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STATE OF NEW YORK
OFFICE OF THE STATE COMPTROLLER

July 27, 2012

Mr. Joseph J. Lhota
Chairman and Chief Executive Officer
Metropolitan Transportation Authority
347 Madison Avenue
New York, NY 10017

Re: Report 2011-F-30

Dear Mr. Lhota:

Pursuant to the State Comptroller's authority as set forth in Article X, Section 5 of the State Constitution and Section 2803 of the Public Authorities Law, we have followed up on the actions taken by officials of the Metropolitan Transportation Authority (MTA) to implement the recommendations contained in our prior audit report, Report 2009-S-10 Metropolitan Transportation Authority *Real Estate Portfolio,* issued September 23, 2010. As part of our follow up we closely examined the leasing of space in Grand Central Terminal to Apple, Inc. (Apple) since this transaction drew considerable public attention and was relevant to our prior audit recommendation number five which called for the Metropolitan Transportation Authority (MTA) to ensure that all rental units are marketed through one of the competitive processes required by MTA's Policies and Procedures.

Background, Scope and Objective

The MTA is a public benefit corporation providing transportation services in and around the New York City metropolitan area. The MTA consists of six constituent agencies and includes a Headquarters which provides administrative support. The MTA Headquarters also includes the Real Estate Department (RED) which has overall responsibility for managing the MTA's real estate portfolio. RED acquires licenses, leases and sells properties. For example, on August 10, 2011, RED garnered considerable public attention, when the MTA signed a lease with Apple for space in Grand Central Terminal (GCT) that had been occupied by the restaurant Metrazur.

Our prior audit determined that the MTA did not manage its real estate holdings in a manner which minimized expenses and maximized revenue. For example:

- RED lacked a strategic marketing plan for its extensive real estate holdings.
- MTA had a significant inventory of rental units that had not been marketed as well as units occupied by tenants with expired leases.
- RED's primary data management system did not account for 175 properties

managed by companies under contract with RED.

- MTA did not collect contractually permitted interest on arrears and most contracts lacked provision for penalties on delinquencies.

- A competitive process was not regularly used to market properties and at times was done without the analysis needed to establish fair market value of properties.

- MTA was spending $3.9 million annually for property taxes on office space that it rented and was spending $3.1 million annually to maintain vacant buildings that it owned.

The objective of our follow up was to assess the extent of implementation of the 12 recommendations included in our prior report as of March 29, 2012.

Summary Conclusions and Status of Audit Recommendations

We found that the MTA has made limited progress in implementing the recommendations contained in our prior audit report. Of the 12 prior audit recommendations, two were implemented, seven were partially implemented, and three were not implemented. With respect to MTA's leasing of space in GCT to Apple we concluded that the competitive process that was undertaken was not a level playing field, was not fair to all potential bidders and was significantly slanted in Apple's favor. Accordingly, the MTA failed to comply fully with our prior audit recommendation number 5 which called on the MTA RED to market its properties through one of the MTA's required competitive processes. Our "Follow-up Observations" shown below commence with the status of actions taken by MTA RED in response to prior audit recommendation number 5 and detail the events leading up to the lease with Apple.

Follow-up Observations

Recommendation 5

Monitor the actions of the staff in the Real Estate Department to ensure that all rental units are marketed through one of the competitive processes required by the MTA's Policies and Procedures, and the market value of all rental units is determined before the units are offered for rent.

Status - Partially Implemented

Agency Action - We examined 11 property leases and licenses entered into by the MTA RED since our last audit and concluded that seven competitive procurements and three non competitive procurements were conducted in accordance with MTA's written Policies and Procedures for the Leasing-Out and Sale of Real Property.

However, we question the lease with Apple for space in GCT. While MTA RED represented that this lease was competitive and in keeping with our prior audit report recommendations, our analysis shows that the playing field was not level and fair for all vendors. We conclude that the competitive process reported by MTA RED in this instance was significantly slanted in Apple's favor.

The following chronology of facts and events leading to lease of GCT space to Apple supports our findings and conclusions.

- As early as November 2008, discussions between MTA RED and Apple commenced regarding the potential to lease space in GCT. This was two and one half years before the issuance of the RFP on May 23, 2011 for space in GCT for which Apple was the sole responder.

- The Director of RED confirmed that when he was hired in mid-2009, negotiations were already underway with Apple regarding the leasing of space in the East Balcony of GCT. According to Apple officials, various spaces were discussed until April 2009 when Apple focused on the GCT balcony area space partially occupied by the restaurant Metrazur. At the time, Metrazur still had ten and one half years remaining on its lease. Since Apple was interested in the space, MTA reported that it approached Metrazur about a buy-out for the remaining term of its lease.

- Apple officials informed us that in July 2009, representatives of Metrazur's owner approached Apple regarding the buy-out. Although Apple informed us that the MTA, Apple and Metrazur did not meet collectively, Apple officials did indicate that contemporaneous negotiations ensued between Apple and Metrazur, Metrazur and MTA and the MTA and Apple. MTA officials reported and Apple officials confirmed that Apple and Metrazur negotiations continued until a $5 million buy-out agreement was reached. Hence, the cost of making the GCT space available for a new competitive procurement had been set by an exclusive arrangement between Metrazur and only one potential future bidder, Apple. This took place with the full knowledge and agreement of the MTA.

- On May 18, 2011 - five days prior to the issuance of the Request for Proposals (RFP) for the leasing of the space, Apple and Metrazur entered into a separate agreement whereby Apple would advance $2 million of the buy-out amount to induce Metrazur to vacate early in order for Apple to be able to take occupancy, complete renovations and be in business in time for the 2011 holiday season. This side agreement further provided that if MTA decided not to re-lease the space, Metrazur would keep the $2 million; if another vendor won the lease, Metrazur would refund the $2 million; and if Apple was awarded the lease, it would have a $2 million credit against the $5 million it would owe Metrazur for the buy-out.

  Apple officials informed us that the MTA was not only aware of the existence of the side agreement with Metrazur but also solicited a letter from Apple stating that the agreement did not bind the MTA and that the lease would be pursuant to a competitive RFP. We obtained a copy of this letter from Apple; the MTA, however, did not provide this document to us despite our request for the production of all relevant files and records pertaining to the lease of the GCT space.

- On May 19, 2011, MTA signed an agreement with Metrazur whereby Metrazur would terminate its lease with MTA for $5 million. According to the MTA RED Director, this agreement was consistent with the understanding between Apple and the MTA as to the MTA's financial expectations regarding the GCT space.

