
- Review of the Market Analysis Work Sheet and explanation of fair market value estimate
- Analysis of whether revenue-generating potential appears to justify cost and effort to make any required improvements to the property.
- Critical assumptions.

The Deputy Director should, upon conclusion of discussions with the RE Manager and resolution of any outstanding issues, then present the Pre-RFP Authorization Memo (with the Market Analysis Work Sheet attached) to the Director, Leasing & Acquisitions, for approval. Both the Deputy Director and Director, Leasing & Acquisitions should agree as to whether the property should be marketed for sale or lease or license. If they determine to move forward with marketing for sale or lease, the Director, Leasing & Acquisitions should authorize the commissioning of an appraisal, if it has not already been commissioned, as provided in Chapter V of these Policies and Procedures. The Pre-RFP Authorization Memo is also approved by the RED Director, Leasing, Acquisitions & Operations.

METROPOLITAN TRANSPORTATION AUTHORITY  
REAL ESTATE DEPARTMENT  
POLICIES AND PROCEDURES FOR THE LEASING-OUT  
AND SALE OF REAL PROPERTY

---

March 2017

CHAPTER II – ASSESSMENT OF OPPORTUNITIES

Page 10

### **CHAPTER III –REQUESTS FOR PROPOSALS (RFPs)**

**Scope** - This chapter describes the Lease/Sale RFP Process.

**Responsibilities** – Unless use of the Lease/Sale Negotiation Process is authorized, the RED is responsible for providing all qualified members of the general public with an opportunity to lease or purchase available properties from the MTA Agencies and for selecting tenants or purchasers based on predetermined priorities while ensuring the integrity of the selection process.

**Objective** - To maximize MTA Agency revenues while choosing qualified tenants who will meet their obligations and improve the appearance of MTA facilities and the quality of the amenities offered to the public at such facilities.

**Procedures** - The Lease/Sale RFP Process is described in the following pages.

#### **A. RFP PUBLICATION**

1. The RE Manager is responsible for preparing the request for proposals (“**RFP**”). The RFP must include:
  - (a) an “RFP Cover Letter”, which highlights information about the offering, contains general instructions, and the following two (2) PAL and Lobbying Law-required statements: (1) **“All proposals shall be publicly disclosed in the agenda for the meeting of the Finance Committee of the MTA Board at which the transaction will be considered for approval or disclosed to the members of the Finance Committee of the MTA Board and to members of the MTA Board in executive session and thereafter publicly disclosed prior to execution”**, and (2) **“All contacts with MTA relating to this RFP must be made through the designated Point(s) of Contact identified herein. Contacts with anyone else at MTA relating to this RFP may be a violation of law and may result in the disqualification of the proposer.”** The RFP Cover Letter should include the names and contact information for the designated Point(s) of Contact (a sample RFP Cover Letter is shown in Figure 9);
  - (b) the Parcel Information Sheet or Term Sheet (absent the Work Sheet – see Figure 7),
  - (c) a Proposer Information Form (“PIF” – See Figure 10) which includes a General Affidavit authorizing credit background and reference investigations,
  - (d) a Procurement Lobbying Law Certification form,
  - (e) An Iran Divestment Act Certification form,

METROPOLITAN TRANSPORTATION AUTHORITY  
REAL ESTATE DEPARTMENT  
POLICIES AND PROCEDURES FOR THE LEASING-OUT  
AND SALE OF REAL PROPERTY

March 2017

CHAPTER III – REQUESTS FOR PROPOSALS (RFPs)

Page 12

- (f) a Proposed Rent, Compensation or Purchase Price Form,
- (g) an IRS Form W-9.
- (h) To the extent practicable, the RFP should also include (or provide a link to a page on the RED website that includes) a proposed form of lease or contract of sale, or a summary of the principal terms of such lease or contract, and it may to the extent the Director, Leasing & Acquisitions deems appropriate require proposers to state any objections that they may have with respect to such form or terms at the time they respond to the RFP.

When this package is complete, the RE Manager should forward the RFP package to his or her Deputy Director and the Director, Leasing & Acquisitions for final approval via an appropriately titled Pre-RFP Authorization Memo (see Figure 11) before it is issued. An RFP should also be reviewed and approved by MTA Legal to the extent that (a) standard RFP provisions have been materially modified or changed, or (b) the contemplated transaction may present special legal issues.

2. Except as the Director, Leasing & Acquisitions may otherwise determine, RFPs are no longer printed and distributed by mail. Instead, RED maintains a mailing list database for prospective tenants to register and access online all RFPs. RED's online service includes automated electronic mailings to registered prospects announcing RFPs for available opportunities.

3. If the subject property is currently occupied by an incumbent lessee or licensee in good standing, the RE Manager should notify such incumbent by an Incumbent Letter sent by certified and first class mail and email that such property is going to be marketed in an upcoming RFP. The RE Manager must check that the address for the incumbent used in the letter is up to date and reflects any changes of address, change of business name, etc. (for an example of such a letter, see Figure 13.) A copy of such letter and the return receipt should be maintained in the incumbent's file. The letter should not mention any details of the RFP, as that might give the incumbent an unfair advantage over other proposers, nor should it state or imply that the incumbent will receive preferential consideration. The letter should be mailed to the incumbent's address as listed for notice in the incumbent's original agreement, as modified by any subsequent amendments. Any questions regarding the appropriate address for notice should be referred to RED Tenant Management (and MTA Legal, if necessary). Subsequently, when the RFP is placed on the RED website, a hard copy should be sent to the incumbent by the RE Manager, certified mail/return receipt requested and first class mail and by email, even if the incumbent does not request one.

4. After receiving approval of the Pre-RFP Authorization Memo from his or her Deputy Director and the Director, Leasing & Acquisitions, the RE Manager shall initiate

METROPOLITAN TRANSPORTATION AUTHORITY  
REAL ESTATE DEPARTMENT  
POLICIES AND PROCEDURES FOR THE LEASING-OUT  
AND SALE OF REAL PROPERTY

the advertisement of the RFP. RED's advertisements for RFPs and any other opportunities will generally be advertised along with all other agency procurements in the classified section of the *New York Post*, the *Minority Commerce Weekly*, a Spanish language newspaper, currently *El Diario*, and the *Amsterdam News*. For each RFP, the advertisement should include a one-sentence description of the opportunity, including the RFP reference number (e.g., RFPBG0912), and a reference to and listing of the MTA website for RED RFPs ([http://mta.info/mta/realestate/retail\\_leasing.html](http://mta.info/mta/realestate/retail_leasing.html)). For an example of the RFP Advertisement, see Figure 14. The RFP website link should have the same language as the description in the advertisement. The advertisement will direct potential proposers to the “Retail + Leasing” page of the MTA website, from where they can access RFPs by signing in with a username and password. Point of Contact information will be included in the RFP cover letters that are included in the .PDFs of RFPs on the website.

Advertisements may also be placed in additional periodicals with the approval of the Director, Leasing & Acquisitions, depending on the targeted market, size and location of the property, etc. (e.g. for a restaurant, trade journals targeted to franchisees might be included). A copy of all advertisements should be included in the RFP File. Targeted advertisements should include a more expansive description of the opportunity and a map, plan, or picture if appropriate. Also, these advertisements should include Point of Contact information and the Lobbying Law language shown above in 1.(a)(1) and 1.(a)(2). See Figure 15 for an example of such an advertisement.

Advertisement drafts must be submitted to Ambika Mohan at Miller Advertising ([amohan@milleraa.com](mailto:amohan@milleraa.com), tel. (212) 366-0901) by the Monday before the Thursday planned for the advertisement to have the RFP information placed in the next MTA advertisements for the four required periodicals. Joy Read, Manager of Production, MTA Marketing, and Rick Osborne, MTA Chief of Creative Services, should be copied on the email to Miller Advertising. The RE Manager should also ensure that the RFP is timely posted onto MTA’s website.

5. At the same time, the RE Manager should call or send an email to the MTA press office, being sure to email the individual responsible for press for the relevant MTA Agency, advising that a RFP is forthcoming, indicating whether a purchaser or tenant is being sought and describing the property being offered. The RE Manager should discuss with the press office whether a press release is warranted for the RFP due to the special circumstances or locations being offered in the RFP, and if so, coordinate the drafting and review of the press release with the relevant Deputy Director and Director, Leasing & Acquisitions. If warranted, the Government Affairs office of the relevant MTA Agency should also be advised of the RFP.

6. On a case by case basis, the Director, Leasing & Acquisitions may, with the concurrence of the Director, Real Estate, (a) elect to make RFPs available to brokers and



METROPOLITAN TRANSPORTATION AUTHORITY  
REAL ESTATE DEPARTMENT  
POLICIES AND PROCEDURES FOR THE LEASING-OUT  
AND SALE OF REAL PROPERTY

March 2017

CHAPTER III – REQUESTS FOR PROPOSALS (RFPs)

Page 14

undertake in such RFPs to pay brokerage commissions (at rates not to exceed industry standard rates) to any brokers that shall be the procuring cause of consummated sales or leases of properties that are the subject of such RFPs, and/or (b) procure (with MTA Board approval) the services of marketing consultants to identify prospective purchasers or tenants to which particular RFPs should be sent.

7. The RE Manager is responsible for seeing to it that each person that has made an Inquiry with respect to any particular property or type of property receives notice of the issuance of any RFP relating to such property or type of property.

8. A site inspection time is typically identified in the RFP. At the indicated inspection time, the RE Manager should be present at the site and available to answer any questions. The RE Manager should maintain a sign-in sheet for each location visited.

9. Addenda to RFPs can and should be issued as appropriate to apprise prospective purchasers or tenants of modified expectations or requirements and/or to provide them with other additional information. Care must be taken to ensure that in this way all interested parties are provided in writing with all material information that is provided (whether orally or in writing) to any one such party.

10. The RE Manager must establish an RFP file which shall include all relevant documents for the RFP in question.

**B. Determination of Whether to Utilize Single-Step or Multi-Step Lease/Sale RFP Process**

In the first instance, the applicable Deputy Director and the Director, Leasing & Acquisitions, should determine whether to utilize a single-step or a multi-step RFP process, based on the nature of the subject property, the complexity of the offering and prior experience with similar types of property.

**C. Single-Step Lease/Sale RFP Process**

In a single-step Lease/Sale RFP Process, the RED's selection is based on the initial proposer submission (except that the RED may seek clarifications and/or completion of submissions as described below). Following review and consideration of the proposals and the making of responsiveness and responsibility determinations, the RED determines which proposal is most advantageous to the State, price and other factors considered. Unless it determines to reject all proposals, the RED must then seek authorization from the MTA Board to enter into a lease or contract of sale, as applicable, with such proposer. All proposals must be publicly disclosed in the agenda for the Finance Committee meeting at which the RED seeks such authorization.

**D. Multi-Step Lease/Sale RFP Process**

In a multi-step Lease/Sale RFP Process, the initial proposer submission is followed by one (1) or more revised submissions. If the incumbent has submitted a proposal, all addendums to the RFP, requests for best and final offers, or other correspondence must be sent to the incumbent by the RE Manager via certified mail, return receipt requested, first class mail, and by email. If the incumbent's proposal was prepared by an attorney or other agent or representative, all addenda should also be sent to such representative or agent certified mail, return receipt requested, first class mail, and by email. Following each submission, RED staff may communicate with proposers to clarify the proposals or to obtain additional information. Following review and consideration of the proposals and the making of responsiveness and responsibility determinations, the RED may decide to make a final determination based on such proposals or it may request that proposers submit revised proposals. At any point, the RED may eliminate from the next step those proposers determined to be unresponsive, not responsible or outside of the competitive range on the basis of the selection criteria specified in the RFP. When the RED decides that it is not going to seek any further submissions, it determines which proposal is most advantageous to the State, price and other factors considered. Unless it determines to reject all proposals, the RED must then seek authorization from the MTA Board to enter into a lease or contract of sale, as applicable, with such proposer. All proposals must be publicly disclosed in the agenda for the Finance Committee meeting at which the RED seeks such authorization.

**E. Earnest Money Deposits**

For discussion about deposits for leases, see Chapter VII – Board Approval Process, Section A. - Conditional Designation Letters.

Typically, in the case of a sale, the RED requires each proposer to deposit with the MTA, at the time of its initial submission (in the case of a single-step RFP), or best and final submission (in the case of a multi-step RFP), earnest money in the amount of the deposit that will ultimately be required under the contract of sale. Except as the Director, Leasing & Acquisitions may otherwise determine, such earnest money deposit should be in the amount of ten (10%) percent of the purchase price.

All earnest money checks and W-9 forms should be forwarded to Tenant Management, which should make a record of such checks and then transmit such checks to Carver Federal Savings Bank. Once a proposer has been eliminated from further consideration, Tenant Management must be so notified by the RE Manager and (except as described in Chapter IX of these Policies and Procedures) such proposer's earnest money deposit should be returned to such proposer. If a proposer has been selected, its earnest money deposit may be held in a non-interest bearing account, until such time as the contract of sale is executed, at which time it will be applied toward the down payment pursuant to

the contract of sale. If the selected proposer fails to enter into a contract of sale, such proposer's earnest money deposit may be retained by the MTA, in its discretion.

The submission of earnest money may be waived for a given RFP by the Director, Leasing & Acquisitions.

#### **F. Opening Proposals**

The receipt of proposals should be conducted with a high degree of confidentiality until the selection process is complete. Documentation such as proofs of receipt, and preliminary screening for completeness of RFP submissions, are critical in maintaining the integrity of the process. The RE Manager responsible for the RFP should maintain a proposal log that includes the name, date and time of receipt of each RFP response (Figure 16). All proposals should be opened at once, in the presence of two (2) RED staff members, and in the meanwhile they should remain sealed and unopened. Subsequent to opening the proposals, each submission should be examined to ensure that all required items have been included. A checklist should be used for that purpose (Figure 17).

#### **G. Evaluating Proposals**

The following should serve as a guide for evaluating proposals, regardless of whether a single-step or multi-step Lease/Sale RFP Process is used. In the case of a single-step Lease/Sale RFP Process, a decision is made based on the initial proposer submission.

**1. Responsiveness.** The first threshold to further consideration of a proposal is its "responsiveness". The following are to be considered to determine whether a proposal is responsive:

- a. Required forms (including Procurement Lobbying Law and Iran Divestment Act forms) are completely filled out and executed by principals.
- b. Receipt of earnest money deposit, in the correct amount as specified in the RFP, if requested.
- c. Appropriate conceptual plans for improvements have been submitted, if requested.
- d. Proposed use is acceptable in accordance with criteria stated in RFP.

Generally, a proposal must be complete to be considered, and an incomplete proposal should be disqualified if the deficiencies are material and allowing the proposer to correct the proposal would afford the proposer a significant unfair competitive advantage or

METROPOLITAN TRANSPORTATION AUTHORITY  
REAL ESTATE DEPARTMENT  
POLICIES AND PROCEDURES FOR THE LEASING-OUT  
AND SALE OF REAL PROPERTY

March 2017

CHAPTER III – REQUESTS FOR PROPOSALS (RFPs)

Page 17

would not be in the MTA's best interest. However, the MTA reserves the right to waive any non-conformity with an RFP's requirements and the RE Manager should afford a proposer an opportunity to rectify any such non-conformity if it is relatively minor or such proposer's proposal is the best or only viable one received. In all instances, the RE Manager must discuss any such non-conformity with his or her Deputy Director. If there is any doubt about the appropriate action to take, MTA Legal should be consulted. All relevant decisions should be made by the Director, Leasing & Acquisitions and/or the Director, Leasing, Acquisitions & Operations or the Director, Real Estate. If a decision is made to request action by the proposer to conform its submission with RFP requirements, an email or letter should be sent to the proposer requesting such action. Any such email or letter should state that the non-conformity must be rectified within five (5) working days, except that a longer time may be allowed by the RE Manager, after consulting with his or her Deputy Director, if the nature of the non-conformity (e.g. missing architectural plans) warrants such longer period.

If an RFP identifies a preferred or mandatory use, it should make clear whether such use is mandatory or merely preferred. If an RFP identifies a disfavored or prohibited use, it should make clear whether such use is prohibited or merely disfavored. A proposal received in response to an RFP should be deemed to be "unresponsive" (and thus disqualified) if such proposal contemplates uses that such RFP identified as prohibited or fails to provide for uses that such RFP identified as mandatory. A proposer should not be disqualified by reason of such proposer having proposed uses that the RFP identified as merely disfavored or failed to propose uses that the RFP identified as merely preferred (although that may be taken into account in scoring proposals, as described below).

**2. Responsibility.** The second threshold to further consideration of a proposal is whether the proposer is "responsible". A proposer may be disqualified as "not responsible" if, among other things, such proposer or any Affiliate of such proposer:

- a. has been convicted of a felony or any misdemeanor involving moral turpitude;
- b. has been disqualified from contracting with the MTA, the City of New York, the State of New York, the Port Authority of New York and New Jersey or the federal government;
- c. has violated the Procurement Lobbying Law (as more particularly described in Chapter XI of these Policies and Procedures); or
- d. owes, with respect to amounts due not more than five (5) years prior to the date of the RFP, in excess of \$10,000 to the MTA; such amount is not (in the view of the MTA Legal Department) the subject of a bona fide dispute; and such amount has remained unpaid for more than ninety (90) days; provided, however,

METROPOLITAN TRANSPORTATION AUTHORITY  
REAL ESTATE DEPARTMENT  
POLICIES AND PROCEDURES FOR THE LEASING-OUT  
AND SALE OF REAL PROPERTY

March 2017

CHAPTER III – REQUESTS FOR PROPOSALS (RFPs)

Page 18

that before disqualifying any proposer by reason of any such non-payment, the RED must provide written notice of such non-payment to such proposer and afford such proposer a period of not less than thirty (30) days to pay the amount that remains unpaid. Late payment, as opposed to non-payment, shall not constitute grounds for disqualification of an otherwise responsible proposer (although it may be taken into account in scoring proposals, as described below).

If, after having been provided written notice and an opportunity to be heard, a proposer is deemed to be not responsible, no further consideration of such proposer's proposal should be undertaken.

For purposes of these Policies and Procedures, "Affiliate" of a proposer means any entity that (a) controls or owns more than a 30% equity interest in such proposer or (b) is controlled by, or more than a 30% equity interest in which is owned by or for the benefit of, either (i) such proposer or (ii) any person (or any member of the immediate family (i.e., spouse, father, mother, brother, sister, children, and stepchildren) of any person) or entity that controls, or owns more than a 30% equity interest in, such proposer.

**3. Selection Criteria.** Once a proposal has been determined to be responsive and the proposer responsible, the following evaluation and selection criteria should be considered to the extent relevant (recognizing that some of such criteria may in some instances not be relevant, as, for example, in the case of a sale):

- Present value of proposed compensation to the MTA, including the present value to the MTA (if any) of any improvements to be paid for by the proposer, but net of the cost of any improvements to be paid for by the MTA ("Net Present Value" or "NPV")
- Quality of proposed improvements
- Nature of proposed business and potential benefit to MTA customers
- Financial capability of proposer and adequacy of business plan
- Business/personal references
- Management and operational experience of proposer
- Compatibility and consistency of proposed use with MTA Agency operations

Rent proposals should be compared based on the present values of anticipated rental streams. Such present values should be calculated using appropriate risk-adjusted discount rates determined by the Director, Leasing & Acquisitions and consistently applied. In calculating such present values, any percentage rent projected by the proposer should be included only to the extent that the RE Manager deems such projections to be reasonable and then should be afforded only half the weight that is afforded to guaranteed minimum rent.

METROPOLITAN TRANSPORTATION AUTHORITY  
REAL ESTATE DEPARTMENT  
POLICIES AND PROCEDURES FOR THE LEASING-OUT  
AND SALE OF REAL PROPERTY

March 2017

CHAPTER III – REQUESTS FOR PROPOSALS (RFPs)

Page 19

In the case of any improvements that are to be made by a tenant and used by such tenant in its business (as opposed to any improvements to be made by a tenant or purchaser for the direct and immediate benefit of the MTA), the value of such improvements should be included in NPV only to the extent, if any, that such improvements are expected to have residual value to the MTA upon the scheduled expiration of the lease term; and then the NPV should include only the present value (as of the lease commencement date, calculated using the discount rate used to calculate the present value of the rents to be paid by such tenant) of the anticipated value of the MTA's reversionary interest in such improvements as of such scheduled expiration date, based on commercially recognized standards for depreciating the cost of improvements over their useful life. Typically, the installation of utility connections (conduit and lines for water, sewer, sprinkler, power, and telephone, for example) from some point outside of the leased premises to the premises, and roofs and windows, are improvements that will provide residual value to the MTA because the following tenant will not need to pay to make such installations, which should, all other things being equal, generate higher proposed rents in subsequent offers to lease the space. However, most pre-existing interior renovations will be demolished and replaced by a new tenant, and generally would therefore not have residual value for the purposes of calculating the NPV.

As part of the RFP evaluation process, the RE Manager should complete RED's NPV calculation Excel template (see Figure 18), which has been designed to facilitate the calculation of Net Present Value and its components for use in discussion and write-ups of RFP proposals.

These Policies and Procedures establish a rebuttable presumption that the responsive and responsible proposer whose proposal offers the highest guaranteed payments to the MTA (calculated on a present value basis) should be designated as the lessee or purchaser of the subject property. However, as appropriate (depending on whether a lease or sale is contemplated), the RE Manager should assess, compare and take into account the respective proposers' business plans, experience and financial capability, and may (with the concurrence of his or her Deputy Director, the Director, Leasing & Acquisitions, the Director, Leasing, Acquisitions & Operations and/or the Director, Real Estate) determine that another proposer should be so designated because such other proposer would:

- (a) be materially more likely to meet its financial obligations to the MTA;
- (b) provide a substantially superior amenity to the MTA's customers, the benefit to the MTA of which would outweigh the financial benefit to the MTA of accepting the proposal that would provide the MTA with the highest guaranteed payments;
- (c) make improvements to the MTA's property, the present value of which to the MTA would cause the NPV received by the MTA from such proposer to be higher

than the NPV the MTA would receive from the proposer offering the highest guaranteed rent; and/or

(d) very likely pay percentage rent such that (even discounting such anticipated percentage rent by at least half as described above) the NPV received by the MTA from such proposer would be higher than the NPV the MTA would receive from the proposer offering the highest guaranteed rent.

In all events, however, except as the MTA Board may otherwise decide in accordance with PAL Section 2897(7), the NPV offered by the designated proposer must equal or exceed fair market value determined in accordance with Chapter V of these Policies and Procedures.

## **H. Selection Process**

### **1. Oral Presentations.**

After reviewing credit background checks and completed Proposer Information Forms, the RE Manager should (except as described in the next paragraph) schedule an oral presentation with each responsive and responsible proposer. It is important that two (2) staff persons attend each interview to maintain the integrity of the process. The oral presentation should focus on any aspects of the proposal that are not self-explanatory and any discrepancies in or questions concerning the Proposer Information Form or credit background report. If, as the result of an oral presentation there are changes to any of the terms or conditions theretofore proposed by a proposer, the RE Manager should secure written confirmation of such changes from such proposer.

If there are several qualified and responsible proposers, the RE Manager may choose to conduct oral presentations with the two (2) or three (3) proposers whose offers, over all, are most highly rated. In cases where there is only one highly rated proposer, the RE Manager, consulting with his or her Deputy Director, may choose to schedule an oral presentation with that proposer only. An oral presentation may be waived if the proposer is an existing MTA tenant or licensee.

### **2. Short listing in Multi-Step RFP.**

In the case of a multi-step RFP process, the RE Manager should determine (a) whether there will be any short listing of proposers before the revised offer stage and (b) whether oral presentations will be held before a revised offer stage. If there will be any short listing before the revised offer stage, the RE Manager should prepare an Authorization Memo recommending such short listing to his or her Deputy Director, the Director, Leasing & Acquisitions, and the Director, Leasing, Acquisitions & Operations. The

METROPOLITAN TRANSPORTATION AUTHORITY  
REAL ESTATE DEPARTMENT  
POLICIES AND PROCEDURES FOR THE LEASING-OUT  
AND SALE OF REAL PROPERTY

March 2017

CHAPTER III – REQUESTS FOR PROPOSALS (RFPs)

Page 21

purpose of such Authorization Memo is to provide support and justification for such short listing.

3. Revised Offer Stage in Multi-Step RFP.

In the case of a multi-step RFP process, after oral presentations and short listing, if any, the RE Manager should prepare a letter instructing the remaining eligible proposers with respect to the process for the submission of revised proposals. Such letter, which should be emailed as a .PDF document and mailed via first class mail, should set forth:

- The date, time and place for the submission of the revised proposals;
- The information that needs to be supplied in the revised proposals; and
- Any supplemental information, not previously supplied, of which the proposers ought to be aware.

There may be more than one call for revised proposals. When the RED decides that that it is not going to seek any further submissions, the RE Manager should proceed as if the last proposals received were the proposals received in a single-step RFP process.

