

Massachusetts Department of Transportation

Request for Proposals

CA/T Parcel 9

Boston, MA

ADDENDUM 3

February 22, 2013

I. INTRODUCTION.

The following amendments, additions, and clarifications are hereby made to the “Request for Proposals; December 2011; Parcel 9, Boston, MA” (together with all figures, appendices, prior addenda attached thereto, and letters incorporated therein, the “RFP”) issued by the Massachusetts Department of Transportation (“MassDOT”). This Addendum 3 and all attachments to it are hereby made a part of the RFP. To the extent that there is any conflict or inconsistency between this Addendum 3 and the text of the original RFP and prior addenda and letters incorporated into the RFP, the language of this Addendum 3 shall govern. In all other respects the content and requirements of the RFP remain unchanged. Capitalized terms in this Addendum 3 shall have the meanings set forth in the RFP. All Reservations and Conditions in Section VIII of the RFP shall apply fully to the information in this Addendum 3. References to section, subsection, paragraph, subparagraph, or page numbers or names are to those in the RFP unless otherwise noted. MassDOT does not warrant the accuracy, currency, completeness, or correctness of any of the information in this Addendum 3.

MassDOT sought and received Best and Final Offers from two of the original four Proposers (the “Finalists”). Pursuant to Section VII.A.7 and Section VIII.A.3 of the RFP, in order to clarify and better compare both the financial and non-financial aspects of the Finalists’ Proposals, MassDOT is now seeking additional information from both of the Finalists. Finalists may resubmit any sections of their original Proposals or Best and Final Offers that they believe are responsive to this Addendum 3. For ease of MassDOT’s review, however, all information requested here, whether new or previously submitted, must be included in the submissions in response to this Addendum 3 (“Addendum 3 Submissions”).

II. SUBMISSION REQUIREMENTS.

A. Submission Process and Procedures. Proposers must follow the Submission Process and Procedures below for responses to Addendum 3.

1. Addendum 3 Submission Due Date. All Addendum 3 Submissions must be received by MassDOT by:

2:00 p.m., Friday, March 15, 2013

2. Submission procedures. All Addendum 3 Submissions must be enclosed in a sealed envelope, addressed and delivered or sent as follows:

Massachusetts Department of Transportation
Office of Real Estate & Asset Development
Massachusetts Transportation Building
Ten Park Plaza, Suite 4470
Boston, MA. 02116

ATTN: PARCEL 9 PROPOSAL – ADDENDUM 3 SUBMISSION

Any Addendum 3 Submission received after the time and date shown above as the Addendum 3 Submission Due Date – even if only a minute late – will not be accepted or will be returned unopened if delivered by USPS. If an Addendum 3 Submission is not received by the Addendum 3 Submission Due Date above, the Proposer’s entire Proposal will be rejected. Addendum 3 Submissions will be deemed to have been received only if and at the time that they are physically received at MassDOT’s Office of Real Estate and Asset Development at Suite 4470 on the fourth floor of the State Transportation Building.

Addendum 3 Submissions may not be delivered to the main security desk of the State Transportation Building or to any other MassDOT office or facility, or any other state or other agency. Addendum 3 Submissions may not be delivered by electronic mail. In light of security measures in effect at the State Transportation Building, Proposers should allow extra time to sign into the building when delivering Addendum 3 Submissions. Proposers are responsible for determining and complying with all current procedures for entering the State Transportation Building, including without limitation, providing necessary identification, prior to the Addendum 3 Submission Due Date.

All Addendum 3 Submissions must be sealed to provide for confidentiality of the information contained therein and to ensure that the Addendum 3 Submissions remain intact until MassDOT opens them. Addendum 3 Submissions must contain all required information and must be in the format described in Section II of this Addendum 3. Addendum 3 Submissions must be complete, and must provide sufficient information for MassDOT to evaluate them. No additions or supplements to Addendum 3 Submissions will be accepted after an Addendum 3 Submission is submitted, unless specifically requested or allowed by MassDOT. Once submitted to MassDOT, all Addendum 3 Submissions and accompanying materials are the sole property of MassDOT. All Addendum 3 Submissions are subject to the reservations and conditions specified in RFP, as amended.

