

# **REQUEST FOR PROPOSALS**

**For the sale or lease of all or some of the  
air space and related real property interests in  
one or more of the three parcels known as**

**Vanderbilt Yard**

**May 24, 2005**



**Metropolitan Transportation Authority**

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EXHIBITS

EXHIBIT A – Forms

- Form 1 - Experience and Qualifications of Proposer
- Form 2 - Experience and Qualifications of Design Professionals
- Form 3 - Disclosure of Contacts
- Form 4 – Disclosure of Prior Non-Responsibility Determination
- Form 5 – Certification of Compliance with Executive Order 127

EXHIBIT B – Site Plan

## **I. INTRODUCTION**

### **A. Summary of Request**

The Metropolitan Transportation Authority (the “MTA”) requests proposals for the sale or lease of all or some of the air space and related real property interests in one or more of the three parcels known as Vanderbilt Yard (“VD Yard” or the “Site”). Any development above portions of the site where there remain active rail operations will be restricted to above a limiting plane not less than 22 feet above top of rail.

Long Island Rail Road (“LIRR”), a public-benefit corporation subsidiary of the MTA, owns the fee interest in the Site. It is anticipated that LIRR will transfer its interests in the Site to MTA prior to such sale or lease. The MTA will consider a sale of land on the portions of the site that does not continue to have active LIRR rail operations or up to a 99-year non-subordinate lease of the entire Site (a “Disposition”) for redevelopment.

The MTA is committed to working promptly to bring about the Disposition of the Site, while taking into account the respective goals and needs of the MTA, the State of New York (the “State”), the City of New York (the “City”), and the community in which the Site is located.

The MTA intends to consider proposals from one or more developers (each a “Proposer”) who desire to acquire/lease and redevelop and/or reuse all or a portion of the Site. The MTA intends to enter into a Disposition with the Proposer whose proposal most successfully meets the goals set forth in Section II of this Request for Proposals (the “Request”), provided that such Proposer is found qualified to carry out its proposal and its proposal fully complies with the requirements of this Request (said Proposer being hereafter referred to as the “Successful Developer”). Proposers are invited to submit proposals in accordance with the terms and conditions of this Request.

All submissions and communications with respect to this Request should be made to Roco Krsulic, Director of Real Estate, the MTA's project manager ("Project Manager") as follows:

Metropolitan Transportation Authority  
Real Estate Department  
347 Madison Avenue, 8<sup>th</sup> Floor  
New York, New York 10017  
Attn: Roco Krsulic, Director of Real Estate  
Telephone: 212-878-7368  
Fax: 212-878-0155

All proposals must be delivered to MTA on or before 5:00 p.m., July 6, 2005 (the "Proposal Due Date").

## II. GOAL

The goal is a Disposition of land or air rights over a portion or the entire Site in a manner that will maximize the economic benefit to MTA for improvement of the public transportation facilities and functions of the MTA and minimize the economic and environmental risk to MTA; however, this goal will be pursued in the context of the following, which will also be considered:

- a. The economic development, planning, and civic needs and desires of the City and the State;
- b. Consideration of the interests of the surrounding community;
- c. The selection of a developer or development team with the experience, reputation, and creditworthiness appropriate for the successful development of a project of this magnitude and importance.
- d. Consistency with the Long Island Rail Road's need to continually operate critical transportation services within the Vanderbilt Yard and related support facilities.

### III. THE SITE

#### A. Real Property And Amenities

The Site consists of Block 1119, Lot 7, situated between Atlantic Avenue and Pacific Street and 5<sup>th</sup> and 6<sup>th</sup> Avenues, Block 1120, Lot 1, situated between Atlantic and Pacific Avenues and 6<sup>th</sup> and Carlton Avenues, and Block 1121, Lot 1, situated between Atlantic and Pacific Avenues and Carlton and Vanderbilt Avenues, Brooklyn, New York (See attached Exhibit B – Site Plan). The three parcels are collectively known as the Long Island Rail Road's Vanderbilt Yard and are deemed to consist of a total of approximately 367,000 square feet. The property is located in the Borough of Brooklyn, Kings County, City and State of New York within Brooklyn Community District Number 2.