4. Recommendation of Award

Single-Step RFP: In the case of a single-step RFP process, upon completion of all oral presentations, if any, the RE Manager should prepare a RFP Award Authorization Memo to his or her Deputy Director, the Director, Leasing & Acquisitions, and Director, Leasing, Acquisitions & Operations (Figure 19). The purpose of such RFP Award Authorization Memo is to provide support and justification for the rejection of all proposals or the issuance of a Conditional Designation Letter. Each such RFP Award Authorization Memo must include a check in the applicable SEQRA/NEPA check-box and any follow-up action required prior to the disposition. The Lobbying Law check box must also be completed as directed on the RFP Award Authorization Memo.

Multi-Step RFP: In the case of a multi-step RFP process, upon completion of all oral presentations, if any, and after the receipt of the final revised proposals, the RE Manager should prepare an RFP Award Authorization Memo for concurrence and approval by his or her Deputy Director, the Director, Leasing & Acquisitions, and the Director, Leasing, Acquisitions & Operations. Again, the purpose of such Authorization Memo is to provide support and justification for the rejection of all bids or the issuance of a Conditional Designation Letter (see Chapter VII.A).

It is the responsibility of the applicable Deputy Director and the Director, Leasing & Acquisitions to verify the RE Manager's present value calculations and to assess the reasonableness of any determination by the RE Manager that the opportunity to lease or purchase the subject property should, for one or more of the reasons set forth above, be



METROPOLITAN TRANSPORTATION AUTHORITY  
REAL ESTATE DEPARTMENT  
POLICIES AND PROCEDURES FOR THE LEASING-OUT  
AND SALE OF REAL PROPERTY

---

March 2017

CHAPTER III – REQUESTS FOR PROPOSALS (RFPs)

Page 22

---

afforded to a proposer other than the proposer that offered the highest guaranteed compensation (as calculated on a present value basis). Any such determination should be highlighted and explained in the RE Manager's Authorization Memo, as well as in the applicable Staff Summary.

## CHAPTER IV – ENTERING INTO AGREEMENTS THROUGH THE LEASE/SALE NEGOTIATION PROCESS

**Scope** – This chapter establishes procedures for entering into lease or sale transactions based on negotiations where use of the Lease/Sale Negotiation Process is permitted by law and determined to be appropriate.

### Applicability.

The Public Authorities Law allows the Lease/Sale Negotiation Process to be utilized only under the following circumstances:

- (a) the estimated fair market value of the property to be leased-out or sold does not exceed \$15,000, or
- (b) proposal prices after advertising are not reasonable, either as to all or some part of the property, or have not been independently arrived at in open competition; or
- (c) the disposition will be to the State or any political subdivision, and the estimated fair market value of the property and other satisfactory terms of disposal are obtained by negotiation; or
- (d) the transferee is a government or other public entity, and the terms and conditions of the transfer require that the ownership and use of the asset will remain with the government or any other public entity;
- (e) the purpose of the transfer is within the purpose, mission or governing statute of the public authority; or
- (f) such action is otherwise authorized by law.

In the case of (a), (b) or (c) above, the disposition must be for no less than fair market value. In the case of (d) or (e), it can be for less than fair market value.

Negotiations with responsible prospective tenants or purchasers may under the foregoing circumstances be undertaken without utilizing the Lease/Sale RFP Process, but only pursuant to a Lease/Sale Negotiation Authorization Memo signed by the appropriate Deputy Director, the Director, Leasing & Acquisitions, Director, Leasing, Acquisitions & Operations for transactions to be entered into pursuant to Board-approved policy, as well by MTA Legal and the Director, Real Estate for transactions that are not pursuant to policy (see Figure 20). At the first instance that a RE Manager, prior to or after obtaining a signed Lease/Sale Negotiation Authorization Memo, solicits an offer from the prospective tenant or purchaser (which should be in writing),

METROPOLITAN TRANSPORTATION AUTHORITY  
REAL ESTATE DEPARTMENT  
POLICIES AND PROCEDURES FOR THE LEASING-OUT  
AND SALE OF REAL PROPERTY

March 2017

CHAPTER IV – LEASE/SALE NEGOTIATION PROCESS

Page 24

the RE Manager should send a letter or email to such other party stating that the RE Manager is the Point of Contact for the transaction and include in the letter the language in A.1(a)(1) and A.2(a)(2) of Chapter III. If he or she deems such negotiations to be successful, then in due course the Director, Real Estate may on the basis of such negotiations enter into a Conditional Designation Letter or lease with respect to a proposed transaction and then submit such transaction to the MTA Board for approval as contemplated by Chapter VII of these Policies and Procedures or as an Information Item to the MTA Board pursuant to an applicable Board-approved Policy authorizing that transaction.

Explanatory Statements.

An “explanatory statement” must be prepared in the case of any disposition pursuant to the Lease/Sale Negotiation Process that involves:

- (a) any sale of real property that has an estimated fair market value in excess of \$100,000;
- (b) any real property disposed of by lease if the estimated annual rent over the term of the lease is in excess of \$15,000 (if the base rent in any year of the initial term is over \$15,000, then the lease qualifies for an explanatory statement); or
- (c) any real property or real and related personal property disposed of by exchange, regardless of value, or any property any part of the consideration for which is real property.

Each such explanatory statement must be transmitted to the NYS Comptroller, the Director of the Budget, the Authorities Budget Office, the Commissioner of General Services and Legislature not less than ninety (90) days in advance of the closing of such disposition, and a copy thereof must be preserved in the RED’s files.

The explanatory statement, which may be in the form of a staff summary, must include at a minimum:

- (a) Description of the parties involved in the property transaction;
- (b) Justification for disposing of property by negotiation;
- (c) Identification of property, including its location;
- (d) Estimated fair market value of the property;
- (e) Proposed sale price of the property;
- (f) Size of the property; and
- (g) Expected date of sale of property.

METROPOLITAN TRANSPORTATION AUTHORITY  
REAL ESTATE DEPARTMENT  
POLICIES AND PROCEDURES FOR THE LEASING-OUT  
AND SALE OF REAL PROPERTY

March 2017

CHAPTER IV – LEASE/SALE NEGOTIATION PROCESS

Page 25

The RE Manager is responsible for preparing any such transmittal, which should be reviewed and approved by his or her Deputy Director and the Director, Leasing & Acquisitions before it is sent out.

State Comptroller Review & Approval

Contracts for the disposition of real property via the Lease/Sale Negotiation Process that are valued at \$1 million or more, and all amendments to such contracts, must be reported to the Office of the State Comptroller (“OSC”) and may be subject to review and approval by the OSC.

**All contracts entered into via the Lease/Sale Negotiation Process with a value of \$1 million or more (with value being determined as the sale value in the case of a sale or the Net Present Value of the rental payments under the full term of a lease, including all option periods), and all amendments to such contracts are “eligible contracts” for OSC review.**

Each eligible contract that the MTA anticipates entering into in a given year must be reported to the OSC in December of the prior year. The Real Estate Finance Manager, with the assistance of the Deputy Directors, Leasing & Acquisitions, will prepare this list on an annual basis and update it quarterly. If an eligible contract that has not been previously reported arises after the December reporting period, then it must be reported to the OSC. The Real Estate Finance Manager, with the assistance of the Deputy Directors, Leasing & Acquisitions, will prepare this report. No eligible contract may be entered into less than ten (10) days prior to the execution of the eligible contract.

The OSC may designate specific eligible contracts that must be submitted automatically to the OSC for prior review and approval, in the manner determined by the OSC (various materials, including RFP or other solicitation materials, may need to be submitted). All eligible contracts submitted for review must contain a provision stating that such contracts are not valid until approved by the OSC (unless the OSC has not approved or disapproved a contract within ninety (90) days, in which case such contract shall become valid and enforceable without such approval).

However, all eligible real-estate contracts that were not selected for review and approval by the OSC, must be filed with the OSC within sixty (60) days of execution. **That means during 2017 all agreements, or amendments to agreements, using the Lease/Sale Negotiation Process with a value of over \$1 million must be filed with the OSC within sixty (60) days of execution.**

METROPOLITAN TRANSPORTATION AUTHORITY  
REAL ESTATE DEPARTMENT  
POLICIES AND PROCEDURES FOR THE LEASING-OUT  
AND SALE OF REAL PROPERTY

March 2017

CHAPTER V – APPRAISALS AND FAIR MARKET VALUE

Page 26

## CHAPTER V – APPRAISALS AND FAIR MARKET VALUE

**Scope** – This chapter contains guidelines for estimating the “fair market value” of MTA Agency real property to be offered for lease or sale.

**Responsibilities** – As required by PAL Section 2897(3), the RED must obtain an “independent appraisal” in connection with every sale or lease of MTA Agency real property (including an interest in real property, such as an easement).

**Objective** – To aid the RED and MTA Board in their efforts to obtain appropriate compensation from tenants and purchasers and to ensure compliance with PAL Section 2897(3), which, except in limited specified circumstances, prohibits the sale or leasing out of MTA Agency property for less than its “fair market value”.

**Procedure** – PAL Section 2897 does not define “fair market value”. However, such term is commonly understood in the real estate industry to mean the price (in the case of a sale) or rent (in the case of a lease) for which a typical owner of property comparable to the subject property would be willing to sell or lease such property and a typical prospective buyer or tenant would be willing to purchase or lease such property as of a specific date, assuming that neither party is specially motivated and that the property is sufficiently marketed so that its availability is reasonably well known.

In many cases, estimating fair market value, while inherently imprecise due to the uniqueness of property, is relatively straight-forward. Anyone with knowledge of the local real estate market can survey published data relating to recent transactions to find examples of sales or leases of comparable properties where the owner presumably solicited or could have solicited offers from any number of potential buyers or tenants. And, in such cases, one need then only make appropriate adjustments to per square foot prices or rents to account for variations among properties. In other cases, however, determining a “market” value is more difficult, as a property (or interest therein such as an easement) can be uniquely valuable to an adjoining property owner and (by virtue of such property’s size, shape or inaccessibility) have relatively little or no value at all to anyone else. In such cases, the fair market value of such property lies at an indeterminate point somewhere between the polar extremes of (a) One Dollar (\$1.00; the amount that the adjoining property owner would have to pay to win such property at an auction without any reserve price) and (b) the amount by which adding such property (or interest therein) to the adjoining property owner’s property would increase the fair market value of the adjoining owner’s property.

In these Policies and Procedures, the term “Type I Transactions” is used to refer to sales or leases of MTA Agency property (such as stores or independently developable parcels) where the purchasers or tenants could be anyone; and the term “Type II Transactions” is used to refer to

METROPOLITAN TRANSPORTATION AUTHORITY  
REAL ESTATE DEPARTMENT  
POLICIES AND PROCEDURES FOR THE LEASING-OUT  
AND SALE OF REAL PROPERTY

March 2017

CHAPTER V – APPRAISALS AND FAIR MARKET VALUE

Page 27

sales or leases of MTA Agency property to adjoining property owners where such property has unique value to such adjoining property owners.

PAL Section 2897 does not distinguish between Type I Transactions and Type II Transactions; in either case, it requires that an independent appraisal of fair market value be obtained and retained in RED's records and (except in the special circumstances identified in Chapter IV of these Policies and Procedures) requires public advertising for proposals. However, because many of the transactions that the RED handles are Type II transactions (given that MTA rights-of-way often have only one logical adjacent user), it is important, as a practical matter, to recognize that the RED will not in fact receive competitive offers in the case of Type II Transactions, and for RE Managers to give suitable instructions to appraisers to avoid confusion and ensure that in all cases the intentions of this chapter are properly served by the appraiser's work.

In the case of a Type I Transaction, the RE Manager should instruct the appraiser to prepare a typical assessment of the value of the subject MTA Agency property assuming full and adequate competition among potential purchasers or tenants, as the case may be. In the case of a Type II Transaction, the RE Manager should instruct the appraiser to prepare an assessment of the incremental value to the adjoining property owner of adding the subject MTA Agency property (or interest therein) to such adjoining property owner's interest. The RE Manager should instruct the appraiser to explicitly state in the appraisal the reasoning used in determining the estimated incremental value to the adjoining property owner.

It is important to note that in either case, the value determined by the appraiser will not necessarily equate with "fair market value". Appraisers can only estimate value, and indeed appraisers commonly disagree when more than one is asked to value any given property. And, in the case of a Type I Transaction to be entered into after the Lease/Sale RFP Process has in fact resulted in competition between two (2) or more typically motivated potential purchasers or tenants, the actual results of such Lease/Sale RFP Process constitute more concrete evidence of fair market value than an appraiser's estimate does. However, the estimate of value determined by an independent appraiser does nonetheless constitute rebuttable evidence of fair market value, and a tool for assessing the efficacy of the RED's efforts to maximize income from the disposition of MTA Agency property (regardless of whether the Lease/Sale RFP Process of the Lease/Sale Negotiation Process is used). Accordingly, each Staff Summary presented for MTA Board approval should include a statement as to whether the proposed transaction would yield to the MTA the appraiser's estimate of value, and, if the proposed transaction would yield to the MTA less than such estimate of value, either (a) an explanation as to (i) why the RED does not believe such estimate of value coincides with fair market value and (ii) why the compensation to the MTA that is being recommended in the Staff Summary represents at least fair market value or (b) information and proposed MTA Board findings of the kind required by PAL Section 2897(7)(b) and (c), which read as follows:

METROPOLITAN TRANSPORTATION AUTHORITY  
REAL ESTATE DEPARTMENT  
POLICIES AND PROCEDURES FOR THE LEASING-OUT  
AND SALE OF REAL PROPERTY

March 2017

CHAPTER V – APPRAISALS AND FAIR MARKET VALUE

Page 28

“b. In the event a below fair market value asset transfer is proposed, the following information must be provided to the authority board and the public:

- (i) a full description of the asset;
- (ii) an appraisal of the fair market value of the asset and any other information establishing the fair market value sought by the board;
- (iii) a description of the purpose of the transfer, and a reasonable statement of the kind and amount of the benefit to the public resulting from the transfer, including but not limited to the kind, number, location, wages or salaries of jobs created or preserved as required by the transfer, the benefits, if any, to the communities in which the asset is situated as are required by the transfer;
- (iv) a statement of the value to be received compared to the fair market value;
- (v) the names of any private parties participating in the transfer, and if different than the statement required by subparagraph (iv) of this paragraph, a statement of the value to the private party; and
- (vi) the names of other private parties who have made an offer for such asset, the value offered, and the purpose for which the asset was sought to be used.

(c) Before approving the disposal of any property for less than fair market value, the board of any authority shall consider the information described in paragraph b of this subdivision and make a written determination that there is no reasonable alternative to the proposed below market transfer that would achieve the same purpose of such transfer.”

Each appraisal commissioned by the RED pursuant to these Policies and Procedures should be prepared by a member of the Appraisal Institute, or the equivalent, except that in the case of a proposed space lease such appraisal may be prepared by a licensed real estate broker experienced in the leasing of space in the area where the subject property is located.

## **CHAPTER VI - ANALYSIS OF PROPOSER’S FINANCIAL CAPABILITY**

**Scope** - This chapter outlines the procedures to be utilized to evaluate a proposer’s financial ability to comply with the terms of a lease or contract of sale.

**Responsibilities** - The RE Manager is responsible for receiving and taking into account the information reported on Proposer Information Forms and for ordering and taking into account the results of independent credit and background reports.

**Objective** - To evaluate the creditworthiness of a prospective tenant or purchaser.

**Procedures** - The necessary procedure for conducting the credit and background check begins with the RE Manager obtaining a completed Proposer Information Form from each proposer in order to gather reference and credit and background information for such proposer. The Proposer Information Form includes an authorization to order a credit background report and check financial references. The RE Manager should provide the requisite information to the RED’s credit reference service, currently Kentech Consulting, Inc., 477 Madison Avenue, 6<sup>th</sup> floor, New York, New York 10022 (phone: 718-683-9944; website: <http://www.ekentech.com>), and order a credit background report from such service. Typically this process takes two (2) to three (3) weeks.

In the case of a proposed sale, the primary evidence of a prospective purchaser’s financial capability is such prospective purchaser’s ability and willingness to put at risk a substantial down payment (typically equal to 10% of the purchase price). However, the RE Manager should nonetheless seek evidence of each prospective purchaser’s ability to finance the balance of the purchase price, recognizing that such evidence is likely to take the form of expressions of interest and indicative terms from prospective equity owners and lenders, as opposed to definitive commitments.

In the case of a lease:

- (a) except in special circumstances with the approval of the Director, Leasing & Acquisitions (as, for example, where the tenant makes a substantial pre-payment of rent or funds a substantial improvement of substantial value to the MTA), the prospective tenant should be required to demonstrate that it is ready and able to post cash or a letter of credit as a security deposit in the amount of three (3) times the projected monthly rent for the fifth year of the lease term;
- (b) the prospective tenant should be required to furnish a business plan, including pro forma projections of income and expense, that demonstrates that the tenant will be able to afford to pay the proposed rent from its operating revenues;



METROPOLITAN TRANSPORTATION AUTHORITY  
REAL ESTATE DEPARTMENT  
POLICIES AND PROCEDURES FOR THE LEASING-OUT  
AND SALE OF REAL PROPERTY

- (c) if the proposed rent is substantially higher than the RED’s estimate of fair market value, then (unless the tenant is itself a creditworthy entity or will make improvements that would have substantial residual value to the MTA if the lease were to be terminated for non-payment of rent) the tenant’s obligation to pay such rent should be personally guaranteed by a creditworthy principal of the tenant;
  
- (d) alternatively, if the projected rent is not substantially higher than the RED’s estimate of fair market value, it will suffice for a creditworthy principal of the tenant to provide a so-called “good guy” guaranty, pursuant to which the guarantor guarantees the payment of rent through the date that is six (6) months after the date on which the tenant surrenders the premises (or such guaranty may be dispensed with entirely if the tenant itself is creditworthy); and
  
- (e) if the tenant is to be required to undertake and pay for substantial capital improvements, the tenant should be required to post security for the completion (and payment of the costs) of such improvements, which security may take the form of (i) a personal guaranty from a creditworthy principal of the tenant, or (ii) a letter of credit (the amount of which may be periodically reduced as construction costs are paid by the tenant).

It is in light of the foregoing requirements that the financial information provided by proposers should be evaluated by RED staff.

## **CHAPTER VII – BOARD APPROVAL PROCESS**

**Scope** – This chapter reviews the process for the preparation of Conditional Designation Letters and Finance Committee Staff Summaries and for the obtaining of MTA Board approval of sale and leasing-out transactions recommended by the RED. All proposals to sell or lease out MTA Agency property must be reviewed by the Finance Committee, and no such sale or lease can become effective until and unless the MTA Board (acting upon the recommendation of the Finance Committee) has specifically authorized such sale or lease, except as permitted in Policy 33 (adopted by the MTA Board in November, 2013). Policy 33 allows the RED to award a standard retail lease to the proposer who offered the highest guaranteed rent without a Finance Committee Staff Summary or MTA Board Approval provided that (i) there were at least 3 proposers and (ii) it is later listed in a chart in the Finance Committee book.

### **A. Conditional Designation Letters**

When the RED has determined that it wishes to accept the proposal of a prospective tenant to lease MTA Agency property or of a prospective purchaser to purchase MTA Agency property (whether pursuant to the Lease/Sale RFP Process or pursuant to the Lease/Sale Negotiation Process), the RE Manager should prepare a conditional designation letter for execution by the Director, Real Estate and counter-signature by such prospective tenant or purchaser (a “Conditional Designation Letter”; see Figure 22 for an example). Such letter should spell out the terms of the proposed transaction with as much specificity as possible under the circumstances, not in the body of the letter itself but by incorporating by reference the most recent written materials (typically a signed Parcel Information Sheet or Term Sheet and signed Rent Proposal) that have been updated, if required, to embody the agreements that the RED believes have been reached to date with respect to such transaction. Each Conditional Designation Letter must stipulate that it does not constitute a legally binding agreement insofar as the MTA is concerned and that it is subject to MTA Board approval.

Typically, in the case of a lease, the RED requires each proposer to deposit with the MTA, at the time they counter-sign and return a Conditional Designation Letter, earnest money in the amount of the security deposit that will ultimately be required under the applicable lease. Except as the Director, Leasing & Acquisitions may otherwise determine, such earnest money deposit should be in the amount of three (3) times the proposed monthly rent in the fifth lease year.

All earnest money checks and W-9 forms should be forwarded by the RE Manager to RED Tenant Management, which should make a record of such checks and then transmit such checks for deposit at Carver Federal Savings Bank. The proposer’s earnest money deposit may be held in a non-interest bearing account until such time as the lease is executed, at which time it will be applied toward the security deposit. If the selected proposer fails to enter into a lease, such proposer’s earnest money deposit may be retained by the MTA, in its discretion.

METROPOLITAN TRANSPORTATION AUTHORITY  
REAL ESTATE DEPARTMENT  
POLICIES AND PROCEDURES FOR THE LEASING-OUT  
AND SALE OF REAL PROPERTY

March 2017

CHAPTER VII – BOARD APPROVAL PROCESS

Page 32

The submission of earnest money may be waived for a given RFP by the Director, Leasing & Acquisitions.

Once an Authorization Memo approving a proposed disposition has been signed, a lease or contract of sale executed by the prospective tenant or purchaser may serve in place of the Conditional Designation Letter. Each such lease (other than a standard retail lease that is governed by Policy 33) or contract must stipulate that it is not a legally binding agreement insofar as the MTA is concerned and that it is subject to MTA Board approval.

If a proposer or purchaser fails to sign a Conditional Designation Letter or subsequently sign a lease or contract of sale, the RE Manager must write a “dead deal” memorandum explaining the reason why the transaction was not completed. The memo must be delivered to the applicable Deputy Director with copies distributed to the Director, Leasing & Acquisitions, the Director, Leasing, Acquisitions & Operations, the Senior Deputy Director, Tenant Management and the Yardi database administrator (to ensure the transaction account is properly closed and the applicable rentable Unit inventory is shown as available).

## **B. Staff Summaries**

After the prospective purchaser or tenant counter-signs the Conditional Designation Letter or returns a signed lease or contract of sale, the RE Manager should prepare a Staff Summary (unless not required pursuant to MTA Board-approved policy, including Policy 33) for Finance Committee approval. The following is the sequence of steps for preparation of the Staff Summary. This process typically takes approximately five (5) weeks and results in a presentation to and discussion with the Finance Committee. A detailed description of the Staff Summary process is contained in the *Staff Summary Procedure* available in the “Staff Summaries” folder in RED’s shared drive.

1. The assigned Executive Secretary distributes a schedule of Finance Committee and MTA Board meeting dates to all RED staff. This schedule includes deadlines for the submission of Staff Summaries.
2. The RE Manager submits a project title to his/her Deputy Director for review, and then to the assigned Executive Secretary who is responsible for RED’s Finance Committee agenda.
3. The RE Manager prepares a first draft of the Staff Summary, using the RED’s standard form (Figure 23). Details such as the following should be included as appropriate:
  - Finance Committee meeting date
  - MTA Agency involved

METROPOLITAN TRANSPORTATION AUTHORITY  
REAL ESTATE DEPARTMENT  
POLICIES AND PROCEDURES FOR THE LEASING-OUT  
AND SALE OF REAL PROPERTY

March 2017

CHAPTER VII – BOARD APPROVAL PROCESS

Page 33

- Purchaser or tenant name
- Location (street address and/or block and lot)
- Activity (use)
- Action requested (approval, extension of term, etc.)
- Term (years)
- Renewal options (if any)
- Space (size/square feet, configuration, etc.)
- Compensation (rent or sales price)
- Termination rights
- Security deposit (if any)
- Guarantor (if any)
- Insurance (if any)
- Required improvements (if any)
- Comments

The comments section should review the justification for the selection of the proposed tenant or purchaser, and should include the number of proposals received (if the purchaser or tenant was selected via an RFP), the names of any proposers that were disqualified and the reasons why, the present values of the guaranteed compensation offered by each responsive and responsible proposer, the discount rate used to calculate such present values, and, if the responsible and responsive proposer with the highest such present value was not selected, an explanation as to why a different proposer was selected.

4. The applicable Deputy Director, the Director, Leasing & Acquisitions, the Director, Leasing, Acquisitions & Operations, the Director, Real Estate and MTA Legal review the draft and make changes as they see fit.
5. MTA executive staff (General Counsel, Chief of Staff and Chief Financial Officer) review and make changes as they see fit.
6. The Director, Real Estate signs the Staff Summary and MTA executive staff then approves by affixing their initials.
7. The completed Staff Summary is submitted along with the remainder of the RED's Finance Committee agenda package for printing.

