Moynihan Station Development Corporation

May 20, 2011

SUBJECT: TWO PART REQUEST FOR PROPOSALS FOR CONSTRUCTION CONTRACTING AND RELATED SERVICES FOR THE MOYNIHAN STATION CIVIC AND LAND USE IMPROVEMENT PROJECT - PHASE 1 (Part 1: Technical Proposal)

Ladies and Gentlemen:

The Moynihan Station Development Corporation ("MSDC")[1] hereby invites firms to submit proposals for construction contracting and related services for the Moynihan Station Civic and Land Use Improvement Project – Phase 1 (the "Project"). This work will be performed in the James A. Farley Post Office Building (the "Farley Building"), which is owned by the New York State Urban Development Corporation d/b/a Empire State Development ("ESD"), and in the train shed (the "Train Shed") of New York Pennsylvania Station ("Penn Station"), owned by the National Railroad Passenger Corporation ("Amtrak"), and located below the Farley Building, pursuant to one or more agreements (each an "Agreement" and collectively the "Agreements") to be entered into between MSDC and the selected firm(s).

The Agreements that may be awarded pursuant to this solicitation are funded in whole or in part with funding provided by the United State of America and is subject to all federal law, rules, regulations, orders and requirements applicable to such funding and such agreements, including, without limiting the foregoing, the Federal Funding Requirements set forth in Section XII below.

I. Procurement Process

This procurement will follow a two-part Request for Proposals ("RFP") process. During Part I, technical proposals ("Technical Proposals" and individually a "Technical Proposal") will be accepted and evaluated against the qualification criteria set forth in this Part I document. Responding firms (each a "Respondent" and collectively the "Respondents") that are successful in Part I will be deemed equally qualified and invited to participate in Part II to submit a sealed price proposal with respect to a draft Agreement and a draft Project Labor Agreement. Final award will be made to the technically qualified Respondent that submits the lowest responsive price. Whether the work described below will be awarded as one package or as two separate packages is yet to be determined. However, a final decision on this issue will be made prior to the release of Part II of this RFP.

[1] MSDC is a subsidiary of the New York State Urban Development Corporation d/b/a Empire State Development ("ESD"), a corporate governmental agency of the State of New York, constituting a political subdivision and public benefit corporation.

II. Pre-Proposal Meeting

A Pre-Proposal Meeting on this RFP will be held at 2:00 PM (EDT) on, Tuesday, May 31, 2011. Respondents will meet in the North Rotunda at the James A. Farley Building located on Eighth Avenue between 31st and 33rd Streets. Attendance is strongly recommended. Information conveyed may be useful to Respondents in preparing their Technical Proposal and any Respondent not attending assumes all risks, which may ensue from non-attendance.

Those interested in attending should email MSDC at msdc@empire.state.ny.us, not later than 12:00 noon (EDT) on Friday, May 27, 2011, and provide the name of each person that will attend on behalf of the Respondent in order to receive further directions and register its personnel for security. All persons attending will have to present photo identification in order to be admitted.

Questions asked at the meeting will be recorded and the answers will be posted at: http://www.empire.state.ny.us/Subsidiaries_Projects/MSDC/MSDC_RFPsOpportunities.html. No questions will be answered at the meeting itself.

III. Communications

ALL QUESTIONS, COMMENTS, REQUESTS FOR CLARIFICATION AND OTHER COMMUNICATIONS REGARDING THIS SOLICITATION MUST BE IN WRITING AND SUBMITTED TO Thelma Washington at msdc@empire.state.ny.us. All such emails must have "Moynihan Phase 1 Construction RFQ" in the subject line. CONTACT WITH ANY OTHER PERSON REGARDING THIS SOLICITATION IS PROHIBITED BY LAW.

All such questions, comments, requests for clarifications and other communications should be submitted no later than 4:00 PM (EDT) on Friday, June 3, 2011.

Neither Thelma Washington nor any employee of MSDC or ESD is authorized to interpret the RFP or the accompanying documents or give additional information as to its requirements. If MSDC determines that interpretation or additional information is necessary, beneficial, or appropriate, it will be communicated only by written formal addenda to this RFP issued by MSDC, and such addenda shall published on the procurement section of MSDC's website (http://www.empire.state.ny.us/Subsidiaries_Projects/MSDC/MSDC_RFPsOpportunities.html) and form a part of this RFP or the accompanying documents as appropriate. Respondent should not rely on any representations, statements, or clarifications not made in writing in this RFP or in a written formal addendum. Proposers are encouraged to check the website frequently.

IV. Submission of Proposals

In order to respond to Part I of this RFP, the Respondent shall submit a concise Technical Proposal in accordance with the following criteria:

A. Format and Copies: The Technical Proposal shall be of no more than 100 pages (double-sided using 12 point or larger font size). Each resume shall be 2-pages maximum, double-sided using 12 point or larger front size. The Technical Proposal pages shall be numbered and bound, or in a 3-ring binder, with "Firm Name" and **Moynihan Station Phase 1 Construction Contractor Technical Proposal** clearly indicated on the cover. Each section of the Technical Proposal shall be separated with a tab divider that is labeled in accordance with the letter of the requirements used in Section X of this RFP and with a separate tab divider for the required Federal Certifications pursuant to Section XII. **Please submit one (1) reproducible original and eight (8) copies, along with one (1) compact disc copy.** In case of a conflict between the reproducible original and the material on the compact disc, the reproducible original shall take precedence over material on the compact disc.

B. Submission Address: Moynihan Station Development Corporation, 633 Third Avenue, 36th Floor, New York, NY 10017, **Attention: Moynihan Phase 1 Construction Procurement.** Do not address your proposal to any other name.

C. Respondent's Name: The Respondent should use its full legal name without abbreviations, including on the return address label, information on the compact disc and information on the reproducible original and copies of the Technical Proposal. It is the responsibility of the Respondent to properly label all submissions, as mislabeling may lead to delays in the review and evaluation of the Technical Proposal.

D. Respondent's Contact Information: Provide the address of Respondent's firm to which any written correspondence should be sent, as well as the contact person's name with phone number and email address.

E. Technical Proposal Due Date: Allow sufficient time for delivery of your sealed Technical Proposal so that MSDC receives it by **12:00 noon (EDT) on Friday, June 17, 2011** (the "Technical Proposal Due Date"). **The cover of your submittal must clearly indicate "Moynihan Station Phase 1 Construction Contractor Technical Proposal"**.