The subject property is adjacent to the Atlantic Terminal Urban Renewal Area (ATURA). The City of New York's designated ATURA developer has proposed a high density mixed-use project for the Site and surrounding parcels, including an arena. Additionally, it is contiguous to the recently expanded Downtown Brooklyn Special Purpose District, which provides for C6-4 zoning, allowing for an FAR of 10.

The property is located in a peripheral, secondary industrial and transportation related area adjacent to the LIRR's Flatbush Avenue Terminal. The nearest subway station is one block west at Flatbush & Atlantic Avenues (A, C, G, M, N, Q, R, W, 2, 3, 4 & 5 trains). LIRR's Flatbush Avenue Terminal on the Atlantic Branch is at that same location. Numerous bus lines pass by or near the Site.

The Site is located within a M1-1 light manufacturing-light performance zoning district and has approximately 1,500 feet of frontage on Atlantic Avenue. This district allows manufacturing use and has a floor area ratio (FAR) of 1.0. The 2004/2005 real estate taxes for the site were \$0 based on a \$0 assessed value, based on MTA's tax exempt status.

The Site, which is owned in fee by LIRR, is currently used as a commuter rail car storage yard with support facilities for LIRR. Any development on the site should contemplate that LIRR would maintain uninterrupted use of the yard and support facilities at no less than the existing capacity and functionality. A portion of the site is used by MTA as storage for inactive NYCT buses. These buses will be relocated from the site to accommodate development.

## **B. Special Site Conditions**

### **1. Current and Future Operations**

VD Yard is essential at its current location to continued LIRR Atlantic Branch service. It currently performs the following functions: daily fleet storage for up to 72 cars; daily toilet serving and cleaning, daily car inspections for up to 68 cars; storage, switching, evaluation and manipulation of equipment for unscheduled maintenance; storage and staging of track work equipment; switching and manipulation of equipment to these activities elsewhere; operation of electric car shop for special programs and retrofits and other transportation-related functions. Additionally, it is the site of a signal generator and a new power substation, specifically on the north side of Block 1119. Any development contemplated over the active yard will be no less than 22 feet above the top of rail.

VD Yard is contemplated to provide addition storage to accommodate the 40% system-wide fleet expansion in 2009 through 2012, which would cause it to be used 24 hours a day.

### **2. Possible Yard Reconfiguration Scenarios that might be Considered**

MTA will consider proposals that contemplate a Disposition of only a portion of the Site, including those that do not impact the active portion of VD Yard. It is possible to submit a proposal that does not require any over built platform. However, provided any new development would under no circumstances curtail current or future LIRR operations, the active portion of VD Yard may offer opportunities for future partial or complete over build of a platform, as follows:

- Since the actual yard tracks do not take up the entire three block parcel, it may be possible to consolidate the yard to the two eastern most parcels (Blocks 1120 & 1121) leaving the western parcel (Block 1119) available for development with no need to provide for an overbuild platform. However, parcels in Blocks 1120 & 1121 not currently under MTA ownership may need to be incorporated into the newly configured yard; In addition, any development of the two eastern most parcels (Block 1120 & 1121) would require the construction of an overbuild platform above the

newly configured yard, assuming space would be available between the tracks to accommodate footings for the platform;

- Conversely, the yard could be reconstructed in its current location in the western most parcels, (Note: The current yard does not provide adequate space for footing and columns.) leaving the eastern most parcel available with no need to provide for an over build platform other than above the lead tracks, provided the current capacity is maintained by possible larger yard or added tracks in the area.
- If the yard were reconstructed in place, any development of the two western most parcels (Block 1119 & 1120) would require the construction of an overbuild deck above the newly configured yard, assuming space would be available between the tracks to accommodate footings for the platform;
- Any development on Block 1119 could require the relocation of the electrical substation providing power for VD Yard and Atlantic Terminal, as well as relocation of the signal generator.

### **3. Construction Protocol**

The special nature of the Site creates certain unique requirements and constraints which each Proposer must take into account when preparing its proposal, specifically if that proposal contemplates building over active tracks. The following are significant requirements relating to the continuing under-platform use as well as yard reconfiguration that must be considered:

#### **A. Code Compliance**

- LIRR will be the Building Code of New York State code permitting agency for the platform and below-platform portions of construction. LIRR will coordinate with the New York City Department of Buildings which will be the code compliance entity for above platform work.