- 3. Components.** All Addendum 3 Submissions shall be submitted in two separately bound components: (i) Component I, which will be distributed to the Boston Redevelopment Authority (“BRA”), the Advisory Committee, and the general public, and posted on MassDOT’s website; and (ii) Component II, which will remain confidential until the final selection of a developer, as described in Section VI.B.2 of the RFP. The contents of each component are described in Section II of this Addendum 3, below.
- 4. Format, copies, and pages.** All pages of both components, including drawings and spreadsheets, shall be printed on two sides of 8½ by 11 inch paper. Addendum 3 Submissions must include ten (10) bound paper copies of each component and one PDF electronic copy on CD-R. Component I shall be no longer than fifteen (15) sheets printed on two sides, i.e., thirty (30) pages, including all forms, drawings, tables, and text. Component II shall be no longer than ten (10) sheets printed on two sides, i.e., twenty (20) pages, including all forms, tables, and text.

- B. Component I: Development Proposal.** The finalists are encouraged to modify their design and program as they feel appropriate and responsive to comments that have been made through the review process with MassDOT, the BRA, the Advisory Committee, and the general public. Comment letters are posted on MassDOT's website:

<http://www.massdot.state.ma.us/InformationCenter/OfficeofRealEstateAssetDevelopment.aspx>

Additional information required with respect to each Finalist's Development Proposal includes the following:

- 1. Building massing and program.** Finalists must provide a single, definitive building massing scheme, including graphics and verbal descriptions.
 - a. Graphics. Graphics must be in the format described in Section VI.B.5 of the RFP. They must include:
 - i. site plan;
 - ii. elevations;
 - iii. aerial perspectives;
 - iv. street-level perspectives, including, at a minimum, the view to Parcel 9 and the Blackstone Block from the North End at Hanover Street; and
 - v. conceptual construction phasing plan(s) (see Section II.B.3.d of this Addendum 3, below).
 - b. Description. Verbal descriptions must include:
 - i. overall height in feet *and* floors;
 - ii. average height in feet across the length of the façade on the John F. Fitzgerald Surface Road;
 - iii. Floor-Area Ratio as defined by the City of Boston Zoning Code;
 - iv. revised table of floor areas by use and building floor, as described in Section VI.C.4.a.i of the original RFP;
 - v. a description of views toward Parcel 9 and the Blackstone Block from the North End and the Rose Fitzgerald Kennedy Greenway; and
 - vi. an itemized list describing all ways in which and the extent to which the proposed building design and program does not comply with the City of Boston Zoning Code, and the type and extent of zoning relief required for the proposed development.

N.B.: After reviewing plans for physical accommodation of HPA operations on Blackstone Street submitted in response to Addendum 2, MassDOT has concluded that the best approach will be to set the first floor of the Parcel 9 building back from the parcel line on Blackstone Street by a distance adequate to allow for a full fire lane through Blackstone Street, with three rows of HPA stalls as currently configured. Finalists must confirm in writing and their final massing plans their willingness to accept such a configuration, subject to all required City, state, and federal reviews, permits, and approvals. The building massing and program submitted in response to this Addendum 3 will be deemed by MassDOT to be the only and definitive proposal.

- 2. Market, retail, and restaurant uses.** Provide a single, definitive, detailed description of all proposed uses for the first floor of Parcel 9, including without limitation, retail, restaurant, market, lobby, mechanical, circulation, storage, trash compaction, and delivery and building service, as well as a description of all market, retail, and restaurant uses on the second or other floors of the proposed building. Describe explicitly how the first- and second-floor uses and plan will interface with the operations of the Haymarket Pushcart Association ("HPA").