F. Delivery Services: If the Technical Proposal is to be delivered by hand, please note that *the person delivering the Technical Proposal will not be permitted access up to MSDC's offices in the 633 Third Avenue building*. The person delivering the Technical Proposal must call the Empire State Development mailroom from the dedicated telephone at the reception counter in the building lobby and notify the person answering the call that there is a person in the lobby to deliver the Technical Proposal and that an MSDC representative should meet that person in the lobby to the receive the Technical Proposal. MSDC assumes no responsibility for delays caused by any delivery services.

G. No Electronic Submission: MSDC will not accept Technical Proposals submitted electronically (*e.g.*, via electronic mail or fax).

H. Late Submission: Late submittals may be rejected.

I. Additional Information: MSDC may request additional information from any Respondent.

V. Oral Presentations

After review of all Proposal submissions, an oral presentation to the selection committee and others, as appropriate, may be requested. It should be noted that if the Respondent is selected to make a presentation, the Respondent may be given short advance notice to prepare a presentation for the selection committee.

Presentations will be limited to approximately sixty (60) minutes, and may include the material contained in the Technical Proposal. The presentation will be followed by an approximately thirty (30) minute question and answer session. Respondent's staff providing the presentation shall be led by the proposed Project Manager, who may be supported by no more than five (5) other senior staff members or consultants who are proposed to work or advise MSDC on the Project.

Notification of presentation scheduling will be made by email. Please provide the name and email address of the person who should be contacted for presentation scheduling as well as an alternate contact person in the event that individual is unavailable.

VI. Notification

Notification as to whether a Respondent has been pre-qualified, placed on a short list, rejected, or disqualified will be made only by a notice in writing, signed by the President or his designated representative on behalf of MSDC, and mailed or delivered to the office designated by the Respondent in its response to this RFP.

VII. Procurement Protest Procedure

MSDC's Procurement Protest Procedure is attached hereto as **Attachment L**.

VIII. Disposal of Contract Documents

The Respondents shall ensure that all recipients of Contract documents through them, including those who do not propose and any prospective subcontractors and suppliers who may receive all or a part of the Contract documents or copies thereof, must secure and appropriately dispose of the Contract documents to prevent further disclosure of the information contained in the documents.

Secure and appropriate disposal includes methods of document destruction such as cross shredding or arrangements with refuse handlers that ensure that third persons will not have access to the documents' contents before, during, or after disposal. Documents may also be returned for disposal purposes to MSDC at its office at 633 Third Avenue, New York NY 10017.

IX. Project Description

It is anticipated, but it is not guaranteed, that work required by the Agreement(s) resulting from this procurement process may include, but may not necessarily be limited to the following:

A. Scope of Work

1. Scope of Work A – West End Concourse ("Scope A")

a. Expansion of the West End Concourse ("WEC") to be approximately doubled in width and length.
b. New vertical access points (stairs, escalators and elevators). This work includes two new street level entrances through the Farley Building to the WEC, and connections from the WEC to the Penn Station platforms.
c. Widened underground connection between the WEC, the 8th Avenue Subway and Level A of Penn Station (the "33rd Street Connector"), reconfigured to be compliant with the Americans with Disabilities Act ("ADA").

2. Scope of Work B – Platform Ventilation ("Scope B")

a. New emergency platform ventilation system for the area of the Train Shed below the Farley Building. The emergency ventilation system shall consist of six fan plants located within the station above the platform and track levels, close to the overhead structure. Four of these fan plants shall each contain a single fan, and two of the fan plants shall each contain two smaller, equally sized fans. All fans shall be reversible, horizontally-mounted axial flow fans, with a sound attenuator mounted on the system side of the fan. The required electrical service for the emergency ventilation system shall be provided from Con Edison to the electrical distribution room also located above the platform and track levels. An emergency generator shall be provided as an alternate power source if there is an interruption in the utility company service.

Further information regarding these scopes of work is provided in **Attachment A**. Included in the release of Part II of this RFP, notice will be given as to whether two contracts (one for Scope A and one for Scope B) or one contract (one that addresses both Scopes A and B collectively ("Scope A+B")) will ultimately be awarded. **For this Part I of the RFP, firms may submit a Technical Proposal to respond to either Scope A, Scope B, and/or Scope A + B.**

B. Estimated Total Contract Price

1. Scope A – West End Concourse

For information purposes only, MSDC estimates that the work required for Scope A will be in the range of eighty million dollars ($80,000,000) to one hundred million dollars ($100,000,000).

2. Scope B – Platform Ventilation

For information purposes only, MSDC estimates that the work required for Scope B will be in the range of eighty million dollars ($80,000,000) to one hundred million dollars ($100,000,000).

3. Scope A + B

For information purposes only, MSDC estimates that the work required for Scope A and Scope B will be in the range of one hundred sixty million dollars ($160,000,000) to two hundred million dollars ($200,000,000).

C. Contract Schedule

It is presently anticipated, but it is not guaranteed, that in the third quarter of 2011, the documents for Part II of this RFP may be available to Respondents determined to be technically qualified during Part I of this RFP. It is the current intention of MSDC to have all work under the Agreements completed within 54 months of the contract(s) award.

X. Submittal Requirements

For a Technical Proposal to be considered in Part I of this RFP, the Respondent must demonstrate to the satisfaction of MSDC 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. Submittals must be tailored to the specific requirements of this RFP.

If the Respondent cannot demonstrate that it meets all of the below mentioned qualifications, then the Respondent may, with others, form a joint venture and request that the joint venture be considered the Respondent in Part I of the RFP (i.e. members of the joint venture may meet the qualifications requirements collectively). If a joint venture is successful in Part I of the RFP, or if two or more entities separately are successful in Part I of the RFP elect to submit a proposal as a joint venture, all participants in the joint venture shall be bound jointly and severally and each participant must execute the proposal.

MSDC's preference is to package the work as one contract for Scope A + B. However, if there is not a sufficiently competitive pool of firms qualified in Part I, defined as five (5) or more qualified respondents, for Scope A + B, MSDC reserves the right to split the work into two contracts (Scope A and Scope B). Therefore, respondents interested in the larger contract are advised to propose on both Scope A + B and on Scope A and/or Scope B. Part I submissions must be clearly marked to indicate which potential packages the respondent is seeking to be qualified for – Scope A, Scope B and/or Scope A + B.