- On May 23, 2011, the MTA advertised the RFP for the GCT East Balcony space in various newspapers and sent email advisories for the RFP to companies on the GCT prospective bidders list. Among the RFP requirements was the upfront payment of $5 million due at lease signing as prepayment of rent to fund the termination agreement with Metrazur. Again, it should be noted that $5 million is the amount that Metrazur and Apple had already negotiated with the knowledge and agreement of the MTA.

- Also on May 23, 2011, and in keeping with the side agreement it had with Metrazur, Apple transferred $2 million to Metrazur's bank account as part one of a two-part installment paid on behalf of the MTA for termination of the Metrazur lease.

- In response to the RFP, several vendors expressed an interest in and toured the Metrazur space. One vendor's correspondence to the MTA dated June 17, 2011 stated that the upfront cost of $5 million was too great of an investment and precluded the vendor from submitting a formal bid on the space. The vendor further indicated that only an entity with a lot of liquid capital would be able to afford the lease under these terms. He stated that the "… RFP process should leave the economic terms of the proposal open for the proposer to propose, rather than the high minimums which appear to be a requirement…"

- Responses to the RFP were due June 27, 2011 and only Apple responded.

- Apple's response to the RFP reveals that Apple did not meet the RFP's unambiguous first year minimum rent requirement of $800,000. In addition, Apple did not use the form that MTA provided in the RFP package for vendors to use to submit proposed rents. Rather, Apple added a column entitled "Less Rent Credit" after the "Proposed Base Rent" column. In the new column, Apple proposed a $200,000 rent credit for each of the first ten years of the lease. Coincidentally, this proposed $2 million credit is equivalent to the amount that was paid by Apple to Metrazur on the day the RFP was issued. In addition, since the credit brought Apple's proposed rent below the minimum required under the RFP, it could have rendered the Apple proposal as "non-responsive."

- Both Apple and the MTA attempted to disassociate the "credit" included in Apple's proposal and its monetary equivalency with the prepayment made by Apple to Metrazur. Apple officials indicated that the credit reflected a calculation of the value of its occupancy of the space as opposed to the value as occupied by Metrazur. MTA officials informed us that the credit was a vestige of formulation they had previously discussed with Apple whereby there would be a recoupment of the prepayment of rent that was necessary to buy-out the restaurant. Neither explanation is satisfactory. The minimum rent was clearly established in the RFP and it did not allow for a credit. Moreover, if it was a vestige of an earlier formulation, it was neither made known to other potential bidders nor reflected in any documentation that was provided to us by the MTA.

- The MTA *Guidelines for Selection of Tenants for Grand Central Terminal* indicates that after receipt of proposals there shall be a determination of responsiveness. In a case where a proposal is not responsive, RED can determine that it is in the best interest of the MTA to permit a proposer to modify its proposal after the due date to correct deficiencies that would otherwise cause it to be non-responsive.

  Nevertheless, MTA did not provide any written support for its evaluation of the Apple proposal. An MTA RED official stated that there was no documented evaluation because there was only one proposer. However in another instance, Wild Edibles had been the only proposer for GCT space and MTA RED's management consultant, Williams Jackson Ewing, completed a formal bid proposal evaluation.

  In addition, there are variables that needed to be evaluated and weighed against each other in determining the overall desirability and impact of the Apple proposal. For example,

  - William Jackson Ewing stated that the market value of the "primary" leased space was $140 per square foot whereas the lease provided for $48 per square foot in the first year and $55 over the first ten years of the lease.
  - The lease provides for Apple to make infrastructure improvements which would benefit the MTA. MTA's "Fact Sheet" indicated these improvements would cost about $2.5 million. In this regard, it should be noted that as of March 19, 2012, about $1.6 million of the improvements were not yet completed and it was uncertain when these would be finished. In addition, MTA employees completed $414,142 of work to enable the infrastructure improvements, but no payment has been received.

  It should be noted that in its negotiations with Apple, MTA ultimately did not accept the rent credit proposed by Apple. However, our analysis of the rent that was ultimately negotiated with Apple reveals that this amount is even more favorable to Apple than it would have been if the credit had been accepted. For example, in the first ten years of the lease Apple will pay $9.171 million dollars or $93,000 less than its initial, non-responsive proposal.

- On August 10, 2011 MTA and Apple signed a lease for the GCT space and, at the direction of MTA; Apple wired the remaining $3 million to a closing agent in compliance with the MTA lease termination agreement with Metrazur.

<u>Auditor's Additional Comments and Conclusions</u>: In the normal course of events, a request for proposal for rental space is initiated by the imminent availability of space. Bidders then submit proposals and the landlord selects the most desirable proposal to meet its needs. In the case of the lease with Apple, the inverse occurred and the MTA undertook a lengthy process that involved Apple and an existing GCT tenant in an effort to induce the existing tenant to make its GCT space available for rent to Apple. In so doing, Apple was afforded a competitive edge in order to meet a mutually desired goal to secure Apple's presence in GCT.

Although the RFP was competitive in the sense that other bidders were able to submit proposals, the circumstances of the MTA's lengthy and substantial dealings with Apple support the conclusion that the playing field was not level amongst all potential bidders. At a minimum, Apple had both an informational and time advantage spanning many months, whereas other vendors were afforded approximately one month to determine if the space was practical and the price feasible for them. Moreover, Apple was directly involved in negotiating the amount of the buy-out of Metrazur which ultimately became a key requirement of the RFP.

As a result, the competitive process followed by MTA RED in this instance was at a minimum severely slanted toward Apple. While this procurement may not be unlawful, it surely evidences non-compliance with the intent of our prior audit recommendation requiring RED staff to ensure all rental units are marketed through one of the competitive processes required by the MTA. Moreover, we are concerned about the existence of such behind the scenes close dealings between a vendor and MTA officials prior to issuance of an RFP.

While in the end this procurement may be an anomaly and Apple may prove to be a valuable and worthwhile tenant, we are concerned that precedent has been set where the spirit of competition, transparency and accountability that best serves taxpayers has been diminished. MTA Executive leadership needs to make significantly more diligent effort to ensure that its public competitive bidding practices are conducted in a manner that does not display favoritism or an unfair advantage to any given bidder, either in fact or in appearance. Such a perception is detrimental to an open and competitive process and potentially places the MTA at a competitive disadvantage. Further the MTA needs to ensure that it represents the interests of taxpayers in fully and consistently reviewing, evaluating and negotiating appropriate proposals and terms of any potential award seeking the best possible agreement for use of public space by private vendors.

Recommendation 1

Assign and train staff to ensure that the MTA is in compliance with the requirement in the Public Authorities Law to publish a listing of its real estate property holdings.

