

27059003

"Review and Comments" on the Development
RFIQ for compliance with the Milestone 6
joint development goals and objectives.

October 26, 1989

Submitted to:

Mr. Gary Spivack
Director of Planning
SCRTD
425 South Main Street
Los Angeles, California
(213) 972-6000

Prepared by:

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October 26, 1989

Via "Facsimile Transmission"

Via "Federal Express"

Mr. Gary Spivack
Director of Planning
SCRTD
425 South Main Street
Los Angeles, California 90013

RE: Review of the Development RFIQ for compliance with the
Milestone 6 joint development goals and objectives.

Dear Mr. Spivack:

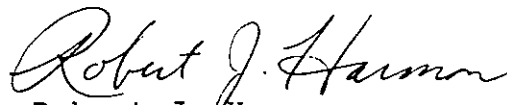
As per our agreement and discussions, please find enclosed three (3) bound copies of our section-by-section comments on the subject Development RFIQ (prepared by the District).

A separate memorandum is also being finalized regarding our observations of the compliance with the Milestone 6 joint development goals and objectives in relation to the "overall developer selection process".

I will be in phone communication later today, Gary, to arrange a conference call on these matters.

Best personal regards,

Sincerely,



Robert J. Harmon
Managing Principal

RJH:srmm
encl.

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INTRODUCTION

1.1

Recommended Revision(s):

"...to secure qualified developer bids to negotiate a land lease or suitable option for the commercial development rights for select properties now owned by the District."

"The sites offered for private sector bids include:

Union Station

Wilshire/Alvarado

Yards/Shops

Macy/Vignes

[Near the District's Central Maintenance Facility]

Location 24

[Van Nuys Blvd./Sherman Way]

Division 7

[West Hollywood, Santa Monica/San Vincente Boulevards]

Note:

In our opinion, reference to both design/construction or any portion is not relevant. It is important, however, to state that the SCRTD is offering development rights "only". The option of fee simple sale should be cited as a "special condition". If a land lease is the stated option, that will bring higher long-term revenues to the SCRTD and reduce the selected developer's up-front capital costs. This preferred approach (assuming a 99-year lease is offered), is a positive feature of the offering.

1.2

Recommended Revision(s):

"The District is required to maintain the transit function of those sites that involve the Metro Rail system's track or stations. Development proposals for these sites must be designed to meet this objective."

Note:

The key message involves site design requirements. In our opinion, specific details should be provided to prospective bidders with respect to access/egress requirements for vehicular or pedestrian/escalator design allowances within commercial buildings.

1.2 [Continued]

Recommended Revision(s):

"The land swap option and the District's need for 500,000 square feet are unusual enhancements to the development proposals. The 500,000 square foot office/tenant commitment is a "deal maker" for financing a major commercial development project. For this commitment, the RFIQ should state that the District expects to realize a substantive "equity" position, in addition to an acceptable "ground lease". In addition, the terms (i.e., "market rate" and "tenure") of your lease commitment should be stated in order to secure the most favorable private sector response.

Note:

In our opinion, stipulations should be made with respect to how the District's lease commitment would be "secured". This will alter the bottom-line form in which the private sector interests will incorporate your tenant commitment in the loan package.

1.3

Recommended Revision(s):

In our opinion, the terms of a "sample" development agreement should be specified within this subsection. The SCRTD is not offering a "fee simple" sale. Are the lease terms 99-years? Are graduated lease rate terms acceptable to the District? In our opinion, a "minimum" lease rate of 3.0%-5.0% of gross annual revenues realized from development on the respective site(s) should be cited within the offering. (WMATA uses 4.0% of gross annual revenues for this purpose.) Leaving "all options open" is non-conventional and may create a false impression to the private sector interests that this represents the equivalent of a "fire sale".

Note:

In our opinion, setting a "minimum" (e.g., 4.0% of annual gross revenues realized from development on the respective properties) lease rate does not inhibit creativity or requisite latitude in negotiations on behalf of the District.

1.4

Recommended Revision(s):

In our opinion, the allowance for continual transit use of each site is not adequately specific for preparation of a "concept plan" proposal. At least a narrative description, or better yet, a "site diagram" (citing parcel, square, et al) should be provided to prospective development interests in order to make an informed determination if the District's property can only be utilized for air rights development, or if the transit function can be isolated.

Note:

In our opinion, even under conditional zoning, the total square footage and land use(s) F.A.R. (rights and terms) that can be developed on each site should also be calculated and provided in the subject offering. The current description only briefly describes SCRTD current plans. All available architectural designs or renderings should be made available "upon request" to all prospective qualified developers.

1.5

Recommended Revision(s):

The level of design detail (i.e., concept plan and scale of drawings) should be specified. Development staging plans and a project construction schedule should also be requested of proposing development interests.

Note:

What financial commitments is the District seeking? Normally, development bonds of a specified amount are defined, based on a percentage of total development costs. This type of bonding or "irrevocable" letter-of-credit deposit will determine the degree of interest and provide an indication with respect to financial credibility of the proposing interest(s). If this request is not made during the RFIQ phase of selection screening, it definitely should be incorporated into the negotiation phase of selection. Incorporation of these provisions in the invitation phase will help insure that the District is not inundated with unqualified and/or marginally interested proposers.

1.6

Recommended Revision(s):

Does the reference to "one or more qualified developers" mean "joint venture"? The existing language in the subject offering implies that developers could be awarded "a portion" of a subject site?

Note:

The "industry standard" is to provide a "sample agreement" within the RFIQ or RFP. Due to the District's need to be flexible, this may not be possible. We should discuss the possibility of developing a "sample agreement" document at your earliest convenience.

3.6

Recommended Revision(s):

If a developer (either single interest or a joint venture) is selected by the District for negotiations, at what point in time does the District make a formal commitment? The principal concern to an established developer is "at what point" do they secure "control of the site" and/or its development rights. [This is not clear in the existing narrative of the subject offering.]

Note:

A chart or submission processing schedule diagram should be developed to clarify this important issue.

3.7

Recommended Revision(s):

In our opinion, this section should be redrafted in a "positive framework". For example, the District may award more than one site to a single joint venture, if the selected interest has both the financial means and the most viable development design concept.

The current language within this subsection of the offering implies that the award process could be staggered or conditional on the success of a first development. Is this true?

Note:

Any ambiguities in the RFIQ will confuse the selection process and possibly deter quality established developers from formally responding. In meeting the District's need to be flexible and attract creative proposals, these ambiguities create a "climate of uncertainty" that is unnecessary and potentially counter-productive.

4.0

Recommended Revision(s):

It is unclear why there is such a high (i.e., 40.0%) MBE design requirement? This should be defined for the prospective proposers. Does the SCRTD define an MBE "equity" requirement? The other unstated issue within this subsection is whether the Davis/Bacon Act requirements will apply? This will add an estimated 10.0% to 15.0% to the development costs..

Note:

In our opinion, these legal and policy issues must be discussed in more detail (either now or before final cost proposals are requested) for qualified development interests.

5.0

Recommended Revision(s):

The focus on brevity is excellent. Any additional information that proves to be required can be obtained in the "final cost" proposal stages of selection by the District.

Note:

In our opinion, a statement should be made describing that the principal reason for brevity is to reduce private sector proposal costs.

6.0

Recommended Revision(s):

[No additional comments on this subsection of the RFIQ under review.]