In order to expedite the evaluation of the qualification information furnished, the Respondent should complete and submit the documents described below. Responses that fail to adhere to this requirement may be excluded from consideration.

Respondent Qualification Statements

Respondent shall provide separate Qualification Statements for Sections A, B, and C, setting forth the evidence (and certifying such evidence as true and complete) of the 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, from a principal of each participant in the joint venture) identifying the Respondent's (or joint venture participant's) specific relevant experience in the performance of services and work similar to those contemplated herein. For all projects 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 mail and email addresses and telephone number for verification purposes. Only proposals received from a Respondent demonstrating relevant prior experience shall be evaluated for designation and selection pursuant to this RFP.

1. Minimum Experience of the Firm

1. Scope A – West End Concourse

The Respondent must have as a prime or general contractor, a minimum of fifteen (15) years of construction experience on contracts comparable in size, type and complexity to that described in Section IX, A1 and Section IX, B1. The Respondent must also demonstrate that during the last ten (10) years it has successfully completed or substantially completed as a prime or general contractor at least two (2) contracts of size, type and complexity comparable to that indicated in Section IX, A1 and Section IX, B1**.** The Respondent may also qualify if during the time period stated above, the respondent or persons or entities owning and controlling the Respondent, shall have satisfactorily performed, as owning and controlling another Respondent, having completed services and work of similar scope to those required by this scope of work. The services and work must have been completed skillfully, in a satisfactory manner, and on time.

2. **Scope B – Platform Ventilation**

   The Respondent must have as a prime or general contractor, a minimum of fifteen (15) years of construction experience on contracts comparable in size, type and complexity to that described in Section IX, A2 and Section IX, B2 above. The Respondent must also demonstrate that during the last ten (10) years it has successfully completed or substantially completed as a prime or general contractor at least two (2) contracts of size, type and complexity comparable to that indicated in Section IX, A2 and Section IX, B2 above**.** The Respondent may also qualify if during the time period stated above, the respondent or persons or entities owning and controlling the Respondent, shall have satisfactorily performed, as owning and controlling another Respondent, having completed services and work of similar scope to those required by this scope of work. The services and work must have been completed skillfully, in a satisfactory manner, and on time.

3. **Scope A + B**

   The Respondent must have as a prime or general contractor, a minimum of fifteen (15) years of construction experience on contracts comparable in size, type and complexity to that described in Section IX, A1 & Section IX, A2 and Section IX, B3 above. The Respondent must also demonstrate that during the last ten (10) years it has successfully completed or substantially completed as a prime or general contractor at least two (2) contracts of size, type and complexity comparable to that indicated in Section IX, A1 & Section IX, A2 and Section IX, B3 above**.** The Respondent may also qualify if during the time period stated above, the respondent or persons or entities owning and controlling the Respondent, shall have satisfactorily performed, as owning and controlling another Respondent, having completed services and work of similar scope to those required by this scope of work. The services and work must have been completed skillfully, in a satisfactory manner, and on time.

2. Minimum Qualifications of the Project Manager or Superintendant

1. **Scope A – West End Concourse**

   The Respondent's Project Manager must have a minimum of fifteen (15) years construction experience on contracts comparable in size, type and complexity outlined in Section IX, A1 and Section IX, B1 above, and the Respondent's Superintendent must have a minimum of ten (10) years construction experience on such contracts.

2. **Scope B – Platform Ventilation**

   The Respondent's Project Manager must have a minimum of fifteen (15) years construction experience on contracts comparable in size, type and complexity outlined in Section IX, A2 and Section IX, B2 above, and the Respondent's Superintendent must have a minimum of ten (10) years construction experience on such contracts.

3. **Scope A + B**

   The Respondent's Project Manager must have a minimum of fifteen (15) years construction experience on contracts comparable in size, type and complexity outlined in Section IX, A1 & Section IX, A2 and Section IX, B3 above, and the Respondent's Superintendent must have a minimum of ten (10) years construction experience on such contracts.

3. Specific Work Experience Critical to the Project

1. **Scope A – West End Concourse**

   The Respondent must demonstrate that it has construction experience on the property of an operating passenger railroad (inter-city, commuter and/or subway).

   Specific experience required includes the following:

   a. Planning and scheduling of contractor performed work on railroad property and/or coordination with railroad provided force account support.
   b. Scheduling of railroad track outages in order to perform contractor work.
   c. Performance of heavy civil work in close proximity to catenary and/or third rail in an urban area.
   d. Coordination, rigging and installation of structural steel and cast in place concrete over an operating railroad.
   e. Coordination and installation of mechanical, electrical and plumbing systems within an operating railroad's facility.
   f. Renovation of an active passenger transit station.

2. **Scope B – Platform Ventilation**

   The Respondent must demonstrate that it has construction experience on the property of an operating passenger railroad (inter-city, commuter and/or subway).

Specific experience required includes the following:

a. Planning and scheduling of contractor performed work on railroad property and/or coordination with railroad provided force account support.
b. Scheduling of railroad track outages in order to perform contractor work.
c. Performance of heavy civil work in close proximity to catenary and/or third rail in an urban area.
d. Coordination, rigging and installation of structural steel and cast in place concrete over an operating railroad.
e. Coordination and installation of mechanical and electrical systems within an operating railroad's facility, including large-scale emergency ventilation fan systems.

3. Scope A + B

The Respondent must demonstrate that it has construction experience on the property of an operating passenger railroad (inter-city, commuter and/or subway).

Specific experience required includes the following:

a. Planning and scheduling of contractor performed work on railroad property and/or coordination with railroad provided force account support.
b. Scheduling of railroad track outages in order to perform contractor work.
c. Performance of heavy civil work in close proximity to catenary and/or third rail in an urban area.
d. Coordination, rigging and installation of structural steel and cast in place concrete over an operating railroad.
e. Coordination and installation of mechanical and electrical systems within an operating railroad's facility, including large-scale emergency ventilation fan systems.
f. Renovation of an active passenger transit station.