### **C. Board Approval**

The RE Manager and his or her Deputy Director should be present during the Finance Committee discussion in order to help answer questions as needed. The Finance Committee may

METROPOLITAN TRANSPORTATION AUTHORITY  
REAL ESTATE DEPARTMENT  
POLICIES AND PROCEDURES FOR THE LEASING-OUT  
AND SALE OF REAL PROPERTY

---

March 2017

CHAPTER VII – BOARD APPROVAL PROCESS

Page 34

---

instruct the RED staff to make changes in the Staff Summary as reflected in the minutes of the Finance Committee meeting. Any such changes must be made to the Staff Summary prior to submission to the full MTA Board. If the transaction is recommended by the Finance Committee, the RE Manager should update RED's Yardi database with the Finance Committee approval date and the transaction is included in the Finance Committee's report to the MTA Board. Once the MTA Board has approved the transaction, the RE Manager should enter the MTA Board approval date (or in the case of a standard retail lease governed by Policy 33, the date listed in the MTA Finance Committee Book pursuant to such policy) into Yardi.

**D. SEQRA Compliance**

As indicated above, RED staff must consult and coordinate with MTA Legal to ensure that, before the MTA Board takes action to approve any sale or leasing-out transaction, the requirements of SEQRA have been satisfied to the extent such requirements are applicable to such transaction. Depending on the circumstances, the MTA Board may need to make certain SEQRA-related determinations before it takes such action. Prior to submitting an Authorization Memo for any transaction, the RE Manager should, in consultation with MTA Legal, determine what, if any, SEQRA requirements must be satisfied and whether and how such requirements need to be addressed in the applicable Staff Summary.

## **CHAPTER VIII - PREPARATION OF FORMAL AGREEMENTS**

**Scope** - This chapter reviews procedures relating to the preparation of definitive legally-binding agreements.

**Objective** - To develop a fully executable agreement as well as provide documentation of the approval and revision of such agreement.

**Responsibilities** - The RE Manager has primary responsibility for the preparation of the draft agreement, preparing the Document Approval Form (“DAF”) and soliciting input from the applicable Deputy Director, RED Tenant Management, the Director, Leasing & Acquisitions and MTA Legal.

**Procedures** - The necessary procedures for preparing the lease or sale agreement include drafting the agreement and obtaining Legal Department approval and tenant concurrence with the written agreement.

### **A. Drafting of Formal Agreement**

Prior to or following the acceptance of the terms of the agreement by the MTA Board, the RE Manager should, in consultation with MTA Legal, prepare a first draft of a formal agreement based on the Conditional Designation Letter, the form of lease provided with the RFP (if applicable), and a draft or the Board-approved Staff Summary, accompanied by the Authorization Memo and Document Approval Form. Such draft must be based on a form previously approved by MTA Legal. MTA Legal must be consulted and provide appropriate guidance if no previously approved form of agreement can readily be identified or deemed applicable for the transaction.

### **B. Internal Review**

Once the RE Manager has prepared such draft, it is routed to the applicable Deputy Director for review, followed sequentially by either the Director, Real Estate Operations or Senior Deputy Director, Tenant Management Unit (depending on the nature of the agreement), then to the Director, Leasing & Acquisitions and on to the assigned attorney at MTA Legal for their respective reviews and comments. A draft agreement may not be sent to the prospective purchaser or tenant until such internal review has been completed and the form of agreement has been approved.

### **C. Document Approval Form**

The Document Approval Form is to be used for documenting revisions and approvals (see Figure 24). The Document Approval Form, along with supporting documentation, should be routed

with the draft agreement for all internal RED reviews, comments and approvals. The Document Approval Form itself does not travel to the Law Department during the review process. However, the date of sending the agreement to the Legal Department is to be noted on the form and resides in the tenant file. The Tenant ID # from Yardi should be included on the Document Approval Form, if applicable.

**D. Execution By Purchaser or Tenant**

Once the required internal review has been completed, the RE Manager should send the proposed documentation to the prospective purchaser or tenant for execution. Should the prospective purchaser or tenant request changes, the RE Manager should present such requested changes to his or her Deputy Director, the Director, Leasing & Acquisitions and/or MTA Legal for discussion, as needed. Once the agreement is finalized, the prospective purchaser or tenant should be directed to execute at least three (3) original counterparts of the agreement and return them to the RE Manager.

**E. Execution By Director, Real Estate**

Once the agreed-upon documentation has been executed by the tenant or purchaser, the RE Manager should use the Document Approval Form to send it (by way of his or her Deputy Director, the Director, Leasing & Acquisitions and MTA Legal) to the Director, Real Estate for execution on behalf of the applicable MTA Agency.

**F. Required Deliveries**

In addition to the executed copies of the agreement, the RE Manager should obtain the following from the purchaser or tenant:

1. Any required security deposit, to the extent, if any, not already deposited with the MTA, and any required personal guarantees of payment and/or performance, including any required guaranty of completion with respect to required improvements.
2. In the case of a lease, the first month's rent.
3. In the case of a lease when possession is intended to be delivered at the commencement of the term, an insurance certificate evidencing coverage as required by the lease. This item must be delivered to the RE Manager prior to possession being granted. The RE Manager should make an initial inspection of the certificate to verify that the amounts specified match those in the agreement, and that all the additional insureds as required under the agreement are named on the certificate, that the address of the premises is correct and that the named insured is correct as per the

METROPOLITAN TRANSPORTATION AUTHORITY  
REAL ESTATE DEPARTMENT  
POLICIES AND PROCEDURES FOR THE LEASING-OUT  
AND SALE OF REAL PROPERTY

March 2017

CHAPTER VIII – PREPARATION OF FORMAL AGREEMENTS

Page 37

lease. After the transaction file is conveyed to Tenant Management, Tenant Management will be responsible for forwarding the insurance certificate to MTA Risk Management for further review and acceptance.

**Note:** Insurance for construction is due upon approval of plans and prior to commencement of any work.

All checks should be forwarded to Tenant Management immediately upon receipt. Copies of all the items referred to in this chapter should be maintained in the Tenant File.

**G. Proposer's Failure to Execute**

If a proposer has held a proposed agreement for more than two (2) weeks, the RE Manager should send a letter to the proposer, UPS Next Day Air, stating that if the agreement is not executed within two (2) weeks the subject property may be offered to another proposer and/or the proposer's offer will be nullified.

Every effort should be made to contact the proposer to identify and resolve any open issues. If the RE Manager judges the proposed tenant's reasons for failure to execute to be valid, an adequate time period should be granted for finalizing and executing the agreement. In no event, however, should the proposed tenant be allowed an inordinate amount of time to complete contract negotiations and satisfy any pre-conditions to contract execution or be allowed to renege on understandings that were reflected in the proposer's proposal or Conditional Designation Letter.

If a proposer purports to withdraw such proposer's proposal or refuses to execute definitive documentation reflecting the terms of the proposal or Conditional Designation Letter, the RED PM, after consulting with his or her Deputy Director, the Director, Leasing & Acquisitions and MTA Legal, should instruct Tenant Management to retain such proposer's earnest money deposit, and in such event Tenant Management should withdraw the deposit and transfer it to the applicable MTA Agency's operating account; provided, however, that the Director, Leasing & Acquisitions may in any event elect to return any earnest money deposit received from any governmental agency or not-for-profit agency. Alternatively, if negotiations have terminated by reason of an impasse over contract terms that were not addressed in the proposal or Conditional Designation Letter, and if the RE Manager and his or her Deputy Director and MTA Legal concur that the proposer has been dealing in good faith, Tenant Management should be directed to return the proposer's deposit with interest, if any.

The RE Manager should take care to maintain contemporaneous notes of all communications that could have a bearing on the determinations that are described in the preceding paragraph.



## **CHAPTER IX - TENANT INFORMATION TRANSFER**

**Scope** - This chapter is designed to assist in preparing lease-related documentation to be forwarded to Information Management and Tenant Management.

**Objective** - To assist in the accurate transfer of pertinent information to Information Management and Tenant Management.

**Responsibilities** - The RE Manager prepares the necessary documentation and communicates the information to Tenant Management and Information Management.

**Procedures** - The necessary procedures for conveying the information are as follows:

### **A. Documentation**

1. If the Director, Leasing & Acquisitions approves the selection, the RE Manager with the assistance of Information Management (which advises the RE Manager of the correct property and unit descriptions), should enter basic proposer information (name, address, property unit) into Yardi to establish a transaction account (“Deal”).
2. Once a tenant has been selected, approved and entered into Yardi as a Deal, the tenant will now appear on Yardi’s Lease Tracking Report. This report may be printed and reviewed by RED management staff at any time (Figure 25).
3. The Director, Real Estate signs all of the copies of the final lease agreement and these are returned to the RE Manager who distributes the signed copies of the agreement as follows:
  - Tenant (1 copy)
  - Tenant Management - (2 copies)
  - MTA Agency (Legal Department, if applicable)
4. The RE Manager assembles or updates the RFP File to include all proposals, rejection letters, copies of interview notes and memos pertaining to the project and forwards to the Information Center. The RE Manager assembles or prepares the Tenant File, which includes the original proposal, all correspondence with the tenant, confirmation letter, two (2) original counterparts of the agreement, Staff Summary, insurance certificate (if required at that time), IRS W-9 form, construction security and Document Approval Form, and attaches the Tenant Control Checklist (Figure 26), which is affixed to the respective project file before forwarding to Tenant Management. Tenant Management is responsible for forwarding this to the Information Center.

METROPOLITAN TRANSPORTATION AUTHORITY  
REAL ESTATE DEPARTMENT  
POLICIES AND PROCEDURES FOR THE LEASING-OUT  
AND SALE OF REAL PROPERTY

March 2017

CHAPTER IX – TENANT INFORMATION TRANSFER

Page 39

The completed file for all new agreements or amendments and changes to existing agreements should immediately be handed over to Tenant Management staff. Within twenty-four (24) hours of when a RE Manager plans to mail a copy of an executed lease agreement to a tenant, the RE Manager should schedule a meeting with Tenant Management staff. At the meeting, Tenant Management staff will verify:

- All items on the tenant file check list are in the file.
- That key qualitative tenant management elements (insurance, rent and security checks, executed routing form and lease) are in the correct amounts and received from the correct party.

If all is in order, Tenant Management staff will enter the “hand-off” date into Yardi. If qualitative elements are not in order, the RE Manager and Tenant Management staff will work together to remedy the matter.

**NOTE:** It is the responsibility of the RE Manager to ensure that no agreement is executed by the Director, Real Estate unless checks are received in the appropriate amounts from the appropriate entity and that initial insurance certificates are received in the limits and coverages contemplated by the lease, if/when applicable.

5. For the Lease/Sale Negotiation Process, the Authorization Memo plus all correspondence, maps and the agreement serves as the Tenant File and is forwarded to Tenant Management.

## **B. Insurance Coordination**

**Note:** If a tenant’s insurance forms are incomplete at the time the Tenant File is forwarded to Tenant Management, a notation as to the status of insurance should be made. The typical reason for uninsured status at the onset of the term is because the tenant is not being granted immediate possession. The tenant will not be granted possession of the premises until active coverage is in place.

## **C. Planning & Construction**

Tenant Management is responsible for the coordination of the construction process from plan submission and approval through completion. The RE Manager will remain available for consultation and provide support to Tenant Management during the term of the tenant’s agreement. Tenant Management is responsible for updating Yardi with respect to all tenant design and construction activity.

METROPOLITAN TRANSPORTATION AUTHORITY  
REAL ESTATE DEPARTMENT  
POLICIES AND PROCEDURES FOR THE LEASING-OUT  
AND SALE OF REAL PROPERTY

---

March 2017

CHAPTER IX – TENANT INFORMATION TRANSFER

Page 40

---

**D. Maintenance of Marketable Property List**

The Deputy Directors are responsible for maintaining the Marketable Property List for their respective areas of responsibility. They are also responsible for using RED's Yardi database to run reports and periodically check active accounts for expiring terms of leased or licensed property to ensure timely marketing of those opportunities is initiated.

## **CHAPTER X - CONSTRUCTION MANAGEMENT**

**Scope** - This chapter provides guidelines for standardized monitoring of the tenant improvement construction process from design through construction completion and the commencement of operation. Responsibility for the tenant design and construction process has been transferred to Tenant Management. The RE Manager is nonetheless responsible for being familiar with the process and is to remain available to provide support and assistance to Tenant Management as/when needed.

**Objective** - To ensure that tenant improvements are efficiently and appropriately completed in compliance with lease terms and with the applicable MTA Agency's architectural, engineering and/or code compliance departments.

**Responsibilities** - The applicable MTA Agency is responsible for approving plans and monitoring and approving the construction of new or altered facilities.

**Procedures** - The necessary procedures for coordinating the construction process include the following:

### **A. Plan Submission**

Tenants submit construction plans for approval by the MTA Agency through the RED (i.e. Tenant Management).

1. Tenant Management, with the assistance of the RE Manager on an as needed basis, is generally responsible for coordinating the approval of design and plans for proposed improvements. After the lease is fully executed, the tenant has a prescribed number of days to submit plans to Tenant Management or its designated receiver. Tenant Management determines if the plans have been completed in accordance with the terms of the agreement and either rejects them for revision or forwards the plans to the appropriate MTA Agency for review. If changes need to be made after the MTA Agency review, the tenant is notified in writing by Tenant Management.
2. Once plans are approved, a plan approval notice is sent to the tenant by Tenant Management and requesting contractor documentation (i.e. construction agreement, work schedule and insurance certificate) for approval and permission to commence construction.
3. As a general rule, the following paragraphs describe how the MTA Agencies administer tenant construction.

**MTA NYCT:** Tenant Management arranges a construction kick-off meeting. Attendees typically include: the tenant, its contractor, subcontractors, the architect or engineer, Tenant Management staff and NYCT Maintenance of Way (“MoW”). MoW is responsible for periodic inspections and for granting approval to open for business. Formal approval, acceptance of the work and issuance of a code compliance certificate concludes the process for NYCT. Tenant Management communicates this information to the tenant.

**MTA LIRR:** LIRR’s Capital Program Management (“CPM”) staff reviews and approves plans. Tenant Management arranges a construction kick-off meeting. Attendees typically include: Tenant Management staff, the tenant, its contractor, subcontractors, the architect or engineer and CPM staff. CPM is responsible for periodic inspections and for granting approval to open for business. Formal approval, acceptance of the work and issuance of a code compliance certificate concludes the process for LIRR. Tenant Management communicates this information to the tenant.

**MTA METRO-NORTH:** Capital Programs (CP) is responsible for issuing a Building Permit and for periodic inspections. Tenant Management coordinates the construction kick-off meeting. Attendees typically include: CP (including the Chief Architect, Engineers and Code Compliance), Tenant Management staff, the tenant, its contractor, subcontractors, the architect or engineer and CP staffs and contractors. CP issues a code compliance certificate upon satisfactory completion of construction. Formal approval, acceptance of the work and issuance of a code compliance certificate concludes the process for CP. Tenant Management communicates this information to the tenant.

## **B. Construction Monitoring**

1. Tenant Management communicates with MTA Agency staff about the status of tenant construction projects. Tenant Management periodically conducts inspections of the premises to monitor the construction progress and ensure the project proceeds according to schedule. Tenant Management is responsible for documenting any delays and the reasons for such delays. Once construction is completed, the applicable MTA Agency is notified that construction is complete and a final inspection is requested.

## **C. Construction Completion**

1. Upon construction completion and approval, Tenant Management arranges the return of the construction security, if applicable.

METROPOLITAN TRANSPORTATION AUTHORITY  
REAL ESTATE DEPARTMENT  
POLICIES AND PROCEDURES FOR THE LEASING-OUT  
AND SALE OF REAL PROPERTY

2. Where an agreement indicates that rent commences upon completion of construction, Tenant Management sends the tenant a rent start notice and commences billing in accordance with the lease.

## CHAPTER XI – NEW YORK STATE PROCUREMENT LOBBYING LAW

**Scope** - This chapter establishes policies and procedures for the implementation of the requirements relating to lobbying with respect to real estate transactions as provided in the State Finance Law and Legislative Law and as amended by Chapter 1 of the Laws of New York of 2005, as amended (the “Procurement Lobbying Law”). The applicable provisions of the Procurement Lobbying Law took effect on January 1, 2006. The Procurement Lobbying Law is a statute enacted by the New York State Legislature and the MTA is obligated to comply with its requirements.

**Objective** - To enhance the public’s confidence in State procurement processes by increasing disclosure requirements for persons attempting to influence a procurement or real estate transaction.

**Responsibilities** – Proposers must not make “Contact” during the Restricted Period with anyone other than the Designated Point(s) of Contact.

**Procedures** - The Procurement Lobbying Law applies to “the purchase, sale or lease of real property or an acquisition or granting of other interest in real property.” Among other things, it restricts certain contacts during the procurement process and requires the MTA to record all such “Contacts” and include them in the transaction record. Violations of the policy regarding permissible contacts must be reported to the appropriate MTA officer and investigated accordingly.

### A. Definitions:

As used in this chapter and as provided in the Procurement Lobbying Law, the following terms have the following meanings:

1. **Contact**: any oral, written or electronic communication with a governmental entity under circumstances where a reasonable person would infer that the communication is *intended to influence* an MTA real estate transaction.
2. **Offeror**: an individual or entity, or any employee, agent or consultant or person acting on behalf of such individual or entity, that contacts the MTA about a real estate transaction during the Restricted Period or that bids, proposes or enters into negotiations with respect to an MTA real estate transaction.
3. **Restricted Period**: the period of time commencing with the earliest written notice, advertisement or solicitation of an RFP or, in the case of a Lease/Sale Negotiation Process transaction, when the RE Manager first solicits a response from a potential lessor or purchaser intending to result in contract of sale or lease, which

METROPOLITAN TRANSPORTATION AUTHORITY  
REAL ESTATE DEPARTMENT  
POLICIES AND PROCEDURES FOR THE LEASING-OUT  
AND SALE OF REAL PROPERTY

solicitation should be in writing, and ending with the final closing of the transaction.

**B.    Applicability:**

1. The Procurement Lobbying Law applies to *all contracts* with an estimated annual expenditure in excess of \$15,000, including, but not limited to, RFPs and agreements entered into via the Lease/Sale Negotiation Process.
2. A transaction is not subject to the provisions of this section if the commencement of the Restricted Period occurred prior to the effective date of the Procurement Lobbying Law, even if the contract is awarded after the effective date.
3. During the Restricted Period, bidders/proposers, or those acting on their behalf, may make only Permissible Contacts with the MTA with regard to a real estate transaction. In addition, bidders/proposers may not attempt to influence a real estate transaction in a way that violates or attempts to violate the ethics provisions of the Public Officers Law Section 73(5), relating to the receipt of gifts intended to influence; and Section 74, which addresses the ethical standards of employees of state agencies (including public benefit corporations), members of the New York State Legislature and Legislative employees.

**C.    Communications Not Prohibited by the Procurement Lobbying Law (“Permissible Contacts”):**

1. A “Contact” (i.e., a communicatoin *intended to* influence a real estate transaction) that is made with a Designated Point of Contact, whether such contact is one of the types of “Contacts” listed in C.2 below or not, or
2. One of the following communications, (all considered “Contacts”), with the Designated Point(s) of Contact OR another agency representative (i.e., an employee of the RED) who is NOT a Designated Point of Contact:
  - a. Proposals: Submission of written proposals in response to an RFP or other solicitation, pursuant to the submission requirements set forth in the solicitation.
  - b. Written Questions: The submission of written questions by a method set forth in the solicitation, advertisement and/or real estate transaction package, when all such questions and responses are to be disseminated to all Offerers who have expressed an interest in the RFP or other solicitation.



METROPOLITAN TRANSPORTATION AUTHORITY  
REAL ESTATE DEPARTMENT  
POLICIES AND PROCEDURES FOR THE LEASING-OUT  
AND SALE OF REAL PROPERTY

- c. Pre-Proposal Conference: Participation in a pre-proposal conference, oral presentation or interview provided for in an RFP.
- d. Complaints: Complaints by an Offerer regarding the failure of a Designated Contact to reply in a timely fashion.
- e. Negotiations: Communications by Offerors, who have been tentatively designated as the prospective tenant or purchaser, provided that such communications are solely for the purpose of negotiating the terms of such designation and/or negotiating the terms of the lease or contract of sale after being notified of such designation.
- f. Review of award: Contacts regarding protests, appeals or other review proceedings before the MTA.
- g. Protests or complaints: Complaints of alleged improper conduct.
- h. Communications between offerers and governmental entities (i.e., state legislature, public authorities, courts) that solely address the determination of responsibility by the MTA of an Offeror.
- i. Contact by a member of the New York State Legislature or legislative staff, when acting in their official capacity, regarding a particular real estate transaction.

In addition and in the absence of the Point of Contact, the Director, Real Estate may authorize another contact within the RED to receive communications on behalf of the Point(s) of Contact.

**D. Communications Prohibited by the Lobbying Law (“Impermissible Contacts”): Any CONTACT that is not a PERMISSIBLE CONTACT as defined above is an “Impermissible Contact” and a violation of the Lobbying Law. To clarify, a communication is an “Impermissible Contact” if *all* of the following are true:**

- i. An Offeror makes an oral, written or electronic communication with a person in an MTA Agency;
- ii. who is not a designated point of contact for the solicitation;
- iii. during the solicitation’s RESTRICTED PERIOD;
- iv. under circumstances that a reasonable person would infer was an attempt to influence that solicitation; and

METROPOLITAN TRANSPORTATION AUTHORITY  
REAL ESTATE DEPARTMENT  
POLICIES AND PROCEDURES FOR THE LEASING-OUT  
AND SALE OF REAL PROPERTY

- v.    in a manner that does not fall under any of the areas considered a PERMISSIBLE CONTACT.

**E.    Recordation of Permissible and Impermissible Contacts:**

1. Permissible Contacts: Upon any Permissible Contact during the Restricted Period, the employee being contacted must obtain the name, address, telephone number, place of employment and occupation of the person or organization making the Contact and whether or not such person (if such person is not the Offeror) or organization was retained, employed or designated by or on behalf of the Offerer to contact the MTA regarding the procurement. Such Permissible Contacts must be recorded on the Report of Contact form (see Figure 27), with the appropriate “Permissible Contact” box checked. The person recording the information makes a copy of the form for themselves, and sends an additional copy to the Director, Real Estate who maintains a central repository of the forms as well as the original to the RE Manager for placement in the Project file.
2. Impermissible Contacts: Any employee of the MTA, including employees outside of the RED, who becomes aware that anyone has violated the Procurement Lobbying Law by making an Impermissible Contact must obtain the name, address, telephone number, place of employment and occupation of the person or organization making the Impermissible Contact and whether or not such person or organization was retained, employed or designated by or on behalf of the Offerer to contact the MTA regarding the procurement and inform the Director, Real Estate and Office of Compliance immediately, using the Report of Contact form, checking the “Impermissible Contact” box (Figure 27).
3. The person recording the information makes a copy of the form for themselves, and sends an additional copy to the Director, Real Estate who maintains a central repository of the forms as well as the original to the RE Manager for placement in the Project file. In addition, the Director, Real Estate will investigate the allegations of Impermissible Contacts. If there is reasonable cause to believe that the allegations are true, the Offerer must be notified of the investigation and given an opportunity to respond to the allegations in accordance with the MTA’s procedure regarding responsibility determinations.
4. The Director, Real Estate must report knowing and willful violations of the Procurement Lobbying Law to the Executive Director of the MTA and the Office of Compliance (“OC”).

METROPOLITAN TRANSPORTATION AUTHORITY  
REAL ESTATE DEPARTMENT  
POLICIES AND PROCEDURES FOR THE LEASING-OUT  
AND SALE OF REAL PROPERTY

**F. Contract Requirements:**

1. All RFP or Lease/Sale Negotiation offering documents must contain the name of the designated contact(s) (the Point(s) of Contact) for that particular procurement.
2. All RFP or Lease/Sale Negotiation offering documents must contain a summary of the requirements of the Procurement Lobbying Law. This summary is contained within Schedule W.
3. Schedule W, the Procurement Lobbying Law Disclosure Statement (Figure 28) must be made a part of, and returned with, the bid/solicitation documents for each real estate transaction covered under the Procurement Lobbying Law. *Failure of a proposer to return a completed Schedule W will deem such proposer as ineligible for award.* Schedule W consists of the following, which satisfy the submission requirements of the Procurement Lobbying Law:
  - a. Affirmation of the Offerer's understanding of, and agreement to comply with, the Procurement Lobbying Law.
  - b. Certification that the information the Offerer has provided the MTA with is complete, true and accurate.
  - c. Disclosure of any findings of non-responsibility made within the previous four (4) years that were due to a violation of the Lobbying Law or as a result of intentionally providing false or incomplete information to a government entity (as defined in the Procurement Lobbying Law). Failure to disclose such prior determinations of non-responsibility will be considered in the determination of responsibility.
  - d. The MTA may confirm the accuracy of the information provided in this disclosure by accessing the list of all Offerers who have been determined to be non-responsible or debarred due to violations of this section, maintained by the OC.

