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February 19, 2013

The Hon. Mitchell J. Landrieu
Mayor
City of New Orleans
1300 Perdido Street, Room 2E04
New Orleans, LA 70112

Mr. Cedric S. Grant
Acting Chief Executive Officer
New Orleans Building Corporation
1340 Poydras St., Suite 1000
New Orleans, LA 70112

Re: Request for Proposals for Redevelopment of World Trade Center Site

Dear Mayor Landrieu and Mr. Grant:

The Bureau of Governmental Research (BGR) is writing with respect to the request for proposals issued by the City of New Orleans in early January for the redevelopment of the World Trade Center tower building (RFP No. 4051-01414).

Background

The 33-story tower building, which now sits vacant, is commonly perceived as one of the most valuable redevelopment opportunities in New Orleans. The building is located on city-owned land at the foot of Canal Street. The city leases the land underlying both the tower and a nearby parking garage to the New Orleans Building Corporation (NOBC), a public benefit corporation it created. NOBC owns the improvements, although they will revert to city ownership upon termination of the ground lease in 2019.

Despite the valuable location, the city's attempts to redevelop the tower and garage over the years have not succeeded. BGR reported extensively on these redevelopment efforts, which suffered from convoluted lease proposals and terms unfavorable to the city. BGR also drew attention to the complexity of the city's approach: pursuing redevelopment in partnership with the master tenant of the tower and garage, the World Trade Center of New Orleans Inc., a private nonprofit civic organization dedicated to international trade development.

In January 2009, BGR recommended that the city and NOBC take an alternative approach: a buy-out of the master tenant's remaining leasehold interest and a clean sale of the tower building and garage. BGR called for the city to set a minimum price that approximates the structures' market value and sell them to the highest bidder willing to accept a redevelopment timeline with penalties for nonperformance.[1] A buy-out of the master tenant would simplify the redevelopment process; a sale of the property would place it on the tax roll and provide for transparent, market-based pricing.

Last year, the city and NOBC bought out the master tenant's leasehold interest, opening the door to a simpler redevelopment process. However, instead of pursuing a sale of the tower building and garage, they issued the current RFP soliciting proposals to redevelop the tower building or the tower site only.

The RFP seeks to generate a broad range of proposals for redevelopment. It imposes no limitations on the type of redevelopment or use of the space and encourages creative and innovative ideas. The RFP's goals indicate a desire for a dramatic rethinking of the WTC site and a redevelopment plan that maximizes its true potential.

Seeking a development that maximizes the site's potential is a worthy goal, and the city's broad solicitation could generate proposals that would greatly enhance the cityscape. However, the choice of a wide-open RFP process also introduces significant subjectivity, muddies the water on pricing and opens the door to the possibility of another subsidized deal that provides scant value to the public.

The potential for beneficial development could be maximized, and the associated risks minimized, by including in the RFP carefully crafted standards for evaluating proposals. Currently, the RFP falls seriously short in this area, leaving potential proposers with uncertainty and the evaluation committee with too much discretion. This and other areas of concern are discussed below.

The Current RFP

The RFP solicits proposals to redevelop the existing tower building or demolish it and redevelop the site. It sets forth nine goals for the redevelopment:

1. Create a world-class civic space benefitting the community and making use of the site's important location.
2. Develop appropriate commercial uses for this highly valuable location.
3. Provide direct revenue to NOBC commensurate with the market value and proposed use of the property.
4. Transform the site by creating a demand generator to the Riverfront, its enjoyment and use.

[1] BGR, *Rethinking the World Trade Center Building Transaction*, January 15, 2009, available at www.bgr.org.

5. Improve the pedestrian transition from the French Quarter and Central Business District to the site and river and enhance the riverfront view from Canal Street.
6. Create a coherent, unified environment through integration of adjacent land uses and spaces.
7. Create vitality for the New Orleans economy by providing new, well-paying jobs, both temporary construction jobs, as well as permanent jobs.
8. Achieve at least thirty-five percent (35%) Disadvantaged Business Enterprises ("DBE") participation in the planning, development, construction, and operation of the project.
9. Achieve Orleans Parish/local business participation in the project.

The RFP requests information under four broad categories:

- Detailed description of the proposed redevelopment addressing the goals listed above
- Qualifications and performance history of the respondent
- Financial capacity of respondent
- Financial feasibility of the project

It also indicates that the scoring will be based on the following evaluation criteria:

- Detailed description of the proposed redevelopment – 35%
- Qualifications and performance history of the respondent – 20%
- Financial capacity of the respondent – 20%
- Financial feasibility of the project – 25%

Concerns with Evaluation Criteria

Generally speaking, evaluation criteria should provide a clear basis for evaluating proposals and making awards.[2] This is necessary to encourage competition, enable potential proposers to develop responsive proposals, and minimize the risk or perception of patronage and favoritism.

Unfortunately, the World Trade Center RFP does not include a clear framework for evaluating proposals and making awards. The proposed framework suffers from a number of serious shortcomings:

- The criteria are vague.
- They do not connect with the goals.
- Net direct revenue and fiscal impact are not separately evaluated.

Vagueness. The RFP does not provide any guidance on how proposals will be evaluated. It merely repeats the headings from the information section and assigns percentages to them in the evaluation criteria. There are no sub-criteria or explanations to guide the evaluation.

[2] American Bar Association, *The 2000 Model Procurement Code for State and Local Governments*, Sec. 3-203.

