

**New York State Thruway Authority
RFP #18C15**

Design, Construction, Financing, Operation and
Maintenance of 27 Service Areas on the New York State Thruway

April 25, 2019

ADDENDUM NO. 12

Notice is hereby given that the following Addendum No. 12 shall be made part of RFP #18C15 issued by the Authority on October 15, 2018 as amended by Addendum No. 1 dated November 8, 2018, Addendum No. 2 dated December 21, 2018, Addendum No. 3 dated December 27, 2018, Addendum No. 4 dated January 25, 2019, Addendum No. 5 dated January 29, 2019, Addendum No. 6 dated February 25, 2019, Addendum No. 7 dated February 27, 2019, Addendum No. 8 dated March 28, 2019, Addendum No. 9 dated April 3, 2019, Addendum No. 10 dated April 5, 2019 and Addendum No. 11 dated April 11, 2019 (the "RFP").

Each Proposer shall acknowledge receipt of this Addendum No.12 in the cover letter submitted as part of their Proposal.

Addendum No.12 consists of the following changes and to the RFP:

NOTE: Material to be deleted is in [], material to be added is in bold and underlined.

Change No. 1 RFP Section 1.1, "Background," is hereby changed to read:

The New York State Thruway Authority (the "Authority" or "NYSTA") is seeking Proposals ("Proposals") from experienced and qualified firms to redevelop, operate and maintain (i.e., design, construct and finance) the food service operations (the "Service Areas") at the 27 food/fuel facilities located on the New York State Thruway.

The Authority is a public corporation organized and existing pursuant to Article 2, Title 9 of the New York State Public Authorities Law for the purpose of financing, constructing, reconstructing, improving, developing, maintaining and operating a highway system known as the Governor Thomas E. Dewey Thruway. The powers of the Authority are vested in and exercised by a seven-member Board appointed by the Governor with the advice and consent of the State Senate.

The New York State Thruway (the "Thruway") is a 570-mile superhighway system crossing the State. It is the longest toll superhighway system in the United States. The Thruway route from the New York City line to the Pennsylvania line at Ripley is 496 miles long and includes the 426-mile mainline connecting New York City and Buffalo, the State's two largest cities. Other Thruway sections make direct connections with the Connecticut and Massachusetts Turnpikes, New Jersey Garden State Parkway and other major expressways that lead to New England, Canada, the Midwest and the South. In 1991 the Cross-Westchester Expressway was added to the Thruway system. In all, the Thruway is comprised of 2,818 lane miles of roadway, 815

bridges, over 350 buildings, 134 interchanges, 34 tandem areas, 27 service areas, nearly 120 water services, 18 waste water treatment plants and 26 motor fueling stations for Authority vehicles and equipment. Operationally, the Authority is segmented into four regional divisions – New York, Albany, Syracuse and Buffalo – with the Administrative Headquarters located in Albany.

The portfolio of the Authority's Service Areas is a \$118+ million per year restaurant and motorist services enterprise comprised of 27 properties immediately accessible from the Thruway. Approximately 250 million trips, accounting for more than 8 billion miles of travel, occur on the entire Thruway system each year. Further detail on average daily trips by Service Area is provided in Exhibit 4.

The Authority intends to enter into a lease agreement ("Lease Agreement") for all 27 Service Areas that will provide an array of development plans and operational services. The term of the Lease Agreement (the "Term") will be for 33 years with regard to 16 Service Areas and 30.5 years with respect to the remaining 11 Service Areas, as further described in Appendix B, Key Terms of Lease Agreement. Proposers may be a single entity or may be a team; however a single entity (the "Operator") will enter into the Lease Agreement and serve as the sole point of contact to the Authority responsible for the provision of all services ("Contract Services") required under the Lease Agreement. Proposers must propose to provide all Contract Services described in this RFP. The Authority will not accept proposals that do not include all of the required Contract Services.

Proposers should be aware that the current operator for 11 of the Service Areas (referred to herein as the "Group 2 Service Areas") is McDonald's Corporation, whose operating agreement does not expire until December 31, 2022. Accordingly, the Group 2 Service Areas are only being offered for development beginning January 1, 2023. The remaining 16 Service Areas (referred to herein as the "Group 1 Service Areas") will be available for redevelopment beginning ~~January~~ July 1, 2020 at 12:01 AM. However, the term of the Lease Agreement applicable to all 27 Service Areas, will expire on ~~December 31 2052~~ June 30, 2053 (at 11:59 PM).