**G. Responsibility Determination:**

1. A finding that an Offerer has knowingly and willfully violated the Procurement Lobbying Law may result in a determination of non-responsibility and the Offerer may not be awarded the lease or sale.
2. The lease or sale may be awarded to an Offerer found non-responsible as a result of a violation of the requirements of this section, if the MTA determines that the award of the license or sale to the Offerer is necessary to protect public property,

METROPOLITAN TRANSPORTATION AUTHORITY  
REAL ESTATE DEPARTMENT  
POLICIES AND PROCEDURES FOR THE LEASING-OUT  
AND SALE OF REAL PROPERTY

health or safety, and that the Offerer is the only source capable of fulfilling the contract within the required timeframe. Such finding must be documented in the transaction file.

3. Any subsequent determination of non-responsibility due to a violation of this section within four (4) years of a determination of non-responsibility will result in the Offerer being debarred from submitting a proposal on or be awarded any real estate contract for four (4) years from the date of the second determination.
4. Compliance with the requirements of the Procurement Lobbying Law and this Procedure will be considered in the overall responsibility determination of the Offerer.

**H. Termination**

1. Each lease or sale contract covered by the Procurement Lobbying Law must contain a provision that authorizes the MTA to terminate any such transaction if any of the certifications provided by the Offerer pursuant to the Procurement Lobbying Law is found to be “intentionally false or intentionally incomplete”.
2. The MTA must include the basis for any action taken pursuant to such termination provision in the transaction record.

METROPOLITAN TRANSPORTATION AUTHORITY  
REAL ESTATE DEPARTMENT  
POLICIES AND PROCEDURES FOR THE LEASING-OUT  
AND SALE OF REAL PROPERTY

---

March 2017

GLOSSARY

Page 50

---

## GLOSSARY

**Authorization Memo:** A memorandum prepared by a RE Manager seeking authorization as required by these Policies and Procedures.

Authorization Memos recommending award pursuant to an RFP require SEQRA check off and signature of the (i) appropriate Deputy Director, (ii) Director, Leasing & Acquisitions, and (iii) Director, Leasing, Acquisitions & Operations.

Authorization Memos recommending award pursuant to the Lease/Sale Negotiation Process require SEQRA check off and the signatures of the (i) appropriate Deputy Director, (ii) Director, Leasing & Acquisitions, (iii) Director, Leasing, Acquisitions & Operations, (iv) MTA Legal and (v) Director, Real Estate.

**Lease/Sale Negotiation Process File:** This file results from the Proposer File and includes the Authorization Memo, the Proposer Information Form, the Conditional Designation Letter, the Staff Summary, the Document Approval Form, two (2) copies of the definitive agreement(s), the insurance certificate and the W-9 form. This file is assembled by the RE Manager and resides in the Information Center.

**Conditional Designation Letter:** As described in Chapter VII.

**Contact:** As defined in Chapter XI.

**Deputy Director:** The Deputy Director of the RED who has primary responsibility for RED leasing & acquisition activities relating to property of a particular MTA Agency.

**Document Approval Form:** As described in Chapter VIII.

**Finance Committee:** The Finance Committee of the MTA Board (or any other committee of the MTA Board that may assume responsibility for oversight of the RED).

**GCT Leasing Guidelines:** As defined in the Introduction.

**Information Center:** The area of the RED office devoted to maintaining central files, VAL maps, Sanborn maps, tax maps, station diagrams and other documents that are regularly needed and must be permanently retained.

**Information Management or IMU:** The information management unit of the RED.

**Inquiries:** As defined in Chapter I.

METROPOLITAN TRANSPORTATION AUTHORITY  
REAL ESTATE DEPARTMENT  
POLICIES AND PROCEDURES FOR THE LEASING-OUT  
AND SALE OF REAL PROPERTY

---

March 2017

GLOSSARY

Page 51

---

**IPIS:** IPIS is a database that contains a list of properties owned by the City of New York. Information concerning tax status, descriptive property history and any *in rem* action is also available. Access to this information is provided via CityNet Computer Hook-up. Certain items from this information can also be found in Yardi for each City-owned property.

**Iran Divestment Act:** The New York State Office of General Services maintains a list of persons who have been determined to engage in investment activities in Iran (“the List”), as defined in the act. Under Public Authorities Law § 2879-c, Iranian Energy Sector Divestment, public benefit authorities may not enter into or award a contract, including a real estate contract, unless it obtains a certification from a proposer that it is not on the list.

**Lease/Sale RFP Process:** The leasing-out or selling of real property of the MTA pursuant to an RFP.

**Lease/Sale Negotiation Process:** The leasing-out or selling real property of the MTA other than pursuant to an RFP.

**Licensing-Out Policies and Procedures:** As defined in the Introduction.

**Marketable Property List:** A list of all properties available for marketing by the RED. This list should be updated and reviewed regularly to determine the marketability of properties.

**MTA:** The Metropolitan Transportation Authority.

**MTA Agency:** As defined in the Introduction.

**Net Present Value or NPV:** As defined in Chapter III.

**New York City Department of Finance Data:** The Department of Finance maintains all ownership records for the five boroughs. The records include information relating to current ownership, mortgages, zoning, location, age of improvements and assessed real property value. The data are accessed via select personal computers within the RED.

**Parcel Information Sheet:** As described in Chapter II.

**Procurement Lobbying Law:** As defined in Chapter XI.

**Proposer File:** The Proposer File is assembled by the RE Manager and contains the original signed proposal, all relevant correspondence with the selected proposer, the Conditional Designation Letter, the Staff Summary, the Document Approval Form, two (2) copies of the definitive agreement(s), the insurance certificate and the W-9 form. This file resides in the Information Center.

METROPOLITAN TRANSPORTATION AUTHORITY  
REAL ESTATE DEPARTMENT  
POLICIES AND PROCEDURES FOR THE LEASING-OUT  
AND SALE OF REAL PROPERTY

---

March 2017

GLOSSARY

Page 52

---

**Proposer Information Form (PIF):** The Proposer Information Form provides detailed information with respect to proposers and their principals and Affiliates, including addresses, past dealings with state and municipal agencies, business history and experience, references, available lines of credit and assets and liabilities, and includes a business plan with financial projections and a credit check authorization. The PIF is used for both the Lease/Sale RFP Process and the Lease/Sale Negotiation Process.

**Real Estate Data, Inc. (REDI):** REDI is a resource of property ownership, tax maps and tax status on microfilm and land books, organized by block and lot and cross-referenced by name and address. REDI is available through the RED library. Any of the Metro-North lines outside of the five boroughs are available only in book form.

**Recordation of Contact:** As defined in Chapter XI

**RED:** The MTA real estate department.

**RE Manager:** A RED staffer who reports to a Deputy Director.

**Restricted Period:** As defined in Chapter XI.

**RFP or Request for Proposals:** A request for proposals issued in accordance with these Policies and Procedures.

**RFP File:** The RFP file results from the Project File after the Tenant File is assembled, and contains all relevant information regarding the RFP, including all proposals and correspondence with proposers and the RE Manager notes regarding the project. This file resides in the Information Center.

**RFP Mailing List:** The mail log is maintained in Yardi by an assigned executive secretary and is comprised of a list of persons who have expressed an interest in leasing property from the MTA.

**Sanborn and Land Maps:** Sanborn and Land Maps are organized by county and municipality; parcels may be identified by location. Sanborn is available for the five boroughs only. In addition to the type of information that REDI provides, the Sanborn provides brief building improvement information, subway stations, utility/municipality easements, condominiums and any air rights.

**SEQRA:** As defined in Chapter II.

**Staff Summary:** The document by which the RED summarizes a transaction for the purpose of obtaining MTA Board authorization to enter into such transaction.

METROPOLITAN TRANSPORTATION AUTHORITY  
REAL ESTATE DEPARTMENT  
POLICIES AND PROCEDURES FOR THE LEASING-OUT  
AND SALE OF REAL PROPERTY

---

March 2017

GLOSSARY

Page 53

---

**Tenant File:** The Tenant File contains all documentation relating to a given tenant, including correspondence, agreements and plans. The files for current tenants and recently (within the past 2 years) terminated tenants are maintained in the Information Center. All other terminated files are maintained at MTA's offsite storage facility and are subject to MTA's document retention policy.

**Tenant Management or TMU:** The tenant management unit of the RED.

**Term Sheet:** A sheet or sheets listing the terms of the agreement, requirement improvements, and other information about the transaction.

**Type I Transaction:** As defined in Chapter V.

**Type II Transaction:** As defined in Chapter V.

**Valuation (VAL) Maps:** The VAL Maps indicate Metro-North and LIRR ownership right of way and indicate property rights along the railroad lines. They also contain limited historical information and identify current tenancies. The RE Manager should check the VAL Maps to verify that property is owned by the MTA and update the maps as new leases are consummated. These maps are located in the Information Center.

**W-9 Form:** Federal tax form W-9.

**Work Sheet:** As described in Chapter II.

**Yardi:** Yardi Systems Inc. is a Santa Barbara, CA based computer-systems and data-processing company that provides property management/ accounting software and maintenance services to the RED. In this document "Yardi" refers to the computer program developed and customized specifically for the MTA.



## **GCT LEASING GUIDELINES**

(As Originally Adopted November 18, 2009, and as Revised by Modifications approved by the MTA Board on November 13, 2013 and March 26, 2014)

### **GUIDELINES FOR SELECTION OF TENANTS FOR GRAND CENTRAL TERMINAL**

#### **Application**

These guidelines (“Guidelines”) apply to the selection of lessees for leases of commercial, retail spaces at Grand Central Terminal (“GCT”). They do not apply to the selection of licensees at GCT, which is governed by policies adopted by the Board in November, 2009. (The principal difference between a lease and license for these purposes is that a license is terminable at the discretion of the licensor for any reason upon short notice, typically 60 days.) These Guidelines supplement the MTA Real Estate Department Policies and Procedures For the Leasing-Out and Sale of Real Property, adopted by the Board on March 23, 2016 as such policies and procedures may be amended from time to time (the “General Policies and Procedures”). In the event of any conflict between these Guidelines and the General Policies and Procedures, these Guidelines will govern for GCT commercial retail leases.

#### **Purpose and Objective**

The purpose of these Guidelines is to provide the MTA Real Estate Department (the “RED”) with standards and procedures for issuing requests for proposals (“RFPs”) and for choosing tenants to recommend for selection for leases of commercial space at GCT. They are intended to further the MTA’s objective of maximizing the long-term aggregate revenues that the MTA derives from the leasing of the commercial space at GCT (taken as a whole), while making available to commuters and others an appropriate mix of goods and services and maintaining a level of quality commensurate with GCT’s status as an historic landmark and one of New York City’s greatest public spaces (the “Objective”). While the Objective is broader than maximizing guaranteed minimum rent for any particular space, these Guidelines establish a rebuttable presumption that the Objective will be furthered by the proposal that is “responsive” and “responsible” (as determined by the procedure described below) and offers the highest Unadjusted Guaranteed Rent Amount (as such term is defined below). Therefore, any staff recommendation to award a lease to a responsive and responsible proposer other than the responsive and responsible proposer that has offered the highest Unadjusted Guaranteed Rent Amount must be made by a selection committee and supported by a rationale that is articulated in the Staff Summary presented to the Board in connection with such recommendation.

METROPOLITAN TRANSPORTATION AUTHORITY  
REAL ESTATE DEPARTMENT  
POLICIES AND PROCEDURES FOR THE LEASING-OUT  
AND SALE OF REAL PROPERTY

March 2017

ATTACHMENT 1

Page 55

These Guidelines are intended only for the guidance of officers and employees of the MTA. Nothing contained in these Guidelines is intended, or shall be construed, to confer upon any person or entity any right, remedy, claim or benefit under, or by reason of, any requirement or provision of these Guidelines. Except to the extent prohibited by law, any provision of these Guidelines may be waived by the Board (by ratification or otherwise) or by the Chairman and Chief Executive Officer.

### **Requests For Proposals**

All opportunities to lease commercial space at GCT (except spaces that have monetary values below the legal threshold requiring a competitive disposition process) must be offered pursuant to competitive RFPs prepared by the Director of GCT Development, approved by the Director of Real Estate, and advertised in accordance with the General Policies and Procedures. More than one space may be offered pursuant to a single RFP.

For each space being offered, an RFP may identify preferred, mandatory, disfavored and/or prohibited uses, as and where appropriate, to encourage and/or ensure an appropriate mix of merchandise and services in various sections of GCT or to otherwise further the Objective. If an RFP identifies a preferred or mandatory use, it shall make clear whether such use is mandatory or merely preferred; if an RFP identifies a disfavored or prohibited use, it shall make clear whether such use is prohibited or merely disfavored.

Without limiting the generality of the foregoing, each RFP must reference (and each prospective tenant must be provided with access to) the generally-applicable design criteria and rules and regulations for commercial spaces at GCT, and state that compliance with such design criteria and rules and regulations is mandatory.

The Director of GCT Development, with the concurrence of the Director of Real Estate, may elect to exclude national chains and/or discount merchandisers from specified areas of GCT, such as the Dining Concourse, the Lexington Passage and/or the Grand Central Market, or GCT as a whole, provided that they reasonably determine that doing so will further the Objective. If required, Each Staff Summary presented to the Board when the award of the proposed lease for a space is submitted in due course for Board approval shall set forth any preferred, mandatory, disfavored, or prohibited uses applicable to such space; provided, however, that the aforementioned design criteria and rules and regulations need only be referenced, not set forth in full, in such Staff Summaries.

### **Selection Criteria**

The following are the selection criteria (the "Selection Criteria") that shall be used to evaluate proposals:

METROPOLITAN TRANSPORTATION AUTHORITY  
REAL ESTATE DEPARTMENT  
POLICIES AND PROCEDURES FOR THE LEASING-OUT  
AND SALE OF REAL PROPERTY

March 2017

ATTACHMENT 1

Page 56

Selection Criterion A: Direct Economic Benefit to the MTA (Maximum 70 Points).

Each evaluator shall:

First: Start with the Unadjusted Guaranteed Rent Amount for each proposal, as determined by the Technical Consultants as described below. The “Unadjusted Guaranteed Rent Amount” for any proposal is the present value of the guaranteed minimum rent set forth in such proposal, discounted to the first day of the lease term using a discount rate of 6%.

Second: Determine the Guaranteed Rent Adjustment Factor for each proposal and multiply it by the Unadjusted Guaranteed Rent Amount for such proposal, to determine the “Adjusted Guaranteed Rent Amount” for such proposal. The “Guaranteed Rent Adjustment Factor” is an adjustment factor intended to reflect any concerns that the evaluator may have with respect to the certainty of payment of the Unadjusted Guaranteed Rent Amount, taking into account (1) the evaluator’s assessment of the viability of the prospective tenant’s business plan, (2) the evaluator’s assessment of the creditworthiness of the prospective tenant (or any proposed guarantor) and (3) any security deposits and/or letters of credit that will be required (as set forth in the applicable RFP). The Guaranteed Rent Adjustment Factor may be as high as 1.00 (which means the evaluator has no uncertainty about the Unadjusted Guaranteed Rent Amount being received by MTA) and as low as 0.50 (which means the evaluator has great uncertainty about the Unadjusted Guaranteed Rent Amount being received by MTA), provided that if a proposal includes commercially unreasonable backloading of rent then the adjustment factor may be as low as zero to protect MTA’s interests.

Third. Take the Unadjusted Percentage Rent Amount for each proposal, as determined by the Technical Consultants. The “Unadjusted Percentage Rent Amount” for any proposal is the present value of the projected percentage rent as set forth in the proposal, discounted to the first day of the lease term using a discount rate of 6%.

Fourth. Determine the Percentage Rent Adjustment Factor for each proposal and multiply it by the Unadjusted Percentage Rent Amount for such proposal to determine the “Adjusted Percentage Rent Amount” for such proposal. The “Percentage Rent Adjustment Factor” is an adjustment factor intended to reflect the evaluator’s assessment of the likelihood of percentage rent being received. The Percentage Rent Adjustment Factor may be as high as 0.50 (which means the evaluator has no uncertainty about the Unadjusted Percentage Rent Amount being received by MTA) and as low as zero (which means the evaluator has great uncertainty about the Unadjusted Percentage Rent Amount being received by MTA).

Fifth. Add the Adjusted Guaranteed Rent Amount for each proposal to the Adjusted Percentage Rent Amount for such proposal to determine the “Adjusted Total Rent Amount” for such proposal.

METROPOLITAN TRANSPORTATION AUTHORITY  
REAL ESTATE DEPARTMENT  
POLICIES AND PROCEDURES FOR THE LEASING-OUT  
AND SALE OF REAL PROPERTY

March 2017

ATTACHMENT 1

Page 57

Sixth. Award the proposal with the highest Adjusted Total Rent Amount (the “Highest Adjusted Total Rent Amount”) seventy (70) points for the Selection Criterion A score.

Seventh. Calculate the Selection Criterion A score for each of the other proposals by multiplying 70 times a fraction, the numerator of which is such proposal’s Adjusted Total Rent Amount and the denominator of which is the Highest Adjusted Total Rent Amount.

Selection Criterion B: Indirect Benefit to the MTA (Maximum 30 Points).

Each evaluator shall determine the likelihood that each prospective tenant will support the elements of the Objective not directly reflected in Selection Criteria A by attracting other desirable prospective tenants to GCT, and/or customers for other current or prospective tenants at GCT. The Selection Criterion B score shall range from 30 (which means that the evaluator believes that the prospective tenant will have an extremely significant positive effect on the elements of the Objective not directly reflected in Selection Criterion A) to zero (which means that the evaluator believes that the prospective tenant will have no positive effect on the elements of the Objective that are not directly reflected in Selection Criterion A).

Total Selection Criterion Score.

The total Selection Criteria score (the “Total Selection Criteria Score”) for each proposal shall be the sum of that proposal’s Selection Criterion A score plus that proposal’s Selection Criterion B score.

### **Procedures for Evaluation of Proposals**

Step 1: Technical Evaluation by Consultants:

All proposals received from prospective tenants shall will be independently evaluated by MTA’s Leasing Agent (currently Newmark Grubb Knight and Frank) and MTA’s Retail Property Manager for GCT (currently, Jones Lang LaSalle LaSalle) or such other outside consultants as may from time to time be retained by the MTA to provide leasing and retail property management services at GCT (individually, the “Technical Consultant” or collectively, the “Technical Consultants”).

Each Technical Consultant shall provide the Director of GCT Development with an independent technical evaluation (a “Technical Evaluation”) of each such proposal.

If either Technical Consultant considers that a proposal is non-responsive, such Technical Consultant shall promptly raise that issue with the Director of GCT Development and the Director of GCT Development shall undertake the responsiveness review in Step 2 for such proposal. If after such responsiveness review (and any corrective steps permitted in Step 2) the

METROPOLITAN TRANSPORTATION AUTHORITY  
REAL ESTATE DEPARTMENT  
POLICIES AND PROCEDURES FOR THE LEASING-OUT  
AND SALE OF REAL PROPERTY

March 2017

ATTACHMENT 1

Page 58

Director of GCT Development determines that such proposal is not responsive, such proposal shall be disqualified and no further technical evaluation shall be performed.

Each Technical Evaluation of each proposal shall include:

- (i) responsiveness to the RFP;
- (ii) a calculation of the Unadjusted Guaranteed Rent Amount;
- (iii) a calculation of the Unadjusted Percentage Rent Amount;
- (iv) a description of any known adverse prior experience (such as arrears, delinquent payments, and failure to comply with lease or license terms) pertaining to business relationships of the prospective tenant or any Affiliate of the prospective tenant (as such term is described below), after due inquiry into the GCT leasing records and the records of the RED's Tenant Management Unit;
- (v) any other matters relating to the responsibility of the proposer;
- (vi) an assessment of the viability of the prospective tenant's business plan (taking into account, as appropriate, the prospective tenant's concept, capabilities and past experience), the creditworthiness of the prospective tenant (or any proposed guarantor) and any security deposits and/or letters of credit that will be required (as set forth in the applicable RFP);
- (vii) an assessment of the likelihood of receiving any proposed percentage rent; and
- (viii) an assessment of the likelihood that the prospective tenant will indirectly further the Objective, by attracting other desirable prospective tenants to GCT, and/or customers for other current or prospective tenants at GCT.

Step 2: Determination of Responsiveness:

The second step after receipt of proposals shall be a determination of responsiveness by the Director of GCT Development using the standard criteria set forth in the General Policies and Procedures (including such prospective tenant's failure to provide all completed forms, supplemental information and signatures required by the applicable RFP). A proposal received in response to an RFP should be deemed to be "not responsive" (and thus disqualified and eliminated from further consideration by the Director of GCT Development) if such proposal (a) contemplates uses that such RFP identified as prohibited uses or (b) fails to provide for uses that such RFP identified as mandatory uses. A prospective tenant may not be disqualified by reason of such prospective tenant having proposed uses that the RFP identified as merely "disfavored" or by reason of having failed to propose uses that the RFP identified as merely "preferred"

METROPOLITAN TRANSPORTATION AUTHORITY  
REAL ESTATE DEPARTMENT  
POLICIES AND PROCEDURES FOR THE LEASING-OUT  
AND SALE OF REAL PROPERTY

March 2017

ATTACHMENT 1

Page 59

(although that may properly be taken into account in scoring proposals, as described above under the heading “Selection Criterion B”). If the Director of GCT Development determines that it is in MTA’s best interests to permit a proposer to modify its proposal after the due date to correct deficiencies that would otherwise cause it to be determined to be non-responsive, such proposer shall be afforded such opportunity.

In making the foregoing determination, the Director of GCT Development may rely on the Technical Evaluations.

Step 3: Initial Determination of Responsibility:

The third step is an initial determination of responsibility by the Director of GCT Development. The Director of GCT Development may determine that a prospective tenant is not responsible for any reason contemplated by the General Policies and Procedures (including unsuitability due to a record of criminality, lack of integrity, violations of the Procurement Lobbying Law (State Finance Law §§ 139-j and 139-k)).

A prospective tenant shall be deemed “not responsible” (and thus disqualified and eliminated from consideration by the Director of GCT Development) if (a) such prospective tenant, or any Affiliate of such prospective tenant, owes, by reason of an amount due not more than five years prior to the date of the RFP, in excess of \$10,000 to the MTA, (b) such amount is not (in the view of the MTA Legal Department) the subject of a bona fide dispute and (c) such amount has remained unpaid for more than 90 days; provided, however, that before disqualifying any prospective tenant by reason of any such non-payment, the Director of GCT Development must provide written notice of such non-payment to such prospective tenant and afford such prospective tenant a period of not less than 30 days to pay the amount that remains unpaid. Late payment, as opposed to non-payment, shall not constitute grounds for disqualification of an otherwise responsible prospective tenant (although it may be taken into account in scoring proposals, as described above under the heading “Selection Criterion A”). A prospective tenant may be deemed “not responsible” (and thus may be disqualified and eliminated from consideration by the Director of GCT Development) if such prospective tenant, or an Affiliate of such prospective tenant, (a) is the current tenant in the space being offered by the RFP or any other retail space at GCT, and (b) refuses to agree to amend its current lease for such space to include security provisions identical to those in the draft lease issued as part of the RFP.

If a proposer is deemed to be not responsible, no further consideration of that proposal will be undertaken.

“Affiliate” of a prospective tenant means any entity that (a) controls or owns more than a 30% equity interest in such prospective tenant or (b) is controlled by, or more than a 30% equity interest in which is owned by or for the benefit of, either (i) such prospective tenant or (ii) any person (or any member of the immediate family (i.e., spouse, father, mother, brother, sister,

METROPOLITAN TRANSPORTATION AUTHORITY  
REAL ESTATE DEPARTMENT  
POLICIES AND PROCEDURES FOR THE LEASING-OUT  
AND SALE OF REAL PROPERTY

March 2017

ATTACHMENT 1

Page 60

children, and stepchildren) of any person) or entity that controls, or owns more than a 30% equity interest in, such prospective tenant.

In making the foregoing determination, the Director of GCT Development may rely on the Technical Evaluations.

Step 4: Evaluation by the Director of GCT Development:

The Director of GCT Development shall thereafter complete his/her written evaluation of all responsive proposals received from responsible prospective tenants based on the Selection Criteria, using both the numerical scoring and comment sections of an evaluation and scoring form substantially in the form attached hereto as Appendix A (the "Evaluation Form"). In completing such Evaluation Form, the Director of GCT Development must exercise his/her own best independent judgment taking into account the Technical Evaluations.

If the proposal with the highest Total Selection Criteria Score is also the proposal with the highest Unadjusted Guaranteed Rent Amount, then, without convening a selection committee, the Director of Real Estate may (i) provided at least three proposals were received, award the lease to the proposer who offered the highest Unadjusted Guaranteed Rent Amount without a Finance Committee Staff Summary or MTA Board Approval provided that it is later listed in a chart in the Finance Committee book consistent with Policy 33 adopted by the MTA Board in November, 2013, applicable to the award of leases generally under the General Policies and Procedures or (ii) submit to the MTA Board Finance Committee a Staff Summary recommending award of the lease to such proposer and seeking authorization of the MTA Board for such action. However, if the proposal with the highest Total Selection Criteria Score is not the proposal with the highest Unadjusted Guaranteed Rent Amount or if two proposals provide for the same highest Unadjusted Guaranteed Rent Amount, then the Director of GCT Development must convene a selection committee (the "Selection Committee") consisting of the Director of GCT Development, the Director of Real Estate Operations or his or her designee and a representative of Metro-North Commuter Railroad Company appointed by the Executive Vice President or his or her designee.