Status - Implemented

Agency Action - The MTA has published its listing of its real estate property holding each year since they were made aware of this provision by our prior audit. The listing is on the MTA's website for 2009 and 2010. The report for 2011 was not posted as of April 23, 2012.

Recommendation 2

Correct the real estate database inaccuracies and omissions noted in this report, and monitor the database to ensure that it remains accurate and complete.

Status - Partially Implemented

Agency Action - The real estate database inaccuracies and omissions identified in the original audit report were corrected. MTA officials stated that, since our prior audit, they check the accuracy of new database entries regularly. However, they do not have a process in place for the MTA to continually monitor the database to ensure that there are no other errors.

Recommendation 3

Implement a single MTA real estate portfolio management system identifying all properties along with their value and other important identifying information to improve the MTA's control over these properties and its access to information about the properties.

Status - Not Implemented

Agency Action - MTA officials stated that in the future, when funding is available, they plan to upgrade the current database system to incorporate the other databases. In addition, the MTA plans to issue an RFP for tenant management services at 2 Broadway which states that the MTA may require that the winning bidder use MTA's existing real estate portfolio management system.

Recommendation 4

Develop a strategic marketing plan. Ensure that the plan contains provisions for removing impediments to rental units' marketability and that adequate efforts are made to market all vacant units. In addition, as part of the plan, consider marketing smaller rental units on the internet like the Chicago Transit Authority, and increase efforts to market vacant newspaper boxes.

Status - Partially Implemented

Agency Action - MTA officials stated they do not intend to develop a strategic marketing plan. They have systematically reviewed the real estate portfolio and identified 67 properties for either outright disposition, or possible availability of development rights to build over yards and other facilities. As of April 13, 2012, MTA's website indicates RFPs have been issued for seven properties. In addition, the MTA has marketed their newspaper boxes, and succeeded in licensing new boxes to three additional publications.

Recommendation 5

Status - See our prior discussion.

Recommendation 6

Improve leasing practices by ensuring that:

- *the standard holdover clause of 5 percent is included and collected from all lease agreements and RFPs are issued for expired leases as soon as possible,*
- *all special lease provisions requested by tenants are practicable for the MTA, and*
- *Advertising firms' certified statements of receipts are submitted on time and are reviewed to verify the appropriateness of the firms' payments for their advertising space.*

Status - Partially Implemented

Agency Action - All of the 11 leases and licenses we reviewed contain a holdover clause. In each case we found that to date RFPs were required and had been issued for eight.

For 10 of the 11 leases and licenses there was no special provision requested by the tenant that seemed to be impractical for the MTA to deliver. However, for one lease, we found that the MTA agreed to provide a chilled water line at a temperature of 48 degrees on a 24 hour 7 days a week basis for supplemental air conditioning. There were no studies or information provided to support that the MTA could provide this water at this temperature.

MTA RED received copies of the advertising firm's certified statements of receipts on time; however, RED does not review the annual statements because they only summarize the information that was provided and reviewed during the course of the year. We urge officials to review them to ensure they are comparable.

Recommendation 7

Improve rent collection practices by:

- *establishing and enforcing a policy requiring interest and late fees to be assessed when rent payments are late by a certain number of days,*
- *collecting rent from tenants that occupy rental units before the lease takes effect, and*
- *routinely inspecting vacant units that are scheduled for future occupation to ensure that they are not being occupied before a new lease takes effect.*

Status - Partially Implemented

Agency Action - MTA officials explained they had a pilot program where notices were sent out to a group of lessees stating that the MTA will start to assess late fees and their account will be charged unless the lessees remit payment to the MTA on or before the due date in the agreement. The results of this pilot program were provided. MTA officials stated that the notices have had a positive effect on the collection of rent on a timely basis.

MTA officials stated that the finding in our audit where a tenant occupied the rental unit prior to the lease taking effect was a onetime occurrence. They added that both MTA property managers and Greystone officials routinely inspect units prior to tenants taking control of them to ensure they do not open before the effective commencement date of the lease. Documentation provided to us did not support the MTA's statement that routine visits are made to units that will be occupied by tenants in the near future. Rather, the documentation provided only supports that periodic visits are made, in general, to all units.

Recommendation 8

Maximize the revenue from the disposal of property by:

- *charging a reasonable sale price for property that is transferred to another government entity for public use, ensuring that the sale contract includes a clause requiring the reversion of the title to the MTA should the purchaser use the property for a purpose other than that specified in the contract, and following up to ensure that the property is being used for the public purpose originally specified; and*
- *ensuring that properties that are to be sold to private interests are not sold for significantly less than their appraised value.*

Status - Implemented

Agency Action - The MTA reported that it sold two properties between September 1, 2009 and December 16, 2011. An appraisal was done for both sales. One property sold above the appraised value, whereas the other sold below the appraised value with the approval of MTA's and Long Island Rail Road's legal departments.

Recommendation 9

Formally evaluate the marketability of the MTA's air rights. If the air rights are found to be marketable, promptly act to market the rights. If the rights are found to be unmarketable at the present time, document the reasons for this determination and set a date to re-evaluate their marketability.

Status - Partially Implemented

Agency Action - The MTA systematically reviewed its real estate database and determined there were three areas where air rights could be disposed of on Second Avenue. These air rights have not been marketed and there is no set time when they will be marketed.

Recommendation 10

Act promptly to either make use of, or dispose of, the Brooklyn building cited in our report. Set a deadline for the sale of the building in Mineola, and remarket the property if the delays in the sale continue.

Status - Not Implemented

Agency Action - The MTA, along with New York City have reached an agreement to sell the building in Brooklyn. An RFP for the sale of the building will be issued during 2012.

MTA replied to the original report that the building in Mineola was to be remarketed if a pending purchase did not close by January 2011. However, the MTA is currently still under agreement with the same buyer with no set closing date and the MTA has decided to extend the closing date another year.

Recommendation 11

Develop written policies and procedures requiring the Real Estate Department to request an exemption from real estate taxes on all properties leased by the MTA and to maintain documentation of these requests.

Status - Not Implemented

Agency Action - The MTA has not developed written policies or procedures requiring RED to request an exemption from real estate taxes on all properties leased by the MTA. In fact, MTA still pays real property taxes on some leased property. MTA officials stated that, unless a landlord is willing to turn a building into a condominium, there is no way for the MTA to avoid paying real estate taxes.

Recommendation 12

Develop written procedures requiring that no lease for space be entered into until the Real Estate Department determines whether vacant MTA-owned property can meet the need for space. Require that this determination be documented, and monitor the performance of the Real Estate Department to ensure that such determinations are being made.