#### **B. Design Review and Approval**

- The Selected Developer will be responsible for designing platform and under-platform systems in a manner which meet LIRR operating requirements (all related design and construction and maintenance costs for the platform and under-platform systems serving the rail yard functions shall be borne solely by Selected Developer). The

following are examples of issues that will need to be addressed:

1. Ventilation
  2. Lighting
  3. Power
  4. Security
  5. Fire Code NFPA-130
  6. Fire alarms
  7. Fire control: pumps, sprinklers, pull-boxes
  8. Smoke Evacuation
  9. Thermal protection
  10. Decking
  11. Structural design
  12. Emergency lighting
  13. Emergency standby power
  14. Public Address systems and strobes
- LIRR approval will be required at defined stages of the design, contract documentation and construction process.
  - LIRR approval of material change orders to the platform and under-platform systems will be required.
  - In connection with all LIRR involvement in the overbuild platform project, the Selected Developer must agree to reimburse LIRR for its costs and expenses, including the cost of consultants and outside counsel.

### **C. Platform Construction Issues**

- Selected Developer must comply with the LIRR work plan and look-ahead process.
- Selected Developer must comply with LIRR site control and protection requirements.
- Selected Developer must take into account LIRR's requirements with respect to the scheduling and phasing of platform construction (Note: the Atlantic Branch operates at near NYCT subway-like headway with eleven trains per hour in the west bound AM peak period and 154 trains over a 24 hour period.).
- In order to minimize interference with LIRR commuter rail operations and service, LIRR will only permit a limited number of yard tracks to be taken out of service at any one time.
- Selected Developer will be required to secure at its sole cost and expense LIRR protection forces for all overbuild and yard-related activity.
- Selected Developer must comply with all LIRR health and safety requirements.
- LIRR will have a construction oversight role throughout platform and below-platform construction.
- LIRR will require platform completion guarantees from a creditworthy source.

- LIRR will have the right to approve platform, foundation and under-platform systems contractors.

**D. Off-Site Costs**

- LIRR may be required to store trains and/or other equipment at other locations to accommodate the track outages required for construction over the operating rail track. These other locations may require improvements to serve this function. The Selected Developer will be required to pay all the costs associated with this alternate storage, including related capital improvements and operating costs.

**E. Platform and Under-Platform Systems Repair and Maintenance**

- Selected Developer will be responsible, at its sole cost and expense, for the maintenance, repair and replacement of the platform and any under-platform systems that it is required to install.

**F. Additional LIRR Operating and Security Costs**

- Selected Developer shall be responsible for reimbursement of all incremental LIRR operating and security costs associated with operations in an enclosed or semi-enclosed environment.

## IV. TERMS AND CONDITIONS

### A. Not an Offer

This Request does not constitute an offer to sell or lease the Site or any portion thereof, nor a solicitation of offers to sell or lease the Site or any portion thereof. Neither the MTA, LIRR, nor any affiliate or subsidiary of any of the foregoing, shall incur any obligation or liability on account of any submission made in connection with this Request (nor shall any proposal be deemed accepted) unless and until an agreement setting forth all the terms and conditions of a transaction has been fully negotiated and a written agreement incorporating such terms and conditions has been fully executed and unconditionally delivered by all the parties thereto and all necessary consents and approvals have been obtained including, without limitation, approval of such written agreement by the MTA Board.

**B. Form of Transaction** MTA would consider a proposal that offers fair market value for land and/or air rights based on reasonable assumptions regarding rezoning or zoning override. Although the Site is currently zoned M1-1, it is contiguous to the recently expanded Downtown Brooklyn Special Purpose District, which provides for C6-4 zoning, allowing for an FAR of 10. MTA considers the assumption that the Site could be rezoned or could have the current zoning overridden to attain higher FAR reasonable.

MTA would consider a lease term of not more than 99 years for a portion or the entire site.

MTA would consider a sale of land for a portion of the Site that does not continue to have active LIRR rail operations.

### C. Taxes

Property owned by MTA is exempt from taxation and special ad valorem levies. MTA is required to pay no fees, taxes or assessments, whether state or local, including but not limited to fees, taxes or assessments on real estate. MTA anticipates that under a lease arrangement the Site and any improvements thereon or therein will continue to be owned by MTA and will be exempt from real property taxes. However, MTA will require the Selected Developer to make payments in lieu of real property taxes (“PILOT”) to MTA in an amount equal to real property taxes that would have been payable by the Selected Developer but for MTA’s exemption, taking into account any as-of-right tax exemptions to which the Selected Developer would have been entitled based on the nature of the improvements constructed

and/or the taxable status of the Selected Developer. Such PILOT payments would be made to MTA at the same times and in the same amounts as the real property taxes that would have been payable but for MTA's exemption. Proposers must identify (a) the timing and amount of PILOT payments that they would anticipate being due to MTA under their development proposal and (b) any real property tax abatements, real property tax exemptions, or other real property tax related matters which would change the timing or reduce the amount of such PILOT payments to MTA.