Step 5: Evaluation by Selection Committee, If Necessary

If a Selection Committee is required, the members of the Selection Committee shall be furnished with the Technical Evaluations. Each Selection Committee member other than the Director of GCT Development shall complete his/her written evaluation of all responsive proposals received from responsible prospective tenants based on the Selection Criteria, using both the numerical scoring and comment sections of the Evaluation Form. In completing such Evaluation Form, each such Selection Committee member must exercise his/her own best independent judgment taking into account the Technical Evaluation.

METROPOLITAN TRANSPORTATION AUTHORITY  
REAL ESTATE DEPARTMENT  
POLICIES AND PROCEDURES FOR THE LEASING-OUT  
AND SALE OF REAL PROPERTY

March 2017

ATTACHMENT 1

Page 61

A meeting of the Selection Committee shall thereafter convene. At such meeting, the members of the Selection Committee may properly discuss the applicable proposals among themselves and/or with the Consultants. After such discussion is completed, each of the three members may prepare supplemental Evaluation Forms taking into account any such consultation and discussion. Each supplemental Evaluation Form shall include a narrative explanation for the basis of any scoring changes from the scoring in that Selection Committee member's original Evaluation Form. The Total Selection Criteria Score on the three final Evaluation Forms (which will be the original Evaluation Form for each Selection Committee member who does not submit a supplemental Evaluation Form; and shall be the supplemental Evaluation Forms for the other Selection Committee members) shall be added together and the proposals ranked based on such aggregate scoring.

**Step 6: Determination of Whether to Present Recommendation to the Board**

The Director of Real Estate may (at any time after an RFP is issued) determine, in consultation with the General Counsel of MTA, that it is in the best interest of the MTA to reject all proposals because the process did not yield sufficiently advantageous proposals, if the Director of Real Estate believes that issuing a new RFP would materially further the Objective, or because it has been determined, since the applicable RFP was issued, that the applicable space is better utilized for a non-commercial purpose, in which case the Director of Real Estate shall so report to the Board's Finance Committee. Otherwise, the Director of GCT Development shall make a final determination of responsibility with respect to the prospective tenant with the highest Total Selection Criteria Score, based on any new information received after the initial determination of responsibility, and if such prospective tenant continues to be responsible the Director of Real Estate shall (i) provided at least three proposals were received, award the lease to the proposer who offered pursuant to Policy 33 of the General Policies and Procedures adopted by the MTA Board in November, 2013, or (ii) submit to the MTA Board Finance Committee a Staff Summary requesting authorization to enter into a lease with the prospective tenant who did not offer the highest Unadjusted Guaranteed Rent Amount, but had the highest Total Selection Criteria Score as determined by a Selection Committee. If such recommended prospective tenant is not the proposer with the highest Unadjusted Guaranteed Rent Amount, then such Staff Summary must include a reasonably detailed explanation of the factors that the Selection Committee took into account in recommending such proposal.



METROPOLITAN TRANSPORTATION AUTHORITY  
REAL ESTATE DEPARTMENT  
POLICIES AND PROCEDURES FOR THE LEASING-OUT  
AND SALE OF REAL PROPERTY

---

March 2017

Page 62

---

Figure 1 – [Intentionally deleted]

METROPOLITAN TRANSPORTATION AUTHORITY  
REAL ESTATE DEPARTMENT  
POLICIES AND PROCEDURES FOR THE LEASING-OUT  
AND SALE OF REAL PROPERTY

---

March 2017

Page 63

---

Figure 2 – Property Subject to RFP

METROPOLITAN TRANSPORTATION AUTHORITY  
REAL ESTATE DEPARTMENT  
POLICIES AND PROCEDURES FOR THE LEASING-OUT  
AND SALE OF REAL PROPERTY

March 2017

Page 64

EXAMPLE OF A PROPERTY SUBJECT TO RFP LETTER

(DATE)

(NAME)  
(STREET ADDRESS)  
(CITY), (STATE) (ZIP CODE)

Dear (NAME):

Thank you for the interest you expressed in leasing property owned or managed by the Metropolitan Transportation Authority (MTA). Please be advised that it is the policy of the MTA to offer lease opportunities through a request for proposals (RFP) process.

IF you would like to be on our RFP mailing list, please complete the enclosed mailing list form and return it to my attention at your earliest convenience.

If you have further questions, you may reach me at (212) (878- \_\_\_\_). Again, thank you for your interest in MTA property.

Sincerely,

(STAFF NAME)

Enclosure (RFP Brochure and Figure2)

cc: (Director of Real Estate Operations)  
(Deputy Director, Leasing & Acquisition)  
File  
Chron

METROPOLITAN TRANSPORTATION AUTHORITY  
REAL ESTATE DEPARTMENT  
POLICIES AND PROCEDURES FOR THE LEASING-OUT  
AND SALE OF REAL PROPERTY

---

March 2017

Page 65

---

Figure 3 – Acknowledgement Letter

METROPOLITAN TRANSPORTATION AUTHORITY  
REAL ESTATE DEPARTMENT  
POLICIES AND PROCEDURES FOR THE LEASING-OUT  
AND SALE OF REAL PROPERTY

March 2017

Page 66

EXAMPLE OF ACKNOWLEDGEMENT LETTER

(When substantial research and/or agency review must take place, if Real Estate Manager in his/her judgment believes a research or agency review is forthcoming, this acknowledgement can be foregone. Telephone contact is then deemed appropriate.)

(DATE)

(NAME)  
(STREET ADDRESS)  
(CITY), (STATE) (ZIP CODE)

Re: LIRR Property West of Centerport Road, Huntington, New York (PROPERTY  
CODE) (UNIT CODE)

Dear (NAME):

The Real Estate Department of the Metropolitan Transportation Authority (MTA) is in receipt of your request for an agreement to use Long Island Rail Road (LIRR) property at the referenced location, for the receipt, storage and sale of masonry supplies.

Please be advised that this request has been forwarded to the LIRR for review. Upon receipt of its comments, you will be notified accordingly.

Should you have any questions, I can be reached at (212) (878-\_\_\_\_).

Sincerely,

(NAME)  
Real Estate Manager  
Real Estate Department

cc: (Director of Real Estate Operations)  
(Deputy Director, Leasing & Acquisition)  
File  
Chron

METROPOLITAN TRANSPORTATION AUTHORITY  
REAL ESTATE DEPARTMENT  
POLICIES AND PROCEDURES FOR THE LEASING-OUT  
AND SALE OF REAL PROPERTY

---

March 2017

Page 67

---

Figure 4 – Property Not Owned/Managed by MTA

METROPOLITAN TRANSPORTATION AUTHORITY  
REAL ESTATE DEPARTMENT  
POLICIES AND PROCEDURES FOR THE LEASING-OUT  
AND SALE OF REAL PROPERTY

March 2017

Page 68

EXAMPLE OF PROPERTY UNAVAILABLE FOR LEASE LETTER

(DATE)

(NAME)  
(STREET ADDRESS)  
(CITY), (STATE) (ZIP CODE)

Re: LIRR Property – Block 6499, Lot 22, Brooklyn, New York (PROPERTY CODE,  
UNIT CODE)

Dear (NAME):

With reference to your letter dated January 7, 2008, regarding the use of LIRR property,  
it appears that the LIRR is not the owner of the property you wish to use.

If I can be of further assistance to you, please call me at (212) (878- \_\_\_\_).

Sincerely,

(NAME)  
Real Estate Manager  
Real Estate Department

Enclosure (RFP Brochure and Figure2)

cc: (Director of Real Estate Operations)  
(Deputy Director, Leasing & Acquisition)  
Chron

METROPOLITAN TRANSPORTATION AUTHORITY  
REAL ESTATE DEPARTMENT  
POLICIES AND PROCEDURES FOR THE LEASING-OUT  
AND SALE OF REAL PROPERTY

---

March 2017

Page 69

---

Figure 5 – Property Unavailable for Lease



METROPOLITAN TRANSPORTATION AUTHORITY  
REAL ESTATE DEPARTMENT  
POLICIES AND PROCEDURES FOR THE LEASING-OUT  
AND SALE OF REAL PROPERTY

March 2017

Page 70

EXAMPLE OF PROPERTY UNAVAILABLE FOR LEASE LETTER

(DATE)

(NAME)  
(STREET ADDRESS)  
(CITY), (STATE) (ZIP CODE)

Re: LIRR Property – Flatbush Avenue, Brooklyn, New York (Block 11216499, Lot 1)  
(PROPERTY CODE, UNIT CODE)

Dear (NAME):

Thank you for the interest you expressed in leasing property owned or managed by the Metropolitan Transportation Authority (MTA). As a follow-up to our phone conversation, please be advised that the referenced site is currently under rehabilitation and will not be available until winter 2010.

If I can be of further assistance to you, please call me at (212) (878-\_\_\_\_). Again, thank you for your interest in MTA property.

Sincerely,

(NAME)  
Senior Real Estate Manager  
Real Estate Department

Enclosure (RFP Brochure and Figure2)

cc: (Director of Real Estate Operations)  
(Deputy Director, Leasing & Acquisition)  
Chron

METROPOLITAN TRANSPORTATION AUTHORITY  
REAL ESTATE DEPARTMENT  
POLICIES AND PROCEDURES FOR THE LEASING-OUT  
AND SALE OF REAL PROPERTY

---

March 2017

Page 71

---

Figure 6 – Letter Denying Request

METROPOLITAN TRANSPORTATION AUTHORITY  
REAL ESTATE DEPARTMENT  
POLICIES AND PROCEDURES FOR THE LEASING-OUT  
AND SALE OF REAL PROPERTY

March 2017

Page 72

EXAMPLE OF LETTER DENYING REQUEST

(DATE)

(NAME)  
(STREET ADDRESS)  
(CITY), (STATE) (ZIP CODE)

Re: Parking Request – West of Endo Boulevard, Garden City, New York  
Property Code \_\_\_\_\_ Unit Code \_\_\_\_\_

Dear (NAME):

Thank you for the interest you expressed in leasing Long Island Rail Road (LIRR) property at the above-referenced location. I regret to inform you that your request has been denied at this time, as this property is being retained for future freight operations..

If I can be of further assistance to you, please contact me at (212) (878-\_\_\_\_).

Sincerely,

(NAME)  
Real Estate Manager  
Real Estate Department

cc: (Director of Real Estate Operations)  
(Deputy Director, Leasing & Acquisition)  
File  
Chron

METROPOLITAN TRANSPORTATION AUTHORITY  
REAL ESTATE DEPARTMENT  
POLICIES AND PROCEDURES FOR THE LEASING-OUT  
AND SALE OF REAL PROPERTY

---

March 2017

Page 73

---

Figure 7 – Parcel Information Sheet

METROPOLITAN TRANSPORTATION AUTHORITY  
 REAL ESTATE DEPARTMENT  
 POLICIES AND PROCEDURES FOR THE LEASING-OUT  
 AND SALE OF REAL PROPERTY

**MTA Parcel Information Sheet**

[enter location, e.g., 2 Broadway Newsstand]

[enter the RFP #, e.g., RFP BG0912]

Page 1 of 5

<b>Location:</b>	[enter location description. If a station, enter complete and correct station name]
<b>Property Code / Unit Code:</b>	[enter Yard/ property code/unit number]
<b>[Landlord OR Licensor]:</b>	[ MTA New York City Transit ("NYCT") or MTA Long Island Rail Road ("LIRR") or MTA Metro-North Railroad ("Metro-North") or MTA Bridges & Tunnels or Metropolitan Transportation Authority ("MTA")]
<b>Site Description:</b>	[describe space, e.g., "Ground floor lobby newsstand (inside security checkpoints) at 2 Broadway."]
<b>Station Ridership:</b>	[ "N/A" or enter: Average weekday ridership: [enter number] Average Saturday ridership: [enter number or "N/A"] Average Sunday ridership: [enter number or "N/A"]
<b>Size:</b>	[enter size of retail or other area in square feet, and separately show the size of any storage areas] [Add if applicable: "A [plan or drawing] of the space is attached hereto as Exhibit A."]
<b>Term:</b>	[enter number of years of initial or total term, if no option] years
<b>Options:</b>	[enter option(s) and number of years and "at [licensee/lessee] OR landlord's discretion" or put "N/A" ] [years]
<b>Termination:</b>	[Put "N/A" if purchase] Landlord may terminate [lease/license] upon [enter number of days] days' notice to tenant [enter "at will" or for "corporate or transportation purposes"].  [Use the following if an amortization provision is being provided, otherwise delete: "If the lease is terminated by landlord within [enter number] years after the commencement date, landlord will reimburse tenant for the documented unamortized reasonable costs of its permanent improvements, amortized on a straight line basis over [enter number of years] years.
<b>Suggested Annual [Rent or Compensation or Purchase Price]:</b>	[enter annual rent or compensation] and add "for Year 1 of the term, or enter purchase price]
<b>Suggested Average Annual Rate of Increase:</b>	[enter percentage, i.e., "3%" or "5%" or "N/A"]
<b>Additional Rent:</b>	
Electricity fee	[ "N/A" or "Tenant shall pay a fee of \$[number] per [month or year] for electricity as additional rent. This amount shall increase annually by 3%."]

METROPOLITAN TRANSPORTATION AUTHORITY  
 REAL ESTATE DEPARTMENT  
 POLICIES AND PROCEDURES FOR THE LEASING-OUT  
 AND SALE OF REAL PROPERTY

**MTA Parcel Information Sheet**

[enter location, e.g., 2 Broadway Newsstand]

[enter the RFP #, e.g., RFP BG0912]

Page 2 of 5

Trash collection fee	["N/A" or "Tenant shall pay a fee of \$[number] per [month OR year] as a trash collection fee. This amount shall increase annually by 3%."]
<b>[Security Deposit or Down Payment]:</b>	Upon signing of [lease/license], three months' [rent or compensation] based on the fifth year's [rent or compensation].
<b>Limited Personal Guarantee:</b>	[Landlord/Licensor] reserves the right to require [tenant/licensee] to provide a personal guarantor with sufficient financial resources, in [landlord/licensor's] opinion, to guarantee payment of [rent/compensation] through [tenant's/licensee's] surrender of premises in case of default, plus an additional six months of rent from the date of surrender.
<b>Limited Corporate Guarantee:</b>	If in [landlord's/licensor's] opinion the tenant has insufficient financial resources, [landlord/licensor] reserves the right to require the parent company of [tenant/licensee] to provide a corporate guarantee of payment of [rent/compensation] through [tenant's/licensee's] surrender of premises in case of default, plus an additional six months of rent from the date of surrender.
<b>Completion Guarantee:</b>	[Landlord/Licensor] reserves the right to require [tenant/licensee] to provide a personal or corporate guarantor, with sufficient financial resources, in [landlord's/licensor's] opinion, to guarantee the complete performance of the required improvements and other improvements that [tenant/licensee] has proposed and [landlord/licensor] has approved
<b>[Required OR Permitted] Use[s]:</b>	[enter required or permitted uses – match what is in form of lease or license, if a form is being used – DO NOT put in an exhaustive list of items, like exist in newsstand agreements]
<b>Prohibited Items and Uses:</b>	[enter prohibited items and uses – match what is in form of lease or license, if a form is being used]
<b>Minimum Hours:</b>	[enter minimum hours for weekdays and add "except for weekends and MTA holidays", or whatever required operating days and times are.] [Tenant/Licensee] may remain open at other times subject to [landlord's/licensor's] approval.
<b>Sales Reporting [optional]:</b>	[Tenant/Licensee] shall provide Landlord with gross sales figures on a monthly or annual basis, if required by landlord.
<b>Condition of Premises:</b>	Premises will be delivered "as is." [Landlord/Licensor/Grantor] anticipates making no improvements to the premises or the systems serving the premises.
<b>Utilities:</b>	
Electrical	The space is served by a [enter size, e.g., "60 amp single phase" or 100 amp three-phase, etc.] electrical service and [is/is not] sub-metered or separately metered.
Fire Alarm	["N/A" or describe the fire alarm situation and what if anything will need

METROPOLITAN TRANSPORTATION AUTHORITY  
 REAL ESTATE DEPARTMENT  
 POLICIES AND PROCEDURES FOR THE LEASING-OUT  
 AND SALE OF REAL PROPERTY

**MTA Parcel Information Sheet**

[enter location, e.g., 2 Broadway Newsstand]

[enter the RFP #, e.g., RFP BG0912]

Page 3 of 5

	to be done, i.e., "connection to a central station located at [location] via rigid conduit is required"]
Sprinkler	["N/A" or describe sprinkler situation and what if anything will need to be done with it]
Plumbing	["N/A" or describe plumbing situation and what if anything will need to be done with it]
Natural Gas	["N/A" or describe natural gas situation and what if anything will need to be done with it]
Domestic Water	["N/A" or describe water situation and what if anything will need to be done with it]
Sanitary Service	["N/A" or describe the sanitary service (i.e., "3" sanitary line with ½ hp 120v 1ph ejector pump"), and what if anything will need to be done with it]
HVAC	["N/A" or describe HVAC situation and what if anything will need to be done with it]
Telecommunications	["N/A" or describe the telephone and/or other telecommunications (i.e., cable or other data lines) situation and what if anything will need to be done with it; also, if applicable, indicate the designated provider such as "Telephone service is available through Verizon"]]

**Condition of Existing Equipment and Utilities:** Tenant is responsible for repair, maintenance, and replacement of all equipment located in or exclusively serving the Premises. No warranties or representations are made regarding the condition of existing equipment or utilities, or the suitability of existing equipment and utilities for [licensee's or tenant's] proposed use.

**Required Improvements:** [Tenant/Licensee] shall be responsible, at its sole cost and expense, for the completion of all improvements required for [tenant's or licensee's] use and as required by [landlord or licensor]

The minimum improvements required by [landlord/licensor] are as follows:

1. [enter required improvement]
2. [enter required improvement]
3. [enter required improvement]
4. [enter required improvement]
5. [enter required improvement]
6. [add additional numbers to list if necessary to describe additional discrete improvement items]

Improvements must meet the requirements of the New York State Uniform Fire Safety and Building Code. [Landlord/Licensor] or its

METROPOLITAN TRANSPORTATION AUTHORITY  
REAL ESTATE DEPARTMENT  
POLICIES AND PROCEDURES FOR THE LEASING-OUT  
AND SALE OF REAL PROPERTY

March 2017

Page 77

**MTA Parcel Information Sheet**

[enter location, e.g., 2 Broadway Newsstand]

[enter the RFP #, e.g., RFP BG0912]

Page 4 of 5

designee shall review all proposed improvements or later alterations for compliance with aforementioned code.

**Compliance with Codes and Ordinances:**

In addition to compliance with the New York State Fire Safety and Building Code, [tenant/licensee] shall comply with all other applicable codes and ordinances, including health regulations, and obtain all required permits.

**Estimated Cost of Improvements:**

Each proposer should take into consideration the requirements for high quality design, materials and workmanship, as well as compliance with all applicable regulations and codes when preparing plans and estimating construction costs.

We strongly encourage each proposer to obtain professional construction estimates before submitting his or her proposal. If actual construction costs exceed estimated costs, the [tenant/licensee] should not anticipate any relief from [landlord/licensor]. The [tenant/licensee] will, in any event, be responsible for completing all required improvements.

**Insurance:**

The lease agreement will specify the insurance requirements and will generally include, at a minimum: Commercial general liability insurance in an amount not less than [\$1,000,000 or \$2,000,000 or \$3,000,000], workers' compensation insurance, and all-risk property insurance policy.

[Enter if applicable or delete: "Railroad protective liability insurance in the amount of [enter amount] will be required of [tenant's/licensee's] contractor"]

**Assignment & subletting:**

[enter "N/A" or "Subject to [landlord's/licensor's] approval, in its sole discretion. However, [landlord/licensor] will not be unreasonable in approving an assignment to an individual or corporation with similar or superior financial position to [tenant's/licensee's] position at the time of award of this lease, in real terms, so long as such individual or corporation demonstrates it has the resources and capability of maintaining the [enter kind of space, i.e., "retail space"] to the standard the [landlord/licensor] requires.

**Broker:**

Any tenant broker is to be paid by the tenant.

**Site Visit:**

[enter time], [enter day of week], [enter date including year]



METROPOLITAN TRANSPORTATION AUTHORITY  
REAL ESTATE DEPARTMENT  
POLICIES AND PROCEDURES FOR THE LEASING-OUT  
AND SALE OF REAL PROPERTY

**MTA Parcel Information Sheet**

[enter location, e.g., 2 Broadway Newsstand]

[enter the RFP #, e.g., RFP BG0912]

Page 5 of 5

This Parcel Information Sheet must be signed by an officer of the prospective [tenant/licensee].

Prospective [tenant/licensee]: \_\_\_\_\_

Authorized Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

METROPOLITAN TRANSPORTATION AUTHORITY  
REAL ESTATE DEPARTMENT  
POLICIES AND PROCEDURES FOR THE LEASING-OUT  
AND SALE OF REAL PROPERTY



**Metropolitan Transportation Authority**

**[Rent or Compensation Proposal Form]**

[RFP number]

[RFP name]

Shown below is the suggested annual [rent or compensation]. Proposers must specify their proposed annual rent for each year of the [lease or license]. Proposed [rent or compensation] should include a minimum [3% or 5% or other] annual escalation over the term of the agreement.

**Suggested Annual [Rent or Compensation]**      \$ \_\_\_\_\_  
for Year 1:

<b>Proposed Annual [Rent or Compensation]:</b>	Year 1	\$ _____
	Year 2	\$ _____
	Year 3	\$ _____
	Year 4	\$ _____
	Year 5	\$ _____
	Year 6	\$ _____
	Year 7	\$ _____
	Year 8	\$ _____
	Year 9	\$ _____
	Year 10	\$ _____
	<b>Option Term[s]</b>	Year 11

To add additional option years, place cursor in "Option Term" box above, click the "Layout" tab on the toolbar, and click the "Insert Below" icon to add a line below. Enter "\$" signs as necessary.

To delete the "Option Term[s]" line and additional lines, if necessary, place cursor in the "Option Term[s]" box above, click the "Layout" tab, and click the "Delete" icon, then the

METROPOLITAN TRANSPORTATION AUTHORITY  
REAL ESTATE DEPARTMENT  
POLICIES AND PROCEDURES FOR THE LEASING-OUT  
AND SALE OF REAL PROPERTY



"Delete rows" line

This [Rent or Compensation] Proposal must be signed by an officer of the prospective [tenant or licensee]:

Prospective [Tenant or Licensee]: \_\_\_\_\_

Authorized Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

METROPOLITAN TRANSPORTATION AUTHORITY  
REAL ESTATE DEPARTMENT  
POLICIES AND PROCEDURES FOR THE LEASING-OUT  
AND SALE OF REAL PROPERTY

March 2017

Page 81



**Metropolitan Transportation Authority**

**Purchase Price Proposal Form**

[RFP number]  
[RFP name]

Shown below is the suggested purchase price for the property interest[s] offered for sale in this RFP. Proposers must specify their proposed purchase price and amount of proposal deposit where indicated below.

**Suggested Purchase Price:** \$ \_\_\_\_\_

In the space below write in the amount of your proposal to purchase the property interest[s] offered for sale in this RFP:

**Proposed Purchase Price:** \$ \_\_\_\_\_

A proposal deposit of [ ]% of the proposed purchase price must be submitted along with this proposal. If selected, this deposit will become your down payment.

**Amount of proposal deposit:** \$ \_\_\_\_\_

**This Purchase Price Proposal must be signed by an officer of the prospective Purchaser:**

Prospective Purchaser: \_\_\_\_\_

Authorized Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

METROPOLITAN TRANSPORTATION AUTHORITY  
 REAL ESTATE DEPARTMENT  
 POLICIES AND PROCEDURES FOR THE LEASING-OUT  
 AND SALE OF REAL PROPERTY



**Metropolitan Transportation Authority**

**[Rent or Compensation Proposal Form]**

[RFP number]

[RFP name]

Shown below is the suggested annual [rent or compensation]. Proposers must specify their proposed annual rent for each year of the [lease or license]. Proposed [rent or compensation] should include a minimum [3% or 5% or other] annual escalation of Base Rent over the term of the agreement.