4. Performance Bond and Labor and Materials Bond

The selected Respondent(s) will be required to comply with all applicable provisions of the Labor Law of the State of New York that shall be carried out in the performance of the Work including, but not limited to, Labor Law Sections 220, 220-d and 220-e, as amended, and all federal law and regulatory requirements, including, without limiting the foregoing, the Davis-Bacon Act.

The Respondent must be able to obtain a Performance Bond and a Labor and Materials Bond for 100% of the relevant Estimated Total Contract Price indicated in Section IX, B above from a surety company satisfactory to MSDC, licensed to transact business of a surety in the State of New York, and whose name appears on the current list of the Treasury Department of the United States as acceptable as a surety upon federal contracts. A letter from the surety company and a "Certificate of Solvency" of the surety company issued by the Superintendent of Insurance, State of New York (or the successor entity charged with the regulation of insurance in the State of New York) must be submitted in Part I of this RFP. The Certificate of Solvency shall certify that the surety company is authorized to transact the business of insurance in the State of New York, and possess the necessary capital and funds (setting forth the actual amount and the surety company's loss exposure limitations).

1. **Scope A – West End Concourse**

   The Respondent must demonstrate that it can obtain a Performance Bond and a Labor and Materials Bond for the Estimated Total Contract Price indicated for the work on which the Respondent is responding, as described in Section IX, B1.

2. **Scope B – Platform Ventilation**

   The Respondent must demonstrate that it can obtain a Performance Bond and a Labor and Materials Bond for the Estimated Total Contract Price indicated for the work on which the Respondent is responding, as described in Section IX, B2.

3. **Scope A + B**

   The Respondent must demonstrate that it can obtain a Performance Bond and a Labor and Materials Bond for the Estimated Total Contract Price indicated for the work on which the Respondent is responding, as described in Section IX, B3.

5. **Bid Bond**

Respondent (or if the Respondent is a joint venture, each participant) shall provide a letter from Respondent's chief financial officer certifying that Respondent has the financial and credit resources to provide bid security by certified check or bank draft, or by a bid bond in an amount not less than five percent (5%) of the relevant Estimated Total Contract Price (Section IX, B above) for the scope of work that the Respondent seeks to perform.

6. Financial Information

The Respondent must demonstrate that it is financially capable of performing the relevant Scope of Work. The determination of the Respondent's financial qualifications and ability to perform the relevant Scope of Work is in the sole discretion of MSDC. The Respondent (or if the Respondent is a joint venture, each participant) shall submit the following:

1. Certified Financial Statements

a. 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 or the Respondent's most recent fiscal year.

b. 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) above do not cover a period which includes a date not more than forty-five (45) days prior to the Technical Proposal Due Date (set forth in Section IV, E) 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.

2. Federal Employer Identification Number (EIN)

Respondent (or if the Respondent is a joint venture, each participant) shall provide their Federal Employer Identification Number as certified on Internal Revenue Service Form W-9.

3. Dun and Bradstreet Number (DUNS)

Respondent (or if the Respondent is a joint venture, each participant) shall provide their Dun and Bradstreet Number, if any, and the name of any credit service to which the Respondent furnished information and the number, if any, assigned by such service to the Respondent's account.

4. List of Affiliates

Respondent (or if the Respondent is a joint venture, each participant) shall provide a complete list of their affiliates.

7. Safety Information

1. Experience Modification Rate

Respondent (or if the Respondent is a joint venture, each participant) shall provide their Insurance Experience Modification Rate ("EMR") for the last three years and supply a letter from Respondent's (or if the Respondent is a joint venture, each participant's) insurance broker or carrier indicating the EMR of the Respondent for the last three years. A written explanation shall be provided for any EMR above 1.2.

2. United States Department of Labor Occupational Safety & Health Administration ("OSHA") Inspection Record

Respondent (or if the Respondent is a joint venture, each participant) shall provide their OSHA Inspection History for the last three years by supplying a printout of the OSHA public database inspection record (http://osha.gov/pls/imis/establishment.html) and a printout of any citations. Also provide a copy of the last three years OSHA 300 Logs. A written explanation shall be provided for any OSHA citations issued to the Respondent (or if Respondent is a joint venture, each participant) within the last three years that were classified with a severity greater than serious.

3. OSHA/ Bureau of Labor Statistics ("BLS") Total Recordable Incident Rate ("TRIR") and Lost Work Day Incident Rate ("LWDIR")

Respondent (or if the Respondent is a joint venture, each participant) shall provide their Incidence Rates for the last three years by supplying a printout of the public database BLS Industry Incidence Rates (http://www.bls.gov/iif/oshwc/osh/os/pr056ny.pdf) with the appropriate industry and type of construction highlighted. A written explanation shall be provided for TRIR or LWDCIR in excess of the BLS for NY State for the industry and work type performed.

4. Fatalities

Respondent (or if the Respondent is a joint venture, each participant's) shall list any work related fatalities that occurred to personnel or any contractor's personnel performing work on any project where Respondent (or if the Respondent is a joint venture, any participant) was the Construction Manager, General Contractor or Controlling Contractor for the last three years. A written explanation shall be provided detailing the specifics around the fatality and any corrective actions that have been taken to prevent reoccurrence.

8. **Required Licenses/Certifications**

The Respondent and/or its subcontractors must have all required New York State and New York City certifications and/or licenses to perform the work in accordance with codes, rules and regulations as applicable. Respondent (or if Respondent is a joint venture, each participant) must provide evidence satisfactory to MSDC that it has, or is eligible to receive, such certification or licenses.

9. **Current Project Commitments**

Respondent (or if the Respondent is a joint venture, each participant) shall provide a list of current projects (including any work in which a bid and/or proposal has been submitted) with a description of the work, the annual dollar value, the location by city, state, and country, the current percentage of completion, the expected date for completion, and the name of an individual (with full mail, email and telephone contact information) representing the owner of the work most familiar with the Respondent's work on these jobs.

10. **Agreement on Terms of Discussion**

Respondent (or if the Respondent is a joint venture, each participant) shall submit a completed **Attachment B – Agreement on Terms of Discussion**.

11. **Background Qualifications Questionnaire**

Respondent (or if the Respondent is a joint venture, each participant) shall submit a completed **Attachment C – Background Qualifications Questionnaire ("BQQ"),** required for consultants, contractors and vendors providing services for the Project.