Status - Partially Implemented

Agency Action - The MTA has written procedures which state that all available MTA property holdings will be identified first, to determine whether they can reasonably meet the requirements of the requesting agency. However, there is no documentation showing that leased space is only acquired if other MTA-owned property is inadequate. It was explained that all leased MTA space requires Board approval. The Board determines if there is a true need for the space. RED questions new expenditures for space (including renewals) and unless the agency can justify the need, it will not be sent to the Board for approval.

Major contributors to this report were Robert Mehrhoff, Erica Zawrotniak, Daniel Raczynski and Dana Bitterman.

The MTA's response to this report is included on pages 12 through 25. State Comptroller's Comments about the MTA's response are attached at the end of this report as page 26.

We thank the management and staff of the MTA for the courtesies and cooperation extended to our auditors during this follow up audit.

Very truly yours,

Carmen Maldonado

Carmen Maldonado
Audit Director

cc: M. Fucilli, MTA, Auditor General
K. Malloy, MTA, Audit Services
T. Lukacs, DOB

Agency Comments

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Metropolitan Transportation Authority
State of New York

May 14, 2012

Ms. Carmen Maldonado, Audit Director
State of New York
Office of the State Comptroller
110 State Street, 11th Floor
Albany, NY 12236

Re: Report 2011-F-30

Dear Ms. Maldonado:

I am writing in response to the above-referenced draft report (the "Draft Report"), which relates to the operations of the Real Estate Department of the Metropolitan Transportation Authority (the "MTA"). The Draft Report assesses the MTA's implementation of the various recommendations contained in a prior audit report issued on September 23, 2010 (the "Prior Audit Report"), paying particular attention to recommendation #5, which had called upon the MTA to ensure that MTA rental properties are marketed competitively in accordance with the MTA's published policies and procedures. The Draft Report's review of the MTA's response to recommendation #5 consists almost entirely of a critique of the MTA's recent lease of space at Grand Central Terminal to Apple, a critique that the MTA believes to be completely unjustified based upon a fair assessment of the facts and circumstances in question.

The MTA strongly disputes the Draft Report's conclusion that "the competitive process that was undertaken [with respect to the Apple lease] was not a level playing field, was not fair to all potential bidders and was significantly slanted in Apple's favor." (Draft Report, at page 2). While granting that "this procurement may be an anomaly" (Draft Report at page 6), the Draft Report posits, in effect, that the MTA was free to conduct its business just as it would have if much of the space in question had not already been occupied by the restaurant Metrazur under a pre-existing leasehold. In fact, however, in the run-up to the issuance of the request for proposals that preceded the consummation of the Apple lease (the "RFP"), the MTA had only two choices:

(a) leave undisturbed, through 2019, the MTA's existing below-market lease with Metrazur (dating from the initial renovation of the Terminal), which was yielding just $263,997 ($27.25 per sq. ft.), thereby foregoing an opportunity to significantly increase our rental income in support of our public transportation mission; or

(b) engage in the negotiations with Metrazur and Apple that induced Metrazur to surrender its lease (at no cost or risk whatsoever to the MTA), thereby enabling the MTA to conduct a competitive RFP for the space Metrazur occupied on the East Balcony and space on the Northeast Balcony that would have remained un-leasable as long as Metrazur's occupancy continued.

The central premise of the critique contained in the Draft Report is that the fairness of the MTA's competitive process was compromised by MTA's knowledge of negotiations between Apple and Metrazur, and by the MTA's participation in concurrent discussions with each of such parties preceding the issuance of the RFP. The MTA sharply disputes this premise, and we are confident that we scrupulously observed not only the letter but also the spirit of the Public Authorities Law and our published leasing guidelines..

The MTA does not typically have reason to involve itself in discussions with a potential proposer like the discussions that it conducted with Apple. However, given the existence of the below-market Metrazur lease, Metrazur's insistence that the terms of a buyout be firmly established (and financially secured) as a pre-condition to the MTA commencing an RFP to remarket its space, and the unique physical limitations of such space, this situation was highly unusual. Far from disclaiming the pre-RFP discussions and agreements you describe in your "chronology of facts and events", we reaffirm here (as we have told you previously) that no buyout of Metrazur's lease would have been possible without such discussions and agreements. Although we were disappointed that no one but Apple ultimately responded to the RFP, we nonetheless achieved a superb result, and we stand behind every aspect of the analysis that was contained in our July 25, 2011 "staff summary" of the transaction (the "Staff Summary"), a copy of which is attached to this response as Exhibit A.

* Comment 1

Pre-RFP Discussions

Because Metrazur had the East Balcony (and therefore also the Northeast Balcony and Hall B Elevator Lobby) tied up until 2019, it took the view that it was entitled both to dictate the process by which any repurposing of the space would be accomplished and to pocket the lion's share, if not all, of the economic benefit of such repurposing. However, from the very start, and at every turn, the MTA consistently insisted that:

* See State Comptroller's Comments, page 26

(a) any new tenant that might take over the Metrazur space would need to be selected pursuant to a bona fide RFP issued by the MTA;

(b) the MTA was in no position to make any buyout payment to Metrazur from its own funds, and any such payment would therefore have to be made using prepaid rent received from such new tenant;

(c) whatever buyout terms Metrazur insisted upon would need to be reflected in such RFP and apply equally to all proposers, regardless of what tenant we selected, so that all proposers would bear the same rent prepayment obligation; and

(d) because the size of such rent prepayment obligation would reduce the amount of annual rent that Apple or any other prospective tenant would be willing to pay to the MTA, the MTA would not agree to make any payment to Metrazur that was disproportionate relative to the economic benefit that the MTA would receive from the re-letting of Metrazur's space.

Metrazur had a successful business, and accordingly demanded a very substantial lump sum payment -- initially, far in excess of $5 million -- to give up its highly favorable lease. Moreover, Metrazur was very fearful that its business would be ruined as soon as word that the restaurant might close got out to its customers and employees, and therefore Metrazur would not allow us to issue the RFP until and unless the terms of a buyout had been fully negotiated and Metrazur had been provided with assurances that it would be compensated in all events (*i.e.,* regardless of whether and when MTA might come to satisfactory terms with a replacement tenant, satisfy any concerns that the State Historic Preservation Officer might have, etc.). For obvious reasons, however, the MTA was not prepared to provide any such assurances to Metrazur in advance of the issuance of the RFP, completion of the MTA's tenant selection process and execution and delivery of a satisfactory replacement lease, and accordingly it seemed that there was no deal to be made.