**Suggested Annual Base Rent for Year 1:** \$ \_\_\_\_\_

**Proposed Annual Rent:**

	<b>Base Rent</b>	<b>Percentage Rent</b>
Year 1	\$ _____	Plus _____% of gross sales over breakpoint of \$ _____
Year 2	\$ _____	Plus _____% of gross sales over breakpoint of \$ _____
Year 3	\$ _____	Plus _____% of gross sales over breakpoint of \$ _____
Year 4	\$ _____	Plus _____% of gross sales over breakpoint of \$ _____
Year 5	\$ _____	Plus _____% of gross sales over breakpoint of \$ _____
Year 6	\$ _____	Plus _____% of gross sales over breakpoint of \$ _____
Year 7	\$ _____	Plus _____% of gross sales over breakpoint of \$ _____
Year 8	\$ _____	Plus _____% of gross sales over breakpoint of \$ _____
Year 9	\$ _____	Plus _____% of gross sales over breakpoint of \$ _____
Year 10	\$ _____	Plus _____% of gross sales over breakpoint of \$ _____

METROPOLITAN TRANSPORTATION AUTHORITY  
REAL ESTATE DEPARTMENT  
POLICIES AND PROCEDURES FOR THE LEASING-OUT  
AND SALE OF REAL PROPERTY



**Metropolitan Transportation Authority**

**Option Term[s]**

Year 11

\$

Plus \_\_\_\_\_% of gross sales over  
breakpoint of \$ \_\_\_\_\_

To add additional option years, place cursor in "Option Term" box above, click the "Layout" tab on the toolbar, and click the "Insert Below" icon to add a line below. Enter "\$" signs as necessary.

To delete the "Option Term[s]" line and additional lines, if necessary, place cursor in the "Option Term[s]" box above, click the "Layout" tab, and click the "Delete" icon, then the "Delete rows" line.

**This [Rent or Compensation] Proposal must be signed by an officer of the prospective [tenant or licensee]:**

Prospective [Tenant or Licensee]: \_\_\_\_\_

Authorized Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

METROPOLITAN TRANSPORTATION AUTHORITY  
REAL ESTATE DEPARTMENT  
POLICIES AND PROCEDURES FOR THE LEASING-OUT  
AND SALE OF REAL PROPERTY

Figure 8 – Market Analysis Work Sheet

METROPOLITAN TRANSPORTATION AUTHORITY  
REAL ESTATE DEPARTMENT  
POLICIES AND PROCEDURES FOR THE LEASING-OUT  
AND SALE OF REAL PROPERTY

March 2017

Page 85

**FACT SHEET**  
Parcel # 1  
Market Analysis Work Sheet  
RFP #

Property Description  
Property Code \_\_\_\_\_ Unit Code \_\_\_\_\_ Parcel# \_\_\_\_\_  
Address:  
Brooklyn, New York

**Comparables – For rental of vacant land**

Source	Location	S/SF
	Bushwick/Brooklyn	\$1.18
	Bushwick/Brooklyn	\$0.80- \$1.20
	Bushwick/Brooklyn	\$1.38

**Comments:** As mentioned above, there are approximately three buildings situated on this site which appear to be structurally unsound, and therefore would require a major capital investment to either refurbish or demolish. As such, the recommended asking compensation for this site is \$1.00 per square foot.

**Asking Compensation or Comparable Value:** \$1.00 per square foot (\$100,000.000 annually)

**Recommended Term:** Five (5) years



METROPOLITAN TRANSPORTATION AUTHORITY  
REAL ESTATE DEPARTMENT  
POLICIES AND PROCEDURES FOR THE LEASING-OUT  
AND SALE OF REAL PROPERTY

---

March 2017

Page 86

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Figure 9 – RFP Cover Letter

METROPOLITAN TRANSPORTATION AUTHORITY  
REAL ESTATE DEPARTMENT  
POLICIES AND PROCEDURES FOR THE LEASING-OUT  
AND SALE OF REAL PROPERTY

March 2017

Page 87

347 Madison Avenue  
New York, NY 10017-3739  
212 878-7000 Tel



[enter date]

Re: Request For Proposals: [enter RFP number] - [enter RFP name]

Dear Prospective [Tenant or Licensee or Purchaser]:

Thank you for your interest in this offering of [MTA New York City Transit or MTA Long Island Rail Road or MTA Metro-North or MTA Bridges and Tunnels] property for [lease or license or sale] at [enter description of property].

Attached is the entire Request for Proposals ("RFP") package, also available on the internet at:

[http://mta.info/mta/realestate/retail\\_leasing.html](http://mta.info/mta/realestate/retail_leasing.html)

**DEADLINE: Proposals must be received by 5:00 p.m. on [enter day of week, day of month, month name, and year].** Proposals submitted after such deadline will, at the MTA's sole discretion, only be considered if the MTA determines that such consideration is in the public interest. Each proposal must include the items listed in the "Submission Requirements" section below. Proposals not including all requested items may be rejected.

In addition to this letter, the RFP package includes the following components:

1. *Parcel Information Sheet[s]*. This section provides information about [each of] the location[s] offered and the date and time that the location[s] may be viewed.
2. *Request for Proposals—Rules and Regulations*. This section contains regulations, information and instructions that relate to the submission of proposals. Please take the time to read this section carefully and refer to it as you fill out the Proposer Information Form.
3. *[Rent or Compensation or Purchase Price] Proposal Form*. This form is to be used to specify the [rent or compensation or purchase price] that the prospective [tenant or licensee or purchaser] proposes to pay to the MTA for the applicable space.
4. *The Proposer Information Form*. Please take the time to read the instructions carefully and ensure that all questions are answered completely. Also, note that the last page must be notarized. [Edit PIF by crossing out irrelevant sections not applicable to the parcel that would only confuse bidders]
5. *U.S. Internal Revenue Service Form W-9, Request for Taxpayer Identification Number and Certification*.
6. *New York State Finance Law Sections 139-j and 139-k ("Lobbying Law") Disclosure Statement*.

METROPOLITAN TRANSPORTATION AUTHORITY  
REAL ESTATE DEPARTMENT  
POLICIES AND PROCEDURES FOR THE LEASING-OUT  
AND SALE OF REAL PROPERTY

March 2017

Page 88

Request for Proposal  
Cover Letter Page 2 of 3

7. *Iran Divestment Act Certification.*

8. *[Delete the following if N/A] Standard Format for Architectural Drawing Submissions.* These guidelines are for the tenant and tenant's architect and contractor to use in preparing design plans following *[lease or license]* execution.

9. *[Delete the following if N/A] Form of [Lease or License or Contract of Sale].*

SUBMISSION REQUIREMENTS: Please provide the following information with your submission (all forms are available for download from the MTA's website listed above):

- Fully completed and signed *Parcel Information Sheet*
- Fully completed and signed *[Rent or Compensation or Purchase Price] Proposal Form.*
- Fully completed and signed *Proposer Information Form.* Notarize the last page of where indicated.
- Fully completed and signed *U.S. Internal Revenue Service Form W-9, Request for Taxpayer Identification Number and Certification.*
- Fully completed and signed *NYS Finance Law Sections 139-j and 139-k Certification.*
- Fully completed and signed *Iran Divestment Act Certification.*
- *Proposal Deposit* in the amount [of three months' of Year 5 *[Rent or compensation, (i.e., three times the amount proposed for Year 5) OR [enter]% of the proposed purchase price]*. Proposals submitted with multiple checks drawn on different accounts may be rejected. You should enclose money orders or checks drawn on a single account.
- *[Include the following only if applicable]* Please list material objections, if any, to the *Form of [Lease or License or Contract]* in a cover letter or on a separate sheet of paper. If you do not list any objections, MTA will proceed on the basis that you have no objections to the *Form of [Lease or License or Contract]* and will reserve the right to award the *[lease or license or contract]* to another bidder, should you later raise such objections.

Four hard copies of submissions should be delivered in sealed envelopes by the date listed above to:

Ms. Odette Berg  
Executive Secretary  
Metropolitan Transportation Authority  
347 Madison Avenue, 8th Floor  
New York, NY 10017  
RFP Number: *[enter RFP number]*  
Parcel Number[s]: *[enter number(s) or delete line if none]*  
Location: *[enter location(s) or delete line if none]*

METROPOLITAN TRANSPORTATION AUTHORITY  
REAL ESTATE DEPARTMENT  
POLICIES AND PROCEDURES FOR THE LEASING-OUT  
AND SALE OF REAL PROPERTY

March 2017

Page 89

Request for Proposal  
Cover Letter Page 3 of 3

All bid proposals shall be publicly disclosed in the agenda for the meeting of the Finance Committee of the MTA Board at which the transaction will be considered for approval.

The MTA reserves the right, at any time, to modify or waive requirements of this RFP.

Please be aware that there are rules regarding permissible contact (oral, written, and electronic communications) with the MTA during a public procurement process. Effective January 1, 2006, New York State Lobbying Law requires that all contact with the MTA relating to this RFP must be made through the following persons/designated Points of Contact. Contact with anyone else at the MTA regarding this RFP may result in ineligibility to participate in the RFP.

The designated Points of Contact are:

Odette Berg  
Tel. (212) 878-1043  
Email: oforesti@mtahq.org  
(for general inquiries regarding the administrative aspects of the RFP only)

[enter project manager information]  
(for questions regarding the specific content of the RFP or RFP procedures and rules)

Sincerely,

[enter project manager name]  
MTA Real Estate Department

METROPOLITAN TRANSPORTATION AUTHORITY  
REAL ESTATE DEPARTMENT  
POLICIES AND PROCEDURES FOR THE LEASING-OUT  
AND SALE OF REAL PROPERTY

---

March 2017

Page 90

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Figure 10 – Proposer Information Form

METROPOLITAN TRANSPORTATION AUTHORITY  
 REAL ESTATE DEPARTMENT  
 POLICIES AND PROCEDURES FOR THE LEASING-OUT  
 AND SALE OF REAL PROPERTY



**Proposer Information Form**

The following information is provided to the Metropolitan Transportation Authority ("MTA") Real Estate Department in connection with the submittal of a proposal to lease or license space. The acceptance by MTA of this Proposer Information Form does not constitute an offer by the MTA or any affiliate or subsidiary thereof. Please attach additional sheets as necessary. **Please print or type.**

<b>MTA Property</b>	Parcel Number (if applicable) _____	Proposed Use _____
	Property Address _____	

<b>Proposer Information (if a sole proprietor)</b>	Name _____	Social Security No.	-	-
	Street _____			
	City _____	State _____	Zip _____	
	Telephone _____	Telephone (alternate) _____		

<b>Proposed Business</b>	Name of Business _____			
	Street _____			
	City _____	State _____	Zip _____	
	Telephone _____	Telephone (alternate) _____		

Type of business:

Corporation     Joint Venture     Partnership     Limited Liability Corporation     Sole Proprietor

Year Formed \_\_\_\_\_

Federal Tax ID No. \_\_\_\_\_ State of Formation \_\_\_\_\_

Name of the business's president or most senior executive \_\_\_\_\_

Name of the business's chief financial officer or treasurer \_\_\_\_\_

**Information Relating to Affiliates**

Below, list all Affiliates of the proposer and provide the requested information for each Affiliate. Add additional pages if necessary. An "Affiliate" of a proposer is any entity that

(a) directly or indirectly or owns more than a 30% equity interest in such proposer, or

(b) otherwise directly controls proposer, or

(c) is controlled by, or has more than a 30% equity interest which is owned by or for the benefit of either

(i) such proposer, or

(ii) any person (or any member of the immediate family (i.e., spouse, father, mother, brother, sister, children, and stepchildren) of any person) or entity that controls, or owns more than a 30% equity interest in, such proposer.

1	Name _____	% of Ownership _____
	Street _____	
	City _____	State _____ Zip _____
	Telephone _____	Telephone (alternate) _____

METROPOLITAN TRANSPORTATION AUTHORITY  
 REAL ESTATE DEPARTMENT  
 POLICIES AND PROCEDURES FOR THE LEASING-OUT  
 AND SALE OF REAL PROPERTY



**Proposer Information Form**

Information  
 Relating to  
 Affiliates  
 (cont'd.)

2 Name \_\_\_\_\_ % of Ownership \_\_\_\_\_  
 Street \_\_\_\_\_  
 City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_  
 Telephone \_\_\_\_\_ e-mail \_\_\_\_\_

3 Name \_\_\_\_\_ % of Ownership \_\_\_\_\_  
 Street \_\_\_\_\_  
 City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_  
 Telephone \_\_\_\_\_ e-mail \_\_\_\_\_

If, applicable, list below the name(s) of principal(s) who will provide any guaranty or guaranties to the proposed lease or license

1 Name \_\_\_\_\_  
 Street \_\_\_\_\_  
 City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_  
 Telephone \_\_\_\_\_ e-mail \_\_\_\_\_

2 Name \_\_\_\_\_  
 Street \_\_\_\_\_  
 City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_  
 Telephone \_\_\_\_\_ e-mail \_\_\_\_\_

3 Name \_\_\_\_\_  
 Street \_\_\_\_\_  
 City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_  
 Telephone \_\_\_\_\_ e-mail \_\_\_\_\_

Has the proposer or any of its principals done business under any other name within the past three years?  Yes  No

Is the proposer owned or controlled by any other organization or business entity?  Yes  No

Does the proposer own more than 30% of any other organization or business entity?  Yes  No

If yes was checked for any of the above, provide the following information for each organization, corporation, or business. Add additional pages if necessary.

1 Name of Business \_\_\_\_\_  
 Federal Tax ID No. \_\_\_\_\_ Owner/Manager Name \_\_\_\_\_  
 Street \_\_\_\_\_  
 City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_  
 Telephone \_\_\_\_\_ Owner/Manager e-mail \_\_\_\_\_

METROPOLITAN TRANSPORTATION AUTHORITY  
 REAL ESTATE DEPARTMENT  
 POLICIES AND PROCEDURES FOR THE LEASING-OUT  
 AND SALE OF REAL PROPERTY



**Proposer Information Form**

**Information  
 Relating to  
 Affiliates  
 (cont'd.)**

2 Name of Business \_\_\_\_\_

Federal Tax No. \_\_\_\_\_ Owner/Manager Name \_\_\_\_\_

Street \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

Telephone \_\_\_\_\_ Owner/Manager e-mail \_\_\_\_\_

List gross receipts of each business for the past three years. Attach copies of Federal Income Tax returns.

1	Name of Business _____	Gross Receipts \$ _____	Year _____
		Gross Receipts \$ _____	Year _____
		Gross Receipts \$ _____	Year _____
2	Name of Business _____	Gross Receipts \$ _____	Year _____
		Gross Receipts \$ _____	Year _____
		Gross Receipts \$ _____	Year _____
3	Name of Business _____	Gross Receipts \$ _____	Year _____
		Gross Receipts \$ _____	Year _____
		Gross Receipts \$ _____	Year _____

**Other Leases  
 or Licenses  
 with MTA and  
 its Subsidiaries  
 and Affiliates**

List all leases or licenses during the last 5 years between the MTA (and its subsidiaries and affiliates) and the proposer and any Affiliate of the proposer.

1 Name of lessee or licensee \_\_\_\_\_

Location \_\_\_\_\_

\_\_\_\_\_

MTA Agency \_\_\_\_\_

2 Name of lessee or licensee \_\_\_\_\_

Location \_\_\_\_\_

\_\_\_\_\_

MTA Agency \_\_\_\_\_



METROPOLITAN TRANSPORTATION AUTHORITY  
 REAL ESTATE DEPARTMENT  
 POLICIES AND PROCEDURES FOR THE LEASING-OUT  
 AND SALE OF REAL PROPERTY



**Proposer Information Form**

**Other Leases  
 or Licenses  
 with MTA and  
 its Subsidiaries  
 and Affiliates  
 (cont'd.)**

3 Name of lessee or licensee \_\_\_\_\_  
 Location \_\_\_\_\_  
 MTA Agency \_\_\_\_\_  
 Describe any lessee or licensee defaults under such lease(s) or license(s).  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

**Business  
 History and  
 Experience**

List all relevant business experience

1	Name of Company _____	From _____	To _____
	Type of Business _____	Your Title _____	
	Street _____		
	City _____	State _____	Zip _____
2	Name of Company _____	From _____	To _____
	Type of Business _____	Your Title _____	
	Street _____		
	City _____	State _____	Zip _____
3	Name of Company _____	From _____	To _____
	Type of Business _____	Your Title _____	
	Street _____		
	City _____	State _____	Zip _____

**Business  
 References**

Provide at least three references from companies with which the proposer, or one or more of its Principals, does business (include at least one vendor).

1	Name of Company _____	From _____	To _____
	Street _____		
	City _____	State _____	Zip _____
	Contact _____	Title _____	Telephone _____

METROPOLITAN TRANSPORTATION AUTHORITY  
 REAL ESTATE DEPARTMENT  
 POLICIES AND PROCEDURES FOR THE LEASING-OUT  
 AND SALE OF REAL PROPERTY



**Proposer Information Form**

**Business References**  
(cont'd.)

2	Name of Company _____	From _____	To _____
	Street _____		
	City _____	State _____	Zip _____
	Contact _____	Title _____	Telephone _____
3	Name of Company _____	From _____	To _____
	Street _____		
	City _____	State _____	Zip _____
	Contact _____	Title _____	Telephone _____

**Bank References**

Provide at least one reference from a bank with which the proposer (or a Principal) has an account and regularly does business. List all other bank account information that represents the means of financial support for the proposed business.

1	Bank Name _____	Branch Number or Location _____	
	Street _____		
	City _____	State _____	Zip _____
	Name of Bank Officer _____		Title _____
	Telephone No. _____	Account No. _____	
	Name on Account _____		
2	Bank Name _____	Branch or Location _____	
	Street _____		
	City _____	State _____	Zip _____
	Name of Bank Officer _____		Title _____
	Telephone No. _____	Account No. _____	
	Name on Account _____		
3	Bank Name _____	Branch or Location _____	
	Street _____		
	City _____	State _____	Zip _____
	Name of Bank Officer _____		Title _____
	Telephone No. _____	Account No. _____	
	Name on Account _____		

METROPOLITAN TRANSPORTATION AUTHORITY  
REAL ESTATE DEPARTMENT  
POLICIES AND PROCEDURES FOR THE LEASING-OUT  
AND SALE OF REAL PROPERTY

March 2017

Page 96



**Proposer Information Form**

**Bank  
References  
(cont'd.)**

Provide at least one bank reference for each guarantor identified on page 2 of this Proposer Information Statement.

1	Bank Name	Branch or Location
	Street	
	City	State Zip
	Name of Bank Officer	Title
	Telephone No.	Account No.
	Name on Account	
2	Bank Name	Branch or Location
	Street	
	City	State Zip
	Name of Bank Officer	Title
	Telephone No.	Account No.
	Name on Account	
3	Bank Name	Branch or Location
	Street	
	City	State Zip
	Name of Bank Officer	Title
	Telephone No.	Account No.
	Name on Account	

**Available  
Financing**

Provide information about lines of credit, or other sources of financing, available to undertake required improvements and fulfill annual rental obligations.

1	Name of Source	
	Street	
	City	State Zip
	Available Amount of Financing \$	Interest Rate
	Telephone No.	Account No.
	Letter Attached?	<input type="checkbox"/> Yes <input type="checkbox"/> No

METROPOLITAN TRANSPORTATION AUTHORITY  
REAL ESTATE DEPARTMENT  
POLICIES AND PROCEDURES FOR THE LEASING-OUT  
AND SALE OF REAL PROPERTY



**Proposer Information Form**

**Available  
Financing  
(cont'd.)**

2 Name of Source \_\_\_\_\_  
Street \_\_\_\_\_  
City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_  
Available Amount of Financing \$ \_\_\_\_\_ Interest Rate \_\_\_\_\_  
Telephone No. \_\_\_\_\_ Account No. \_\_\_\_\_  
Letter Attached?  Yes  No

3 Name of Source \_\_\_\_\_  
Street \_\_\_\_\_  
City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_  
Available Amount of Financing \$ \_\_\_\_\_ Interest Rate \_\_\_\_\_  
Telephone No. \_\_\_\_\_ Account No. \_\_\_\_\_  
Letter Attached?  Yes  No

**Proposed  
Retail Concept  
and Use**

Describe below the proposed retail concept, including the price range of merchandise or services.  
Add additional pages if necessary. If the use is food service, attach a proposed menu.

\_\_\_\_\_  
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METROPOLITAN TRANSPORTATION AUTHORITY  
REAL ESTATE DEPARTMENT  
POLICIES AND PROCEDURES FOR THE LEASING-OUT  
AND SALE OF REAL PROPERTY



**Proposer Information Form**

**Operation and Management Plan**

Indicate proposed staffing during business hours. Provide an entry for each change in the number of personnel during these hours.

Day(s) Hour(s) No. Personnel Manager at Location:  Yes  No

Day(s) Hour(s) No. Personnel Manager at Location:  Yes  No

Day(s) Hour(s) No. Personnel Manager at Location:  Yes  No

Day(s) Hour(s) No. Personnel Manager at Location:  Yes  No

Describe the involvement of the principals in the operation of the proposed business. Attach an organization chart (if available) of the proposed entity.

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METROPOLITAN TRANSPORTATION AUTHORITY  
 REAL ESTATE DEPARTMENT  
 POLICIES AND PROCEDURES FOR THE LEASING-OUT  
 AND SALE OF REAL PROPERTY



**Proposer Information Form**

<b>Projected Startup Costs</b>		<b>Improvements</b>					
		1 – Architectural Fees	\$	_____			
		2 – Construction Costs	\$	_____			
		3 – Trade Fixtures	\$	_____			
		4 – <b>TOTAL IMPROVEMENTS</b>	\$	_____		add lines 1 to 3	
		<b>Other Costs</b>					
		5 – Legal Costs	\$	_____			
		6 – Incorporation Fees	\$	_____			
		7 – Licensing Fees	\$	_____			
		8 – Franchise Fees	\$	_____			
		9 – Consulting Fees	\$	_____			
		10 – Merchandise Inventory	\$	_____			
		11 – Rent During Construction	\$	_____			
		12 – Miscellaneous	\$	_____			
		13 – <b>TOTAL STARTUP COSTS</b>	\$	_____		add lines 4 to 12	

**Scope of Work and Improvements**      Describe the proposed improvements. Add additional pages if necessary.

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

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\_\_\_\_\_

METROPOLITAN TRANSPORTATION AUTHORITY  
 REAL ESTATE DEPARTMENT  
 POLICIES AND PROCEDURES FOR THE LEASING-OUT  
 AND SALE OF REAL PROPERTY



**Proposer Information Form**

**Financial Statements:** Provide financial statements (audited, if available) for the prospective business entity and each guarantor for the past two full fiscal years. If financial statements are not otherwise available, please provide the following information.

<b>Assets</b>	<b>Funds</b>			
	1 - Cash	\$ _____		
	2 - Checking	\$ _____		
	3 - Savings	\$ _____		
	4 - Other	\$ _____		
	5 - Subtotal-Funds	\$ _____		add lines 1 to 4
	<b>Receivables</b>			
	6 - Trade or Business	\$ _____		
	7 - Other	\$ _____		
	8 - Subtotal-Receivables	\$ _____		add lines 6 and 7
	<b>Securities</b>			
	9 - Stocks	\$ _____		
	10 - Bonds	\$ _____		
	11 - Other (Pensions, Annuities)	\$ _____		
	12 - Subtotal-Securities	\$ _____		add lines 9 to 11
	<b>Fixed Assets</b>			
	13 - Equipment	\$ _____		
	14 - Other	\$ _____		
	15 - Subtotal-Fixed Assets	\$ _____		add lines 13 and 14
	<b>Other Assets</b>			
	16 - Trade, Auto	\$ _____		
	17 - Life Insurance	\$ _____		
	18 - Subtotal-Other Assets	\$ _____		add line 16 and 17
	19 - Inventory	\$ _____		
	20 - Miscellaneous	\$ _____		
	21 - Land and Buildings	\$ _____		
	22 - <b>GRAND TOTAL ASSETS</b>	\$ _____		add lines 5,8,12,15, 18-21
<b>Liabilities</b>	23 - Payables	\$ _____		
	24 - Notes Payable	\$ _____		
	25 - Mortgages	\$ _____		
	26 - Deferred	\$ _____		
	27 - Miscellaneous	\$ _____		
	28 - <b>GRAND TOTAL LIABILITIES</b>	\$ _____		add lines 23-27
	29 - <b>CAPITAL/NET WORTH</b>	\$ _____		line 22 minus line 28

If the business entity is in the process of being organized and does not yet have assets or liabilities, check here and complete the financial statement on the basis of the personal assets and liabilities of the principal(s) who will provide a guaranty(ies). Clearly indicate all sources of capitalization.

METROPOLITAN TRANSPORTATION AUTHORITY  
 REAL ESTATE DEPARTMENT  
 POLICIES AND PROCEDURES FOR THE LEASING-OUT  
 AND SALE OF REAL PROPERTY



**Proposer Information Form**

**Income:  
One-year  
Projection**

**Proposed First Year Business Plan:** Provide projected income and expenses for the first year of the lease or license term.