Certain tangible personal property that is an integral component of a building or structure owned by MTA is exempt from sales tax. MTA anticipates that under a lease arrangement any tangible personal property that is an integral component of improvements in or on the Site will be exempt from sales tax. However, MTA will require the Selected Developer to make payments in lieu of sales taxes ("PILOST") to MTA in an amount equal to the sales taxes that would have been payable by the Selected Developer but for MTA's exemption.

#### **D. Permits and Approvals**

The Selected Developer will be required, at its sole cost and expense, to comply with all applicable federal, state, and local laws and regulations, and to obtain from all appropriate government authorities all construction and ancillary approvals for the development of the Site, including but not limited to, all required building permits and approvals. All risk associated with potential rezoning of the Site will be borne fully by the Selected Developer.

#### **E. Expenses**

Under no circumstances shall MTA or LIRR be liable for any of the costs of any Proposer or the Selected Developer in connection with preparing a proposal in response to this RFP, negotiating with MTA, or otherwise participating in this RFP process. The Selected Developer shall be solely responsible for the following costs and expenses: (i) to the extent applicable, New York City and New York State real property transfer and conveyance taxes; (ii) recordation fees with respect to any recordable instruments contemplated by the documents which shall govern the disposition of the Site (the "Disposition Contract"); and (iii) the cost of any surveys desired by the Selected Developer. The Selected Developer shall also be responsible for payment of the following costs and expenses of MTA and LIRR in connection with this Request, the negotiation of the Disposition Contract and related documents, the closing of any transactions relating to the disposition of the Site, and the design and construction of improvements on the Site: (A) fees

and disbursements of outside counsel, engineers, appraisers, consultants, and financial and real estate advisors retained by MTA and/or LIRR; and (B) in-house MTA and LIRR force account costs, including without limitation, the costs of design review, construction oversight and inspection and site protection services (all such costs and expenses being collectively referred to as the “MTA/LIRR Costs”). Commencing upon notice to the Selected Developer on the Developer Selection Date that it is the Selected Developer, such Selected Developer shall be liable for all of the MTA/LIRR Costs including those incurred prior to the Developer Selection Date, regardless of whether the Disposition Contract is completed or there are any closings related to the disposition.

Within five (5) days after the occurrence of the Developer Selection Date, (as hereinafter defined) the Selected Developer will be required to deposit with the MTA the sum of \$500,000 (the “Expenses Fund”) to cover the anticipated MTA/LIRR Costs through the date of execution and delivery of the Disposition Contract. MTA shall have the right to withdraw amounts from the Expenses Fund necessary to reimburse MTA and/or LIRR for MTA/LIRR Costs. At any time that the amount of the Expenses Fund shall be less than \$100,000, the Selected Developer shall deposit with the MTA such amount that shall be necessary to restore the amount of the Expenses Fund to not less than \$250,000. Any amounts remaining in the Expenses Fund after reimbursement of all MTA/LIRR Costs incurred through the date of execution and delivery of the Disposition Contract shall be refunded to the Selected Developer.

**F. Project Manager**

The Project Manager is authorized only to direct the attention of Proposers to various portions of this Request (including all attachments) and to consider requests for clarification. Neither the Project Manager nor any other employee of the MTA, or the LIRR, is authorized to give interpretations of this Request or additional information regarding the requirements of this Request. Interpretations or additional information, if provided, will be communicated to Proposers only by public notice or written addenda, and shall be considered part of the Request. Pursuant to MTA’s Vendor Code of Ethics (which may be found at [www.mta.info/mta/procurement/vendor-code.htm](http://www.mta.info/mta/procurement/vendor-code.htm)) Proposers should not contact other employees or consultants of the MTA, the LIRR, or any other governmental entity regarding this Request or send proposals to them. Failure to observe this requirement may result in the Proposer’s disqualification from consideration pursuant to this Request.