This impasse was broken only because Apple proved willing to provide Metrazur with the $2 million advance payment Metrazur required before Metrazur would commit to surrender its lease. Apple did so with full knowledge that it was taking the risk that a third party would outbid Apple pursuant to the MTA's RFP (in which case, Metrazur would refund such advance payment to Apple, using funds received by the MTA from such third party and paid over to Metrazur), or that the MTA's Board would otherwise see fit to reject Apple's final offer (it being understood that State Historic Preservation Officer approval was by no means a foregone conclusion, and that Apple's pre-RFP offer to the MTA, on the basis of which MTA staffers were prepared to recommend the proposed settlement with Metrazur to the MTA Board, would merely provide a *floor* for purposes of the RFP). We are hard pressed to

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Comment
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* See State Comptroller's Comments, page 26

see how making this advance payment put Apple at any competitive advantage; on the contrary, if anything, it placed Apple at a disadvantage in subsequent negotiations with us. However, we did take pains to confirm with Apple that it was not operating under the assumption that this payment would impose any obligation whatsoever on the MTA in reviewing responses to the RFP or otherwise, and we can't imagine that the Comptroller would have wanted us to have done otherwise.

The RFP

To ensure that the RFP got wide exposure once we finally had the green light from Metrazur, we took the extraordinary step of taking out full quarter page ads for the RFP in the Wall Street Journal and Crain's New York Business, and our leasing agent Williams Jackson Ewing made extensive efforts to publicize the opportunity to compete for the space (at the International Council of Shopping Centers Global Retail Real Estate Convention in Las Vegas, and otherwise). Moreover, as we had anticipated, the issuance of the RFP enjoyed considerable press coverage. Thus, we are confident that the fact that we did not receive competing proposals was attributable to the factors we enumerated in the Staff Summary rather than to any lack of exposure of the RFP.

It is true that Apple had the space in question in mind for longer than other prospective tenants may have. However, the MTA never lost sight of its legal obligations under the Public Authorities Law to engage in a robust competitive process and made every effort to "level the playing field" for all proposers. To that end, we insisted on including in the RFP every bit of relevant information that had been gathered by or for Apple, so that others would have ready access to it; we made sure that the buyout terms that Metrazur had negotiated with us would apply equally to all proposers; and, having allowed more than a month for initial responses, we stood ready to grant requests for extensions had any been requested.

It is also true that the RFP set a high bar for proposers. The successful proposer would have to front the money to be paid to Metrazur; it would receive no tenant improvement allowance from the landlord, enjoy no free rent period and pay at least $800,000 per year for the "Primary Space" and $40 per square foot for the "Ancillary Space" described in the Staff Summary (subject to annual increases of at least 3% or the equivalent in present value terms); it would be obliged to observe restrictions on signage and fixturing that the average retailer cannot abide; and it would have to accept in its then "as is" condition space that was in many respects ill-suited to conversion to non-restaurant use. But we did not include onerous up-front capital costs and other requirements in the RFP in order to scare away other proposers; the requirements were givens, driven by Metrazur, the State Historic

Preservation Officer and the MTA's lack of capital budget dollars. Indeed, as described in the Staff Summary, we purposely made optional the leasing of the "Ancillary Facilities" Apple was interested in (i.e. all but the "Primary Space"), in order to ensure that the RFP was not tailored to particularly suit Apple's space needs. And the RFP permitted a wide variety of potential uses, and would have accommodated any number of alternative rent proposals, as long as proposers offered at least $800,000 to start for the Primary Space.

The Draft Report suggests (at page 4) that it somehow would have benefitted other proposers to know how we came up with that $800,000 amount. We fail to see what difference that would have made. It was, purely and simply, the minimum amount on the strength of which MTA staffers were prepared to recommend to the MTA Board that the MTA acquiesce in Metrazur's $5 million demand.

The Draft Report also suggests that it is somehow significant that Apple's initial RFP response failed to satisfy the $800,000 minimum requirement. However, Apple promptly revised its offer to satisfy the requirement; and, as shown on the attached Exhibit B, in present value terms the difference between Apple's initial proposal and its conforming proposal was not $93,000 but $1,257 -- hardly grounds for disqualification.

* Comment 3

Carey's Hole and Other Financial Considerations

When all was said and done, the Apple lease (i) increased the MTA's guaranteed annual net operating revenue by more than $800,000, (ii) provided for enhanced public access to beautifully restored areas overlooking the Terminal's Main Concourse that would otherwise have remained unrenovated and off the beaten track, and (iii) shifted to a creditworthy tenant the entire cost and risk of building the elevator, fire stairs and other infrastructure improvements required to open up the "Carey's Hole" portion of the Terminal for renewed occupancy, a major undertaking for which Metro-North had no capital funding available.

* Comment 4

Although the RFP did not require proposals to encompass the Ancillary Facilities, Apple taking on responsibility for the Carey's Hole project was, as we indicated in the Staff Summary, a highly material element of the consideration that we bargained for with Apple. From our point of view, the resulting cost avoidance was as good as rent, and from the tenant's point of view the costs of creating a new elevator, fire stairs and other infrastructure improvements represented significant up-front out-of-pocket costs of leasing the Primary Space from us, just as the cost of buying out Metrazur did. Consequently, had any other proposer offered only to take the Primary Space, it would have needed to have offered significantly more than the stipulated minimum rent for the Primary Space in order to best Apple's offer.

* See State Comptroller's Comments, page 26

Furthermore, as the passage of time has demonstrated, Apple assumed (and relieved Metro-North of) considerable *risk* when it agreed to take on the Carey's Hole project. The reason that the work has not yet been completed is not (as the Draft Report implies) that Apple's commitments were somehow illusory but rather that the space has proved to be in even worse condition, and the logistics of accessing it have proved to be even more complicated, than had been anticipated. Apple remains fully committed to completing the work, and is duly paying us $40 per foot for its premises in Carey's Hole, notwithstanding that it has been unable to use the space and has been obliged in the meanwhile to make alternative arrangements to accommodate personnel off-site.

Apple certainly would have been prepared to pay significantly more annual rent per square foot for the Primary Space if we had been in a position to provide it with space in Carey's Hole that was ready for occupancy, just as Apple undoubtedly would have agreed to pay more annual rent if we had granted it a typical free rent period, if no payment to Metrazur had been required or if we had not required Apple to absorb a wide variety of other up-front costs. (For your information, as of May 1, the total amount billed to Apple for Metro-North construction-related services is now not $414,142, but $940,000, of which all but the most recently billed charges have been paid in full). In implying that Apple may be paying a below-market *annual* rent, the Draft Report chooses to disregard the enormous *upfront* costs Apple absorbed by dint of these atypical lease terms. Yet, paradoxically, the Draft Report also takes the position that these same upfront costs were so onerous that they had the effect of scaring off competitors that otherwise would have offered to compensate the MTA more highly than Apple did. This inconsistency lies at the heart of the Draft Report and calls undercuts its central premise – that MTA inappropriately (indeed, "abusively") slanted the playing field in Apple's favor.

