

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 Long Island Bus, 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 or license 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 concessions.

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

The Proposer Information Statement (“Proposer Statement”) must be filled out completely. An incomplete Proposer Statement will 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 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. 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 (the “Deadline”). The envelopes must be addressed as follows:

Metropolitan Transportation Authority
Real Estate Department
347 Madison Avenue, 8th Floor
New York, New York 10017
Parcel No.: _____
Location: _____
RFP No.: _____
Attention: _____

The parcel number, location, RFP Number, and the person to whom the proposal is to be directed is shown for each parcel in the RFP.

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:

- A completed Proposer Statement
- A completed New York State Finance Law § 139-j and §139-k (“Lobbying Law”) Disclosure Statement
- A completed Proposed Compensation Form
- A completed “IRS Form W-9, Request for Taxpayer Identification Number and Certification”
- A description of the proposed method of operation
- A description of such improvements that the proposer proposes to make to the premises
- An estimate of the cost of the improvements to be constructed
- A proposal deposit as described below (see “Proposal Deposit”)
- Other requirements that may be specified in the RFP

No lease or license shall be deemed granted 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

A proposal deposit is required 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. 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 or license agreement 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. Closed or locked concessions 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, 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. **Operation and Management Plan:** the proposer's plan should, at a minimum, include the following elements:
 - Proposer's organization chart (if available), including the person designated as a contact for the MTA Real Estate Department
 - Total number of employees to be located at the property
 - Number of shifts and employees per shift
 - Plan for staff relief at lunch and dinner breaks
 - Handling of emergency situations
 - Method of stocking supplies
 - Personal involvement of principal(s) in the operation
5. **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.

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 or licensee 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 provided, 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. Compensation: all compensation shall be payable monthly in advance 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 or license may not be assigned or sublet.
8. Insurance: the lessee or licensee shall be required to maintain insurance in the amount of \$2,000,000 per occurrence, and the lessee's or licensee's contractor shall be required to maintain similar insurance.
9. Termination: MTA or its affiliate or subsidiary generally reserves the right to terminate a lease agreement for transportation or corporate purposes upon 60 days notice to the lessee. MTA or its affiliate or subsidiary generally reserves the right to terminate a license agreement for any reason.
10. Rules and Regulations: additional rules, regulations, and restrictions may apply to the properties. These are described in the RFP.

Compensation

The Proposed Compensation Form (see "Submission Requirements") contains spaces for the proposer to indicate annual compensation for each year of the term of the lease or license. The suggested annual compensation is set forth for each property in the RFP and on the Proposal Compensation Form. The suggested annual compensation should be used as a guide in establishing the proposed compensation; however, proposals for more or less than the suggested annual compensation are permitted. The lease or license compensation 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.

No Brokerage Commission

Except as the RFP may expressly otherwise provide, no commissions whatsoever for brokerage or any other fee 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 in the Proposer Statement, 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 Sections J and K; Section J is for those proposers who can unconditionally swear that the statements contained in that section are true and complete, and Section K is for those who cannot do so. The proposal of a firm that completes Section K will be considered for an award only if the MTA determines that the proposer was unable to swear to statements in Section J for reasons unrelated to the restriction of competition.
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	<p>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:</p> <ul style="list-style-type: none">• Distribution of subway, bus, and commuter rail maps without charge• 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.