The MTA will provide each Proposer the opportunity to inspect the Site. Site visits will be scheduled by the Project Manager, who should be contacted for the exact dates and times.

## **G. Environmental Issues**

Disposition of the Site may trigger the need for an environmental review under the State Environmental Quality Review Act (“SEQRA”). If so, the Selected Developer will fully compensate MTA for all costs and expenses associated with compliance with SEQRA, including but not limited to the cost and expenses of preparing any and all reports, analysis, and documentation; public notifications, outreach, meetings, and hearings; and the procurement of environmental consultants and counsel as may be required.

The Selected Developer shall be responsible for all environmental conditions at the Site arising from or connected with (a) any act or omission in connection with site investigations, site excavation and construction and all associated activities conducted by or on behalf of the Selected Developer; (b) the release or threatened release of hazardous or regulated substances at any location where the Selected Developer has caused materials removed from the Site to be transported and disposed; (c) the negligent use and occupancy of the Site and related property by the Selected Developer or the failure of the foregoing to exercise due care in its operations; (d) the utilization of the Site by the Selected Developer for non-permitted uses; or (e) the breach by Selected Developer of any of the terms of the Disposition Contract. The Selected Developer shall indemnify and hold the MTA harmless from any and all environmental claims, environmental clean-up liabilities, and other actions, causes of action, suits, proceedings, administrative orders, costs, charges, and damages directly or indirectly arising therefrom.

The environmental review process may include a requirement that the Selected Developer enter into an entry permit with MTA and LIRR in which, among other things, the Selected Developer would agree to indemnify and hold the MTA and LIRR harmless from liabilities that may arise from the discovery of hazardous or regulated substances in, on or under the Site by the Selected Developer or the Selected Developer’s consultants. The Selected Developer agrees to accept the site in existing condition. The MTA will not be responsible for any costs of environmental remediation and/or management, whether or not such remediation and/or management is required by an environmental agency having jurisdiction.

## **V. SUBMISSION REQUIREMENTS**

### **A. General**

Ten (10) bound originals of the material required, including all forms and attachments must be received by the MTA by 5:00 p.m., July 6, 2005, at 347 Madison Avenue, 8<sup>th</sup> Floor, New York, New York 10017, addressed to the attention of Roco Krsulic, (the “Project Manager”). The original proposal must be signed by a representative of the Proposer authorized to bind the Proposer and must provide the name, address, and telephone numbers of individuals who have authority to bind the Proposer and who may be contacted during the period of proposal evaluation.

### **B. Organization of Proposal**

The proposal should be organized as follows:

#### **1. Disposition of Site**

The proposal must set forth the payments to be made to MTA in connection with the disposition of the Site.

- a. If the disposition is a fee simple transfer of all or a portion of the Site, identify the following:
  1. The proposed purchase price (the “Purchase Price”), including:
    - (i) The amount of the non-refundable down payment (the “Purchase Down Payment”) to be paid upon execution and delivery of the Disposition Contract, which amount shall be not less than ten percent (10%) of the Purchase Price and which shall be in the form of cash or cash-equivalents.
    - (ii) The terms of payment of the remaining portion of the Purchase Price.
  2. If the disposition is a non-subordinate lease of the Site, identify the following:
    - (i) The proposed term (not to exceed 99 years), including renewal options.
    - (ii) The amount and timing of rent payments, including any pre-development rent or rent abatements.
    - (iii) The guaranteed base rent to be paid the MTA throughout the term of the lease, including escalations. The description of escalations must include the method used to calculate escalations, their timing, and the

projected amount of each escalation. Fair market rental resets and timing of the same should be described.

- (iv) The amount of the non-refundable prepayment of rent (the “Rent Prepayment”) to be paid upon execution and delivery of the Disposition Contract, which amount shall be not less than ten percent (10%) of the present value of the guaranteed base rent (discounted at six percent (6%) per annum). The Rent Prepayment shall be in the form of cash or cash-equivalents.
- (v) Any additional payments to MTA proposed by Developer, including any PILOT and PILOST payments.
- (vi) MTA’s share of proceeds from a capital event such as an assignment of the leasehold interest, transfer of interest in the Selected Developer’s business entity, refinancing or sale of the project, or any other capital event after construction.