12. **Non-Collusive Bidding Certification**

Respondent (and if the Respondent is a joint venture, each participant) shall submit a properly subscribed and affirmed **Attachment D – Non-Collusive Bidding Certification**, and Respondent's failure to include it may result in MSDC rejection of the Technical Proposal; provided, however, that if the Respondent (or any joint venture participant) cannot make such certification, it shall so state and shall submit with the Proposal a signed statement which sets forth in detail the reasons therefore. In the event that such statement is submitted in lieu of the Non-Collusive Bidding Certification, the bid shall not be considered unless MSDC determines that disclosure was not made for the purpose of restricting competition or appearance of a restriction of competition.

13. General Conflict of Interest

If the Respondent (or if the Respondent is a joint venture, each participant) or any employee, agent or subcontractor of the Respondent (or any joint venture participant) may have a possible conflict of interest, or may give the appearance of a possible conflict of interest, the Respondent shall include in its Technical Proposal a statement indicating the nature of the conflict and submit a mitigation plan addressing said conflict.

If in the sole discretion of MSDC, MSDC believes that the Respondent (or any joint venture participant) performing construction management, general contracting, design, environmental and/or management services in any capacity for MSDC has a conflict (or potential conflict) of interest, MSDC may reject or decline to review the Technical Proposal.
However, a Respondent who believes that it can provide a mitigation plan that would address the conflict (or potential conflict) of interest shall submit to MSDC, with the Technical Proposal, such mitigation plan for evaluation by MSDC.

It is recommended that the following items/concepts be addressed in a proposed mitigation plan where a conflict or the appearance of a conflict of interest may, or may in the future, or does currently exist:

a. A proposed organizational chart/structure/firewall designed to keep separate, as specific by project, and to allow for no overlap between team members and resources including, but not limited to: equipment, materials, staffing, laydown areas, and office facilities on said projects.

b. Specific plan(s) intended to maintain the separation and integrity, as specific by project, of the following to include, but not limited to: confidential and/or privileged information, documents, plans, drawings, estimates and other financial data.

c. Specific plan to maintain proper and independent billing procedure(s) designed to address the avoidance of double and improper billings.

d. Specific plan to educate employees, on all levels, of the importance of said mitigation plan to promote the awareness and importance of mitigation and its role in preventing fraud, waste, and abuse, and verification of such education/training and individual understanding.

e. Specific plan to internally oversee and/or audit the above-listed plans and procedures to ensure compliance.

f. Specific contingency plan, notification, and approval process for where there is a necessary, reasonable, and business related purpose for overlap in and/or sharing of staff members and/or resources.

g. Specific contingency plan in addressing a direct or suspected violation of said mitigation plan. All violations must be reported to MSDC.

h. The Respondent (or if the Respondent is a joint venture, each participant) shall ensure that all employees, contractors, consultants, sub-consultants, subcontractor or other person or entities identified with respect to each such conflict of potential conflict must cooperate with MSDC and its integrity monitor, in auditing the mitigation plan for compliance. This cooperation must include access to all necessary documentation and interviews of employees and affiliated persons.

MSDC reserves the right to disqualify the Respondent if, in MSDC's sole discretion, any interest disclosed from any source could create a conflict of interest or give the appearance of a conflict of interest. MSDC's determination regarding any questions of conflict of interest will be final.

14. Organizational Conflict of Interest

The Agreement(s) may give rise to a potential for an organizational conflict of interest. An organizational conflict of interest exists when the nature of the work to be performed under the Agreement(s) may, without some form of restriction on future activities result in an unfair competitive advantage to the Respondent.

a. If the Respondent is awarded the work, the Respondent will have access to confidential and/or sensitive MSDC and Project information in the course of Agreement performance. Additionally, the Respondent may be provided access to proprietary information obtained from other contracted entities during Agreement performance. The Respondent agrees to protect all such information from disclosure unless so authorized, in writing, by MSDC and to refrain from using such information for any purpose other than that for which it was furnished.

b. If the Respondent is awarded the work, then to the extent that the Respondent either (i) uses confidential and/or sensitive MSDC or Project information or proprietary information obtained from other MSDC or Project contractors to develop any form of document, report, or plan that is determined by MSDC to be the basis, in whole or in part, of any subsequent solicitation issued by MSDC or (ii) develops written specifications that are used in any subsequent solicitation issued by MSDC, the Respondent agrees that it shall not be eligible to compete for such subsequent solicitation(s) as a

prime or principal contractor or as part of any teaming arrangement unless MSDC provides, in writing, a specific waiver of this restriction. The duration of any restriction imposed under this subparagraph shall not exceed the length of the initial performance period of any subsequently awarded contract for which the Respondent was ineligible to complete.

The Respondent, by submitting its Technical Proposal, agrees to the above stated conditions and terms and further agrees to perform all duties under the Agreement and, in doing so, not to enter into contractual agreements with MSDC prime contractors and first-tier subcontractors in such a way as to create an organizational conflict of interest.

If MSDC determines that the Respondent has violated any term of this clause, MSDC may take any appropriate action available under the law or regulations to obtain redress to include, but not be limited to, (x) requiring the Respondent to terminate any affiliation or contractual arrangement with a MSDC prime contractor or first-tier subcontractor at no cost to MSDC, (y) determining the Respondent ineligible to compete for or be awarded any subsequent or "follow-on" contracts that may be based upon the Respondent's actions or violations of this section, or (z) terminating the Agreement, in whole or in part.

15. New York State Finance Law Sections 139-j and 139-k

New York 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 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 <u>only</u> with the contact person listed in Section III of this RFP; (ii) the completion by prospective bidders of the Offerer Disclosure of Prior Non-Responsibility Determinations and the Offerer's Affirmation of Understanding of and Agreement pursuant to State Finance Law, copies of which are attached to this RFP; and (iii) periodic updating of such forms during the term of any contract resulting from this solicitation. Respondents must submit both **Attachment G - Offerer Disclosure of Prior Non-Responsibility Determinations** and **Attachment H - Offerer's Affirmation of Understanding of and Agreement pursuant to State Finance Law**, properly completed, as part of their Technical Proposals.

