



**Joint Development and Real Estate Committee**

**Information Item IV-A**

**September 30, 2010**

**Unsolicited Joint Development Proposals**

Washington Metropolitan Area Transit Authority  
**Board Action/Information Summary**

<input type="radio"/> Action <input checked="" type="radio"/> Information	MEAD Number:	Resolution: <input type="radio"/> Yes <input checked="" type="radio"/> No
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**TITLE:**

Unsolicited Proposals for Sites Offered Previously

**PURPOSE:**

Provide analysis of how Metro's Joint Development Policies and Guidelines address Unsolicited Proposals received after there has been a prior Joint Development Solicitation for a site.

**DESCRIPTION:**

This items meet the goal of using every resource wisely by establishing how Metro deals properly with Unsolicited Proposals that it may receive.

There are four distinct situations in which Metro could potentially receive an unsolicited proposal or proposals. How Metro would treat the receipt of such a proposal or proposals in each situation is set forth below.

- In the event that Metro has an open solicitation for a given site, and in the event that an "Unsolicited Proposal" were to be received before the due date of that open solicitation for the same site, the unsolicited proposal would be treated as a qualifying response to the open Solicitation, and the proposer would have an opportunity to conform its submission to the proposal requirements.
- In the event that Metro receives an unsolicited proposal after the closing of a solicitation and during developer evaluation/Term Sheet negotiations, then the unsolicited proposal would be a late submission and would be treated as such. Late submissions can be accepted or rejected at the discretion of the contracting officer.

Should Metro staff not be able to successfully negotiate terms with the highest ranked developer, they are authorized to "bump-down" to the next highest-ranked developer, which could potentially include the unsolicited proposal. Metro staff may also elect to negotiate with two developer proposers at the same time. In any event, Metro staff must propose a selected developer and a negotiated term sheet to the Board of Directors for approval.

- In the event that a given "Selected Developer" has been granted an exclusive right to negotiate with Metro by a Board Approval, and in the event that an unsolicited proposal is received during the time when the Selected Developer is exercising that exclusive right, any such unsolicited proposal should be rejected. It should be noted that the

Selected Developer`s exclusive right to negotiate is time limited, but it may be extended at the Board`s discretion.

- In the event that Metro staff are not able to negotiate an approvable Joint Development Agreement with a given Selected Developer in the allotted time, then negotiations have failed.

At such point, the Board has three options: 1) the Board may re-establish the Selected Developer and extend the negotiation time-frame; 2) the Board may choose to re-advertise the site; or 3) the Board may choose to retain the property without offering it for development. The possibility of "bumping down" to the next developer in line at the time of the initial proposals, however, is not an option available to the Board in this situation.

The above points notwithstanding, an unsolicited proposal -- should one be received subsequent to a failure to conclude negotiations with a Joint Development Agreement -- would be treated according to Section 14 of the current Joint Development Guidelines, and Metro Staff may :

- Screen for operational need
- Screen with the Local Jurisdictions
- Advertise the unsolicited proposal
- Evaluate the proposal or proposals
- Negotiate a Term Sheet and make a recommendation to the Board

(OR)

- An Unsolicited Proposal may be rejected and approval sought from the Board to advertise a solicitation for the site

**FUNDING IMPACT:**

No impact on funding

Project Managers

Office of the General Counsel: Marc Biondi and Josh Montague  
Office of Planning and Joint Development: Gary Malasky

**RECOMMENDATION:**

None



**Washington Metropolitan Area Transit Authority**

# Unsolicited Proposals

## In the Context of an Existing Joint Development Solicitation

Joint Development and Real Estate Committee

September 30, 2010



## Purpose

**Provide analysis of how Metro's Joint Development Policies and Guidelines address Unsolicited Proposals received after there has been a prior Joint Development Solicitation for a site**



# Joint Development Process

- Divided into four phases:
  - Solicitation of Developer Proposals
  - Developer Submissions and Term Sheet Negotiations
  - Joint Development Agreement Negotiations
  - Failure of Joint Development Negotiations



# Solicitation of Proposals

- When an “Unsolicited Proposal” is received before the due date of an open solicitation for the same site:
  - Treated as a response to the Solicitation
  - Developer will have opportunity to conform submission to proposal requirements



# Developer Submissions / Term Sheet

- When an “Unsolicited Proposal” is received during developer evaluation/Term Sheet negotiations:
  - It is a late submission and treated as such
  - Late submissions can be accepted or rejected at discretion of contracting officer



## Developer Submissions / Term Sheet (continued)

- If unable to successfully negotiate with highest ranked developer, staff authorized to “bump-down” to next highest-ranked developer
- Alternatively, staff is authorized to negotiate with two developers at the same time
- Staff proposes a Selected Developer and negotiated Term Sheet to the Board of Directors for approval.



# Joint Development Negotiations

- A Board-approved Selected Developer is granted an exclusive right to negotiate with Metro
- This right is time-limited; but may be extended at the Board's discretion
- An "Unsolicited Proposal" received during this time is rejected



# Failure of Negotiations

- If staff does not negotiate an approvable Joint Development Agreement in the allotted time; negotiations have failed
- The Board must take action to either
  - Reestablish the Selected Developer and extend the negotiation time-frame; or
  - Re-advertise the site
- The option to “Bump down” to the next developer is not available at this point, but an Unsolicited Proposal may be considered.



## Failure of Negotiations (continued)

- If Metro receives an Unsolicited Proposal on the site after negotiations have failed:
  - Section 14 of the current Guidelines applies
    - Screen for operational need
    - Screen with the Local Jurisdictions
    - Advertise the unsolicited proposal
    - Evaluate the proposal or proposals
    - Negotiate a Term Sheet and make a recommendation to the Board

(OR)

  - An Unsolicited Proposal may be rejected and approval sought from the Board to advertise a solicitation for the site