It should be noted that an “all cash” transaction will best serve the goal of the MTA set forth in Section II of this Request whether for full sale price or prepaid rent, and that any proposal providing for such an “all cash” transaction will therefore be more favorably considered than a proposal that does not call for an “all cash” transaction. Furthermore, the MTA will not consider a proposal that includes purchase money or similar financing by the MTA.

## **2. Narrative**

A narrative description of the proposal must be provided. It should include but not be limited to the following items:

- a. Proposed use and/or program concept, including a detailed breakdown of commercial, residential, retail, hotel and/or other uses for the Site and any public areas or amenities;
- b. Proposed property management;
- c. Operating characteristics (hours of operation, anticipated daily usage, and peak periods);
- d. Architectural features which illustrate the development program;
- e. Relationship of proposal to adjacent public spaces, including entrances to the subway, bus stops, and surrounding residential and commercial properties; and
- f. Quantification of economic impact, including taxes, direct construction and permanent jobs (broken out separately)

associated with the project, and other direct and multiplier effects on the economic activity of the City (stating all assumptions and describing in detail and setting forth all quantitative methods and calculations used to support such qualification).

### **3. Drawings and Plans**

The following drawings must be provided:

- a. General site plan, with cross sections (particularly where over build is contemplated – keep in mind all structure must maintain at least a 22 foot above top of rail clearance).

### **4. Financing Plan**

Each Proposer must submit a financing plan satisfactory to the MTA as part of its proposal. This financing plan should include all information required to provide the MTA sufficient data to evidence that the proposed development can be financed, constructed, and delivered in a timely fashion. The financing plan should contain the following:

- a. Development schedule and budget;
- b. Sources and uses statement;
  - (i) Sources, amounts, terms and conditions of financing, and the Proposer's equity; and
  - (ii) Breakdown of uses of funds in the project, including an itemized list of all costs associated with the improvements of the Site;
- c. Pro forma cash-flow statements, with documentation of assumptions for a 20-year period;
- d. Evidence of financing consistent with sources and uses statement;
- e. Evidence of financial capacity of lenders and equity sources.

Identity and financial capacity of guarantor to guaranty lien-free completion of the proposed project, especially any overbuild platform above the active rail yards and the related under-platform equipment. At the MTA's request, the Proposer will submit a revised updated, detailed financing plan setting forth such information as MTA (in consultation with its advisors) deems, in the exercise of its sole discretion, helpful or relevant in evaluating the Proposer or any aspect of its proposal and indicating any and all changes from any initial financing plan.

## **5. Project Completion Schedule**

Detailed schedule from the execution date of the Disposition Contract through building occupancy must be provided. The schedule should show estimated dates of commencement and completion, commitments from lenders (and tenants, if applicable), and renovation and new construction time periods (as appropriate). The development schedule should include but not be limited to the following:

- a. Preliminary design (work on which should commence promptly after the occurrence of the Developer Selection Date);
- b. Phasing plan, if applicable;
- c. Construction documents;
- d. Reviews and approvals;
- f. Construction;
- g. Substantial completion date; and
- h. Occupancy date.

## **6. Development Team Information**

To enable the MTA to assess a Proposer's ability and resources to carry out the proposed redevelopment, the Proposer must complete and submit with its proposal the forms included in Exhibit A. These forms include information regarding:

- a. Description of Proposer;
- b. Description of development team (including the design team) structure and all relevant experience; and
- c. Complete disclosure of financial information of the Proposer, including credit information regarding the Proposer, credit references, and relevant financial statements, including, without limitation, net worth statements.

## **7. New York State Executive Order Number 127**

New York State Executive Order Number 127, Providing For Additional State Procurement Disclosure ("EO 127") requires the MTA to systematically seek the disclosure of persons or organizations whose intended purpose is to influence certain procurements as defined by EO 127. This Disposition comes under this definition. EO 127 requires the MTA to record

information about all such persons or organizations that “attempt to influence the [proposal] process,” and to make that information accessible to the public. In addition, it requires contractors, consultants and potential contractors and consultants, to disclose to the MTA the identity of persons or organizations retained, employed or designated by them to attempt to influence a proposal process. EO 127 also requires that the Proposer must declare whether the person/organizations retained, employed or designated to attempt to influence the procurement process has a financial interest in the procurement.

Obligations under EO 127 continue after contract award and may apply to any subsequent amendments to the contract.