The Section 139 Requirements also require MSDC and ESD employees to obtain and report certain information when contacted by prospective bidders during the Restricted Period, make a determination of the responsibility of bidders, and make all such information publicly available in accordance with applicable law. If a prospective bidder is found to have knowingly and willfully violated the Section 139 Requirements, that prospective bidder and its subsidiaries, and related and successor entities will be determined to be a non-responsible bidder 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 Policy Regarding Permissible Contacts under State Finance Law Section 139-j and 139-k, which is applicable to all ESD subsidiaries, including MSDC, is attached to this solicitation as **Attachment F**. Neither this summary nor the referenced Policy is a complete presentation of the provisions of the Procurement Requirements. A copy of State Finance Law Sections 139-j and 139-k can be found at http://www.ogs.state.ny.us/aboutogs/regulations/advisoryCouncil/StatutoryReferences.html. All potential respondents are solely responsible for full compliance with the Section 139 Requirements.

16. New York State Tax Law Section 5-a

Any contract resulting from this solicitation is also subject to the requirements of New York State Tax Law Section 5-a ("STL 5-a"). STL 5-a prohibits MSDC from approving any such contract with any entity if that entity or any of its affiliates or subcontractors make 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 responses a properly completed Form ST-220-CA, Contractor Certification to Covered Agency (http://www.tax.ny.gov/pdf/current_forms/st/st220ca_fill_in.pdf) or a satisfactory affidavit that the entity is not required to register. Solicitation responses that do not include a properly completed ST-220-CA or affidavit are incomplete and no contract will be approved without the appropriate forms, duly executed.

17. Federal Certifications

Respondent shall submit with its Proposal all certifications, statements, documents and information required pursuant to the law, regulations, and orders of the United States of America, including without limiting the foregoing, those expressly required pursuant to Section XII, Federal Funding Requirements, of this RFP.

18. Project Labor Agreement

Respondent (or if Respondent is a joint venture, each participant) should provide examples of experience of working on projects as a party to a project labor agreements coordinating the work of all trades working on the project, with true and complete copies of all referenced project labor agreements and names and contact information for the project owner and trades that were parties to each project labor agreement.

XI. New York State Affirmative Action and Non-Discrimination Compliance and Federal Disadvantaged Business Enterprise Compliance

MSDC complies with all applicable laws, executive orders, and regulations and is committed to providing meaningful affirmative action opportunities for Minorities and Women Business Enterprises within the State.

Each Respondent (or if Respondent is a joint venture, each participant) must represent that it shall comply with the provisions of this section relating to Affirmative Action and Non-Discrimination. Respondent must represent that it will require its agents, servants, representatives and/or employees to comply with any and all City, State and/or Federal laws that prohibit discrimination in employment because of age, race, creed, color, national origin, sex, disability or marital status of any individual. The Respondent, shall, to the extent permitted by law, undertake a program of affirmative action as directed by and substantially in accordance with the Affirmative Action program used by MSDC.

MSDC requests that responding Respondent (and if Respondent is a joint venture, each participant) demonstrate the ability and willingness to provide for meaningful participation for DBEs, MBE's, and WBE's and the participation of Minority and Female Workforce ("M/FWF"), and to implement the following Affirmative Action Program for the Respondent's work in connection with the Project.

1. Respondent is required to use its best efforts to achieve an overall DBE/MBE/WBE participation goal of 20% of the total value of the contract.

2. The United States Department of Transportation regulations on Disadvantaged Business Enterprises are contained in Part 26 of Title 49 of the Code of Federal Regulations. Firms owned and controlled by socially and economically disadvantaged individuals and certified as DBEs pursuant to the New York State Uniform Certification Program ("NYSCUP") are eligible to be treated as DBEs. Eligible DBE firms are listed on the NYSUCP website http://biznet.nysucp.net. If Respondent wishes to subcontract a portion of the work through, or joint venture with, a firm not listed in the NYSCUP directory, but which Respondent believes should be eligible for certification by with the

NYSCUP because the firm is (1) a DBE, as defined federal regulations cited above in this paragraph and (2) competent to perform portions of the work, Respondent shall submit an DBE Uniform Certification Application to MSDC. The application is available online at https://www.nysdot.gov/main/business-center/civil-rights/forms-and-applications. In addition, to update a previously-certified firm's certification file and to advise MSDC of changes to any information, please email these changes to MSDC. Credit toward applicable DBE goals will be granted only to competent NYSCUP certified eligible DBEs.

3. Respondent is encouraged to consider forming joint ventures, partnerships, or other similar arrangements where appropriate or feasible to assist in meeting this DBE/MBE/WBE goal.

4. Respondent shall complete **Attachment E-1**. Other non-discrimination and affirmative action bid document provisions are set forth in **Attachment E-2**. Certain non-discrimination and affirmative action definitions and related information are set forth in **Attachment E-3**.

5. A partial listing of New York State Certified MBEs and WBEs that could provide services in completion of the proposed contract(s) will be available at http://www.empire.state.ny.us/Subsidiaries_Projects/MSDC/MSDC_RFPsOpportunities.html.

6. Respondent is required to use its best efforts to achieve the overall goal of 25% M/FWF participation for construction, demolition, abatement and similar work, if any, performed by the Respondent (or its subcontractors and subconsultants) in connection with the Project. M/FWF provisions are set forth in **Attachments E-3** and **Attachment E-4** and participation is computed in the Monthly Employment Utilization Report ("MEUR") as indicated in **Schedule A-2** of **Attachment E-4**.

MSDC strongly encourages Respondents to implement an Affirmative Action Program that includes the participation of NYS Certified MBEs and WBEs for the subcontracting and subconsultant work or joint venturing in connection with this RFP.

XII. Federal Funding Requirements

The contract(s) which are to be procured pursuant to this RFP are funded in whole or in part by the Federal Railroad Administration ("FRA"), an operating administration within the United States Department of Transportation ("USDOT"), under the American Recovery and Reinvestment Act of 2009 ("ARRA" or the "Recovery Act") and consequently, the contractor and all subcontracting activity associated with this Project will be subject to certain FRA and USDOT requirements including, but not limited to, the following:

1. **Independent Monitor – Access to Records**

   Section 902 of the Recovery Act requires that each contract awarded using Recovery Act funds must include a provision that provides the U.S. Comptroller General and his or her representatives with MSDC to: 1) examine any records of the contractor or any of its subcontractors, or any State or local agency administering such contract, that directly pertains to, and involves transactions relating to, the contract or subcontract; and 2) to interview any officer or employee of the contractor or any of its subcontractors, or of any State or local government agency administering the contract, regarding such transactions.