<u>Indirect Economic Benefit</u>

As we noted in the Staff Summary, apart from the rent Apple pays us directly, "Apple's occupancy can be expected to generate significant new traffic benefitting GCT's other tenants, and each 1% increase in the gross sales of such other tenants will be worth approximately $500,000 to the MTA *in present value terms*". (The MTA has <u>not</u> in fact claimed that such an increase would be worth $500,000 per year). Under our existing leases, we currently receive $50,000-$60,000 per year in additional percentage rent for each 1% increase in gross sales, and for purposes of capitalizing such income we would be entirely justified in applying a multiple of 20 to such annual amount (the analogue of a 5% cap rate, roughly our cost of funds). However, to be conservative, we cut that factor *in half*

* Comment 5

* See State Comptroller's Comments, page 26

and applied a multiple of 10 to the $50,000 figure (the lower end of the range) to calculate the $500,000 amount that appeared in the Staff Summary.

In point of fact, for the stores at the Terminal that were open for all of both periods, gross sales during Q1 2012 were 6.5% higher than they were in Q1 2011. We can't say precisely how much of that is due to Apple. But we do think the number speaks for itself.

****

We wish to make the following brief observations with respect to portions of the Draft Report that relate to recommendations of the Prior Audit Report other than Recommendation #5:

Recommendation #2. As we have discussed, MTA Real Estate does regularly and routinely double-check new entries into Yardi, and of course we correct existing errors as and when they are discovered. However, we currently lack sufficient staffing to proactively seek out and correct any errors that may have been made in inputting data in the past.

Recommendation #4. Apart from the initiatives mentioned in the Draft Report, we announced in April 2011, and are currently deep into planning for the implementation of, a highly strategic plan for the right-sizing of the MTA's office space portfolio that will culminate in the marketing for re-development of the MTA's headquarters buildings at 341-347 Madison.

Recommendation #10. The MTA has not in fact decided to extend the closing date for the referenced property in Mineola by another year. Closing has been delayed on a short-term basis only as we seek to resolve a dispute with the Village of Mineola with respect to an improperly asserted lien.

Recommendation #12. The MTA leases only a relatively small number of properties, and all MTA Real Estate project managers who handle such transactions are trained to request exemption from taxes wherever the MTA leases entire tax lots. As noted, where the MTA leases only part of a building, a condominium must be formed if exemption is to be obtained. Most recently, to such end, the MTA has succeeded in convincing landlords to form condominiums in connection with the MTA's leases at 333 West 34th Street, 177 Livingston Plaza and 180 Livingston Plaza.

* Comment 6

* See State Comptroller's Comments, page 26

Thank you for this opportunity to comment on the Draft Report.

Very truly yours,

Jeffrey B. Rosen
Director, Real Estate

cc: Jerry Barber, Assistant Comptroller
Joseph J. Lhota
Michael Fucilli
James Henly
Stephen Morello
Catherine Rinaldi

EXHIBIT A

Staff Summary

Metropolitan Transportation Authority

Page 1 of 4

Subject TERMINATION OF EXISTING LEASE AND EXECUTION OF NEW LEASE	Date JULY 25, 2011
Department REAL ESTATE	Vendor Name
Department Head Name JEFFREY B. ROSEN	Contract Number
Department Head Signature	Contract Manager Name
Project Manager Name NANCY MARSHALL	Table of Contents Ref #

Board Action					
Order	To	Date	Approval	Info	Other
1	Finance Committee	7/25/11	X		
2	Board	7/27/11	X		

Internal Approvals			
Order	Approval	Order	Approval
		1	Legal
3	Chief of Staff		
2	Chief Financial Officer		

Narrative

AGENCY:	MTA Metro-North Railroad ("Metro-North")
LESSEE:	Apple Inc. d/b/a Apple ("Apple")
LOCATION:	"Primary Space": East Balcony 8,967 RSF Hall B Lobby 1,290 RSF Northeast Balcony 2,830 RSF North Wall 1,322 RSF Suspended Mezzanine 938 RSF "Ancillary Facilities": Hall B-1 1,202 RSF Additional Hall B-1 419 RSF Carey's Hole 2nd Basement 6,062 RSF* *Subject to re-measurement
ACTIVITY:	Sale of Apple-branded merchandise plus incidental sale of third party accessories associated with tenant-branded merchandise.
ACTION REQUESTED:	Approval of terms
TERM:	Initial term of approximately ten years and four months, with two 5-year renewal periods at Tenant's option
SPACE:	23,030 sf (15,347 "Primary Space", 7,683 "Ancillary Facilities")
COMPENSATION:	At lease signing, Tenant will pay $5 million, which MTA shall cause to be paid to the owner of Metrazur as consideration for the early termination of the Metrazur lease. In addition, Tenant will pay $25,000 per month for the period commencing on lease execution and ending on the earlier of store opening or four months from lease commencement, and thereafter will pay rent monthly in advance at the following rates:

Staff Summary

Metropolitan Transportation Authority

Primary Space

Year	Annual Rent
1	$800,000
2	$824,000
3	$848,720
4	$874,182
5	$900,407
6	$927,419
7	$955,242
8	$983,899
9	$1,013,416
10	$1,043,819
First Option Period	
11	$1,344,000
12	$1,384,320
13	$1,425,850
14	$1,468,625
15	$1,512,684
Second Option Period	
16	$1,664,000
17	$1,713,920
18	$1,765,338
19	$1,818,298
20	$1,872,847

Ancillary Facilities

Year	Annual Rent**
1	$307,320
2	$316,540
3	$326,036
4	$335,817
5	$345,891
6	$356,268
7	$366,956
8	$377,965
9	$389,304
10	$400,983
First Option Period	
11	$414,882
12	$427,328
13	$440,148
14	$453,353
15	$466,953
Second Option Period	
16	$514,761
17	$530,204
18	$546,110
19	$562,493
20	$579,368

**Subject to re-measurement of Carey's Hole space

Staff Summary

Metropolitan Transportation Authority

MARKETING: $35,000 per annum from lease commencement through the end of the 1st lease year, with 3% increase over the prior lease year in each subsequent lease year.