The response should make clear the character of the space, the operational plan, and potential conflicts or synergies with the HPA or Public Market.

N.B.: The first floor uses and program submitted in response to this Addendum 3 will be deemed by MassDOT to be the only and definitive proposal.

3. **Blackstone Street reconstruction.** Describe in detail all elements of the proposed reconstruction of Blackstone Street, including without limitation:
 - a. Limits of reconstruction. Describe the limits of reconstruction, including whether sidewalks on both sides of the street will be included in the proposed reconstruction and the proposed limits at North and Hanover streets.
 - b. Pavement. Describe proposed changes to the level and surface treatment of the street and sidewalk pavement.
 - c. Utilities and equipment. Describe all utilities, equipment, shelters, lighting, or other services for use by the HPA to be provided;
 - d. Construction phasing. Describe proposed construction phasing for the reconstruction of Blackstone Street and construction of the Parcel 9 building, including how the construction will accommodate HPA operations, storage, and trash removal during all phases of construction; and
 - e. Budget. Provide an itemized budget for all hard and soft costs associated with the proposed street reconstruction, not be less than that included in the response to Addendum 2 to the RFP.

N.B.: MassDOT considers reconstruction of Blackstone Street to support HPA operations to be an integral part of the Parcel 9 project. Finalists must confirm in writing that their proposals, including their revised Financial Proposals, include the costs for Blackstone Street reconstruction.

4. **HPA conflicts.** Finalists must describe any potential conflicts between the proposed development and use of Parcel 9 and the operations of the HPA, including, without limitation: HPA noise impacts on Parcel 9 uses; HPA cleanliness and odor impacts; pedestrian and delivery access conflicts during HPA operations; and competition between Parcel 9 retail food uses and HPA operations. For each potential conflict, identify how such conflicts with the HPA will be minimized with respect to all Parcel 9 building uses, both in terms of physical design, operations, and coordination.

N.B.: In order to limit conflicts with the HPA, MassDOT will include in the Lease an explicit prohibition on the sale of produce on HPA days of operation at prices that will undercut HPA vendors. The exact limits on prices will be determined in consultation with the HPA during Lease negotiations. Finalists must confirm in writing their willingness to accept these Lease terms. MassDOT reserves the right to include additional limitations on the sale of food at Parcel 9 to ensure coordination with the HPA and the Boston Public Market on Parcel 7.

5. **Relationship to Boston Public Market.** Finalists must describe the relationship between the retail uses on Parcel 9 and the proposed Boston Public Market on Parcel 7. The description should address explicitly the type, source, price, and sales approach for produce

and other products to be sold. The degree to which the Parcel 9 retail will be conflict with, compete with, and/or be complementary to the Boston Public Market should be described.

- 6. Support of HPA operations.** MassDOT will include in the Lease requirements that the Lessee provide financial and operational support to the HPA. Finalists must describe all proposed provisions for financial and operational support, including without limitation interior space, utilities, trash compaction and removal, and other services to the HPA, including any provisions described in the letters submitted on January 23, 2013. Provide a detailed, itemized, tabular description of all such provisions. With respect to charges for space within the building, Finalists must state explicitly if the HPA will be required to pay for ongoing use of the space, including both rent and utilities. With respect to charges for trash compaction and removal, Finalists must state explicitly their proposed financial arrangement with the HPA.