1 – Estimated Sales/Revenue	\$ _____	
2 – Cost of Goods Sold	\$ _____	
3 – <b>GROSS PROFIT</b>	\$ _____	subtract line 2 from line 1

**Expenses:  
One-year  
Projection**

4 – Wages, Salaries	\$ _____	
5 – Rent	\$ _____	
6 – Telephone	\$ _____	
7 – Gas	\$ _____	
8 – Electricity	\$ _____	
9 – Interest on Loan	\$ _____	
10 – Advertising	\$ _____	
11 – Postage	\$ _____	
12 – Travel	\$ _____	
13 – Vehicle Expense	\$ _____	
14 – Payroll Taxes	\$ _____	
15 – Other Taxes	\$ _____	
16 – Supplies	\$ _____	
17 – Legal Fees	\$ _____	
18 – Accounting Fees	\$ _____	
19 – Insurance	\$ _____	
20 – Repairs	\$ _____	
21 – Equipment Rental	\$ _____	
22 – Depreciation	\$ _____	
23 – Other	\$ _____	
24 – <b>TOTAL EXPENSES</b>	\$ _____	add lines 4 through 23
25 – <b>ESTIMATED PROFIT (LOSS)</b>	\$ _____	subtract line 24 from line 3



METROPOLITAN TRANSPORTATION AUTHORITY  
 REAL ESTATE DEPARTMENT  
 POLICIES AND PROCEDURES FOR THE LEASING-OUT  
 AND SALE OF REAL PROPERTY



**Proposer Information Form**

**Projected Sales  
for Lease or  
License Term**

Provide projected sales for the lease or license term *after* the first year (include only those years during the proposed lease or license term).

Year 2	\$ _____
Year 3	\$ _____
Year 4	\$ _____
Year 5	\$ _____
Year 6	\$ _____
Year 7	\$ _____
Year 8	\$ _____
Year 9	\$ _____
Year 10	\$ _____

**Responsibility  
Related Questions**

- Has the proposer or any Affiliate thereof ever been barred from bidding on contracts, or declared not responsible by any city, town, village, county, state, or federal public entity?  Yes  No
  
- Are any outstanding liens pending against the proposer or any Affiliate thereof?  Yes  No
  
- Are any judgments outstanding against the proposer or any Affiliate thereof?  Yes  No
  
- Is any suit or other legal action pending against the proposer or any Affiliate thereof?  Yes  No
  
- Has the proposer or any Affiliate thereof been adjudged bankrupt, voluntarily or involuntarily, under any provision of the Bankruptcy Law, executed an assignment for the benefit of creditors, or abandoned a business without satisfying its outstanding debts?  Yes  No
  
- Has the proposer or any Affiliate thereof ever been convicted of a felony?  Yes  No

If yes to any of the above, please provide all details below. Add additional pages if necessary.

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

METROPOLITAN TRANSPORTATION AUTHORITY  
REAL ESTATE DEPARTMENT  
POLICIES AND PROCEDURES FOR THE LEASING-OUT  
AND SALE OF REAL PROPERTY

March 2017

Page 103



**Proposer Information Form**

**General Affidavit**

**Representations, Warranties, Covenants, and Consent to a Credit Review**

By executing this Proposer Information Form, the undersigned represents and warrants the following.

- A. The undersigned has received and read the entire Request for Proposals, has acquainted itself/himself/herself with all matters therein referred to in connection with this proposal, will accept the premises "as-is" and will secure any necessary permits and licenses pertaining to the operation of, or the making of any improvements to, the site. The undersigned acknowledges that the MTA makes no representation or warranties as to the information supplied herein or the type of use or development permitted at each location.
- B. The undersigned acknowledges that improvements and other work (1) may not be carried out without the prior approval of the MTA, (2) will become the property of the MTA, and (3) must conform to appropriate health, safety, fire, and building codes, as required.
- C. Neither the undersigned nor any Affiliate of the undersigned is in arrears in the payment of amounts due to the MTA or any of its affiliated agencies or the State of New York or the City of New York or any instrumentality thereof.
- D. The undersigned is of lawful age.
- E. No person, firm, or corporation other than herein above named has any interest in this proposed lease or license agreement.
- F. By executing this Proposer Information Form, the undersigned represents and warrants that:
  - (i) The compensation and other terms of this proposal have been arrived at independently without any agreement, collusion, consultation, or communications intended to restrict competition.
  - (ii) Unless otherwise required by law, the compensation and other terms quoted in this proposal have not been knowingly disclosed by the undersigned or any other individual and, before the proposal is opened, shall not knowingly be directly or indirectly disclosed by the prospective tenant or licensee or any other individual or by or on behalf of the proposer to any other proposer or to any competitor; and
  - (iii) No attempt has been made or will be made by the undersigned or by any other individual or by or on behalf of the prospective tenant or licensee to induce any other person, partnership, corporation, or other entity to submit or not to submit a proposal, for the purpose of restricting competition.
- G. The undersigned represents and warrants that no elected representative or other officer or employee or person whose salary is payable in whole or in part from the Federal Government or State or City of New York, and no member officer or employee of the Metropolitan Transportation Authority or any affiliate or subsidiary thereof is directly or indirectly interested in this proposal or in the proposed lease or license agreement to which it relates or will have an interest in any of the profits thereof.
- H. The undersigned declares under the penalties of perjury provided for by Article 210 of the New York Penal Law that the undersigned has read fully and understands all of the terms and conditions of this Request for Proposals and all of the foregoing questions in the Proposer Information Form and the Rent Proposal Form or Proposed Compensation Form. The answers and statements herein including, without limitation, the Proposer Information Statement and the Credit Authorization, are to the best of the undersigned's knowledge and belief true, correct, and complete. The undersigned agrees that in the event that circumstances reflected by the answers herein change, the undersigned will promptly notify the Real Estate Department of the Metropolitan Transportation Authority in writing by certified mail. The undersigned also understands that a misstatement, omission, or failure to update information may be cause for the Metropolitan Transportation Authority not to award to the proposer, or its current principals, the proposed lease or license, and may have the effect of precluding persons or entities from doing business with the Metropolitan Transportation Authority or its affiliates or subsidiaries in the future.

METROPOLITAN TRANSPORTATION AUTHORITY  
REAL ESTATE DEPARTMENT  
POLICIES AND PROCEDURES FOR THE LEASING-OUT  
AND SALE OF REAL PROPERTY

March 2017

Page 104



**Proposer Information Form**

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By executing this Proposer Information Form, the undersigned authorizes the Metropolitan Transportation Authority or its designated agent or contractor to conduct a credit and reference investigation of the proposer and its Affiliates. This authorization includes commercial and financial institutions, credit reporting agencies and present and former customers, including without limitation the entities described in this Proposer Information Statement.

**This Proposer Information Form must be signed below.**

Proposer \_\_\_\_\_

Authorized Signature \_\_\_\_\_ Date \_\_\_\_\_

Print Name and Title \_\_\_\_\_

Sworn to me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_

Notary Public's Signature \_\_\_\_\_

Notary Seal

METROPOLITAN TRANSPORTATION AUTHORITY  
REAL ESTATE DEPARTMENT  
POLICIES AND PROCEDURES FOR THE LEASING-OUT  
AND SALE OF REAL PROPERTY

---

March 2017

Page 105

---

Figure 11 – Pre-RFP Authorization Memo

METROPOLITAN TRANSPORTATION AUTHORITY  
 REAL ESTATE DEPARTMENT  
 POLICIES AND PROCEDURES FOR THE LEASING-OUT  
 AND SALE OF REAL PROPERTY



**Metropolitan Transportation Authority**

**Real Estate Department  
 Authorization Memorandum—General**

Date: [Month [DD], [YYYY]]  
 To: [Deputy Director], [Director, L&A], [Director RE Operations]  
 From: [Project Manager Name]  
 Re: [If RFP, list reference number, agency, description (i.e., retail, vending, etc.)]

AGENCY:

[LESSEE/LICENSEE/GRANTEE or N/A]:

LOCATION[S]:

ACTIVITY: Approval of RFP

SEQRA/NEPA:

Type 1	✓	EIS	✓
Type 2		NEPA	
Unlisted		N/A	

Actions Required

---

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BOND REVIEW: (Y/N/NA)

Bond counsel consulted?	
OK to proceed?	

---

---

COMMENTS:

[Very briefly summarize RFP and list EVERY location and use (i.e., DeKalb Av – Newsstand) in the RFP]

Comments: \_\_\_\_\_

Recommended: \_\_\_\_\_ Date \_\_\_\_\_

[NAME], Deputy Director

METROPOLITAN TRANSPORTATION AUTHORITY  
REAL ESTATE DEPARTMENT  
POLICIES AND PROCEDURES FOR THE LEASING-OUT  
AND SALE OF REAL PROPERTY

Comments: \_\_\_\_\_

Recommended: \_\_\_\_\_ Date \_\_\_\_\_

David Bosch, Director, Leasing & Acquisition

Comments: \_\_\_\_\_

Recommended: \_\_\_\_\_ Date \_\_\_\_\_

Michael Bader, Director, Real Estate Operations

METROPOLITAN TRANSPORTATION AUTHORITY  
REAL ESTATE DEPARTMENT  
POLICIES AND PROCEDURES FOR THE LEASING-OUT  
AND SALE OF REAL PROPERTY

---

March 2017

Page 108

---

Figure 12 – [Intentionally deleted]

METROPOLITAN TRANSPORTATION AUTHORITY  
REAL ESTATE DEPARTMENT  
POLICIES AND PROCEDURES FOR THE LEASING-OUT  
AND SALE OF REAL PROPERTY

---

March 2017

Page 109

---

Figure 13 – Incumbent Letter



METROPOLITAN TRANSPORTATION AUTHORITY  
REAL ESTATE DEPARTMENT  
POLICIES AND PROCEDURES FOR THE LEASING-OUT  
AND SALE OF REAL PROPERTY

March 2017

Page 110

347 Madison Avenue  
New York, NY 10017-3739  
212 878-7000 Tel



**Metropolitan Transportation Authority**

State of New York

**CERTIFIED MAIL # [enter number] —RETURN RECEIPT REQUESTED  
and First Class Mail**

[DATE]

[NAME]

[ADDRESS]

[CITY, STATE ZIP]

Re: {LOCATION DESCRIPTION, e.g.: Newsstand at 96<sup>th</sup> Street Subway Station, Manhattan}

Tenant ID: [YARDI TENANT NUMBER]

Property ID: [YARDI PROPERTY NUMBER]

Dear [MR./MS NAME]:

As you know, your [lease/license/permit] for the above location [has expired/will expire soon]. It is the Metropolitan Transportation Authority's (MTA's) policy to offer lease and license opportunities through a Request for Proposals ("RFP") process. This is to inform you that the MTA will shortly be issuing an RFP to [LEASE/LICENCE] the above location, and you are invited to submit a proposal. The RFP due date is [MM/DD/YYYY]. To view and download a copy of the RFP, go to the MTA website at:

[http://mta.info/mta/realestate/retail\\_leasing.html](http://mta.info/mta/realestate/retail_leasing.html).

Please note that all contacts with the MTA relating to this RFP must be made through the designated Points of Contact. Contact with anyone else at the MTA relating to this RFP may be a violation of the law and may result in the disqualification of the proposer. The Points of Contact for this RFP will be myself, [PROJECT MANAGER'S NAME], at 212-878-[XXXX] (for questions regarding the specific content of the RFP or RFP procedures and rules), and Odette Berg at 212-878-1043 (for general inquiries regarding the administrative aspects of the RFP only).

If you have any questions regarding the RFP, please call one of the Points of Contact listed above.

Sincerely,

[PROJECT MANAGER'S NAME]

MTA Real Estate Department

*The agencies of the MTA*

MTA New York City Transit  
MTA Long Island Rail Road

MTA Long Island Bus  
MTA Metro-North Railroad

MTA Bridges and Tunnels  
MTA Capital Construction

MTA Bus Company

METROPOLITAN TRANSPORTATION AUTHORITY  
REAL ESTATE DEPARTMENT  
POLICIES AND PROCEDURES FOR THE LEASING-OUT  
AND SALE OF REAL PROPERTY

---

March 2017

Page 111

---

Figure 14 – RFP Advertisement

METROPOLITAN TRANSPORTATION AUTHORITY  
REAL ESTATE DEPARTMENT  
POLICIES AND PROCEDURES FOR THE LEASING-OUT  
AND SALE OF REAL PROPERTY

March 2017

Page 112

**MTA REAL ESTATE**

**Request for Proposals**—[Describe RFP, e.g., "Lease of 8 Newsstands in the MTA New York City Transit subway system"], [brief description of location, i.e., at various subway stations in Brooklyn, Queens, and the Bronx]. Proposals must be received by 5:00 p.m. on [day of week], [day of month], [YYYY].

*For information on this Request for Proposals, please go to [http://mta.info/mta/realestate/retail\\_leasing.html](http://mta.info/mta/realestate/retail_leasing.html)*

[MTA log here for *Amsterdam News* only] **Metropolitan Transportation Authority**

METROPOLITAN TRANSPORTATION AUTHORITY  
REAL ESTATE DEPARTMENT  
POLICIES AND PROCEDURES FOR THE LEASING-OUT  
AND SALE OF REAL PROPERTY

---

March 2017

Page 113

---

Figure 15 – Sample Advertisement

METROPOLITAN TRANSPORTATION AUTHORITY  
REAL ESTATE DEPARTMENT  
POLICIES AND PROCEDURES FOR THE LEASING-OUT  
AND SALE OF REAL PROPERTY

March 2017

Page 114

**REQUEST FOR PROPOSALS**

**Newsstand/Coffee Concession Opportunities**

MTA Metro-North Railroad is seeking proposals from experienced professionals to lease, operate and maintain newsstands and coffee concessions at the White Plains, North White Plains, Bronxville and Mt. Vernon East stations in New York.

More information on these properties and an explanation of the Request for Proposals ("RFP") process by which these concessions will be offered to the public are available from the persons listed below as Points of Contact. All contacts with the MTA relating to this RFP must be made through these designated Points of Contact. Contact with anyone else at MTA related to this RFP may be a violation of the law & may result in the disqualification of the proposer.

**To receive a copy of the RFP and for administrative questions only, please contact:**

METROPOLITAN TRANSPORTATION AUTHORITY  
Real Estate Department, 347 Madison Avenue, New York, New York 10017-3739  
Point of Contact: Odette Forestier -  
Tel: (212) 878-1043 or email [MTARE@MTAHQ.ORG](mailto:MTARE@MTAHQ.ORG)  
Reference No. RFP AB0113

**For further information regarding the specific contents of the RFP, please contact:**

Point of Contact: Alicia Biggs -  
Tel: (212) 878-7148 or email [ABIGGS@MTAHQ.ORG](mailto:ABIGGS@MTAHQ.ORG)

This information is also available on the Internet at:  
[http://mta.info/mta/realstate/retail\\_leasing.html](http://mta.info/mta/realstate/retail_leasing.html)



**Metropolitan Transportation Authority**

MTA 54271  
MTA  
NY Post  
3c  
4.125" x nec 1/4"  
1.28.13

METROPOLITAN TRANSPORTATION AUTHORITY  
REAL ESTATE DEPARTMENT  
POLICIES AND PROCEDURES FOR THE LEASING-OUT  
AND SALE OF REAL PROPERTY

---

March 2017

Page 115

---

Figure 16 – Proposal Receipt Log



METROPOLITAN TRANSPORTATION AUTHORITY  
REAL ESTATE DEPARTMENT  
POLICIES AND PROCEDURES FOR THE LEASING-OUT  
AND SALE OF REAL PROPERTY

---

March 2017


Page 117

---

Figure 17 – Proposal Checklist



METROPOLITAN TRANSPORTATION AUTHORITY  
 REAL ESTATE DEPARTMENT  
 POLICIES AND PROCEDURES FOR THE LEASING-OUT  
 AND SALE OF REAL PROPERTY


**Metropolitan Transportation Authority**

**Proposal Checklist**

If an item is missing, please indicate if the proposal will be rejected or if the missing item or items will be sent. Please indicate in the space provided why the project manager has determined that the proposal should not be rejected on the basis of an incomplete proposal.

Project Manager: \_\_\_\_\_

Verifier: \_\_\_\_\_

Parcel No: \_\_\_\_\_

Location: \_\_\_\_\_

Proposer's Name: \_\_\_\_\_

Business Name: \_\_\_\_\_

	Included	Signed	Numbered	Indexed	
<b>RFP Received</b>					<b>Follow Up</b>
Applicant Information Statement	<input type="checkbox"/>				Letter Sent <input type="checkbox"/>
Business Profile	<input type="checkbox"/>				Response Due _____
Financial Profile	<input type="checkbox"/>				Reason: _____
Cred. Authorization	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
One-year Business Plan	<input type="checkbox"/>				_____
Background	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
General Affidavit	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
NYS Fin. Law (199) 139-k (Lobby Law) Disclosure Stmt.	<input type="checkbox"/>	<input type="checkbox"/>			_____
Proposed Compensation Form	<input type="checkbox"/>				_____
W-9	<input type="checkbox"/>	<input type="checkbox"/>			_____
Preliminary Plans	<input type="checkbox"/>				_____
Deposit	<input type="checkbox"/>				_____
No Deposit	<input type="checkbox"/>				_____
Check No _____ # _____					
Amount \$ _____					
Project Manager's Signature: _____ Date: _____					
Verifier's Signature: _____ Date: _____					

MTA-RED 08-21-04

METROPOLITAN TRANSPORTATION AUTHORITY  
REAL ESTATE DEPARTMENT  
POLICIES AND PROCEDURES FOR THE LEASING-OUT  
AND SALE OF REAL PROPERTY

Figure 18 – RFP Evaluation Form



METROPOLITAN TRANSPORTATION AUTHORITY  
REAL ESTATE DEPARTMENT  
POLICIES AND PROCEDURES FOR THE LEASING-OUT  
AND SALE OF REAL PROPERTY

---

March 2017

Page 121

---

Figure 19 – RFP Award Authorization Memo

METROPOLITAN TRANSPORTATION AUTHORITY  
 REAL ESTATE DEPARTMENT  
 POLICIES AND PROCEDURES FOR THE LEASING-OUT  
 AND SALE OF REAL PROPERTY

March 2017

Page 122



**Metropolitan Transportation Authority**

**Real Estate Department  
 Authorization Memorandum—General**

Date: [Month [DD], [YYYY]]  
 To: [Deputy Director], Director, L&A, Director RE Operations  
 From: [Project Manager Name]  
 Re: [RFP reference number, agency, description (i.e., retail, vending, etc.)]

AGENCY:

LESSEE:

LOCATION:

ACTIVITY:

SEQRA/NEPA:	✓	✓	Actions Required
Type 1	<input type="checkbox"/>	EIS	<input type="checkbox"/>
Type 2	<input type="checkbox"/>	NEPA	<input type="checkbox"/>
Unlisted	<input type="checkbox"/>	N/A	<input type="checkbox"/>

LOBBYING LAW: (Y/N)

Have there been Contacts?	<input type="checkbox"/>
Were Contacts permissible?	<input type="checkbox"/>

COMMENTS:

Paragraph 1: Introduction

- a) Summarize in a couple of sentences why property is being disposed of, licensed, or acquired.
- b) Summarize recommendation as to method of disposition/acquisition and price.

Paragraph 2: Discuss property

- a) Location – Municipality, closest MTA operation, any other noteworthy items.
- b) Nature of MTA or agency ownership.
- c) Physical attributes (improved, vacant, structures, fencing, etc.)
- d) Current use
- e) Possible uses
- f) Restrictions placed by MTA agency (i.e., use; disposition method (license only, etc); time limitations; termination rights.)

Paragraph 3: Nature of interest being disposed of or acquired

- a) Describe interest: Fee/permanent easement/temporary easement/net lease/lease/license/permit/other)

METROPOLITAN TRANSPORTATION AUTHORITY  
REAL ESTATE DEPARTMENT  
POLICIES AND PROCEDURES FOR THE LEASING-OUT  
AND SALE OF REAL PROPERTY

March 2017

Page 123

- b) Describe circumstances that may impact value; describe any unusual or unique circumstances.
- c) Describe WHY that interest is being offered or purchased (i.e., if a lease, was a sale considered? If a license, could it be leased? Did the agency restrict the interest, and why?)

Paragraph 4: Method of disposition or acquisition

- a) RFP (obviously N/A for acquisitions)
- b) If not RFP, why not?
  - i. Pursuant to policy
  - ii. Pursuant to special circumstances noted in Licensing Procedures when competition is not feasible (Board approval still required)
  - iii. Other reasons

Paragraph 5: Discussion of Proposals

- a) How many proposals received? Refer to spreadsheet if applicable.
- b) Discussion of top proposers:
  - i. Creditworthiness
  - ii. Financial wherewithal to start up and make improvements.
  - iii. Experience applicable to proposed operation; note if prior or current experience with MTA and if so, licensee/tenant history.
  - iv. Discussion of proposals in comparison to appraised value or market value.
  - v. If proposals are below appraised or estimated fair market value, discuss the reasons therefor.

Paragraph 6: Negotiations

- a) What items were negotiated (note: if sole bidder, MUST negotiate; if many responses to RFP, usually take high bid, unless extenuating circumstances).
- b) Result of negotiations

Paragraph 7: Recommendation

- a) Recommend course of action, citing reasons.

Comments: \_\_\_\_\_

Recommended: \_\_\_\_\_ Date \_\_\_\_\_

[NAME], Deputy Director

Comments: \_\_\_\_\_

Recommended: \_\_\_\_\_ Date \_\_\_\_\_

David Bosch, Director, Leasing & Acquisition

METROPOLITAN TRANSPORTATION AUTHORITY  
REAL ESTATE DEPARTMENT  
POLICIES AND PROCEDURES FOR THE LEASING-OUT  
AND SALE OF REAL PROPERTY

Comments: \_\_\_\_\_

Recommended: \_\_\_\_\_ Date \_\_\_\_\_

Michael Bader, Director, Real Estate Operations

METROPOLITAN TRANSPORTATION AUTHORITY  
REAL ESTATE DEPARTMENT  
POLICIES AND PROCEDURES FOR THE LEASING-OUT  
AND SALE OF REAL PROPERTY

---

March 2017

Page 125

---

Figure 20 – Lease Sale Negotiation Authorization Memo



METROPOLITAN TRANSPORTATION AUTHORITY  
 REAL ESTATE DEPARTMENT  
 POLICIES AND PROCEDURES FOR THE LEASING-OUT  
 AND SALE OF REAL PROPERTY

March 2017

Page 126



**Metropolitan Transportation Authority**

**Real Estate Department  
 Authorization Memorandum—General**

Date: [Month [DD], [YYYY]]  
 To: [Deputy Director], Director, L&A, Director RE Operations  
 From: [Project Manager Name]  
 Re: Authorization Memo – Lease/Sale Negotiation Process Award[agency, description (i.e., retail, vending, etc.)]

AGENCY:

LESSEE:

LOCATION:

ACTIVITY:

SEQRA/NEPA:	✓	✓	Actions Required
Type 1		EIS	_____
Type 2		NEPA	_____
Unlisted		N/A	_____

LOBBYING LAW: (Y/N)

Have there been Contacts?		_____
Were Contacts permissible?		_____

BOND REVIEW: (Y/N/NA)

Bond counsel consulted?	
OK to proceed?	

COMMENTS:

Paragraph 1: Introduction

- a) Summarize in a couple of sentences why property is being disposed of, licensed, or acquired.
- b) Summarize recommendation as to method of disposition and price.

Paragraph 2: Discuss property

- a) Location – Municipality, closest MTA operation, any other noteworthy items.
- b) Nature of MTA or agency ownership.
- c) Physical attributes (improved, vacant, structures, fencing, etc.)
- d) Current use
- e) Possible uses
- f) Restrictions placed by MTA agency (i.e., use; disposition method (license only, etc); time limitations; termination rights.)

METROPOLITAN TRANSPORTATION AUTHORITY  
REAL ESTATE DEPARTMENT  
POLICIES AND PROCEDURES FOR THE LEASING-OUT  
AND SALE OF REAL PROPERTY

March 2017

Page 127

Paragraph 3: Nature of interest being disposed of or acquired

- a) Describe interest: Fee/permanent easement/temporary easement/net lease/lease/license/permit/other)
- b) Describe circumstances that may impact value; describe any unusual or unique circumstances.
- c) Describe WHY that interest is being offered or purchased (i.e., if a lease, was a sale considered? If a license, could it be leased? Did the agency restrict the interest, and why?)

Paragraph 4: Why no RFP

- a) Describe why the Lease/Sale negotiation process is being used:
  - i. Pursuant to policy
  - ii. Pursuant to special circumstances noted in Licensing Procedures when competition is not feasible (Board approval still required)
  - iii. Other reasons

Paragraph 5: Discussion of Proposals

- a) Discussion of proposed lessee/grantee:
  - i. Creditworthiness
  - ii. Financial wherewithal to start up and make improvements.
  - iii. Experience applicable to proposed operation; note if prior or current experience with MTA and if so, licensee/tenant history.
  - iv. Discussion of proposal in comparison to appraised value or market value.
  - v. If proposal is below appraised or estimated fair market value, discuss the reason(s) therefor.

Paragraph 6: Negotiations

- a) What items were negotiated?
- b) Result of negotiations

Paragraph 7: Recommendation

- a) Recommend course of action, citing reasons.