   Section 1515 of the Recovery Act authorizes the USDOT Office of the Inspector General to: 1) examine any records of the contractor or any of the subcontractors that pertain to and involve transactions relating to the contract or subcontract; and 2) interview any officer of employee of the contractor or subcontractor regarding such transactions.

   MSDC's funding agreement with FRA authorizes the Secretary of Transportation of the Secretary's authorized representatives to inspect all Project work, materials, payrolls and other data and to audit the books, records, and accounts of MSDC's contractors pertaining to the Project.

2. **Disadvantaged Business Enterprises**

   The contract(s) described above will be subject to the United States Department of Transportation regulations on Disadvantaged Business Enterprises ("DBE's")[2] contained in Part 26 of Title 49 of the Code of Federal Regulations. Please refer to Section IX of this RFP regarding MSDC program for DBE, MBE and WBE participation in the contract(s). Eligible DBE firms are listed on the following Uniform Certification Programs (UCPs) website:

   New York UCP – http://biznet.nysucp.net

3. **Buy American Requirements**

   The contract(s) described above will be subject to Section 1605 of the Recovery Act (regulations at 2 CFR Part 176.140) and to 49 U.S.C. 24405(a) which require that all iron, steel, and manufactured goods used are produced in the United States unless subject to a waiver or exception as provided therein.

[2] Individuals who are rebuttably presumed to be socially and economically disadvantaged include women, Blacks, Hispanics, Native Americans, Asian-Pacific Americans, and Asian-Indian Americans. A bidder may meet the DBE goal by using any combination of disadvantaged businesses.

4. Federal Certifications

Debarment and Suspension

This RFP is a covered transaction for purposes of 2 CFR Parts 180 and 1200. As such, the Respondent is required to verify that none of the Respondent, its principals, as defined at 2 CFR 180.995, or affiliates, as defined at 2 CFR 180.905, are excluded or disqualified as defined at 2 CFR 180.935 and 180.940.

The Respondent is required to comply with 2 CFR 180, Subpart C and must include the requirement to comply with 2 CFR 180, Subpart C in any lower tier covered transaction it enters into.

By signing and submitting its proposal, the Respondent certifies as follows:

The certification in this clause is a material representation of fact relied upon by MSDC. If it is later determined that the Respondent knowingly rendered an erroneous certification, in addition to remedies available to MSDC, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The Respondent agrees to comply with the requirements of 2 CFR 180, Subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The Respondent further agrees to include a provision requiring such compliance in its lower tier covered transactions.

1. USDOT requires that each potential Contractor, for major third party contracts, complete a certification entitled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion" for itself and its principals and requires each Subcontractor or Supplier (for Subcontracts and Supplier agreements expected to equal or exceed $25,000) to complete a certification entitled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion" for itself and its principals. Copies of the required certification forms and accompanying instructions are set forth in **Attachment J**.

2. In the event that the Respondent has certified prior to award that it is not proposed for debarment, debarred, suspended, or voluntarily excluded from covered transactions by any Federal Department or agency and such certification is found to be false, any subsequent contract may be canceled, terminated or suspended by MSDC and the Respondent will be liable for any and all damages incurred by MSDC because of such cancellation, termination or suspension because of such false certification.

3. The Respondent shall obtain certifications from all known potential Subcontractors and Suppliers (for which payments are expected to equal or exceed $25,000) and submit such certifications to the address set forth in E below.

4. Prior to the award of any Subcontracts or Supplier agreements expected to equal or exceed $25,000, regardless of tier, any prospective Subcontractor or Supplier who has not previously submitted a certification for this Contract must execute and submit to the Contractor a certification "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tiered Covered Transactions" in the form set forth in **Attachment J** which will be deemed a part of the resulting Subcontract and Supplier agreement.

5. The originals of any certifications or correspondence relating hereto shall be sent to MSDC, 633 Third Avenue, 36th Floor, New York, NY 10017.

6. The Respondent shall not knowingly enter into any Subcontracts or Supplier agreements with a person that is proposed for debarment, debarred, suspended, declared ineligible or voluntarily excluded from covered transactions.

7. As required by USDOT, the Respondent and its Subcontractors or Suppliers required to file the certification have a continuing duty to disclose, and shall provide immediate written notice to MSDC if, at any time, it learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

<u>Lobbying Restrictions –Contracts Exceeding $100,000</u>

A. Definitions as used in this Clause:

   1. "Agency," as defined in 5 U.S.C. 552(f), includes Federal executive departments and agencies as well as independent regulatory commissions and Government corporations, as defined in 31 U.S.C. 9101(1). As used in the Certification set forth following the clause herein entitled “Integrity Monitor”, it also includes any other public agency.

   2. "Covered Federal action” means any of the following Federal actions:

      a. The awarding of any Federal contract;
      b. The making of any Federal grant;
      c. The making of any Federal loan;
      d. The entering into of any cooperative agreement; and

e. The extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement. As used in the above referenced Certification, it includes the award of the contract with which it is associated.

3. "Indian tribe" and "tribal organization" have the meaning provided in Section 4 of the Indian Self Determination and Education Assistance Act (25 U.S.C. 450B). Alaskan natives are included under the definitions of Indian tribes in that Act.

4. "Influencing or attempting to influence" means making, with the intent to influence, any communication to or appearance before an officer or employees of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any covered Federal action.

5. "Local government" means a unit of government in a State and, if chartered, established, or otherwise recognized by a State for the performance of a governmental duty, including a local public authority, a special district, an intrastate district, a council of governments, a sponsor group representative organization, and any other instrumentality of a local government. It also includes a bi-state agency.

6. "Officer or employee of an agency" includes the following individuals who are employed by an agency:

   a. An individual who is appointed to a position in the Government under title 5, United States Code, including a position under a temporary appointment;
   b. A member of the uniformed services as defined in section 101(3), title 37, United States Code;

7. A special government employee as defined in Section 202, title 18, United States Code;

   a. An individual who is a member of a Federal advisory committee, as defined by the Federal Advisory Committee Act, Title 5, United States Code Appendix 2; and
   b. An employee of a bi-state agency.