N.B.: MassDOT will require that financial and operational support of the HPA will include, at a minimum:

- a. Interior space. A weather-tight area within the Parcel 9 building of not less than 1,500 square feet for use by the HPA must be provided, to be made available at no charge other than pro-rated utility charges.
- b. Restrooms. Indoor restrooms available for use by HPA vendors must be provided.
- c. Trash compaction. Trash compaction facilities and equipment capable of handling the HPA's needs during days of HPA operations, as well as those of the Parcel 9 building, must be provided.
- d. Trash handling and street cleaning fees. Charges to the HPA for trash handling and street cleaning must provide:
 - i. the first ten (10) years of operation of not more than \$150,000 per annum;
 - ii. Years 11 through 20 of operations to increase at an annual rate equal to the lesser of (i) the annual increase in the Consumer Price Index for All Urban Consumers (Boston), or (ii) five percent (5%); and
 - iii. a commitment that the Lessee shall negotiate in good faith with the HPA regarding trash handling and street cleaning rates after Year 20 of operations, such negotiations to start no later than Year 18 of operations, and such negotiations to be in the context of all activity within the Market District.

Finalists must confirm in writing their willingness to accept these minimum Lease terms for HPA support. MassDOT reserves the right to negotiate further requirements in the Lease.

- 7. Support for Market District.** Finalists should describe how their proposed development and use plan for Parcel 9 reflects and reinforces the development of the Market District as a whole, with particular attention to the goals and priorities for that emerging district as set forth in the 2009 Boston Market District Feasibility Study commissioned by the BRA.
- 8. Support for surrounding communities.** Finalists should describe whether and how their proposed development and use plan for Parcel 9 reflects and reinforces the quality of life in the surrounding North End / Waterfront, West End, and Beacon Hill communities. Issues to be addressed should include, without limitation, noise, hours of operation, traffic, and views. Finalists should describe whether and how their revised Proposal has been modified in response to community comments on and concerns with their initial submissions.

9. Residential condominiums prohibited. In furtherance of the Parcel 9 Development Guidelines in Section IV of the RFP, MassDOT will include in the Lease an explicit and outright prohibition on the creation of condominiums for individual residential units, now or in the future, regardless of the prior use of the space to be converted. Finalists must confirm in writing their willingness to accept these Lease terms.

10. Non-disturbance covenant. In order to limit conflicts with the HPA, MassDOT will include in the Lease an explicit acknowledgement by the Lessee accepting the nature and hours of the HPA operations and a covenant not to interfere with those operations. MassDOT further will require the Lessee to include these same provisions in any assignment of its rights under the Lease, including any sale, transfer of interest; any commercial, residential, or other sublease, license, vendor agreement; or other permitted assignment of its lease rights.

11. Agreements. Finalists must submit copies of all executed or proposed agreements with the HPA or any other group relating the proposed development of Parcel 9.

12. Consultation. Finalists will be asked to meet with the Advisory Committee, the BRA, and MassDOT. MassDOT will contact the Finalists regarding the time and location of the meeting. Finalists also are welcome, but not required, to consult directly with the HPA and the BRA to discuss their proposals prior to submitting their Addendum 3 Submission. Note, however, that MassDOT will base its evaluation on the Proposals as submitted by the Finalists.

C. Component II: Financial Proposal. In light of the additional information requested in Section II.B of this Addendum 3 and possible changes to Proposals, MassDOT is allowing Proposers to adjust their Best and Final Offers by submitting a Revised Financial Proposal as Component II of the Addendum 3 Submissions.

1. Rent structure. MassDOT expects that the Rent proposed in the Addendum 3 Submissions will be primarily in the form of non-recurring rent and/or annual rent, as described below. Any contingent, performance-based, or participation rent must be limited to a minor supplement to non-recurring and/or annual rent rather than a primary source of rent revenue proposed. See Section III.C.2 of this Addendum 3 for a discussion of how MassDOT will evaluate Financial Proposals.

