

Request for Proposals—Rules and Regulations

The Metropolitan Transportation Authority (“MTA”) is now accepting proposals for each of the properties described in this Request for Proposals.

Introduction

The MTA Real Estate Department manages income-producing property of MTA New York City Transit, MTA Long Island Rail Road, MTA Metro-North Railroad, MTA Bridges and Tunnels, and MTA Staten Island Railway (hereinafter referred to as “affiliates” or “subsidiaries”).

The MTA offers property for lease, license, or sale through a public solicitation known as a “Request for Proposals” (“RFP”). The MTA’s objective in issuing an RFP is to publicly offer and promote specific properties or concessions. The goal of the RFP process is to attract strong and viable proposals. The properties, offered from time to time by the MTA, are extremely varied and include vacant land, newsstands, parking lots, restaurants, and retail stores.

The MTA’s selection criteria include the financial strength, management expertise, business plan, and track record of the proposer, as well as the rent, compensation or purchase price offered and the improvements proposed for the property, if improvements are required. The RFP, therefore, requires the completion of an extensive proposal.

The Proposer Information Form must be filled out completely. An incomplete Proposer Information Form may be returned and may disqualify a proposal.

Multiple Properties

These Rules and Regulations are part of the complete RFP package that contains descriptions of one or more properties. Please note that the RFP constitutes a separate and distinct request for proposals for each location or property described within the RFP. Therefore, a separate and complete proposal must be assembled for each parcel desired.

Due Date

Each proposal must contain three copies of all the documents requested in the “Submission Requirements” section that follows below, and any additional items noted in the cover letter to this RFP (the “RFP Cover Letter”). The proposal must be delivered, in a sealed envelope, to the MTA Real Estate Department on or before the date specified for that property in the RFP Cover Letter (the “Deadline”), addressed as indicated in the RFP Cover Letter.

Submission Requirements

Properties may be offered in the RFP singly or as a group. A separate agreement shall be concluded for each offering whether the offering is an individual property or a group of properties. A proposer who wishes to submit a proposal for more than one property may do so provided:

1. A separate proposal is submitted for each offering; and

2. The proposer does not condition a proposal for any one offering upon the award of another offering. A proposal that specifies such a condition may be rejected.

At a minimum, proposals must include the following for each property, unless otherwise specified in the RFP Cover Letter:

- A completed and signed Parcel Information Sheet for each site, lease, or location for which a proposal is being submitted.
- A completed and signed Proposer Information Form.
- A completed and signed New York State Finance Law § 139-j and §139-k (“Lobbying Law”) Disclosure Statement.
- A completed and signed Rent, Compensation, or Purchase Price Proposal Form.
- A completed “IRS Form W-9, Request for Taxpayer Identification Number and Certification”.
- If required, a proposal deposit as described below (see “Proposal Deposit”).
- Other requirements that may be specified in the RFP.

No lease, license, or contract of sale shall be deemed granted or entered into and no rights whatsoever shall accrue to the proposer or any other person against the MTA or any affiliate or subsidiary thereof, nor shall there be deemed to be a lease or license for any property unless and until a fully executed agreement is delivered to the proposer. The execution of an agreement by the MTA or an affiliate or subsidiary is usually subject to the approval of the MTA Board.

The MTA reserves the right, without liability, to:

1. Postpone the submission deadline,
2. Reject any and all proposals,
3. Negotiate all terms and conditions, including compensation and location, with any proposer,
4. Modify or withdraw this RFP or any property specified in it at any time and without explanation, or
5. Waive any requirement.

The information provided in this RFP is summary in nature and has been prepared without audit or verification. No representations or warranties of any kind, either expressed or implied, are made with respect to such information by the MTA, its affiliates or subsidiaries, or by any officer, employee, or agent thereof. Applicants must recognize that the properties are being offered on an “as-is” basis and that applicants’ proposals must rely solely on their own independent study. A detailed

independent investigation by the applicant should be made before submitting a proposal (see “Inspection of Premises” below.)

Proposal Deposit

If required, a proposal deposit in the form of a check payable to the Metropolitan Transportation Authority in an amount equal to three months of the fifth year’s proposed compensation (for leases or licenses) or other amount indicated in the RFP for properties offered for sale. The check will be deposited in an interest-bearing account.

Proposal deposits will be returned to unsuccessful proposers (with interest) within 120 days after the Deadline.

If the proposer selected for an award fails to execute a lease, license agreement or contract of sale on the basis of the terms submitted in the proposal, the amount of the deposit made by such proposer, together with any interest thereon, may be retained by MTA as liquidated damages. The proposal deposit of the proposer to which the lease or license is awarded will be applied toward the security deposit under the applicable agreement. It is understood, however, that additional security may be required.