TRASH: Either Tenant will be responsible for its own trash removal with no charge by Landlord or else Tenant will participate in the general Terminal retail trash removal program and will pay its proportionate share of the cost.

INSURANCE: Standard

CONSTRUCTION PERIOD: 120 days

COMMENTS:

Ever since the Terminal was renovated in 1998, the East Balcony overlooking the Main Concourse at Grand Central Terminal has been occupied by the restaurant Metrazur and the Northeast Balcony (although occasionally used for parties) has remained unleased. The base rent payable under the Metrazur lease is $263,997 per annum ($27.25 per rentable square foot, as opposed to $70.10 per foot for Michael Jordan's and $86.68 per foot for Cipriani). The Metrazur lease has not generated percentage rent.

Like the two other GCT balcony restaurant leases, the Metrazur lease provides for a 20-year term; and, but for the initiative that is the subject of this staff summary, such lease would not expire until December 31, 2019. However, MTA Real Estate succeeded in May of this year in obtaining from Metrazur's owner a conditional surrender agreement (contingent among other things upon Board approval), which has enabled the MTA to solicit proposals from prospective replacement tenants. Such surrender agreement provides for a lump sum payment to Metrazur's owner of $5 million, to be made upon the execution and delivery of a replacement lease; and accordingly the MTA's request for proposals (the "RFP") stipulated that any new tenant would be required to provide the MTA with the funds with which to make such payment, over and above monthly rent very substantially in excess of the rent that Metrazur's owner currently pays.

The RFP was distributed to a wide variety of brokers and potential end users and duly promoted by, among other means, prominent advertisements in Crain's New York Business and the Wall Street Journal. However, Apple, which had previously expressed interest in leasing the property, submitted the only proposal received in response to the RFP. Although other businesses inspected the property and considered submitting proposals, the fact that no other proposals were received likely reflects a number of factors affecting the marketability of the property: (a) the subject space will be delivered "as is", and converting the Primary Space to a new use and preparing the Ancillary Facilities for occupancy will require very substantial capital outlays by the new tenant, (b) the aforementioned lump sum payment to Metrazur's owner is quite large and must necessarily be funded in advance, (c) the RFP specified a variety of special limitations on fixturing and signage, to ensure that any new use of the areas visible from the Main Concourse would be suitably respectful of and consistent with the Main Concourse's magnificent architecture and landmark status, and (d) although the Primary Space is highly visible, it suffers from relatively poor accessibility, a limitation that Apple, with its unmatched brand recognition and enormous drawing power, is perhaps uniquely capable of overcoming. Taking into account all of the foregoing factors, Williams Jackson Ewing has advised that it believes that the rent to be paid to the MTA by Apple exceeds the fair market rental value of the premises.

The RFP addressed three categories of GCT space: (a) the space where Metrazur operates on the North Balcony, (b) the "landlocked" Northeast Balcony space and adjoining elevator lobby, which the MTA has heretofore been precluded from leasing by reason of Metrazur's occupancy, and (c) certain other spaces that (although not heretofore leased at all) could, in principle, have been leased by the MTA either to the new occupant of the Metrazur space or to one or more other end users. The spaces in the first two categories are identified and collectively referred to above as the "Primary Space", and proposers under the RFP were required to lease them in their totality. The spaces in the third category are identified and collectively referred to above as "Ancillary Facilities" and they were designated as "optional" spaces in the RFP. Apple has proposed to lease all of the Ancillary Facilities, as well as the Primary Space. The Ancillary Facilities will include the entire second basement (i.e. lowest level) of the area of the Terminal known as Carey's Hole, which is about to be vacated by Metro-North personnel who are being relocated to newly outfitted quarters upstairs. In connection with the fitting-out of such space, which would otherwise be the most difficult for the MTA to lease out, Apple will undertake, at its own cost, extensive vertical transportation and other infrastructures improvements, which will also greatly facilitate and expedite the leasing out of the balance of Carey's Hole.

Staff Summary

Metropolitan Transportation Authority

The proposed transaction offers a very substantial economic benefit to the MTA compared to the status quo. As noted above, Apple has committed to pay rent for the Primary Space that is several times higher than the base rent under the existing Metrazur lease. We calculate the net present value to the MTA of the proposed transaction (i.e. the present value of the proposed Apple lease revenues to MTA over and above the present value of the Metrazur lease if it were to remain in effect) to be in excess of $5 million, even *before* one takes into account (a) revenue to be obtained from the leasing to Apple of the Ancillary Facilities, except insofar as such revenue exceeds the net revenue that we estimate we would receive were we to offer them separately for lease, (b) revenue attributable to periods subsequent to 2019, when, the Metrazur lease having expired in the normal course, we would in any event have been free to re-let the Primary Space, and (c) the anticipated *indirect* financial benefit to the MTA of having an Apple store at Grand Central (i.e. the evaluation criterion that is referred to in the Board-approved GCT Tenant Selection Guidelines as "Selection Criterion B"). Although Apple will not itself pay percentage rent, its occupancy can be expected to generate significant new traffic benefitting GCT's other tenants, and each resulting 1% increase in the gross sales of such other tenants will be worth approximately $500,000 to the MTA in present value terms.

Recognizing that the Apple store is expected to attract many customers and entail a substantial back-of-the-house operation, Apple, Metro-North and MTA Police Department personnel have engaged in an intensive planning effort to ensure that Apple's operations will be compatible in all respect, and not interfere with, the privacy use of the terminal as a transportation facility.

Apple has proposed to make only very modest alterations to historic elements and will employ only minimal and highly discreet signage at limited locations, all satisfactory to the State Historic Preservation Officer, and will be required to accommodate enhanced public (ie. non-shopper) access to the portions of the East Balcony and Northeast Balcony adjacent to the balustrades overlooking the Main Concourse.