Comments: \_\_\_\_\_

Recommended: \_\_\_\_\_ Date \_\_\_\_\_

[NAME], Deputy Director

Comments: \_\_\_\_\_

Recommended: \_\_\_\_\_ Date \_\_\_\_\_

David Bosch, Director, Leasing & Acquisition

METROPOLITAN TRANSPORTATION AUTHORITY  
REAL ESTATE DEPARTMENT  
POLICIES AND PROCEDURES FOR THE LEASING-OUT  
AND SALE OF REAL PROPERTY

Comments: \_\_\_\_\_

Recommended: \_\_\_\_\_ Date \_\_\_\_\_

Michael Bader, Director, Real Estate Operations

[delete two signature lines below if transaction is pursuant to Board-approved policy]

Comments: \_\_\_\_\_

Recommended: \_\_\_\_\_ Date \_\_\_\_\_

[enter name], Deputy General Counsel

Comments: \_\_\_\_\_

Recommended: \_\_\_\_\_ Date \_\_\_\_\_

Jeffrey B. Rosen, Director, Real Estate

METROPOLITAN TRANSPORTATION AUTHORITY  
REAL ESTATE DEPARTMENT  
POLICIES AND PROCEDURES FOR THE LEASING-OUT  
AND SALE OF REAL PROPERTY

---

March 2017

Page 129

---

Figure 21 – [Intentionally deleted]

METROPOLITAN TRANSPORTATION AUTHORITY  
REAL ESTATE DEPARTMENT  
POLICIES AND PROCEDURES FOR THE LEASING-OUT  
AND SALE OF REAL PROPERTY

---

March 2017

Page 130

---


Figure 22 – Conditional Designation Letter

METROPOLITAN TRANSPORTATION AUTHORITY  
REAL ESTATE DEPARTMENT  
POLICIES AND PROCEDURES FOR THE LEASING-OUT  
AND SALE OF REAL PROPERTY

March 2017

Page 131

120 West Avenue  
P.O. Box 1001  
Poughkeepsie, NY 12603

 **Metropolitan Transportation Authority**  
State of New York

December 13, 2012

Susan Wysocki  
President  
Babycakes Café  
1-3 Collegeview Avenue  
Poughkeepsie, NY 12603

Re: Conditional Designation Letter for the Lease of Retail Space at the Poughkeepsie Train Station

Dear Ms. Wysocki:

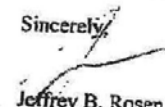
We have recently completed our analysis of your best and final offer for the above-referenced Request for Proposals. I am pleased to inform you that Babycakes Café has been conditionally designated as the successful proposer, subject your acceptance of the terms herein and MTA Board approval.

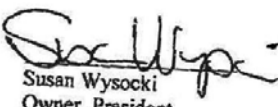
Attached is a term sheet based on the terms included in your best and final offer, along with other standard provisions that will be part of the lease agreement between Babycakes Café and the MTA. We have attached both a clean version of the term sheet and a version that shows our changes.

As you had previously discussed with our Broker, Royal Properties, an 8% natural breakpoint provision will be part of the lease. Under this provision, the MTA will receive 8% of all sales over the natural breakpoint pertaining to that year, beginning with year four of the lease (see attached modified rent proposal).

Kindly review the attached term sheet and modified rent proposal sheet. Please sign both sheets and this letter and forward all three signed documents back to me. Upon receipt of the signed documents, MTA Real Estate will present this proposal for approval at an upcoming meeting of the MTA Board.

Please contact Daniel Levine, project manager, at 212-878-4631 if you have any questions.

Sincerely,  
  
Jeffrey B. Rosen  
Director, Real Estate

 1/10/2013  
Susan Wysocki  
Owner, President  
Rent-A-Chef Inc. dba Babycakes Café

Enclosures  
cc: D. Bosch  
N. Mastropietro  
D. Levine  
Jeff Kintzer  
J. Rosen Chron

S:\DL\NET LEASING\Poughkeepsie\CDL\FINAL Babycakes CDL.docx

MTA Real Estate  
MTA Bus & Bus  
MTA Bus & Bus  
MTA Bus & Bus  
MTA Bus & Bus

METROPOLITAN TRANSPORTATION AUTHORITY  
REAL ESTATE DEPARTMENT  
POLICIES AND PROCEDURES FOR THE LEASING-OUT  
AND SALE OF REAL PROPERTY

---

March 2017

Page 132

---

Figure 23 – Staff Summary

METROPOLITAN TRANSPORTATION AUTHORITY  
 REAL ESTATE DEPARTMENT  
 POLICIES AND PROCEDURES FOR THE LEASING-OUT  
 AND SALE OF REAL PROPERTY

**Staff Summary**



Subject <b>LEASE</b>
Department <b>REAL ESTATE</b>
Department Head Name <b>JEFFREY B. ROSEN</b>
Department Head Signature <i>[Signature]</i>
Project Manager Name <b>DORRIE MASSARIA ROBERTS</b>

Date <b>NOVEMBER 9, 2009</b>
Vendor Name
Contract Number
Contract Manager Name
Table of Contents Ref #

Board Action					
Order	To	Date	Approval	Info	Other
1	CCRFW Committee	11/9/09	X		
2	Board				

Internal Approvals			
Order	Approval	Order	Approval
	Executive Director	2	Civil Rights <i>[Signature]</i>
	Chief of Staff	1	Legal <i>[Signature]</i>
	Director of BAFM		
3	Dep Exec Dir of Admin <i>[Signature]</i>		

**Narrative**

**AGENCY:** MTA Long Island Rail Road ("LIRR")

**LESSEE:** JJ Penn Station LLC d/b/a Jamba Juice

**LOCATION:** Level A, Penn Station, New York

**ACTIVITY:** Retail sale of food and non-alcoholic beverages

**ACTION REQUESTED:** Approval of terms

**TERM:** Ten (10) Years

**SPACE:** Approximately 1600 square feet of Retail Space 9A, and approximately 100 square feet of Storage Space D

**COMPENSATION** Retail

Year	Annual	PSF	% Increase
1	\$200,000.00	\$125.00	
2	\$210,000.00	\$131.25	5
3	\$220,500.00	\$137.81	5
4	\$231,525.00	\$144.70	5
5	\$243,101.00	\$151.84	5
6	\$255,256.00	\$159.54	5
7	\$268,019.00	\$167.51	5
8	\$281,420.00	\$175.89	5
9	\$295,491.00	\$184.68	5
10	\$310,265.00	\$193.92	5



METROPOLITAN TRANSPORTATION AUTHORITY  
REAL ESTATE DEPARTMENT  
POLICIES AND PROCEDURES FOR THE LEASING-OUT  
AND SALE OF REAL PROPERTY

March 2017

Page 134

**Staff Summary**



Page 2 of 2

**CAPITAL CONSTRUCTION/PLANNING/REAL ESTATE COMMITTEE MEETING**

JJ Penn Station LLC d/b/a Jamba Juice (Cont'd)

Storage

<u>Year</u>	<u>Annual</u>	<u>PSF</u>	<u>% Increase</u>
1	\$4,000.00	\$40.00	
2	\$4,200.00	\$42.00	5
3	\$4,410.00	\$44.10	5
4	\$4,630.50	\$46.31	5
5	\$4,862.03	\$48.62	5
6	\$5,105.13	\$51.05	5
7	\$5,360.38	\$53.60	5
8	\$5,628.40	\$56.28	5
9	\$5,909.82	\$59.10	5
10	\$6,205.31	\$62.05	5

**COMMENTS:**

In response to a recent Request for Proposals (RFP) for Retail Space 9A at Penn Station, seven (7) proposals were received to occupy the space, including one that did not include a proposed rent schedule.

The rental payments proposed (calculated on a present value basis, using a discount rate of 9%) ranged from \$88,708 to \$1,590,879. The highest proposal was received from Healthy Food Concepts at \$1,590,879. The remaining proposals were made by Sarah's Kitchen at \$1,386,792; Dunkin Donuts at \$1,207,196; Michael Chung at \$1,154,168; Safar Ali at \$729,931 and Subway Restaurants at \$88,708. Randy Page submitted a proposal, but neglected to submit a proposed rent schedule.

Healthy Food Concepts proposes to operate a Jamba Juice store under a franchise from Jamba Juice Company ("Jamba Juice"). Jamba Juice stores feature blended-to-order fruit smoothies, squeezed-to-order juices, blended beverages and snacks. As of December 30, 2008, Jamba Juice had a total of 729 stores, including 511 company-owned stores and 218 franchisee-owned stores in the United States and the Bahamas. As the Lessee is to be single-purpose LLC, the Lessee's principal, Mr. Altaf Isani, has agreed to provide a personal guarantee as part of the lease agreement. Mr. Isani is known to the MTA through his ownership interest in Rosen's Café at 347 Madison Avenue, New York.

Based on the foregoing, MTA Real Estate requests authorization to enter into a lease agreement with JJ Penn Station LLC on the above-described terms and conditions.

METROPOLITAN TRANSPORTATION AUTHORITY  
REAL ESTATE DEPARTMENT  
POLICIES AND PROCEDURES FOR THE LEASING-OUT  
AND SALE OF REAL PROPERTY

---

March 2017

Page 135

---

Figure 24 – Document Approval Form

METROPOLITAN TRANSPORTATION AUTHORITY  
 REAL ESTATE DEPARTMENT  
 POLICIES AND PROCEDURES FOR THE LEASING-OUT  
 AND SALE OF REAL PROPERTY

**Document Approval Form**



**Transaction Type:**

Lessee / Licensee / Permittee / Grantee		Yardi Account #
Use & Location		Yardi Property # / Unit #
Project Manager	Attachments Proposer Info. Form..... <input type="checkbox"/> Yes <input type="checkbox"/> N/A ATN / Selection Memo..... <input type="checkbox"/> <input type="checkbox"/> Credit Report..... <input type="checkbox"/> <input type="checkbox"/> Good Standing Opinion..... <input type="checkbox"/> <input type="checkbox"/> NPV Analysis..... <input type="checkbox"/> <input type="checkbox"/>	SEQRA / NEPA Action Required Type 1 <input type="checkbox"/> _____ Type 2 <input type="checkbox"/> _____ Unlisted <input type="checkbox"/> _____ NEPA <input type="checkbox"/> _____
Deputy Director		

**DOCUMENT REVIEW**

<b>I. Deputy Director</b>		<b>II. Tenant Management</b>		<b>III. L &amp; A Supervisor</b>	
Date Submitted	Approved and Date	Date Submitted	Approved and Date	Date Submitted	Approved and Date
Comments / Date		Comments / Date		Comments / Date	
<b>IV. Legal Review</b>		<b>V. Final Review (if required)</b>		<b>VI. External Execution</b>	
Date Submitted	Approved and Date	Deputy Director Signature and Date		Date Sent	
Comments and Date		L & A Supervisor Signature and Date		Date Returned	Via: <input type="checkbox"/> Overnight <input type="checkbox"/> Certified <input type="checkbox"/> Hand

**DOCUMENT EXECUTION**

**Real Estate Department Staff**

\_\_\_\_\_, Deputy Director, Leasing & Acquisition      \_\_\_\_\_  
 Date \_\_\_\_\_ Date Returned to RED

David Bosch, Leasing & Acquisitions Supervisor      \_\_\_\_\_  
 Date \_\_\_\_\_ Date Returned to Project Manager

**Legal Department Staff**

\_\_\_\_\_  
 Date \_\_\_\_\_ Finance Committee Approval Date

**Executed by Agency Officer**

Jeffrey B. Rosen, Director, Real Estate      \_\_\_\_\_  
 Date \_\_\_\_\_ MTA Board Approval Date

Filed with the office of the New York State Controller      Date \_\_\_\_\_ or N/A \_\_\_\_\_

METROPOLITAN TRANSPORTATION AUTHORITY  
REAL ESTATE DEPARTMENT  
POLICIES AND PROCEDURES FOR THE LEASING-OUT  
AND SALE OF REAL PROPERTY

---

March 2017

Page 137

---

Figure 25 – Yardi Lease Tracking Report

METROPOLITAN TRANSPORTATION AUTHORITY  
 REAL ESTATE DEPARTMENT  
 POLICIES AND PROCEDURES FOR THE LEASING-OUT  
 AND SALE OF REAL PROPERTY

March 2017

Page 138

Agency=NYCT Property=tel16300, tax25900, tbw30300, tby00500, tl40900, t Report Date=10/16/2000										
Agency Code	Prop Name Tenant Code Tenant Name RE Manager	Unit Code Status Sqft	Tenant Use Location	Date Method	REC	Brd Appr	Les Exnc	Hand Off	OforB	Rent Com
NYCT tlw40300	42 ST-TIMES SQ 1000098	02 Current 0	Pay Phone				05/01/1999			03/01/2000
tl40900	42 ST-TIMES SQ 1000099	01 Current 0					05/01/1998			02/01/2000
tel16300	42 ST 10000107	01 Current 0					06/27/1989			03/01/2000
	42 ST 10000108	02 Current 0	Barber				11/01/1995			03/01/2000
	42 ST 10000109	03 Current 0	HlvBeauty				11/01/1995			03/01/2000
	42 ST 10000110	04 Current 0	Fiorit				03/15/1997			02/28/2000
	42 ST 10000111	05 Current 0	Other Retail				06/02/1994			03/01/2000
	42 ST 10000112	06 Current 0	Newsstand				03/04/1994			03/01/2000
	42 ST 10000113	07 Current 0	Other Retail				11/01/1995			03/01/2000
	42 ST 10000114	08 Current 0					03/04/1994			03/01/2000
	42 ST 10000115	09 Current 0					03/01/1996			03/01/2000
	42 ST 10000116	10 Current	Newsstand				03/04/1994			03/01/2000
	42 ST 10000117	11 Current 0					06/02/1994			03/01/2000
	42 ST 10000118	12 Current 0	Newsstand				03/01/1996			03/01/2000

METROPOLITAN TRANSPORTATION AUTHORITY  
REAL ESTATE DEPARTMENT  
POLICIES AND PROCEDURES FOR THE LEASING-OUT  
AND SALE OF REAL PROPERTY

Figure 26 – Tenant Control Log

METROPOLITAN TRANSPORTATION AUTHORITY  
 REAL ESTATE DEPARTMENT  
 POLICIES AND PROCEDURES FOR THE LEASING-OUT  
 AND SALE OF REAL PROPERTY

<b>TENANT CONTROL LOG</b>		
TENANT NAME: _____		ACCOUNT NO.: _____
AGENCY: <u>  </u> LIRR <u>  </u> LIB <u>  </u> MN <u>  </u> B&T <u>  </u> MTA HQ <u>  </u> NYCT <u>  </u> SIRTOA <u>  </u> SBK		
PROPERTY: _____		UNIT: _____
LOCATION: _____		
REQUIRED:	INITIALS	COMMENT
1. 2 executed original counterparts of Agreement	_____	_____
2. Staff Summary <u>or</u> Information Item	_____	_____
3. RFP Site Data Sheet <u>or</u> RTN	_____	_____
4. Routing Form for Execution	_____	_____
5. Document Preparation History Form	_____	_____
6. Determination of Responsibility [***]	_____	_____
<b>IF APPLICABLE:</b>		
• IRS Form W-9	_____	_____
• Security Deposit	_____	_____
• Record of Contact(s)	_____	_____
• Certificate of Insurance	_____	_____
• D/B/A Certificate	_____	_____
• 1 <sup>st</sup> Month Rent	_____	_____
• Master/Sub Report	_____	_____
• Applicant Information Statement [**]	_____	_____
• Credit Report	_____	_____
• Proof of Incorporation	_____	_____
• Copy of Advertisement	_____	_____
• RFP Proposal Analysis	_____	_____
• Agreement Transmittal Letter	_____	_____
• Other: _____	_____	_____
L&A PROJECT MANAGER NAME: _____		
NEW TENANT ACCEPTED FOR MANAGEMENT:		
By: _____		Date: _____
[*] Only required if value of agreement is over \$15,000 in any year during term. [**] Verify completeness of Lobbying Law Disclosure Statement pages.		

METROPOLITAN TRANSPORTATION AUTHORITY  
REAL ESTATE DEPARTMENT  
POLICIES AND PROCEDURES FOR THE LEASING-OUT  
AND SALE OF REAL PROPERTY

---

March 2017

Page 141

---


Figure 27 – Record of Contact Form



METROPOLITAN TRANSPORTATION AUTHORITY  
REAL ESTATE DEPARTMENT  
POLICIES AND PROCEDURES FOR THE LEASING-OUT  
AND SALE OF REAL PROPERTY

March 2017

Page 142

 Metropolitan Transportation Authority  
**Real Estate Department**

**RECORD OF CONTACT  
UNDER THE NEW YORK PROCUREMENT LOBBYING LAW  
(State Finance Law §139-j and §139-k)**

*If you receive a Contact in connection with a real estate transaction you must complete this form and submit it to the Director of Real Estate. If you believe that the Contact was an Impermissible Contact or you are not sure whether it was an Impermissible Contact, then you must also submit a copy to MTA Corporate Compliance - see below.*

Check One: This Contact is:  Permissible  Impermissible  I'm not sure\*

To: **MTA Director of Real Estate, 347 Madison Avenue, 8<sup>th</sup> Floor, Fax: (212) 878-0162**

\*If this is an Impermissible Contact or you are not sure whether it is an Impermissible Contact, you must also send a copy to the **Chief Compliance Officer, MTA Corporate Compliance, 2 Broadway, 16<sup>th</sup> Floor, Fax: (646) 252-1401**, together with an Impermissible Contact Referral Form.

From: \_\_\_\_\_  
(Your Name, Title and Department)

Date: \_\_\_\_\_

\* \* \* \* \*

I was contacted by the individual named below regarding the real estate transaction identified below. It reasonably appears that this was a Contact as defined in State Finance Law §139-k(1)(c) because I infer that the communication was intended to influence the real estate transaction. In accordance with State Finance Law §139-k(4), the following information was obtained. The Contact was made by means of:

correspondence  telephone  email  in person  other \_\_\_\_\_

Real Estate Transaction No. (if known): \_\_\_\_\_

Description of the Real Estate Transaction: \_\_\_\_\_

Contact's Name: \_\_\_\_\_

Contact's Address: \_\_\_\_\_

Contact's Telephone Number: \_\_\_\_\_

Contact's Place of Principal Employment: \_\_\_\_\_

Contact's Occupation/Title: \_\_\_\_\_

Is the above named person or organization the other party to this real estate transaction?  Yes  No

If No, was the above named person or organization retained, employed or designated by or on behalf of the other party to this real estate transaction to appear before or contact MTA about this real estate transaction?  Yes  No

Date(s) Contact was made: \_\_\_\_\_

FOR THE FORM & TITLE ONLY: Law/Record/Contact/RE/1406  
Rev. 7-07

METROPOLITAN TRANSPORTATION AUTHORITY  
REAL ESTATE DEPARTMENT  
POLICIES AND PROCEDURES FOR THE LEASING-OUT  
AND SALE OF REAL PROPERTY

---


March 2017

Page 143

---

Figure 28 – Procurement Lobbying Law Disclosure Statement

METROPOLITAN TRANSPORTATION AUTHORITY  
 REAL ESTATE DEPARTMENT  
 POLICIES AND PROCEDURES FOR THE LEASING-OUT  
 AND SALE OF REAL PROPERTY

 Metropolitan Transportation Authority

---

**New York State Finance Law Sections 139-j and 139-k ("Lobbying Law") — Disclosure Statement**

**General Information** All procurements (which are defined to include essentially all real estate transactions) by the MTA in excess of \$15,000 annually, are subject to New York State's State Finance Law Sections 139-j and 139-k effective January 1, 2006 ("Lobbying Law").

Pursuant to the Lobbying Law, all "contacts" (defined as oral, written or electronic communications with the MTA intended to influence a procurement) during a procurement must be made with one or more designated Point(s) of Contact only. Exceptions to this rule include written questions during the bid/proposal process, communications with regard to protests, contract negotiations and RFP conference participation. Nothing in the Lobbying Law inhibits any rights to make an appeal, protest or complaint under existing administrative or judicial procedures.

Violations of the policy regarding permissible contacts must be reported to the appropriate MTA officer and investigated accordingly. The first violation may result in a determination of non-responsibility and ineligibility for award to the violator and its subsidiaries, affiliates and related entities. The penalty for a second violation within four (4) years is ineligibility for bidding/proposing on a procurement and/or ineligibility from being awarded any contract for a period of four (4) years. The MTA will notify the New York State Office of General Services ("OGS") of any determinations of non-responsibility or objections due to violations of the Lobbying Law. Violations found to be "knowing and willful" must be reported to the MTA Executive Director and OGS.

Moreover, the statutes require the MTA to obtain certain affirmations and certifications from bidders and proposers. This Disclosure Statement contains the forms with which to comply, together with additional information and instructions.

---

**Instructions** New York State Finance Law §139-k(2) obligates the MTA to obtain specific information regarding prior non-responsibility determinations. This information must be collected in addition to the information that is separately obtained pursuant to New York State Finance Law §165(9). In accordance with New York State Finance Law §139-k, an offerer must be asked to disclose whether there has been a finding of non-responsibility made within the previous four (4) years by any governmental entity due to: (a) a violation of New York State Finance Law §139-j or (b) the intentional provision of false or incomplete information to a governmental entity.

As part of its responsibility determination, New York State Finance Law §139-k(3) mandates consideration of whether an offerer fails to timely disclose accurate or complete information regarding the above non-responsibility determination. In accordance with law, no procurement contract shall be awarded to any offerer that fails to timely disclose accurate or complete information under this section, unless the factual elements of the limited waiver provision can be satisfied on the written record.

---

**Disclosure of Prior Non-responsibility Determinations**

Name of Bidder/Proposer: \_\_\_\_\_

Address: \_\_\_\_\_

Name and Title of Person Submitting this Form: \_\_\_\_\_

Has any governmental entity<sup>1</sup> made a finding of non-responsibility regarding the Bidder/Proposer in the previous four years?  Yes  No

If yes, Was the basis for the finding of the Bidder's/Proposer's non-responsibility due to a violation of State Finance Law §139-j?  Yes  No


<sup>1</sup> A "governmental entity" is: (1) any department, board, bureau, commission, division, office, council, committee or officer of New York State, whether permanent or temporary; (2) each house of the New York State Legislature; (3) the unified court system; (4) any public authority, public benefit corporation or commission created by or existing pursuant to the public authorities law; (5) any public authority or public benefit corporation, at least one of whose members is appointed by the governor or who serves as a member by virtue of holding a civil office of the state; (6) a municipal agency as that term is defined in paragraph (b) of subsection (a) of section one-c of the Legislative Law; or (7) a subsidiary or affiliate of such a public authority. (SFL §139-j, paragraph 1.a.)

MTA Fin. Law 139-j, 139-k; rev. 10-06a; Page 1

METROPOLITAN TRANSPORTATION AUTHORITY  
REAL ESTATE DEPARTMENT  
POLICIES AND PROCEDURES FOR THE LEASING-OUT  
AND SALE OF REAL PROPERTY

March 2017

Page 145

 Metropolitan Transportation Authority

---

**New York State Finance Law Sections 139-j and 139-k ("Lobbying Law") — Disclosure Statement**

Was the basis for the finding of Bidder's/Proposer's non-responsibility due to the intentional provision of false or incomplete information to a governmental entity?  Yes  No

If yes, please provide details regarding the finding of non-responsibility below.

Governmental Entity: \_\_\_\_\_

Year of Finding of Non-responsibility: \_\_\_\_\_

Basis of Finding of Non-Responsibility: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

(Add additional pages as necessary)

Has any governmental entity terminated a procurement contract with the Bidder/Proposer due to the intentional provision of false or incomplete information?  Yes  No

---

**Bidder's/Proposer's Affirmation and Certification**

By signing below, the Bidder/Proposer:

- a) Affirms that the Bidder/Proposer understands and agrees to comply with the policy regarding permissible contacts in accordance with New York State Finance Law Sections 139-j and 139-k.
- b) Certifies that all information provided to the MTA with respect to New York State Finance Law §139-j and §139-k is complete, true and accurate.

By \_\_\_\_\_ Date \_\_\_\_\_  
(Signature of Person Certifying)

Print Name and Title: \_\_\_\_\_ Title: \_\_\_\_\_

Bidder/Proposer or Contractor/Consultant (Full Legal Name): \_\_\_\_\_

Address of Bidder/Proposer or Contractor/Consultant: \_\_\_\_\_

\_\_\_\_\_

Business Telephone Number: \_\_\_\_\_

**MTA's Right to Terminate**

The MTA reserves the right to terminate a Contract (including any lease, license, entry permit, or sale documents) in the event it is found that the certification filed by the Bidder/Proposer, in accordance with New York State Finance Law §139-k, was intentionally false or intentionally incomplete. Upon such finding, the MTA may exercise its termination right by providing written notification to the Bidder/Proposer in accordance with the written notification terms of the Contract.

MTA F-13 (Law 139-j, 139-k (rev. 10-06a))—Page 2