The vagueness problem is most pronounced in the first criterion: "detailed description of the proposed redevelopment." What exactly does this mean? Based on the information requested under that rubric earlier in the RFP, one might extrapolate that the evaluation criterion is intended to cover the design, quality and nature of the project, as well as employment impact and DBE and local business participation. If that is the case, what weights will the city accord these very different components? By what standards will the city assess the design, quality and nature of the project? Will it measure them against some or all of the goals set forth in the RFP? If so, which ones? If not, what will be the basis for judging the project itself?

The preceding questions are not exhaustive, but they illustrate the point: The criteria provide little in the way of guidance for proposers or evaluators. The vagueness introduces unnecessary subjectivity into a process that already depends heavily on the judgment of the evaluation committee. The administration should clarify the basis for its evaluation by adding supplemental explanations or sub-criteria that address the open questions.

Lack of Connection with Goals. A related weakness is that the RFP does not link the city's development goals to the evaluation criteria. This creates a risk that some goals will be inadequately addressed or not considered at all. The problem can be remedied by incorporating the goals into the evaluation criteria and requiring the review committee to assess the proposals against each of them. For example, in evaluating the merits of the development plans themselves, the review committee could assess each plan against the goals relating to the building, site and environs. It could separately consider whether and to what extent the plan would create a world-class civic space, develop appropriate commercial space, etc.

Revenue Not Separately Evaluated. One of the city's goals is for the redevelopment to "[p]rovide direct revenue to NOBC commensurate with the market value and proposed use of the property." That goal is not specifically addressed in the RFP's list of criteria. It might be indirectly incorporated into the financial feasibility criterion as part of an analysis of "direct and indirect economic benefits" to NOBC and the city. However, "direct and indirect benefit" is an extremely vague and broad concept. It is a standard that could conceivably be satisfied without any payment whatsoever to NOBC and the city.

BGR reviewed a dozen RFPs issued over the past year for the redevelopment of publicly owned real estate elsewhere in the U.S. In nine of the 12 cases, the developer's proposed purchase price or other payments are separately evaluated. While none of the nine bases the decision solely on direct compensation, it is given clear consideration.

The criteria are silent on another revenue issue: the fiscal impact of the proposed projects. While the RFP asks developers to detail "all direct and indirect economic benefits to NOBC and the City," it does not call for an evaluation of the fiscal impacts of their proposed developments on all local public bodies. Evaluating fiscal impact is necessary to get a full picture of the financial value of a proposal. Including all public bodies is important, since some of them might forego substantial revenue as a result of potential subsidies.

To ensure the public receives a proper return on this asset, the RFP should be amended to make revenue a distinct criterion. Net direct revenue to NOBC and the fiscal impact on local government bodies should both be considered under that criterion. The weight given to the revenue criterion should not fall below the smallest weight accorded any of the other criteria.

In calculating direct revenue to NOBC, the city and NOBC should deduct the value of any direct and indirect subsidies to be provided by the city or other local government bodies. The offset is necessary to eliminate the portion of the revenue that is indirectly provided by the public.

Fiscal and economic impact studies are vulnerable to manipulation and distortions. For that reason, the fiscal impact analyses should be conducted by the city, rather than the proposer, using a common methodology. They should guard against vulnerabilities inherent in such analyses, such as optimistic predictions of a project's economic impacts and the tendency to count as "new" tax revenue that is currently generated from competing businesses.

Including revenue as a criterion would not preclude the selection of a lower-revenue project with major non-monetary public benefits, such as a large and dynamic civic space. It would, however, mean that the non-monetary benefits would have to command high enough scores to push the project ahead of the other proposals. As a result, the criterion would serve as an appropriate factor in measuring the relative value of what could be very different proposals.

Other Concerns

Ambiguity in the Form of Transaction. It is unclear from the RFP whether developers have the option to propose a purchase or lease. That ambiguity should be addressed.

Ambiguity on Public Subsidies. The RFP requires proposers to provide "detail of any and all special conditions that the developer may propose to offer or to ask the City as part of the proposal." This could be interpreted to include public subsidies. It is unclear why any local subsidies would be needed to redevelop a prime location between the French Quarter and the convention center. However, if the city intends to entertain requests for subsidies, it should clearly require developers to disclose up front whether they intend to seek local subsidies and, if so, the type and amount.

Developer Financials Not Required. The RFP does not specifically require proposers to submit any financial information about the project developer. Such information is important in evaluating the financial health and capacity of the developer, including its ability to make an equity investment in the project. The city and NOBC should require proposers to submit the project developer's audited financial statements for the last three years.

Strengthening the RFP

We understand the city wants to solicit a broad range of ideas for redeveloping the WTC tower building. But that does not preclude establishing a clear basis for evaluating proposals and selecting a developer. Nor does it preclude obtaining a financial return commensurate with the market value and proposed use of the property.

To maximize the potential for beneficial development and reduce unnecessary subjectivity, we suggest that the city issue an addendum to the RFP that:
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- Adds specificity to the evaluation criteria by providing supplemental explanations or adding sub-criteria.
- Links each goal to the appropriate evaluation criterion and requires the evaluation committee to consider each proposal against the individual goals.
- Adds a criterion that separately considers the net direct revenue to NOBC and the net fiscal impacts for the public.
- Accords that criterion a weight no less than the smallest weight for any of the other major criteria.
- Clarifies whether developers have the option to propose either a purchase or lease.
- Requires proposers to state whether they intend to pursue local subsidies and, if so, to identify the type and amount.
- Requires proposers to submit the project developer's audited financial statements for the last three years.

BGR applauds the administration for seeking to redevelop this important site with the goal of maximizing its true potential. We hope that our suggestions will assist the city in attracting a high-quality pool of proposals. Thank you for considering them.

If you have any questions, please contact me at 525-4152, ext. 107.

Sincerely yours,

Janet R. Howard
President & CEO