The Proposer selected by the Authority to enter into a Lease Agreement in accordance with this RFP (the "Successful Proposer") will have a deep understanding of facilities management and will have the expertise and financial strength necessary to perform the Contract Services, as set forth in this Request for Proposals ("RFP"). A critical element of this RFP is to identify a Proposer that will redevelop highly-visible properties to create an environment that will provide the users of the Thruway with the highest industry levels of convenience, service, safety, food & beverage quality and variety.

The Successful Proposer will champion the New York State Experience and create a sense of place that is an authentic part of the surrounding region. The Successful Proposer will constantly improve the customer experience in regard to safety and security, authenticity, hospitality, and engagement.

The goals of this project include the following:

- Provide a clean, friendly and safe environment at first-class Service Areas;

- Provide food, beverage, and traveler service options that will include a variety of high-quality local, regional and nationally-known food offerings together with other services appropriate for the travelers along the Thruway;
- Consolidate management and operation of all Services Areas to a single Operator for the purpose of serving as the Authority's sole point of contact responsible for all Contract Services;
- Attract substantial capital investment by the Successful Proposer to significantly improve the quality and utilization of the Service Areas; and
- Provide a revenue stream to the Authority resulting from the long-term investment of the private sector, which will result in an increased capture rate and greater generation of revenues.

The Authority will prepare the Lease Agreement, which must be approved by the New York State Attorney General's Office and the Office of the New York State Comptroller.

The Lease Agreement will establish the scope of the Contract Services and specify the details of the contract administration, including regularly scheduled meetings between the parties, required reporting obligations, and the event of default provisions, liquidated damages and termination rights for actual or anticipated failure of the Operator to perform its contractual obligations. Further details of terms and conditions that will be set forth in the Lease Agreement are attached hereto as Appendix B, Key Terms of Lease Agreement.

Change No. 2 – RFP Section 2.3.2 “Renewal and Replacement Plan” is hereby changed to read:

2.3.2 – Renewal and Replacement Plan

Funds in the Renewal and Replacement Reserve Account may be used to pay for renewal and replacement capital improvement expenditures ranging from minor repairs to major remodeling or refreshing of the Service Area that cost more than \$2,500.00 and have a minimum useful life of three (3) years. Renewal and replacement capital improvements that cost more than \$15,000.00, shall require written pre-approval from the Authority's Director of Maintenance and Operations. Proposers should refer to Appendix F and the supporting documents available through this link:

<https://www.thruway.ny.gov/external/service-area-rfp/index.html> for specific building assessments of current Service Area facilities and current building codes and standards for reconstruction/renovations. All items toward which reinvestment capital expenditures are applied shall be deemed to be the property of the Authority.

Funds in the Renewal and Replacement Reserve Account that are not expended in any year after the Redevelopment Period shall remain in the Renewal and Replacement Reserve Account to be used in future years during the Term of the Lease Agreement and can, at the Authority's sole discretion based on a Renewal and Replacement Plan submitted by the Operator and approved by the Authority, be rolled forward into the next annual renewal and replacement period. The Authority reserves the right to require the Operator to remit the unspent funds to the Authority during the Term of the Lease Agreement. Any funds not expended upon the expiration of the Term on ~~{December 31, 2052}~~ **June 30, 2053**, or upon any earlier termination of the Lease Agreement, shall be remitted to the Authority.

Change No. 3 – RFP Section 2.3.3 “Rental Revenue from Operations” is hereby changed to read:

The Authority is seeking a reliable and steadily growing revenue stream over the Term of the Lease Agreement. The Authority requires submission of a Proposal that provides for rent prior to closing the location during transitional operations, suspending the rent during the Redevelopment Period to the extent a Service Area is closed (with no sales) as permitted by the Authority, a percentage of Gross Sales based rent with a Minimum Annual Guaranteed (“**MAG**”) rent for the new redeveloped Service Area commencing on the Opening Date and additional rental revenue when new services, goods or other opportunities are offered in the future, as further described below.

1. A rent based on the MAG during transition shall be provided on a monthly basis at the start of the Lease Agreement on ~~[January 1]~~, **July 1, 2020** for Group 1 Service Areas or starting on January 1, 2023 for the Group 2 Service Areas (currently operated by McDonald’s Corporation) or date negotiated relative to the transition from the current operator while the restaurants, gift stores, etc. and Service Area remains open. The rent shall be suspended once development of the Service Area occurs and is closed for construction and there are no sales. The construction period will be established for each Service Area and liquidated damages, in a daily amount based on the Minimum Annual Guaranteed rent, may be assessed if the project is delayed more than thirty (30) days past the scheduled Opening Date set forth in the Lease Agreement, as further described in Appendix B, Key Terms of Lease Agreement.
2. Monthly payments to the Authority based on a percentage of Gross Sales, subject to a MAG rent, (pro-rated for the year in which the redeveloped Service Area opens), of the new Service Area will recommence on the Opening Date for such Service Area, as further described in Appendix B, Key Terms of Lease Agreement. Rent would be due by the 15th of each month, based on the Gross Sales of the previous month. Late payment would be subject to 1% of the rent owed for each day late.

Change No. 4 – RFP Section 3.1.3, “Capital Proposal and Financial Proposal,” is hereby changed to read:

A. “Capital Investment Plan and Renewal and Replacement Plan (“Capital Plan”) (To Be Submitted in a Separate Envelope marked “Capital Proposal”)” is hereby changed to read:

Each Proposer is required to submit a Capital Investment Plan (value of investment) and Renewal and Replacement Plan. Each Proposer is required to submit a completed Capital Plan and reinvestment commitment over the Term of the Lease Agreement on the provided spreadsheets for the Service Areas as outlined in Section 2.3 of this RFP. The spreadsheets are in Excel form **and are dated April, 2019. They** ~~[-and]~~ are available at

<https://www.thruway.ny.gov/external/service-area-rfp/index.html> for this RFP. **The Excel spreadsheets dated 10/15/18 are hereby deleted, and declared to be void and of no effect. They are in all respects superseded by the Excel spreadsheets dated April, 2019.**

Proposers are required to use the ~~file~~ format **specified herein** and **to** input the following fields.

1. Enter the name of the **PROPOSER**.
2. Enter the **Estimated Opening Date** in Column B by location. This determines the period of renewal and replacement investment over the Term of the Lease Agreement which is through ~~[December 31, 2052]~~ **June 30, 2053**. Group 1 Service Areas would be opened sometime after ~~[January]~~ **July 1**, 2020, and Group 2 Service Areas would be open after January 1, 2023.
3. Enter the proposed **Capital Investment amount** that would be made at each location.
4. The minimum of 1% a year to be set aside for renewal and replacement will be calculated based on the Capital Investment and the Opening Date which will be in Column E.
5. Enter the estimated **renewal and replacement investments** for the initial 10 years in Column G, the second 10 Year period in Column I and then the amount for the balance of the Term of the Lease Agreement in Column K.

Note: The Authority requires a minimum of 1% of the Capital Investment to be set aside annually as a contingency that rolls over to be used for future reinvestment in the Renewal and Replacement Plan. This will be based on the actual Capital Investment cost or what was proposed on this form, whichever is higher.

B. Fee Proposal (To Be Submitted in a Separate Envelope marked “Fee Proposal”)

Each Proposer is required to submit its percentage of Gross Sales and MAG rent offer (“Offer”) for each of the 27 Service Areas on a separate form. The Fee Proposal forms can be completed and printed via an Excel workbook.

There are 27 labeled tabs in the workbook with one sheet for each Service Area. There is one additional sheet that automatically summarizes the Proposer’s Fee Proposal for the entire portfolio. Each Proposer must use the Excel **spreadsheets dated April, 2019 that file** are available at <https://www.thruway.ny.gov/external/service-area-rfp/index.html> to prepare its Offer, sign the Summary sheet and the completed Excel file should be printed and submitted in a separate envelope. **The Excel spreadsheets dated 10/15/18 are hereby deleted and declared to be void and of no effect. They are in all respects superseded by the Excel spreadsheets dated April, 2019.**

The Offer includes the proposed pre-development MAG rent from the start of the agreement until construction begins and then rent is suspended while the service area is closed for construction with no sales as described in Section 2.3.B. The Offer for the first full-year included in the Fee Proposal (i.e., first 12 months after the Opening Date) will be a **Rent** expressed as a percentage of projected Gross Sales, subject to a MAG, as described in Section 2.3.B.

The following fields must be completed by the Proposer:

1. Enter the name of the **PROPOSER**
2. From the dropdown menu, select the **PROPOSED PROTOTYPE DESIGN** for this Service Area. You may select one of the Authority's concepts ("Level 1, 2A, 2B or 3") or one of your own (Please specify).
3. Enter your **PROJECTED GROSS SALES** for the first full year (12 months) of operations from the Opening Date.
4. Enter the projected **YEAR TO YEAR % sales growth**.
5. Enter the **PERCENT OF GROSS SALES OFFERED AS RENT**.
6. Enter the **MINIMUM ANNUAL GUARANTEED (MAG) RENT**. This is your guaranteed minimum annual rent offer by location.
7. Enter the number of months for pre-development prior to construction development at each Service Area.
8. Enter the **PRE DEVELOPMENT MAG PER MONTH** prior to construction development at the Service Area.
9. Enter the projected number of months for construction (Service Area closed and no rent to NYSTA).
10. Enter **MAG RENT ESCALATION** percentage for Years 6, 11, 16, 21, 26, and 31 of the Term of the Lease Agreement for Group 1 Service Area locations. For Group 2 Service Area locations, it will be in years 9, 14, 19, 24 and 29 due to three year delay in operating.

Note: Rent will be based on the greater of the MAG or the Gross Sales based rental offer. The Fee Proposal evaluation will be weighted as follows:

- a. Minimum Annual Guaranteed Rent 70%
- b. Projected Gross Sales Based Rent 30%

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Change No. 5 – RFP Appendix B, Section 1, “Term of Agreement,” is hereby changed to read:

Term of Agreement
<p>The Lease Agreement will become effective for purposes of the Transition Period (defined in Section 3 below) on the Effective Date (defined below); however, the Operator’s right of possession shall commence on January July 1, 2020 (at 12:01 AM) for the Group 1 Service Areas described below and on January 1, 2023 (at 12:01 AM) for the Group 2 Service Areas described below as applicable (the “Term”). The Term shall expire for all Service Areas on December 31, 2052 June 30, 2053 (at 11:59 PM).</p>
<p>The January July 1, 2020 commencement of the Term with regard to the Group 1 Service Areas will constitute the “Group 1 Commencement Date” and the January 1, 2023 commencement of the Term with regard to the Group 2 Service Areas will constitute the “Group 2 Commencement Date” (and collectively, will constitute the “Commencement Dates”). Each calendar year (commencing January 1st and ending December 31st) during the Term will constitute a “Lease Year.” <u>The period extending from July 1, 2020 to December 31, 2020 for the Group 1 Service Areas shall constitute a partial Lease Year, and the period extending from January 1, 2053 to June 30, 2053 for both the Group 1 Service Areas and the Group 2 Service Areas shall constitute a partial Lease Year.</u></p>
<p>The “Effective Date” means the date on which all of the following have occurred: (1) the Lease Agreement has been executed and delivered by the parties; (2) all security for performance instruments required as of the Effective Date pursuant to Section 11 below have been provided to the Authority; (3) the Lease Agreement has been reviewed and approved by the State Attorney General and the State Comptroller; and (4) the Operator has demonstrated to the Authority that it has secured sufficient financing for its obligations under the Lease Agreement, including by providing to the Authority financing documents that are acceptable to the Authority.</p>
<p>The Authority will provide the Successful Proposer with the flexibility to enter into the Lease Agreement prior to securing all required financing (i.e., achieving “financial close”). In such event, the Effective Date will be established upon satisfaction of clauses (1) and (3), above, and the Operator will be required to satisfy clauses (2) and (4) within a reasonable period following the Effective Date, while proceeding with its Transition Period responsibilities. In any event, financial close, including satisfaction of both clauses (2) and (4), above, must be achieved prior to the Group 1 Commencement Date.</p>

Change No. 6 – RFP Appendix B, Section 10, “Initial Rent” is hereby changed to read:

Initial Rent
For each Service Area, the Operator will pay the Authority a minimum guaranteed rent (“Initial Rent”) on a monthly basis from the commencement of the Term (January July 1, 2020 for the Group 1 Service Areas and January 1, 2023 for the Group 2 Service Areas) until the beginning of the Redevelopment Period for such Service Area. The Initial Rent will be suspended to the extent a Service Area is permitted to be closed (and no sales occur) during the Redevelopment Period for such Service Area.

Change No. 7 – RFP Section 1.2, “Key Dates,” is hereby changed to read:

Section 1.2 – Key Dates

Provided below is a tentative schedule for the milestones in this RFP process, listed in the order of occurrence. The Authority reserves the right to change any or all of these dates as it deems necessary or convenient in its discretion; in the event of such a date change, the Authority will issue an Addendum pursuant to Section 1.8 notifying all interested parties of such change.

Event	Date
RFP Issuance	October 15, 2018
Pre-Proposal Conference Registration	November 7, 2018
Non-Mandatory Pre-Proposal Conference	November 13, 2018
Site Visits / Inspections Begin	November 14, 2018
Site Visits / Inspections End	November 16, 2018
Deadline for Written Questions	[April 25, 2019] <u>May 1, 2019</u>
Official Responses to Written Questions (on or before)	[May 7, 2019] <u>May 15, 2019</u>
Additional Site Visits Upon Request by Proposers	March 2019
Proposal Due Date	June 6, 2019 (No later than 3:00 PM EDT)

All responsive Proposals will be publicly disclosed in the meeting agenda of the Finance Committee of the Thruway Board at which the selection of the Successful Proposer and award of the Lease Agreement is considered for approval. See Section 3.3 -Confidentiality and Information Disclosure to Third Parties.

Change No. 8 – The RFP Cover Page, which also serves as the Non-Collusive Bidding Certification, is hereby revised and is attached. NOTE: This form must be filled out, signed, and submitted with your Proposal.

NEW YORK STATE THRUWAY AUTHORITY

200 Southern Boulevard
Post Office Box 189
Albany, NY 12201-0189

October 15, 2018

REQUEST FOR PROPOSAL

18C15 – Design, Construction, Financing, Operation and Maintenance of 27 Service Areas on the New York State Thruway Authority	Inquiries To: Mari-Ann Brower (518) 436-3161 or E-mail: NYSTA-Purchasing@thruway.ny.gov
Time and Due Date of Proposal Submission: 3:00 P.M. EDT, June 6, 2019	Time and Date of Pre-proposal Meeting: 1:00 P.M., EST, November 13, 2018
Contract Period: Group 1 – January July 1, 2020 (at 12:01 AM) and expire December 31, 2052 <u>June 30, 2053</u> (at 11:59PM) Group 2 – January 1, 2023 (at 12:01 AM) and expire December 31, 2052 <u>June 30, 2053</u> (at 11:59 PM)	

INSTRUCTIONS

Attach this form to the front of your proposal.

Indicate whether or not your firm is certified by NYS as a Minority or Women Owned Business Enterprise by circling yes or no.

Circle one: Yes No

Indicate whether or not your firm is proposing a joint venture by circling yes or no.

Circle one: Yes No

Complete all information below, including signature, to acknowledge your understanding and acceptance of the provisions of the Non-Collusive Bidding Certification as indicated at the bottom of this document.

The Signatory to this document must be authorized to bind the proposing firm contractually.

_____	_____	
Firm Name	Federal Tax ID No.	
_____	_____	
Street Address	City/State/Zip	
_____	_____	
Area Code/Telephone (800 if available)	Fax	_____
		E-mail
_____	_____	
Print Name	Title	
_____	_____	
Signature	Date	

NON-COLLUSIVE BIDDING CERTIFICATION

By submission of this bid, each bidder and each person signing on behalf of any bidder certifies, and in the case of joint bid, each party thereto certifies as to its own organization, under penalty of perjury, that to the best of his/her knowledge and belief:

- 1) The prices of this bid have been arrived at independently, without collusion, consultation, communication, or agreement, for the purposes of restricting competition, as to any matter relating to such prices with any other Bidder or with any competitor; and
- 2) Unless otherwise required by law, the prices which have been quoted in this bid have not been knowingly disclosed by the Bidder and will not knowingly be disclosed by the Bidder prior to opening, directly or indirectly, to any other Bidder or to any competitor; and
- 3) No attempt has been made or will be made by the Bidder to induce any other person, partnership or corporation to submit or not to submit a bid for the purpose of restricting competition.