- a. Non-recurring rent. Proposers must include some component of fixed, non-recurring rent payments, including a significant portion to be paid at lease closing. Other events at which fixed non-recurring rent can occur include project completion, initial capital events, or other early project milestones.
- b. Annual rent. Proposers may include enforceable annual rent payments throughout the Term of the Lease. With respect to annual rent payments, MassDOT requires that there will be regular, periodic escalation that tracks the Consumer Price Index (“CPI”) or other measure of inflation. CPI based rent escalation should be based on the full change in CPI, not a proportion of CPI change. MassDOT further requires that annual rent payments will be subject to occasional periodic adjustments to market value by appraisal.
- c. Contingent, performance-based, or participation rent. MassDOT is willing to consider participating in the ongoing growth in value of the proposed development project through contingent, performance-based, or participation rent. Although MassDOT is willing to consider any proposal for contingent, performance-based, or participation rent, MassDOT

strongly prefers that such rent be based on gross revenues or capital event proceeds, or on externally verifiable measures of performance.

2. **Financial proposal format.** Finalists must submit Component II of their Addendum 3 Submissions in the form described in Section VI.D of the original RFP. The new Component II must include ALL information requested in the Submission Requirements, Section VI.D, of the original RFP in the form and level of detail requested, as well as any additional information described below. Information to be included in Component II, Financial Proposal, must include:
 - a. Rent Offer Form. A Rent Offer Form reflecting the Revised Financial Proposal must be submitted using the form provided in the RFP as Schedule 2 and following the instructions in Section D.1 of the Submission Requirements of the RFP.
 - b. Financial Proposal Narrative. In addition to the Rent Offer Form, Proposers must provide a concise verbal description of the Revised Financial Proposal, including amounts and timing of non-recurring rent and all assumptions and bases for participation or performance-based rent, as described in Section VI.D.2 of the Submission Requirements of the RFP.
 - c. Project Financial Projections. Proposers must provide complete, revised financial projections as described in Section VI.D.2 of the Submission Requirements of the RFP. These projections must include a detailed line-item Development Budget and Operating Pro-Forma with all detailed, line-item information as requested in Section VI.D.2 of the Submission Requirements of the RFP. The information provided must be detailed enough to allow MassDOT to analyze the proposed development project, and must include, without limitation:
 - i. detailed revenue estimates to support the proposed financing, including pro-forma operating projections and backup for the revenue assumptions;
 - ii. if the Proposal includes apartments, projected rent rolls and operating expenses for the apartments and rent assumptions for both market-rate and affordable units;
 - iii. if applicable, projected operating expenses (non-reimbursed) for the commercial portion of the building;
 - iv. line items for all costs related to the reconstruction of Blackstone Street or capital costs for accommodation of the HPA operations, to the extent that these costs are included in the development project budget; and
 - v. operating costs to be reimbursed by the HPA and any operating subsidy to be provided to the HPA.
 - d. Contingent rent calculations. Finalists must provide any calculations used to determine any projected contingent, performance-based, or participation rents. If Finalists are offering MassDOT any revenues at future capital events, a 30-year projection indicating MassDOT revenues from projected capital events, and back-up for that projection must be provided.
3. **Sources of funds.** Finalists must provide all information required in Section VI.D.3 of the Submission Requirements of the RFP, including, without limitation, a description of the proposed financing structure, the identity of known funding sources, and evidence of the ability of the project to raise the equity cited. In addition to the information described in Section VI.D.3 of the Submission Requirements of the RFP, Finalists must describe the amount and sources of all funding required to pay pre-construction costs.

III. SELECTION PROCESS AND CRITERIA.

MassDOT will follow the selection process and criteria included in Section VII of the RFP, as modified by this Addendum 3. To the extent that the Selection Process and Criteria were modified by Addendum 2 to the RFP, those provisions of Addendum 2 are hereby withdrawn.

A. Proposals Considered. MassDOT will evaluate and score the Finalists' full Proposals, which are deemed to comprise: the original proposals submitted on March 23, 2013; the Best and Final Offer submissions on November 16, 2012; the January 23, 2013 letters; the Addendum 3 Submissions; and presentations and answers to questions at all public meetings and MassDOT interviews. MassDOT will consider existing or proposed outside agreements with the HPA and other groups, as detailed in the Finalists' letters of January 23 and included in the Addendum 3 Submissions, in its evaluation of the Finalists' proposals. Any agreements not included in the Addendum 3 Submissions will not be considered by MassDOT.