Withdrawal of Proposals

After the Deadline, proposals shall be considered an offer and may not be withdrawn until at least 180 days after the Deadline. Any withdrawal before that date shall result in forfeiture of the proposer’s security deposit.

Inspection of Premises

All proposers are urged to inspect the property, preferably accompanied by an architect if improvements are required. Closed or locked retail spaces or properties will be made available for inspection only at the dates and times specified in the RFP. These dates and times are subject to change. Prospective proposers must contact the MTA Real Estate Manager specified in the RFP for the desired property at least 24 hours before the scheduled inspection to confirm attendance.

Except as the RFP may otherwise expressly provide, neither the MTA nor any affiliate or subsidiary will improve the offered properties. Title to any improvements shall vest in the MTA or an affiliate or subsidiary upon installation, unless otherwise specified in the lease or license.

Selection Criteria

The MTA will consider the following criteria in evaluating proposals:

1. Business Experience: Proposers will be evaluated on the basis of the type, depth, and length of their business experience and the areas and levels of their past responsibilities.
2. Financial Qualifications: The creditworthiness of the proposer and any proposed guarantor will be evaluated to assure the MTA that the costs of the required improvements can be met, that the improvements will be completed in a timely fashion, that a smooth and uninterrupted operation be maintained, and compensation and security obligations under the lease or license will be fulfilled.

3. Income to the MTA: The amount and timing of payments proposed over the term of the lease or license will be evaluated.
4. Proposed Concept and Use: The responsiveness of the retail concept and use to the requirements of the RFP.
5. Operation and Management Plan: The degree to which the Operation and Management Plan addresses how the retail or other use shall be operated and managed.
6. Schematic Drawings of Required Improvements: If drawings are required, the quality of the drawings and their adherence to the specifications outlined in the RFP will be evaluated.
7. Any other criteria specified in the RFP.

Lease or License Term The offered term of the lease or license for each parcel is indicated in the RFP.

Conditions

1. As-is: No representations are made as to the condition of the premises. Except as the RFP may expressly otherwise provide, the lessee, licensee or purchaser shall be required to accept the premises “as-is”.
2. Improvements: All improvements shall be made at the sole cost and expense of the proposer. All improvements made by the lessee or licensee will become the property of the MTA or an affiliate or subsidiary.

The lessee or licensee will be required to submit plans and specifications for review and approval. Plans must be prepared by a New York State-licensed architect or engineer and submitted within 30 days after execution of a lease or license, unless otherwise specified.

All work must be completed within 30 days after approval of the construction plans, unless otherwise specified, and must conform to all applicable state, local, and agency regulations.

The lessee or licensee may be required to submit additional security in cash or letter of credit to guarantee the performance and completion of construction in accordance with the plans submitted.
3. Utilities: Except as the RFP may expressly otherwise provide, the lessee or licensee shall be responsible for providing its own utilities at the lessee’s or licensee’s sole cost and expense. This includes any work, permits, etc., that are required to bring any service or utility to the premises.
4. Maintenance: The lessee or licensee shall be responsible for maintaining the premises. Rubbish removal shall be performed as set forth in the lease or license agreement.
5. Rent or compensation: All rent or compensation pursuant to leases or licenses shall be payable monthly in advance unless otherwise specified and shall be due on the first day of the month.

6. Security: The lessee or licensee shall provide a security deposit equal to three months of the fifth year's compensation unless otherwise specified.
7. Assignment: The lease, license or contract of sale may not be assigned or sublet.
8. Insurance: The lessee or licensee shall be required to maintain insurance per occurrence in the amount set forth in the RFP and the lessee's or licensee's contractor shall be required to maintain similar insurance.
9. Termination: Unless otherwise specified, MTA or its affiliate or subsidiary generally reserves the right to terminate a lease agreement for transportation or corporate purposes upon notice to the lessee as specified in the RFP. MTA or its affiliate or subsidiary generally reserves the right to terminate a license agreement for any reason on no more than 60 days' notice.
10. Rules and Regulations: Additional rules, regulations, and restrictions may apply to the properties. These are described in the RFP.

