

APPENDIX 1
Guidelines for Selection of Tenants for Grand Central Terminal

Application

These guidelines (“Guidelines”) apply to the selection of lessees for leases of commercial 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 January, 2006 and April, 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 Licensing-Out, Leasing-Out and Sale Of Real Property, adopted by the Board in February, 2009, 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.

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.

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 for leases of storage spaces and other incidental 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, provided that they reasonably determine that doing so will further the Objective. 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:

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.

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 be independently evaluated by Williams Jackson Ewing and Jones Lang 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 (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 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" (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 should 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"). 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, 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, with the concurrence of the Director of Real Estate, a Staff Summary recommending award of the lease to such proposer may be submitted to the Board for approval without convening a selection committee. 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 the Director of Business Development 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.

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, subject to the approval of the Deputy Executive Director of Administration, 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 Committee on Capital Construction, Planning & Real Estate. 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 submit to the Board a Staff Summary requesting authorization to enter into a lease with such prospective tenant. 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.

Grand Central Terminal Retail Leasing Evaluation Sheet

Space: Space # (current tenant)
 Evaluator: _____
 Date: _____

Scoring	A	B	C	D	E	F	G	H	I	J
	Unadjusted Guaranteed Rent Amount	Guaranteed Rent Adjustment Factor*	Adjusted Guaranteed Rent Amount (A x B)	Unadjusted Percentage Rent Amount	Percentage Rent Adjustment Factor**	Adjusted Percentage Rent Amount (D x E)	Adjusted Total Rent Amount (C + F)	Selection Criterion A Score *** (0-70)	Selection Criterion B Score (0-30)	Total Selection Criterion Score (H + I)
Proposer 1										
Proposer 2										
Proposer 3										

* Guaranteed Rent Adjustment Factor: from 1.00 (no uncertainty about A) to as low as 0.50 (great uncertainty about A); however may be as low as 0.00 per guidelines

** Percentage Rent Adjustment Factor: as high as 0.50 (no uncertainty about D) to as low as zero (great uncertainty about D)

*** Selection Criterion A Score: 70 multiplied by the ratio of the Adjusted Total Rent Amount for the proposer to the highest Adjusted Total Rent Amount (from column G)

Grand Central Terminal Retail Leasing Evaluation Sheet

Space: Space # (current tenant)
 Evaluator: _____
 Date: _____

Proposer 1

Guaranteed Rent Adjustment Factor selected: _____

Explanation of Guaranteed Rent Adjustment Factor selected:

Percentage Rent Adjustment Factor selected: _____

Explanation of Percentage Rent Adjustment Factor selected:

Selection Criterion B Score: _____

Factors considered in arriving at Selection Criterion B Score:

Grand Central Terminal Retail Leasing Evaluation Sheet

Space: Space # (current tenant)
Evaluator: _____
Date: _____

Proposer 2

Guaranteed Rent Adjustment Factor selected: _____
Explanation of Guaranteed Rent Adjustment Factor selected:

Percentage Rent Adjustment Factor selected: _____
Explanation of Percentage Rent Adjustment Factor selected:

Selection Criterion B Score: _____
Factors considered in arriving at Selection Criterion B Score:

Grand Central Terminal Retail Leasing Evaluation Sheet

Space: Space # (current tenant)
Evaluator: _____
Date: _____

Proposer 3

Guaranteed Rent Adjustment Factor selected: _____
Explanation of Guaranteed Rent Adjustment Factor selected:

Percentage Rent Adjustment Factor selected: _____
Explanation of Percentage Rent Adjustment Factor selected:

Selection Criterion B Score: _____
Factors considered in arriving at Selection Criterion B Score:

