

REQUEST FOR PROPOSALS
BROKER FOR DISPOSITION OF EXCESS FARLEY BUILDING
DEVELOPMENT RIGHTS

ISSUED BY

NEW YORK STATE URBAN DEVELOPMENT CORPORATION

D/B/A

EMPIRE STATE DEVELOPMENT

&

MOYNIHAN STATION DEVELOPMENT CORPORATION

FEBRUARY 6, 2014

Deadline for responses: 12:00 PM (EST) on March 6, 2013

If you intend to submit a proposal, please provide notice of your intention to msdc@esd.ny.gov so that you may receive all future notices for this solicitation.

*All questions, comments, requests for clarification or any other communication regarding this RFP must be submitted no later than **February 20, 2013** to msdc@esd.ny.gov with the subject heading “BROKER RFP – FARLEY”.*

Neither ESD nor MSDC will not accept and cannot respond to questions, comments or requests for clarification via any other methods.

*Addenda to this RFP, including responses to any questions, will be posted by **February 27, 2013** on the RFPs & Opportunities section of the MSDC web site:*

[http://www.esd.ny.gov/Subsidiaries Projects/MSDC/MSDC RFPsOpportunities.html](http://www.esd.ny.gov/Subsidiaries%20Projects/MSDC/MSDC%20RFPsOpportunities.html).

A listing of all pertinent dates can be found in Exhibit E.

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INFORMATION FOR RESPONDENTS

New York State Urban Development Corporation d/b/a Empire State Development (“ESD”)¹ and Moynihan Station Development Corporation (“MSDC”)² hereby invite firms to submit proposals for a contract for the valuation, marketing and disposition of excess development rights (the “Farley Rights”) associated with the James A. Farley Building Post Office Building (the “Farley Building”). The Farley Building occupies an entire super block between Eighth and Ninth Avenues and 31st and 33rd Streets, immediately adjacent to Madison Square Garden and Pennsylvania Station. ESD owns the Farley Building, and MSDC is responsible for the redevelopment of portions of the Farley Building as a new intercity railroad station, the Moynihan Station. ESD is the mortgagor on a mortgage loan financing of the Farley Building premises. The respondent contemplated to be selected pursuant to this solicitation is referred to herein as the “Listing Agent.”

ESD and MSDC, in cooperation with the Port Authority of New York and New Jersey (“PANYNJ”), are overseeing the redevelopment of the Farley Building into Moynihan Station, a new Manhattan intercity passenger rail station. Construction for Moynihan Station is occurring in distinct phases. Phase 1 will double the length and width of the below-grade West End Concourse; provide two new entrances to Penn Station through the Farley Building; construct critical life safety improvements; improve egress from the platforms of Penn Station; and increase accessibility between the street, concourse and platform levels of the complex for persons with disabilities. Phase 1 is under construction and scheduled for completion in 2016.

Phase 2 will transform the Old Sorting Hall within the Farley Building into the new, sky-lit train hall comparable in size to Grand Central Station—increasing the concourse capacity of Penn Station by a third. Amtrak will relocate its operations from Penn Station to Moynihan Station upon completion of Phase 2.

The zoning lot that holds the Farley Building allows for up to an additional 2.5 million square feet of development above and beyond the existing structure. Because of the historic nature of the Farley Building, the preference of ESD and MSDC is to transfer these development rights off-site, rather than to

¹ New York State Urban Development Corporation d/b/a Empire State Development is a corporate governmental agency of the State of New York, constituting a political subdivision and public benefit corporation

² MSDC is a subsidiary corporation of the New York State Urban Development Corporation d/b/a Empire State Development, a corporate governmental agency of the State of New York, constituting a political subdivision and public benefit corporation.

effectuate an over-build above the Farley Building. One million of the 2.5 million square feet of Farley Rights (the “MOU Rights”) are subject to a 2005 Memorandum of Understanding (“MOU”) with a commercial joint venture. ESD and MSDC seek to engage the Listing Agent who would assist in determining the market value of the remaining 1.5 million square feet of Farley Rights (the “Remaining Rights”) and managing their disposition. Until the mortgage is released in full, all dispositions will require the prior approval of the mortgagees and satisfactory release documentation. Net proceeds from that disposition would be used to pay down the outstanding mortgage loan and then to fund a portion of the Phase 2 development cost.

ESD has statutory authority to override local laws and regulations, including zoning requirements, in connection with its projects. For purposes of considering the dispositions of development rights discussed in these materials, respondents should be aware that ESD can consider alternative structures for disposition of the development rights beyond those that would typically apply in the case of a transferable development rights (“TDRs”) disposed of by a private party pursuant to local law and regulations. The mechanism for disposition, while still subject to further evaluation by ESD and MSDC, could require identification of suitable sites having characteristics consistent with the use of ESD override powers. It should be assumed that potential parcels must be located in the general vicinity of the Farley Building, with specific requirements for location to be determined after the Listing Agent is selected. These dispositions will require, among other things, environmental review pursuant to the New York State Environmental Quality Review Act and implementing regulations (“SEQRA”), satisfactory appraisals, preparation and approval of a statutorily required General Project Plan (“GPP”) (including public hearings and relevant New York State and New York City (“NYC”) approvals related to the GPP and the disposition), and voluntary extinguishment of Farley Rights to the extent that those Farley Rights create floor area ratio (“FAR”) on the designated parcel(s) that exceeds that the FAR permitted by then applicable NYC zoning regulations.

The Listing Agent will be the exclusive sales agent for a term to be specified in a contract between the selected firm and ESD (the “Listing Agreement”). The Listing Agent will work closely with ESD, MSDC and PANYNJ staff to: systematically determine the market value of the Remaining Rights based on various development possibilities; in cooperation with consultants retained by ESD or MSDC, identify and/or evaluate potential parcels; and market the Remaining Rights for disposition.

The Listing Agent will be compensated via a fee based on a percentage of the cumulative gross sales proceeds received solely from the Remaining Rights (*i.e.*, not from the MOU Rights). The respondent shall include a comprehensive fee proposal including a schedule of fees as a percentage of the gross proceeds of any transaction, the timing for the earning and payment of any such fees, and any other forms of fixed or percentage compensation or expense reimbursement terms sought by the respondent. The respondent should understand that all dispositions will be subject to discretionary ESD Directors' authorizations and New York State and NYC actions and approvals, the timing and success of which cannot be guaranteed by ESD or MSDC. In the event that a transaction regarding the Remaining Rights does not close, there will be no payment to the Listing Agent with respect to that transaction. There will be no compensation paid to the Listing Agent for the disposition of the MOU Rights.

The Listing Agent will work closely with ESD, MSDC, and PANYNJ staff to create high-level, generic pro forma analyses for potential developments that are both permitted as of right and would be possible in conjunction with the disposition of some or all of the Remaining Rights. As part of the pro forma analyses, the selected firm will be expected to provide submarket data including but not limited to (by asset type): indicative market rents, occupancy, real estate taxes, typical operating expenses, capitalization rates, and recent sale and lease comparables. The purpose of this analysis will be to determine a residual value of the Remaining Rights on a per square foot basis.

The Listing Agent will also be tasked with surveying the submarket to evaluate potential parcels for the Remaining Rights. This analysis will include a targeted list of owners, developers and/or investors who either currently control potential parcels or have a significant controlling interest in such parcels and may be interested in acquiring additional property or properties in order to assemble an optimal development parcel. An index of properties will be created in connection with this portion of the process with information including but not limited to: existing zoning, allowed FAR, recent sales information, owner and existing use.

In connection with the marketing and sale of the Remaining Rights, the Listing Agent will create an offering memorandum that should include the above-mentioned pro forma information, site control expectations, generic scenarios for site assemblage and, in cooperation with ESD and MSDC, a description of all required State and NYC discretionary actions with estimated cost and timing. In addition, the offering should detail the process for respondent due diligence, submitting and selecting bids. As part of the offering memorandum, it should be made explicit to potential buyers that any

conditions to their bids, including but not limited to land use approvals, debt or equity financing, government approvals or internal committee approvals must be detailed at the time of bid submission.

SCOPE OF SERVICES

ESD's and MSDC's objective in retaining a Listing Agent for the Remaining Rights is to maximize the net disposition proceeds to the extent possible for ESD within applicable requirements of law and regulations and subject to ESD's role as a corporate governmental agency of New York State, constituting a political subdivision and public benefit corporation. Therefore, as described herein, the Listing Agent will work with ESD, MSDC and the PANYNJ to develop and refine a marketing strategy and aggressively market the Remaining Rights.

The Listing Agent will report and coordinate with a designated representative from each of ESD, MSDC and the PANYNJ. Upon the execution of the Listing Agreement with ESD, the Listing Agent will develop a conceptual schedule for development and execution of a marketing plan.

The specific scope of work of the Listing Agent may include, but is not limited to, the following tasks:

Client Coordination

Upon being selected, the Listing Agent will provide to ESD and MSDC a schedule for providing the: (i) market data; (ii) pro forma; (iii) index of potential parcels; (iv) the list of owners, developers, and/or investors to be contacted; and (v) the offering memorandum. As each milestone is reached, the Listing Agent will meet or hold a conference call with the ESD/MSDC/PANYNJ staff to discuss the work product, next steps and any other issues. More frequent calls or meetings may be necessary, particularly once the offering memorandum is released publicly.

Market Data

The Listing Agent will provide ESD and MSDC with a complete overview of the market and submarket or submarkets, as applicable, prior to releasing the offering memorandum. The overview will include but is not limited to the following information by asset type (market-rate and affordable rental residential, for sale condominiums, office, retail and hotel):

- Gross Rents

- Occupancy
- Operating expenses PSF
- Real estate taxes PSF
- Capitalization rates
- Recent sales and lease comparables

Pro Forma Modeling

The Listing Agent will work closely with ESD and MSDC staff to create generic high-level pro forma analyses for potential developments that are both permitted as of right and would be possible in conjunction with the disposition of some or all of the Remaining Rights. The purpose of these analyses will be to determine a residual value of the Remaining Rights on a per square foot basis.

Identify Potential Landing Sites

In coordination with ESD's and MSDC's land use consultant and counsel, the Listing Agent will evaluate potential parcels for the Remaining Rights. The overview will include an index of sites and potential assemblages, including the following characteristics:

- In-place zoning with FAR
- Allowed uses as of right
- Existing use and/or improvements
- Existing owner
- Recent sales
- Site and improvement square footages
- Analysis of sample sites and assemblages

Identify Target List of Investors/Developers

The Listing Agent will provide ESD and MSDC with a list of owners, investors, and/or developers who are likely to bid for all or a portion of the Remaining Rights. The list should contemplate existing owners of all or portions of the potential parcels as described above as well as those third parties who are or have been active in the site assemblage and development business in both the NYC market and this particular submarket.

Create an Offering Memorandum

The Listing Agent will draft, in cooperation with ESD and MSDC counsel, an offering memorandum to be distributed to all potential buyers of the Farley Rights, which shall include, at a minimum:

- Overview of the Remaining Rights
- Market data as described above
- Geographic limits of potential parcels
- Generic description of possible parcel assemblage options
- Process for accessing due diligence materials, including but not limited to execution of a Non-Disclosure Agreement
- A detailed description of the bidding process including:
 - How and in what form bids should be submitted
 - What information about the respondent is required to be considered a complete bid
 - The timeline from receipt of a complete bid to a response to the respondent
 - Closing procedures

The Listing Agent will work with ESD and MSDC staff in order to determine the minimum and maximum increments in which the Remaining Rights will be listed for sale so proceeds from disposition are sufficient to offset likely transaction costs and so as not to overwhelm the market.

Coordinate Closing

The Listing Agent shall manage the bid process, and in coordination with ESD and MSDC, evaluate all bids. Acceptance or rejection of any and all bids shall be in the sole discretion of ESD. The bidding and evaluation processes must be conducted in accordance with applicable law, regulation and policy. Once a bid or bids has been accepted, the Listing Agent will coordinate the payment of funds to an account designated and controlled by ESD (or otherwise in accordance with ESD's written instructions) and work with successful respondents to file the relevant paperwork with appropriate government entities.

TERM OF AGREEMENT

The proposed term of the Listing Agreement is two (2) years with three (3), one (1) year extension options to be exercised in ESD's sole discretion. The schedule of deliverables described in the "Client Coordination" section will be included in the Listing Agreement along with rights and remedies to ESD

for failure to comply with said schedule. Rights and remedies will include, but will not be limited to, an ESD termination option with no restriction on engaging another listing agent, to be defined in the Agreement, for lack of performance by the Listing Agent.

Any contract arising from this solicitation (e.g., the Listing Agreement) will be subject to the terms and conditions set forth in the Corporation's Schedule A. Please review this document at:

<http://esd.ny.gov/CorporateInformation/Data/revisedScheduleAWORDMay2012.pdf>

FEE FOR SERVICES

The Listing Agent will be compensated with a fee based on a percentage of the cumulative gross sales proceeds actually received by ESD with respect to the disposition of the Remaining Rights. The respondent shall include a comprehensive fee proposal including schedule of fees as a percentage of the gross proceeds of any proposed transaction, the timing for the earning and payment of any such fees, and any other forms of fixed or percentage compensation or expense reimbursement terms sought by the respondent. All dispositions will be subject to discretionary ESD, State and NYC actions and approval of the mortgagees, the timing and success of which cannot be guaranteed by either ESD or MSDC. Said fee will not be paid until closing on the sale of the development rights in question. In the event that a transaction regarding the Remaining Rights does not close, there will be no payment to the Listing Agent with respect to that transaction.

EVALUATION CRITERIA

Submissions to this RFP and presentations, if necessary, will be evaluated by a committee composed of ESD, MSDC, and PANYNJ personnel experienced in the disciplines necessary to make a value judgment and decision regarding the qualifications of the submitting firm (the "Selection Committee").

The Selection Committee members will base their evaluation on criteria, which are listed below in relative order of importance (subject to the weights set forth below for each criteria):

- A. Qualifications and experience of firm and proposed marketing and sales staff
- B. Proposed marketing approach
- C. Proposed fees and expenses

The relative weights of the evaluation criteria are detailed in the Scoring Matrix below:

A	B	C
Qualifications and experience of firm and proposed marketing and sales staff	Proposed marketing approach	Fees and expenses
25%	25%	50%

The firm whose submission offers, in the sole opinion of ESD, the best opportunity for generating the maximum gross sales proceeds from the Remaining Rights in a timely fashion will be selected as Listing Agent. ESD will make its selection based on the assessment and weighting of the above factors.

The Selection Committee may decide to interview a short list of respondents based on a preliminary review of the submissions and the preliminary scoring results.

CONTRACT PROCESS

Based on the aforementioned criteria, ESD and MSDC shall endeavor to negotiate a fair and equitable contract (between ESD and the Listing Agent) within a reasonable timeframe with the preferred respondent for the performance of the services outlined in the Scope of Services.

If ESD determines (in its sole and absolute discretion) that negotiations of a contract cannot be satisfactorily concluded, the respondent will be notified by letter that negotiations have been terminated. Thereafter, unless the Selection Committee decides for any reason to recommend that ESD reject all submissions, ESD will initiate negotiations with the next highest rated firm. This procedure shall be continued until a mutually satisfactory contract has been negotiated or this procurement process is terminated by ESD.

No respondent shall have any rights against ESD, MSDC, or PANYNJ arising at any stage of the solicitation from any negotiations that take place, or from the fact that ESD does not select a respondent for negotiations.

ESD reserves the right to reject all bids and to re-solicit bids if in its sole opinion it shall deem that so proceeding is in the best interest of ESD. ESD may terminate this procurement process at any time.

No submission will be accepted, or contract awarded to, a respondent or any substantially owned affiliate of a respondent, that is debarred pursuant to New York Workers' Compensation Law Section 141-b.

No submission will be accepted, or contract awarded to, a respondent or any substantially owned affiliate of a respondent, that is debarred pursuant to New York State Finance Law Section 139-j.

All materials, information, documents, and other items submitted to ESD and/or MSDC by a respondent pursuant to or in connection with this RFP shall constitute such respondent's "Submission of Proposal".

The issuance of this RFP, the submission of the Submission of Proposal by any respondent and/or the acceptance of a Submission of Proposal by ESD or MSDC does not obligate ESD or MSDC in any manner. Neither ESD nor MSDC is responsible for any costs incurred by a firm in the preparation of a Submission of Proposal. ESD and MSDC reserve the right to amend, modify or withdraw this RFP, including the right to permit amendment of deficient responses, at its sole discretion.

Protests by respondents of the award or decision to award the contract must strictly comply with the ESD Procurement Protest Procedures, annexed hereto as **Exhibit C**.

FORM AND SUBMISSION OF PROPOSALS

To respond to this Request for Proposals ("RFP"), the respondent shall submit a Submission of Proposal in the format described below and including all materials, information, documents, and other items required by this RFP, including, without limiting the foregoing, all items required below:

- **Submission Format:** The submission pages shall be numbered and bound in a 3-ring binder, with Farley Rights Qualifications and the respondent's full legal name clearly indicated on the cover. Each section of the submission shall be separated with a tab divider that is labeled in accordance with the letter of the requirements specified in the section below entitled Qualification Submission Requirements. Respondents must abide by the page limits for each section as specified below.
- **Submission Copies:** Each submission must be contained in a sealed envelope which shall be conspicuously endorsed with the respondent's full legal name. Respondents shall submit one

(1) reproducible original and five (5) copies of the submission, along with one (1) electronic copy in PDF format. In case of a conflict between the reproducible original and any of the copies, the reproducible original shall take precedence over any of the copies.

- **Submission Due Date:** Submissions will be received until **12:00 PM (EST) on March 6, 2013** (the “Submission Due Date”). Submissions will not be accepted after the Submission Due Date unless a Revised Submission Due Date has been communicated to respondents.
- **Submission Delivery:** SUBMISSIONS MUST BE DELIVERED BY HAND between 10:00AM and 12:00 PM (EST) on the Submission Due Date to a representative of ESD who will be accepting Proposals in the North Rotunda of the Farley Building (located on 8th Avenue between 31st and 33rd Streets). To get to the North Rotunda, enter the main lobby of the post office at the top of the grand staircase. Make a right once you enter and the North Rotunda is located at the north end of the postal lobby. Please allow sufficient time for delivery of Submissions so that ESD receives it by the Submission Due Date. Neither ESD nor MSDC assumes any responsibility for delays caused by any delivery services.

Proposal Submission Requirements

To respond to this RFP, the respondent shall include all of the following information and items in its Submission of Proposal:

- **Statement of Qualifications:** The respondent shall provide a comprehensive description of the firm or agent bidding, including a summary of past valuation and sales of Transferable Development Rights (“TDRs”) experience, description of access to market data, bios of key principals and a list of references of past clients, and description of firm’s experience with and participation in dispositions contingent upon discretionary public reviews and approvals. The respondent shall provide details of specific relevant experience in the performance of services and work similar to those contemplated herein. For all prior engagements referenced, include the name of the company, the date the services were provided, the nature of the services performed, the name of a contact person and such person’s current mailing address, email address and telephone number for verification purposes.

- **Minimum Experience of the Firm:** The respondent should have a minimum of five (5) years experience valuing and marketing TDRs in New York City. The respondent should demonstrate that it has successfully sold TDRs in at least (5) five separate transactions. ESD and MSDC strongly prefer that a respondent demonstrate experience with and participation in at least (2) two separate dispositions contingent upon discretionary public reviews and approvals, but this is not a requirement.

The respondent must demonstrate to the satisfaction of ESD that it meets the minimum requirements of the RFP as stated in this section. Company brochures alone are insufficient for the purpose of demonstrating experience and technical expertise. ESD will be the sole judge of whether a respondent meets the qualification requirements. Only proposals from firms demonstrating relevant previous experience in the performance of services similar to those contemplated herein shall be deemed qualified for award pursuant to this RFP.

Please submit no more than ten (10) pages for this section of the Submission.

Company brochures, images and portfolios may be submitted to supplement this section of the RFP, and they will not be counted against the page limit. Nevertheless, they are not necessary and will not be a suitable substitution for the requirements for this section of the Submission.

- **Management Approach:** Submit a detailed description of the proposed valuation and marketing approach to be taken for the Scope of Services outlined above. Factors addressed in respondent's management approach shall include, but are not limited to the following:
 - Proposed organizational structure to be responsive to ESD's and MSDC's needs;
 - Approach to valuing and marketing the Remaining Rights;
 - Sample template of the to be created pro forma analysis;
 - Plan for keeping ESD, MSDC and PANYNJ apprised of the sales process.

Please submit no more than five (5) pages for this section of the Submission.

- **Experience with TDR sales and dispositions contingent upon discretionary public review and approvals:** Please provide examples of past experience with valuation, marketing and sale of TDRs and contingent upon discretionary public approvals. Please submit no more than five (5) pages for this section of the Submission.

- **Key Personnel:** The respondent shall provide the names and qualifications of the individual(s) proposed to serve as brokers. ESD will reserve the right to approve in writing any change of the broker(s) from what is proposed in the submission. Please submit no more than five (5) pages for this section of the Submission.
- **Fee Proposal:** As stated above, Listing Agent will be compensated with a fee based on a percentage of the cumulative gross sales proceeds with respect to the disposition of the Remaining Rights. The respondent shall include a comprehensive fee proposal including schedule of fees as a percentage of the gross proceeds of any proposed transaction, the timing for the earning and payment of any such fees, and any other forms of fixed or percentage compensation or expense reimbursement terms sought by the respondent. The respondent should understand that all dispositions will be subject to discretionary ESD, State and NYC actions, the timing and success of which cannot be guaranteed by ESD or MSDC. In the event that a transaction regarding the Remaining Rights does not close, there will be no payment to the Listing Agent with respect to that transaction.
- **Submission of Proposal Certification:** The respondent shall provide a Submission of Proposal Certification, in the form of annexed **Exhibit A**, certifying all as true and complete all materials, qualifications, certifications, and supporting documentation constituting the respondent's Submission of Proposal, including respondent's compliance with the prerequisites set forth below. The statement must be signed and certified by a principal of the respondent (or if the respondent is a joint venture, by a principal of each participant in the joint venture) identifying the respondent's (or joint venture participant's). The signature on the Submission of Proposal Certification must be acknowledged before a Notary Public.
- **Non-Collusive Bidding Certification:** The respondent shall provide a properly subscribed and affirmed Non-Collusive Bidding Certification per the instructions herein upon the form annexed hereto as **Exhibit B**.
- **New York State Finance Law Sections 139-j and 139-k Forms:** The respondent shall provide properly subscribed and affirmed New York State Finance Law Sections 139-j and 139-k Forms per the instructions herein.

- **New York State Tax Law Section 5-a Form:** The respondent shall provide a properly subscribed and affirmed New York State Tax Law Section 5-a Form per the instructions herein.
- **New York State Vendor Responsibility Questionnaire:** The respondent shall provide a properly subscribed and affirmed Vendor Responsibility Questionnaire per the instructions herein.
- **Non-Discrimination and Contractor & Supplier Diversity Forms:** The respondent shall provide a properly subscribed and affirmed Equal Employment Opportunity Policy Statement (Form OCSD-1), anticipated Staffing Plan (Form OCSD-2), and MWBE Utilization Plan (Form OCSD-3) per the instructions herein.
- **Encouraging Use of New York State Businesses in Contract Performance:** The respondent shall provide written responses to the questions set forth on annexed as **Exhibit D** regarding the use of New York State businesses in the performance of the Contract.
- **Financial Information:** The respondent must demonstrate that it is financially capable of performing the Scope of Services. The determination of the respondent's financial qualifications and ability to perform the Scope of Services is in the sole discretion of ESD. The respondent shall submit, with its Submission, the following:
 - Certified financial statements, including applicable notes, reflecting the respondent's assets, liabilities, net worth, revenues, expenses, profit or loss and cash flow for the most recent calendar year (2012 or 2013, if available) or the respondent's most recent fiscal year.
 - Where the certified financial statements in (a) above are not available, then Statements reviewed by an independent Certified Public Accountant and setting forth the aforementioned information shall be provided.

Where the statements submitted pursuant to subparts (a) and (b) if this subparagraph 2 do not cover a period which includes a date not more than forty-five (45) days prior to the Submission Due Date, then the respondent shall also submit a statement in writing, signed by an executive

officer or his/her designee, that the present financial condition of the respondent is at least as good as that shown on the statements submitted.

- **Schedule A:** Any contract arising from this solicitation (e.g., the Listing Agreement) will be subject to the terms and conditions set forth in the Corporation's Schedule A. Please review this document at:

<http://esd.ny.gov/CorporateInformation/Data/reviseScheduleAWORDMay2012.pdf>

QUESTIONS BY RESPONDENTS

Questions by prospective respondents concerning this RFP must be submitted in writing no later than **5:00 PM (EST) on February 20, 2014** via email to msdc@esd.ny.gov. No telephone or fax inquiries shall be accepted.

NON-COLLUSIVE BIDDING

With its Submission of Proposal, each respondent and each person signing on behalf of any respondent certifies, and in the case of a joint bid each party thereto certifies as to its own organization, that: (a) the prices in its bid have been arrived at independently without collusion, consultation, communication or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other respondent or with any competitor; (b) the prices quoted in its bid have not been and will not be knowingly disclosed, directly or indirectly, by the respondent prior to the official opening of such bid to any other respondent or to any competitor; (c) no attempt has been made and none will be made by the respondent to induce any other person, partnership or corporation to submit or not to submit a bid for the purpose of restricting competition; (d) this organization has not made any offers or agreements, or given or agreed to give anything of value (see definition of "anything of value" appearing in the clause of the contract entitled "No Gifts/Gratuities/Offer of Employment") or taken any other action with respect to any ESD, MSDC or PANYNJ employee or former employee or immediate family member of either which would constitute a breach of ethical standards under the Code of Ethics and Financial Disclosure dated as of April 11, 1996 (a copy of which is available upon request to the individual named in the clause hereof entitled "Questions by Respondents"), nor does this organization have any knowledge of any act on the part of any ESD, MSDC or PANYNJ employee or former ESD, MSDC or PANYNJ employee

relating either directly or indirectly to this organization which constitutes a breach of the ethical standards set forth in said Code; (e) no person or selling agency, other than a bona fide employee or bona fide established commercial or selling agency maintained by the respondent for the purpose of securing business, has been employed or retained by the respondent to solicit or secure the contract on the understanding that a commission, percentage, brokerage, contingent or other fee would be paid to such person or selling agency. Each respondent must submit a properly subscribed and affirmed Non-Collusive Bidding Certification in the form annexed hereto.

The foregoing certification as to "(a)", "(b)", "(c)", "(d)" and "(e)" shall be deemed to have been made by the respondent as follows: if the respondent is a corporation, such certification shall be deemed to have been made not only with respect to the respondent itself, but also with respect to each parent, affiliate, director and officer of the respondent, as well as, to the best of the certifier's knowledge and belief, each stockholder of the respondent with an ownership interest in excess of 10%; if the respondent is a limited liability company, such certification shall be deemed to have been made not only with respect to the respondent itself, but also with respect to the each parent, affiliate, director and officer of the respondent, the managing member, as well as, each member of the respondent with an ownership interest in excess of 10%; if the respondent is a partnership, such certification shall be deemed to have been made not only with respect to the respondent itself, but also with respect to each partner. Moreover, the foregoing certification, if made by a corporate respondent, shall be deemed to have been authorized by the Board of Directors of the respondent, and such authorization shall be deemed to include the signing and submission of the bid and the inclusion therein of such certification as the act and deed of the corporation.

In any case where the respondent cannot make the foregoing certification, the respondent shall so state and shall furnish with the signed bid a signed statement which sets forth in detail the reasons therefore. If the respondent is uncertain as to whether it can make the foregoing certification, it shall so indicate in a signed statement furnished with its bid, setting forth in such statement the reasons for its uncertainty.

Notwithstanding that the respondent may be able to make the foregoing certification at the time the bid is submitted, the respondent shall immediately notify both ESD and MSDC in writing during the period of irrevocability of bids on the contract or any extension of such period, of any change of circumstances which might under this clause make it unable to make the foregoing certification or required disclosure. The foregoing certification or signed statement shall be deemed to have been made by the respondent

with full knowledge that it would become a part of the records of ESD and MSDC and that ESD and MSDC will rely on its truth and accuracy in awarding the contract. In the event that ESD or MSDC should determine at any time prior or subsequent to the award of the contract that the respondent has falsely certified as to any material item in the foregoing certification or has willfully or fraudulently furnished a signed statement which is false in any material respect, or has not fully and accurately represented any circumstance with respect to any item in the foregoing certification required to be disclosed, ESD or MSDC may determine that the respondent is not a responsible respondent with respect to its bid on the contract or with respect to future bids on ESD and on MSDC contracts and may, in addition to exercising any other rights or remedies it may have, exercise any of the rights or remedies set forth in the clause of the contract entitled "Rights and Remedies of ESD".

In addition, respondents are advised that knowingly providing a false certification or statement pursuant hereto may be the basis for prosecution for offering a false instrument for filing (see e.g., New York Penal Law, Section 175.30 et seq.). Respondents are also advised that the inability to make such certification will not in and of itself disqualify a respondent, and that in each instance ESD will evaluate the reasons therefore provided by the respondent.

NEW YORK STATE FINANCE LAW SECTIONS 139-J AND 139-K

State Finance Law Sections 139-j and 139-k (collectively, the "Section 139 Requirements") apply to this solicitation. These requirements (1) govern permissible communications between potential respondents and ESD or MSDC or other involved governmental entities with respect to this solicitation during the procurement process; and (2) establish sanctions for knowing and willful violations of the provisions of the requirements, including disqualification from eligibility for an award of any contract pursuant to this solicitation.

In order to comply with the Section 139 Requirements: (i) all communications regarding this solicitation, from the issuance of this solicitation through award and final approvals of any resulting contract (the "Restricted Period"), must be conducted only with the ESD contact person listed in this solicitation; (ii) the completion by respondents of the Offerer Disclosure of Prior Non-Responsibility Determinations and the Offerer's Affirmation of Understanding of an Agreement pursuant to State Finance Law, copies of which are available at

www.esd.ny.gov/CorporateInformation/Data/RFPs/RequiredForms/SF_Law139_JK.pdf, is required; and

(iii) periodic updating of such forms during the term of any contract resulting from this solicitation is required. Respondents must submit both of these forms, properly completed, as part of their Proposals.

The Section 139 Requirements also require MSDC and ESD employees to obtain and report certain information when contacted by a prospective respondent during the Restricted Period, make a determination of the responsibility of the respondent, and make all such information publicly available in accordance with applicable law. If a prospective respondent is found to have knowingly and willfully violated the Section 139 Requirements, that prospective respondent and its subsidiaries, and related and successor entities will be determined to be a non-responsible respondent and will not be awarded any contract issued pursuant to this solicitation. In addition, two such findings of non-responsibility within a four-year period can result in debarment from obtaining any New York State governmental procurement contract.

A copy of the Policy Regarding Permissible Contacts under State Finance Law Section 139-j and 139-k, which is applicable to ESD and all ESD subsidiaries, including MSDC, can be found at www.esd.ny.gov/CorporateInformation/Data/RFPs/RequiredForms/PermissibleContactsPolicy_Jan2007.pdf. Neither this summary nor the referenced Policy is a complete presentation of the provisions of the Section 139 Requirements. A copy of State Finance Law Sections 139-j and 139-k can be found at <http://www.ogs.state.ny.us>. All potential respondents are solely responsible for full compliance with the Section 139 Requirements.

NEW YORK STATE TAX LAW SECTION 5-A

Any contract resulting from this solicitation is also subject to the requirements of State Tax Law Section 5-a (“STL 5-a”). STL 5-a prohibits ESD from approving any such contract with any entity if that entity or any of its affiliates or subcontractors makes sales within New York State of tangible personal property or taxable services having a value over \$300,000 during the immediately preceding consecutive four sales tax quarters and is not registered for sales and compensating use tax purposes. To comply with STL 5-a, all respondents must include in their Proposals a properly completed Form ST-220-CA, (a copy of the form is available at www.tax.ny.gov/pdf/current_forms/st/st220ca_fill_in.pdf) or a satisfactory affidavit that the entity is not required to register (a copy of the affidavit form is available at www.esd.ny.gov/CorporateInformation/Data/RFPs/RequiredForms/STL_5A_Affidavit.pdf).

Respondents must submit a properly completed ST-220-CA or an Affidavit of Non-Applicability as part of their Proposals.

NEW YORK STATE VENDOR RESPONSIBILITY

New York State Procurement Law requires that state agencies award contracts only to responsible vendors. Vendors are invited to file the required Vendor Responsibility Questionnaire online via the New York State Vendor Responsibility System (“VendRep System”) or may choose to complete and submit a paper questionnaire. Submission of this Vendor Responsibility Questionnaire is a requirement for all State vendors and does not by itself establish responsibility for the contract.

To enroll in and use the New York State VendRep System, see the VendRep System Instructions available at www.osc.state.ny.us/vendrep or go directly to the VendRep system online at <https://portal.osc.state.ny.us>. For direct VendRep System user assistance, the OSC Help Desk may be reached at 866-370-4672 or 518-408-4672 or by email at helpdesk@osc.state.ny.us.

Vendors opting to file a paper questionnaire can obtain the appropriate questionnaire from the VendRep website www.osc.state.ny.us/vendrep/forms_vendor.htm and execute accordingly pertaining to the company’s trade industry.

NON-DISCRIMINATION AND CONTRACTOR & SUPPLIER DIVERSITY REQUIREMENTS

Pursuant to New York State Executive Law Article 15-A, ESD and MSDC recognizes their respective obligations under the law to promote opportunities for maximum feasible participation of certified minority-and women-owned business enterprises (MWBES) and the employment of minority group members and women in the performance of ESD and MSDC contracts.

It is the policy of the State of New York, ESD and MSDC to comply with all Federal, State and Local laws, policy, orders, rules and regulations which prohibit unlawful discrimination based on race, creed, color, national origin, sex, sexual orientation, age, disability or marital status, and to take affirmative action in working with contracting parties to ensure that New York State Business Enterprises, MWBEs, minority group members and women share in the economic opportunities generated by ESD’s and MSDC’s participation in projects or initiatives, and/or the use of ESD and MSDC funds.

ESD's Non-Discrimination and Contractor & Supplier Diversity goals will apply to this initiative. The selected Contractor shall be required to use its Good Faith Efforts (pursuant to 5 NYCRR §142.8) to achieve the participation of certified Minority Business Enterprises (MBE) totaling 15% and Women Business Enterprise (WBE) totaling 5% of the total value of the share of the fees received by the Listing Agent. The overall MWBE participation goal requirement for the project shall be no less than 20% of the total value of the share of the fees received by the Listing Agent.

Respondents shall provide a properly subscribed and affirmed Equal Employment Opportunity Policy Statement (Form OCSD-1), anticipated Staffing Plan (Form OCSD-2), and MWBE Utilization Plan (Form OCSD-3) as part of the response to this RFQ. Copies of these forms are available at:

Form OCSD-1

http://esd.ny.gov/CorporateInformation/Data/RFPs/OCSD_1MWBEEOPolicyStatement.pdf

Form OCSD-2

http://esd.ny.gov/CorporateInformation/Data/RFPs/OCSD_2StaffingPlan.pdf

Form OCSD-3

http://esd.ny.gov/CorporateInformation/Data/RFPs/OCSD_3MWBEUtilizationPlan.pdf

Form OCSD-4

http://esd.ny.gov/CorporateInformation/Data/RFPs/OCSD_4GoodFaithEfforts.pdf

For purposes of providing meaningful participation by MWBEs on the project and achieving the project goals established herein, Respondent should reference the directory of New York State Certified MWBEs found at the following internet address: <https://ny.newnycontracts.com/>

Only the Respondent shall complete these forms. In the Utilization Plan (Form OCSD-3) the prime contractor must list all of the sub-contractors and sub-consultants it proposes to use in achieving the MWBE goal requirement. OCSD is available to assist in identifying New York State certified MWBEs that can provide goods and services in connection with this contract. If respondents require MWBE listings or

have other questions relating to MWBE requirements herein, please contact the OCSD with any inquiries and comments at ocsd@esd.ny.gov.

COMPLIANCE WITH THE IRAN DISINVESTMENT ACT

As part of ESD/MSDC procurement guidelines, upon submission of proposal, the prime-consultant shall comply with the Iran Divestment Act. The following language shall be submitted to each of ESD and MSDC on company letterhead and signed by the consultant;

"By submission of this bid, each respondent and each person signing on behalf of any respondent certifies, and in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, that to the best of its knowledge and belief that each respondent is not on the list created pursuant to paragraph (b) of subdivision 3 of section 165-a of the state finance law."

PROJECT SUNLIGHT

Under the Public Integrity Reform Act of 2011, "appearances" (broadly defined and including any substantive interaction that is meant to have an impact on the decision-making process of a state entity) before a public benefit corporation such as ESD by a person (also broadly defined) for the purposes of procuring a state contract for services as contemplated in this RFP, must be reported by ESD to a database maintained by the State Office of General Services that is available to members of the public. If in doubt as to the applicability of Project Sunlight, Proposers and their advisors should consult the Laws of 2011, Ch. 399 for guidance.

INSURANCE REQUIREMENTS

The Proposer will be required to demonstrate evidence of sufficient insurance coverage (at a minimum and to the extent applicable). Insurance requirements will be as follows for the selected Consultant:

- Commercial General Liability \$1.0 million per Occurrence/\$2.0 million in the Aggregate
- Commercial Automobile Insurance – Limit of \$1.0 million
- Professional Liability Insurance of \$1.0 - \$5.0 million
- Worker's Compensation and Employer's Liability Insurance at State statutory limits
- Disability Insurance at State statutory limits

Should the Proposer be selected, the Proposer will be expected to name Moynihan Station Development Corp, NYS Urban Development Corp d/b/a Empire State Development, Port Authority and others as required as “additional insured” on a primary and non-contributory basis, policies should include a waiver of subrogation in MSDC/ ESD / Port Authority’s favor.

EXHIBIT A – SUBMISSION OF PROPOSAL CERTIFICATION³

To: Empire State Development and Moynihan Station Development Corporation:

The undersigned⁴

(hereinafter called "the Contractor") hereby submits the accompanying materials, qualifications, certifications, and supporting documentation constituting the Contractor's Submission of Proposal with the intention, if selected, of negotiating a contract ("the Contract") in good faith and in a reasonable timeframe to perform the services described herein under the terms and conditions and for the compensation as set forth in the Submission of Proposal.

To induce the acceptance of the Contractor's proposal, the undersigned hereby makes each and every certification, statement, assurance, representation and warranty made by the Contractor in the Submission of Proposal.

Moreover as a condition to acceptance and consideration by each of ESD and MSDC of the Submission of Proposal, whether or not it is accepted, the undersigned agrees that all information of any nature whatsoever, regardless of the form of the communication, received from the undersigned (including its officers, agents, or employees) by ESD and MSDC, their respective officers, agents or employees, and notwithstanding any statement therein to the contrary, has not been given in confidence and may be used or disclosed by or on behalf of ESD or MSDC without liability of any kind.

³ If bidder is a joint venture, provide this Submission of Proposal Certification as appropriate for each participant in the joint venture and attach and complete an additional signature for each joint venture participant.

⁴ Insert bidder's name. If a **corporation**, give state of incorporation, using the phrase, "a corporation organized under the laws of the State of _____." If a **partnership**, give full names of partners, using also the phrase, "partners doing business under the firm name of _____ and organized under the laws of the State of _____." If a **limited partnership**, using the phrase "organized under the laws of the State of _____, General Partner, _____." If a **limited liability company**, "organized under the laws of the State of _____, Managing Member, _____." If an **individual** using a trade name, give individual name, using also the phrase, "an individual doing business under the trade name of _____." If a **joint venture**, give the information required above for each participant in the joint venture.

Unless expressly stated otherwise, the RFP and all materials, information, documents, certification and other items required by the RFP or included in the Submission of Proposal, and all other materials, information, documents, certifications and other items submitted in connection therewith at any time are made part of the Submission of Proposal. This offer set forth in the Submission of Proposal shall be irrevocable for 90 days after the date on which ESD opens this Submission of Proposal.

The undersigned hereby designates the following as the

Contractor's office:

Contractor's telephone number:

Contractor's fax number:

Contractor's e-mail address:

SIGNATURE (*) () (***) (****) (*****)**

Dated, _____, 2014

(Signature of agent, partner, general partner, managing member, or corporate officer)

ENTITY NAME: _____

BY: _____

PRINT NAME: _____

TITLE: _____

(*) The foregoing signature shall be deemed to have been provided with full knowledge that the Submission of Proposal, including each certification, statement, assurance, representation, warranty, schedule or other information or document submitted by the bidder with respect to the Submission of Proposal will become a part of the records of ESD and MSDC and that ESD will rely in awarding the Contract on the truth and accuracy of such Submission of Proposal and each such certification, statement, assurance, representation, warranty and schedule and other item made part thereof. Knowingly submitting a false statement in connection with any of the foregoing may be the basis for prosecution for offering a false instrument for filing (see, e.g., N.Y. Penal Law, Section 175.30 et seq.).

(**) Acknowledgment of signature to be taken by a notary public in proper form on as indicated below.

(***) If bidder is a joint venture, provide a Submission of Proposal Certification for each participant in the joint venture.

(****) If signed by an officer or agent, give the agent's title and address.

(*****) If the entity providing the Submission of Proposal Certification is a corporation, provide the Certificate of Authority of the corporation's Secretary in the form that follows:

ACKNOWLEDGMENT OF BIDDER, IF A CORPORATION

State of New York)) SS.:

County of.....)

On this.....day of....., 201_, before me personally came and appeared, to me known, who, being by me duly sworn, did depose and say that he/she resides at, that he/she is the _____ of _____, the corporation described in and which executed the foregoing instrument; that he/she knows the seal of said corporation; that one of the seals affixed to said instrument is such seal; that it was so affixed by order of the directors of said corporation; and that he/she signed his/her name thereto by like order.

Notary Public
(Notary Public Seal & Stamp)

ACKNOWLEDGMENT OF BIDDER, IF A PARTNERSHIP

State of New York)) SS.:

County of.....)

On this.....day of....., 201_, before me personally came and appeared to me known , being by me duly sworn, did depose and say that he/she resides at, that he/she is a partner of _____; and that he/she executed the foregoing instrument as and for the act and deed of said entity.

Notary Public
(Notary Public Seal & Stamp)

ACKNOWLEDGMENT OF BIDDER, IF A LIMITED PARTNERSHIP

State of New York)) SS.:

County of.....)

On this.....day of....., 201_, before me personally came and appeared to me known and who, being by me duly sworn, did depose and say that he/she resides at, that he/she is the General Partner of _____; and that he/she executed the foregoing instrument as and for the act and deed of said entity.

Notary Public
(Notary Public Seal & Stamp)

ACKNOWLEDGMENT OF BIDDER, IF A LIMITED LIABILITY COMPANY

State of New York)) SS.:

County of.....)

On this.....day of....., 201_, before me personally came and appeared to me known and known to me who, being by me duly sworn, did depose and

say that he/she resides at, that he/she is the Managing Member of _____; and that he/she executed the foregoing instrument as and for the act and deed of said entity.

Notary Public
(Notary Public Seal & Stamp)

ACKNOWLEDGMENT OF BIDDER, IF AN INDIVIDUAL

State of New York)) SS.:

County of.....)

On this.....day of....., 201_, before me personally came and appeared.....to me known and known to me to be the person described in and who executed the foregoing instrument and he acknowledged to me that he executed the same.

Notary Public
(Notary Public Seal & Stamp)

CERTIFICATE OF AUTHORITY (for corporations only)

I, the undersigned, as Secretary of _____, the corporation submitting the Submission of Proposal Certification, hereby certify that under and pursuant to the organizational documents and resolutions of said corporation, the officer who has signed said Submission of Proposal Certification on behalf of the corporation is fully and completely authorized so to do.

(Corporate Seal) By: _____

Print Name: _____

State of New York)) SS.:

County of.....)

On this.....day of....., 201_, before me personally came and appeared, to me known, who, being by me duly sworn, did depose and say that he/she resides at, that he/she is the Secretary of _____ and he/she executed the foregoing instrument.

Notary Public
(Notary Public Seal & Stamp)

EXHIBIT B – NON-COLLUSIVE BIDDING CERTIFICATION

_____ ("Respondent") which has submitted the accompanying Submission of Proposal, each person signing on behalf of Respondent, and in the case of a joint bid each party thereto, as to its own organization, hereby certifies and affirms under penalty of perjury, that to the best of its knowledge and belief:

(1) The prices in this bid have been arrived at independently without collusion, consultation, communication, or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other respondent or with any competitor;

(2) Unless otherwise required by law, the prices which have been quoted in this bid have not been knowingly disclosed by Respondent and will not knowingly be disclosed by Respondent prior to opening of the bids, directly or indirectly, to any other respondent or to any competitor; and

(3) No attempt has been made or will be made by Respondent to induce any other person, partnership or corporation to submit or not to submit a bid for the purpose of restricting competition.

Signed and sealed this _____ day of _____, 2013.

Name of Respondent: _____

By: _____

Print Name: _____

Title: _____

IN THE PRESENCE OF:

Signature: _____

Print Name: _____

ACKNOWLEDGMENT OF BIDDER, IF A CORPORATION

State of New York)) SS.:

County of.....)

On this.....day of....., 201_, before me personally came and appeared, to me known, who, being by me duly sworn, did depose and say that he/she resides at, that he/she is the _____ of _____, the corporation described in and which executed the foregoing instrument; that he/she knows the seal of said corporation;

that one of the seals affixed to said instrument is such seal; that it was so affixed by order of the directors of said corporation; and that he/she signed his/her name thereto by like order.

Notary Public
(Notary Public Seal & Stamp)

ACKNOWLEDGMENT OF BIDDER, IF A PARTNERSHIP

State of New York)) SS.:

County of.....)

On this.....day of....., 201_, before me personally came and appeared to me known , being by me duly sworn, did depose and say that he/she resides at, that he/she is a partner of _____; and that he/she executed the foregoing instrument as and for the act and deed of said entity.

Notary Public
(Notary Public Seal & Stamp)

ACKNOWLEDGMENT OF BIDDER, IF A LIMITED PARTNERSHIP

State of New York)) SS.:

County of.....)

On this.....day of....., 201_, before me personally came and appeared to me known and who, being by me duly sworn, did depose and say that he/she resides at, that he/she is the General Partner of _____; and that he/she executed the foregoing instrument as and for the act and deed of said entity.

Notary Public
(Notary Public Seal & Stamp)

ACKNOWLEDGMENT OF BIDDER, IF A LIMITED LIABILITY COMPANY

State of New York)) SS.:

County of.....)

On this.....day of....., 201_, before me personally came and appeared to me known and known to me who, being by me duly sworn, did depose and

say that he/she resides at, that he/she is the Managing Member of _____; and that he/she executed the foregoing instrument as and for the act and deed of said entity.

Notary Public
(Notary Public Seal & Stamp)

ACKNOWLEDGMENT OF BIDDER, IF AN INDIVIDUAL

State of New York)) SS.:

County of.....)

On this.....day of....., 201_, before me personally came and appeared.....to me known and known to me to be the person described in and who executed the foregoing instrument and he acknowledged to me that he executed the same.

Notary Public
(Notary Public Seal & Stamp)

EXHIBIT C - PROCUREMENT PROTEST PROCEDURES

The following protest procedure is the sole administrative remedy for protesting procurement decisions of the New York State Urban Development Corporation d/b/a Empire State Development (ESD). Any bidder or proposer submitting a bid or proposal in response to an ESD solicitation may protest the award or decision to award a contract by submitting to the ESD Project Manager by certified mail or by hand delivery such protest setting forth the basis thereof in writing to the no later than ten (10) calendar days after notice of the award or announcement of the decision to award on ESD's website or actual knowledge by the protester that a decision by ESD to award to other than the protester has been made whichever occurs first, addressed as follows: Project Manager – Empire State Development, 633 Third Avenue New York, New York 10016

The written protest must be received in ESD office no later than 5:00 p.m. on the tenth (10th) day as set forth above. In the event the tenth (10th) day falls on a weekend or an official holiday, the (10) ten-day period expires at 5:00 p.m. on the next regular business day.

The protest should contain, at a minimum, the following:

Name and address of the protester including telephone and facsimile numbers and email address;

The solicitation title and number, if available;

The contract or purchase order title and number, if available;

A statement concerning the protester's interest in the award or non-award of the contract and/or purchase order;

A detailed statement of the basis for the protest including any supportive documents and information;

The relief requested and the reason therefore.

The Project Manager will appoint a Protest Officer who will be a manager or other employee of ESD with the requisite procurement knowledge, as designated by the ESD General Counsel. The Protest Officer shall review the protest and supportive documents and issue a written decision within five (5) business days of the appointment where feasible. The Protest Officer may take any action or make any requests he or she deems necessary in order to investigate the protest including extending the time to issue a decision in order to obtain all evidence and other pertinent information.

The protester will be provided a copy of the written decision. This decision will be final unless within three (3) business days of receipt of the written decision the protester appeals to the ESD General Counsel or her/his designee. The appeal shall be in writing, sent via facsimile and certified mail, or by hand delivery to the ESD General Counsel as follows: General Counsel, Empire State Development Corporation, 633 Third Avenue, New York, NY 10017; Fax: (212) 803-3775

No evidence or information may be introduced or relied upon if the appeal that has not been presented to the Protest Officer prior to Protest Officer's decision. The ESD General Counsel or her/his designee will review the appeal and supportive documents and the decision of the Protest Officer and issue a written decision within five (5) business days of receipt if feasible. The ESD General Counsel or her/his designee may take any action or make any requests she or he deems necessary including extending the

time to issue a decision in order to render a decision on the appeal.

The decision of the ESD General Counsel or her/his designee shall be conclusive and final.

EXHIBIT D – ENCOURAGING USE OF NEW YORK STATE BUSINESSES IN CONTRACT PERFORMANCE

New York State businesses have a substantial presence in State contracts and strongly contribute to the economies of the state and the nation. In recognition of their economic activity and leadership in doing business in New York State (“NYS”), respondents/proposers for this ESD contract for commodities, services or technology are strongly encouraged and expected to consider NYS businesses in the fulfillment of the requirements of the contract. Such partnering may be as sub-contractors, suppliers, protégés or other supporting roles (herein collectively called “Subcontractors”).

Respondents/proposers need to be aware that, if selected through this ESD solicitation, they will be strongly encouraged, to the maximum extent practical and consistent with legal requirements, to use responsible and responsive NYS Subcontractors in performing the contract, including without limitation: (i) purchasing commodities; and (ii) utilizing services and technology. Further, respondents/proposers are reminded that they must continue to utilize small, minority and women-owned businesses, consistent with current State law.

Utilizing New York State businesses in State contracts will help create more private sector jobs, rebuild New York’s infrastructure, and maximize economic activity to the mutual benefit of the contractor and its NYS business partners. NYS businesses will promote the contractor’s optimal performance under the contract, thereby benefiting public sector programs that are supported by associated procurements.

Public procurements can drive and improve the State’s economic engine through promotion of the use of New York businesses by its contractors. The State therefore encourages respondents/proposers to provide maximum assistance to NYS businesses in their use of the contract. The potential participation by all kinds of NYS businesses will deliver great value to the State and its taxpayers.

Respondents/proposers can demonstrate their commitment to the use of NYS businesses by responding to the questions below (negative responses will not adversely affect contract selection):

(A) Do you anticipate the need for Subcontractors fulfilling the requirements of this ESD contract?

Yes No

(B) Do you anticipate that NYS businesses will be used in the performance of this ESD contract as Subcontractors?

Yes No

NOTE: If the answer to question (B) is Yes, please identify NYS businesses that will be used and attach identifying information such as name, address, contact information, nature of business. Please also be prepared to provide ESD on a regular basis (at least quarterly) with the amounts paid to NY businesses.

EXHIBIT E – SCHEDULE OF DATES

RFP Issued:	February 6, 2014
RFI Deadline:	February 20, 2014
RFI Responses:	February 27, 2014
Receipt of Proposals:	March 6, 2014 - NOON
Proposer Interviews:	March 6 – March 20, 2014
Final Selection of Financial Advisor & Contract Commencement:	March 2014