Failure of the Proposer to timely disclose and complete information or to otherwise cooperate with the MTA in the implementation of EO 127 shall be considered by the MTA in its determination of the responsibility of Proposer.

The following forms which are included in Exhibit A, must be completed by the Proposer in order to comply with EO 127:

Form 3 - Disclosure of Contacts Form

Form 4 - Disclosure of Prior Non-Responsibility Determinations

Form 5 - Certification of Compliance with Executive Order 127

Note: Failure to complete and return the forms with your Proposal may cause the Proposer to be deemed non-responsible.

## **VI. SELECTION PROCESS**

### **A. General**

The MTA may at any time exclude proposals that, in the sole and absolute discretion of the MTA, fail to comply with the requirements of this Request, or fail to meet the goals of the MTA set forth in Section II of this Request.

The MTA will review all proposals for completeness and compliance with the terms and conditions of this Request, and may request from any or all of the Proposers additional material, clarification, confirmation, or modification of any submitted proposal, including proposals that are incomplete or nonconforming as submitted. Except at the request or by the consent of the MTA (which consent shall be in the sole and absolute discretion of the MTA), Proposers will not be entitled to change their proposals once submitted.

The MTA evaluation committee will review and evaluate all responsive proposals.

The MTA evaluation committee will present such evaluations to the MTA Board for action, which may include, among other alternatives, direction to continue discussions with one or more of the Proposers or the selection of the Proposer that, in the sole and absolute discretion of the MTA, most successfully fulfills the Selection Criteria (as such term is hereinafter defined) and best meets the other needs and goals of this Request and the MTA.

The MTA reserves the right, at any time and in its sole and absolute discretion, to reject any or all proposals, to withdraw the Request without notice, to use the proposals as a basis for negotiation with one or more Proposers and/or with parties other than those responding to this Request and/or on terms other than those set forth herein. The MTA reserves the right to waive compliance with and/or change any of the terms of this Request.

### **B. Criteria**

In evaluating the proposals for the MTA Board, the MTA evaluation committee will consider such criteria (all criteria considered by the MTA being hereinafter referred to collectively as the "Selection Criteria") that, in its sole and absolute discretion, are in the best interests of the MTA. The criteria listed below are of significant concern to the MTA:

1. Quantity and certainty of the financial return to the MTA;
2. Financial viability of the proposal;

3. Overall economic development benefit of the proposal;
4. Proposer's experience in the development, management, marketing and design of projects of a scale, complexity, and quality similar to that required by the Request, and its ability to implement its proposal;
5. Proposed timeframe for commencement and completion of the Proposal;
6. Proposer's financial qualifications (including its proven ability to obtain financing for projects of similar size, experience with institutional lenders, and evidence of the willingness of such lenders to finance the proposed development), and the amount of equity or personal risk the Proposer proposes for the proposal;
7. Quality of the development program including the proposed use and design based on:
  - (i) Overall compliance with this Request; and
  - (ii) Relationship and overall benefit to adjacent public spaces, streets, properties and community;
8. Proposer's previous record of performance in business dealings with any municipal, state, or federal agencies, including the MTA; and
9. Ability of the Proposer and the MTA to agree on the terms of a Disposition Contract.
10. Proposer's commitment to ensure MTA/LIRR operating requirements with minimal impact to Railroad Operations.

### **C. Deposits and Security**

1. Together with their proposal, each Proposer shall include a non-refundable Administrative Fee of \$25,000.00. This shall be in the form of a cashier's check made payable to MTA.
2. Upon execution of the Disposition documents, a non-refundable down payment (the "Purchase Down Payment") which shall be in the form of cash or cash-equivalents will be required from the Selected Developer. The Purchase Down Payment will be credited against the Purchase Price. Likewise, the Rent Prepayment will be credited against the guaranteed base rent.

3. The Selected Developer will be required to post the Expenses Fund as set forth in Section IV. E. of this Request.
4. With respect to any Disposition, the Administrative Fee will be retained by the MTA and the Selected Developer will not be entitled to any credit against the Purchase Price or lease rent in connection therewith.

## **VII. INTENTION**

The MTA intends to select a Proposer for award of a Disposition Contract as described in this Request. However, as stated elsewhere in this Request, the MTA reserves the right, without liability, to accept any and reject all the proposals submitted in response to this Request and to dispose of the Site outside this solicitation process.