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

EXHIBIT B

NPV CALCULATION

	Primary Space			
	Apple Proposal		Actual Lease	
NPV (Y0=6.0%)	$	6,819,677.35	$	6,818,420.35
Difference	$	1,256.99		
Difference		0.018%		
Month				
1	$	50,000.00	$	66,666.67
2	$	50,000.00	$	66,666.67
3	$	50,000.00	$	66,666.67
4	$	50,000.00	$	66,666.67
5	$	50,000.00	$	66,666.67
6	$	50,000.00	$	66,666.67
7	$	50,000.00	$	66,666.67
8	$	50,000.00	$	66,666.67
9	$	50,000.00	$	66,666.67
10	$	50,000.00	$	66,666.67
11	$	50,000.00	$	66,666.67
12	$	50,000.00	$	66,666.67
13	$	69,166.67	$	68,666.67
14	$	69,166.67	$	68,666.67
15	$	69,166.67	$	68,666.67
16	$	69,166.67	$	68,666.67
17	$	69,166.67	$	68,666.67
18	$	69,166.67	$	68,666.67
19	$	69,166.67	$	68,666.67
20	$	69,166.67	$	68,666.67
21	$	69,166.67	$	68,666.67
22	$	69,166.67	$	68,666.67
23	$	69,166.67	$	68,666.67
24	$	69,166.67	$	68,666.67
25	$	71,741.67	$	70,726.67
26	$	71,741.67	$	70,726.67
27	$	71,741.67	$	70,726.67
28	$	71,741.67	$	70,726.67
29	$	71,741.67	$	70,726.67
30	$	71,741.67	$	70,726.67
31	$	71,741.67	$	70,726.67
32	$	71,741.67	$	70,726.67
33	$	71,741.67	$	70,726.67
34	$	71,741.67	$	70,726.67
35	$	71,741.67	$	70,726.67
36	$	71,741.67	$	70,726.67
37	$	74,393.92	$	72,848.50
38	$	74,393.92	$	72,848.50
39	$	74,393.92	$	72,848.50
40	$	74,393.92	$	72,848.50
41	$	74,393.92	$	72,848.50
42	$	74,393.92	$	72,848.50
43	$	74,393.92	$	72,848.50
44	$	74,393.92	$	72,848.50
45	$	74,393.92	$	72,848.50
46	$	74,393.92	$	72,848.50
47	$	74,393.92	$	72,848.50
48	$	74,393.92	$	72,848.50
49	$	77,125.75	$	75,033.92
50	$	77,125.75	$	75,033.92
51	$	77,125.75	$	75,033.92
52	$	77,125.75	$	75,033.92
53	$	77,125.75	$	75,033.92
54	$	77,125.75	$	75,033.92
55	$	77,125.75	$	75,033.92

ANNUAL RENT SCHEDULE

	Primary Space			
Year	Apple Proposal		Actual Lease	
1	$	600,000.00	$	800,000.00
2	$	830,000.00	$	824,000.00
3	$	860,900.00	$	848,720.00
4	$	892,727.00	$	874,182.00
5	$	925,509.00	$	900,407.00
6	$	959,274.00	$	927,419.00
7	$	994,052.00	$	955,242.00
8	$	1,029,874.00	$	983,899.00
9	$	1,066,770.00	$	1,013,416.00
10	$	1,104,773.00	$	1,043,819.00
Total Aggregate Rent	$	9,263,879.00	$	9,171,104.00
Difference	$	92,775.00		

56	$	77,125.75	$	75,033.92
57	$	77,125.75	$	75,033.92
58	$	77,125.75	$	75,033.92
59	$	77,125.75	$	75,033.92
60	$	77,125.75	$	75,033.92
61	$	79,939.50	$	77,284.92
62	$	79,939.50	$	77,284.92
63	$	79,939.50	$	77,284.92
64	$	79,939.50	$	77,284.92
65	$	79,939.50	$	77,284.92
66	$	79,939.50	$	77,284.92
67	$	79,939.50	$	77,284.92
68	$	79,939.50	$	77,284.92
69	$	79,939.50	$	77,284.92
70	$	79,939.50	$	77,284.92
71	$	79,939.50	$	77,284.92
72	$	79,939.50	$	77,284.92
73	$	82,837.67	$	79,603.50
74	$	82,837.67	$	79,603.50
75	$	82,837.67	$	79,603.50
76	$	82,837.67	$	79,603.50
77	$	82,837.67	$	79,603.50
78	$	82,837.67	$	79,603.50
79	$	82,837.67	$	79,603.50
80	$	82,837.67	$	79,603.50
81	$	82,837.67	$	79,603.50
82	$	82,837.67	$	79,603.50
83	$	82,837.67	$	79,603.50
84	$	82,837.67	$	79,603.50
85	$	85,822.83	$	81,991.58
86	$	85,822.83	$	81,991.58
87	$	85,822.83	$	81,991.58
88	$	85,822.83	$	81,991.58
89	$	85,822.83	$	81,991.58
90	$	85,822.83	$	81,991.58
91	$	85,822.83	$	81,991.58
92	$	85,822.83	$	81,991.58
93	$	85,822.83	$	81,991.58
94	$	85,822.83	$	81,991.58
95	$	85,822.83	$	81,991.58
96	$	85,822.83	$	81,991.58
97	$	88,897.50	$	84,451.33
98	$	88,897.50	$	84,451.33
99	$	88,897.50	$	84,451.33
100	$	88,897.50	$	84,451.33
101	$	88,897.50	$	84,451.33
102	$	88,897.50	$	84,451.33
103	$	88,897.50	$	84,451.33
104	$	88,897.50	$	84,451.33
105	$	88,897.50	$	84,451.33
106	$	88,897.50	$	84,451.33
107	$	88,897.50	$	84,451.33
108	$	88,897.50	$	84,451.33
109	$	92,064.42	$	86,984.92
110	$	92,064.42	$	86,984.92
111	$	92,064.42	$	86,984.92
112	$	92,064.42	$	86,984.92
113	$	92,064.42	$	86,984.92
114	$	92,064.42	$	86,984.92
115	$	92,064.42	$	86,984.92
116	$	92,064.42	$	86,984.92
117	$	92,064.42	$	86,984.92
118	$	92,064.42	$	86,984.92
119	$	92,064.42	$	86,984.92
120	$	92,064.42	$	86,984.92

State Comptroller's Comments

1. The pre-RFP negotiations and discussions with one interested and potential bidder is troublesome. Such actions create the impression that one party has sole opportunity and access to relevant people and information and is afforded considerable more time to develop a proposal. Structuring a surrender agreement with Metrazur that did not include a potential bidder would have improved the arms-length nature of the RFP.

2. MTA did not disclose the existence of the pre-payment of $2 million by Apple to Metrazur, we learned this only through confirmation of the facts with Metrazur.

3. It is significant from an appearance standpoint when the one and only proposing vendor who has been solely involved in every leg of the procurement submits a bid that blatantly is inconsistent with the requirements of the request for proposal.

4. MTA officials did not disclose that Apple had not yet completed the construction of an elevator in the Carey's Hole space. It was during a tour of the space leased by Apple at GCT that MTA's property management consultant had to disclose this information. We also note that the response is silent as to when Apple will complete the outstanding construction work.

5. The matters discussed in this portion of the MTA's response have been deleted from the finding in the body of the final audit report.

6. The only recent condominium is 333 West 34th Street. The other two locations date back to 2003 and 2007.