B. Community, Advisory Committee, and City review. Pursuant to Section VII.A of the RFP, MassDOT will seek additional public and agency review of the proposals as part of its evaluation. The additional review will include, at a minimum:

- 1. Public presentation.** Both finalists will be required to present the non-financial portions (i.e., Component I) of their Addendum 3 Submissions at a public meeting to include members of the Advisory Committee, Boston Redevelopment Authority staff, and MassDOT staff. The meeting will occur on:

Wednesday, March 20, at 6:00 p.m.

at the

Mariners House, 11 North Square, North End, Boston

Finalists will be responsible for providing all projection and other display equipment necessary, and are encouraged to arrive early to set up for the presentation. Finalists will be notified of the format for the presentations prior to the event.

- 2. Advisory Committee, BRA, and public comments.** MassDOT will make Addendum 3 Submissions available to the BRA and other agencies, the Advisory Committee, and the general public. MassDOT will seek and accept further written comment from all interested parties. Comments may be submitted via electronic mail to: MassDOT.RE@dot.state.ma.us, with a subject line that contains the words "PARCEL 9 COMMENTS." In order to be considered in the evaluation of the Proposals, all written comments must be received by:

Friday, April 5, 2013

- 3. Interviews.** Pursuant to Section VII.A of the RFP, MassDOT may or may not conduct additional interviews with Finalists.

C. Selection criteria. MassDOT will evaluate the Proposals on the full range of Selection Criteria described in Section VII.B of the RFP. MassDOT's designation of a Developer will be based on its determination of the greatest overall benefit and value for the use of its real estate assets – including both financial and non-financial benefits and value based on the Selection Criteria. Section D of Addendum 2, Best and Final Offer, is hereby deleted from the RFP.

1. **Evaluation criteria weights.** In evaluating the Proposals, MassDOT shall apply the following percentage weights to each of the Selection Criteria described in Section VII.B of the RFP:
 - a. Non-Financial criteria – 50 percent:
 - i. Development Approach – 15 percent.
 - ii. Experience – 10 percent.
 - iii. Community Input – 20 percent.
 - iv. Responsiveness to the RFP – 5 percent.
 - b. Financial criteria – 50 percent:
 - i. Financial Proposal – 25 percent.
 - ii. Developer Financial Capacity – 15 percent.
 - iii. Development Financial Planning – 10 percent.
 - c. Civil Rights: pass/fail.
2. **Financial Proposal evaluation.** MassDOT will evaluate Addendum 3 Submission Financial Proposals primarily on the basis of non-recurring and enforceable annual rent and expects that a significant portion of the non-recurring portion of the Rent offer will occur at lease execution. MassDOT's analysis of the Addendum 3 Submission Financial Proposals will be based on a present value of the projected revenue stream from the proposed Rent. MassDOT will apply a discount rate to each type of proposed rent that is commensurate with the level of risk associated with that revenue in terms of the likelihood, timing, enforceability, and frequency of proposed payments. Non-recurring and annual rent will be discounted at lower rates than contingent, performance-based, or participation rent. The latter will be discounted on the basis of the risk inherent in the proposed income stream; these discount rates will be significantly higher than those applied to non-recurring and enforceable annual rent.

IV. RESERVATIONS AND CONDITIONS.

All reservations and conditions included in Section VIII of the RFP, as amended by any prior addenda or letters, apply fully to this Addendum 3 and to the entire RFP process. Without limiting the foregoing, pursuant to Section VIII.A.6 of the RFP, MassDOT explicitly reserves the right to negotiate further any part of the Proposal with the Selected Developer of Parcel 9 – after designation. In any negotiation of the Financial Proposal, MassDOT will not accept a total present value below that offered in the Addendum 3 Submission.