Proposal Forms

The Rent, Compensation, or Purchase Price Proposal Form (see "Submission Requirements") contains spaces for the proposer to indicate annual compensation for each year of the term of the lease or license or proposed purchase price. The suggested annual rent, compensation, or purchase price is set forth for each property in the RFP and on the Rent, Compensation, or Purchase Price Proposal Form. The suggested annual rent, compensation or purchase price should be used as a guide to establish the proposed rent, compensation, or purchase price; however, proposals for more or less than the suggested annual rent, compensation or purchase price are permitted. The rent, compensation or purchase price offered in each proposal shall be firm and guaranteed, and cannot be based on variable factors such as gross receipts, cost-of-living adjustments, items permitted to be sold, etc., unless otherwise specified in the RFP.

No Brokerage Commission

Except as the RFP may expressly otherwise provide, no commissions whatsoever for brokerage or any other fee or rent or compensation shall be due or payable by the MTA or any affiliate or subsidiary.

Non-Discrimination

The MTA will not discriminate against any person on the basis of race, creed, color, national origin, sex, age, sexual orientation, handicap, or marital status in accepting, reviewing, and evaluating proposals.

General Affidavit

The General Affidavit, located at the end of the Proposer Information Form, must be signed under oath before a notary public in order for a proposal to be considered for an award. If the proposer is a corporation or limited liability company it may be signed by one individual authorized to bind the corporation or limited liability company. If the proposer is a partnership or joint venture, it must be signed on behalf of each partner or joint venturer unless one partner or joint venturer is authorized to bind the others, in which case a single General Affidavit may be signed by

one individual authorized to bind the partnership or joint venture. The portion of the General Affidavit addressing non-collusion is found in Section F.

Design Criteria

All plans and specifications submitted to the MTA must conform to the requirements of any applicable design standards. These standards are included in the RFP for any property to which they apply.

Products To Be Sold

The decision as to whether a certain product may or may not be sold, other than those products listed in the RFP, shall be at the sole and absolute discretion of the MTA or its affiliate or subsidiary. A lessee or licensee may be required to participate in various passenger service programs. The programs may include, but are not limited to:

- Distribution of subway, bus, and commuter rail maps without charge; and
- Sale of MetroCards at face value.

Eligibility

MTA employees, or employees of any affiliate or subsidiary, are not eligible to propose. A proposal submitted by any such employee shall be disqualified.

Protests

Protests: All complaints or protests relating to this RFP, including all complaints or protests that are exceptions to the limitation on contacts during a Restricted Period as set forth in the Procurement Lobbying Law (New York State Finance Law § 139-j and 139-k), must be addressed to the MTA General Counsel, 2 Broadway – 20th floor, New York, New York 10004, and should be made in advance of an RFP award where the basis for the complaint or protest is known to the proposer in advance of an RFP award. Complaints and protests will only be accepted from proposers or prospective proposers whose direct economic interest would be affected by an award to a tenant, licensee, or purchaser or by failure to make such an award. Complaints and protests regarding an RFP award must be received within 14 days of the RFP award authorization by the MTA Board; any complaint or protest received later than 14 days following the MTA Board action approving an award to a tenant or licensee shall be deemed untimely.

Any complaint or protest shall include: (1) the name and address of the complainant or protester; (2) identification of this RFP and the space or spaces or property relevant to the complaint or protest; and (3) a detailed statement of the factual and legal grounds of the complaint or protest, including a description of the applicable law or other requirement that is alleged to have been violated, together with all relevant documents. The MTA General Counsel shall transmit the complaint or protest to the MTA Director of Real Estate for consideration. A complaint or protest found by the MTA Director of Real Estate to be patently without merit or untimely may be rejected without further consideration. Otherwise, the MTA Director of Real Estate may, at his or her sole discretion, conduct interviews, meet with the complainant or protester to review the issues raised in the complaint or protest, request additional written or oral submissions or take any other actions he or she deems necessary to determining the merits of the complaint or protest. After review of a complaint or protest submitted under these provisions, the MTA Director or Real

Estate will issue a written decision on the basis of the information provided by the complainant or protester, the result of any meetings with the complainant or protester, and the MTA Director of Real Estate's own investigation. If the MTA Director of Real Estate finds that the complaint or protest has merit, MTA will take appropriate action to correct the disposition process to protect the rights of the complainant or protester. Notwithstanding the pendency of a complaint or protest, MTA reserves the right, in the sole discretion of the MTA Director of Real Estate based upon the circumstances, to proceed with the disposition process, including without limitation, to seek action by the MTA Board, to negotiate, execute and deliver a lease, license, or contract of sale and to commence action to remove a holdover tenant or licensee. No complaint or protest, whether pending or decided, shall toll or otherwise or extend a complainant's or protester's time to pursue other remedies, including without limitation, commencing an Article 78 petition.