If for any reason the MTA decides not to proceed with the Disposition of the Site or decides to dispose of the Site outside this solicitation process, the MTA will not be liable for any costs and expenses associated with the preparation, clarification, submission, or negotiation of proposals submitted in response to this Request.

## VIII. GENERAL CONDITIONS

MTA and LIRR make no representations or warranties whatsoever with respect to this Request and the Site, including, without limitation, representations or warranties as to the accuracy of any information or assumptions contained in this Request or otherwise furnished to Proposers; the use or progress of development of the Site, or any portion thereof; and site and environmental conditions or the suitability of the Site for any specific uses or development. Proposers shall make their own analysis and evaluation of the income potential and profits and expense of the Site, as well as the physical condition, operation, layout, size, building systems or structural integrity, and Proposers shall not rely upon any statement or information given to Proposers by the MTA or LIRR, including without limitation, any information contained in this Request or in any other documents cited in this Request.

In addition to those stated elsewhere, this Request is subject to the specific conditions, terms, and limitations stated below:

1. The Selected Developer will be required to comply with all applicable federal, state, and local laws and regulations.
2. Any site preparation, demolition or construction activities at the Site related to this proposal are to be performed at the sole cost and expense of the Selected Developer.
3. Prior to commencing any work, the Selected Developer shall obtain valid permits and approvals, as required by the MTA, LIRR, and by City, State and federal laws, regulations, or agencies.
4. The Selected Developer will be required to perform and pay for such environmental remediation and/or management as may be required by any environmental agency with jurisdiction over the Site in accordance with Section IV (f) above.
5. No Proposer will be selected if, in the determination of the MTA, any principal of the Proposer or any other member of the Proposer's development team is in arrears or in default upon any debt, contract, or obligation to or with the State, City, the MTA, or any of their respective affiliates, subsidiaries, agencies, or instrumentalities.

6. The MTA will not pay for or refund any costs and expenses incurred by a Proposer in responding to this Request or by the Selected Developer following selection or designation.
7. All determinations as to the completeness or compliance of any proposal, or as to the eligibility or qualification of any Proposer, will be within the sole and absolute discretion of the MTA.
8. Acceptance of a Proposer's proposal or selection of the Selected Developer pursuant to this Request will not create any rights on the Proposer's or Selected Developer's part, including without limitation rights of enforcement, equity, or reimbursement. After execution and delivery of the Disposition Contract (as more particularly set forth in Section VII hereof), the terms thereof will thereafter govern the relationship between the MTA and the Selected Developer. In the event of any variance between the terms of this request and the Disposition Contract, the Disposition Contract will govern.
9. The MTA advises all Proposers that there is no legal obligation on part of the MTA to have a Disposition of the Site through a competitive bid or competitive negotiation process, that this Request does not constitute an offer or request for bids, and that the MTA reserves the right to use the proposals submitted as a basis for negotiation with Proposers or other parties as the MTA deems appropriate.
10. This Request may be reissued, amended, or withdrawn if it is deemed in the best interest of the MTA or the State of New York to do so, or if, in the sole and absolute judgment of the MTA (in consultation with its advisors), all the responses are unacceptable. Issuance of this Request does not obligate the MTA to undertake any action.
11. Proposers will be rejected by the MTA if such Proposers, or any principal, partner, officer, director or principal shareholder of the Proposer's firm is determined, in the sole discretion of the MTA, to have been convicted of or, pleaded guilty or nolo contendere to a felony or crime of moral turpitude, to be an "organized crime figure", to be under indictment or criminal investigation, or to be in arrears or in default on any debt, contract, or obligation to or with a New York State or local government entity. The Selected Developer may be required to complete a background questionnaire to verify that it is in full compliance with these requirements.

## **IX. BROKERS**

Proposals shall be accepted from principals only. No brokerage fees, finder's fees, commissions, or other compensation will be payable by the MTA in connection with the selection of the Selected Developer or the Disposition of the Site. Submission of a proposal by a Proposer in response to this Request will constitute an undertaking by the Proposer to hold harmless and indemnify and defend the MTA from and against any and all expenses, damages, or liability (including, without limitation, attorneys' fees and disbursements) arising out of any claim for such fees, commissions, or other compensation made in connection with such Proposer's response to this Request, selection or nonselection thereunder or negotiation and execution (or nonexecution) of a Disposition Contract.