8. "Person" means an individual, corporation, company, association, authority, firm, partnership, society, State, and local government, regardless of whether such entity is operated for profit or not for profit. This term excludes an Indian tribe, tribal organization, or any other Indian

Organization with respect to expenditures specifically permitted by other Federal law.

9. "Reasonable Compensation" means, with respect to a regularly employed officer or employee of any person, compensation that is consistent with the normal compensation for such officer or employee for work that is not furnished to, not funded by, or not furnished in cooperation with the Federal Government.

10. "Reasonable Payment" means, with respect to professional and other technical services, a payment in an amount that is consistent with the amount normally paid for such services in the private sector.

11. "Recipient" includes all contractors and subcontractors at any tier in connection with a Federal Contract. The term excludes an Indian Tribe, tribal organization, or any other Indian organization with respect to expenditures specifically permitted by other Federal law.

12. "Regularly Employed" means, with respect to an officer or employee of a person requesting or receiving a Federal Contract, an officer or employee who is employed by such person for at least one hundred and thirty (130) working days within one (1) year immediately preceding the date of the submission that initiates agency consideration of such person for receipt of such contract. An officer or employee who is employed by such person for less than one hundred and thirty (130) working days within one (1) year immediately preceding the date of the submission that initiates agency consideration of such person shall be considered to be regularly employed as soon as he or she is employed by such person for one hundred and thirty (130) working days.

13. "State" means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, a territory or possession of the United States, an agency or instrumentality of a State, and a multi-state, regional, or interstate entity having governmental duties and powers.

B. Prohibition

1. Section 1352 of Title 31, United States Code provides in part that no appropriated funds may be expended by the recipient of a Federal contract, grant, loan, or cooperative agreement to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any of the following covered Federal actions: the awarding of any Federal contract;

the making of any Federal grant; the making of any Federal loan; the entering into of any cooperative agreement; and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement. For the purposes of the Certification included herein following the clause entitled "Integrity Monitor", it includes the award of the associated contract.

2. The prohibition does not apply as follows:

    a. Agency and legislative liaison by own employees.

        i. The prohibition on the use of appropriated funds, in subparagraph B.1.) of this Section, does not apply in the case of a payment of reasonable compensation made to an officer or employee of a person requesting or receiving a Federal contract or the contract associated with the certification if the payment is for agency and legislative liaison activities not directly related to a covered Federal Action.

        ii. For purposes of subparagraph B. 2.) a.(i) of this Section, providing any information specifically requested by an agency or Congress is allowable at any time.

        iii. For purposes of subparagraph B. 2.) a.(i) of this Section, the following agency and legislative liaison activities are allowable at any time only where they are not related to specific solicitation for any covered Federal action.

            a. Discussing with an agency (including individual demonstrations) the qualities and characteristics of the person's products or services, conditions or terms of sales and service capabilities; and,

            b. Technical discussions and other activities regarding the application or adaptation of the person's products or services for an agency's use.

        iv. For purposes of paragraph B. 2)a.(i) of this Section, the following agency and legislative liaison activities are allowable only where they are prior to formal solicitation of any covered Federal action:

            a. Providing any information not specifically requested but necessary for an agency to make an informed decision about initiation of a covered Federal action;

b. Technical discussions regarding the preparation of an unsolicited proposal prior to its official submission; and

c. Capability presentations by persons seeking awards from an agency pursuant to the provisions of the Small Business Act, as amended by Public Law 95-507 and other subsequent amendments.

v. Only those activities expressly authorized by subparagraph B. 2)a. of this Section are allowable under subparagraph B. 2)a.

b. Professional and Technical Services by Own Employees.

i. The prohibition on the use of appropriated funds, in subparagraph B. of this Section, does not apply in the case of a payment of reasonable compensation made to an officer or employee of a person requesting or receiving a Federal contract or an extension, continuation, renewal, amendment, or modification of a Federal contract or the contract associated with the certification if payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that contract or for meeting requirements imposed by or pursuant to law as a condition for receiving that contract.

ii. For purposes of subparagraph B. 2.) b. (i) of this Section, "professional and technical services" shall be limited to advice and analysis directly applying any professional or technical discipline. For example, drafting of a legal document accompanying a bid or proposal by a lawyer is allowable. Similarly, technical advice provided by an engineer on the performance or operational capability of a piece of equipment rendered directly in the negotiation of a contract is allowable. However, communications with the intent to influence made by a professional (such as a licensed lawyer) or a technical person (such as a licensed accountant) are not allowable under this Section unless they provided advice and analysis directly applying their professional or technical expertise and unless the advice or analysis is rendered directly and solely in the preparation, submission or negotiation of a covered Federal action. Thus, for example, communications with the intent to influence made by a lawyer that do not provide legal advice or analysis directly and solely related to the legal aspects of his or her client's proposal, but

generally advocate one proposal over another are not allowable under this Section because the lawyer is not providing professional legal services. Similarly, communications with the intent to influence made by an engineer providing an engineering analysis prior to the preparation or submission of a bid or proposal are not allowable under this Section since the engineer is providing technical services but not directly in the preparation, submission or negotiation of a covered Federal action.

iii. Requirements imposed by or pursuant to law as a condition for receiving a covered Federal award include those required by law or regulation, or reasonably expected to be required by law or regulation, and any other requirements in the actual award documents.

iv. Only those services expressly authorized by subparagraph B. 2.) b. this Section are allowable under subparagraph B. 2.) b.

c. Reporting for Own Employees.

No reporting is required with respect to payments of reasonable compensation made to regularly employed officers or employees of a person.

d. Professional and Technical Services by Other than Own Employees.

i. The prohibition on the use of appropriated funds, in subparagraph B. l.) of this Section, does not apply in the case of any reasonable payment to a person, other than an officer or employee of a person requesting or receiving a covered Federal action, if the payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal contract or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal contract.

ii. For purposes of subparagraph B. 2.) d. (i) of this Section, "professional and technical services" shall be limited to advice and analysis directly applying any professional or technical discipline. For example, drafting of a legal document accompanying a bid or proposal by a lawyer is allowable. Similarly, technical advice provided by an engineer on the performance or operational capability of a piece of equipment rendered directly in the negotiation of a contract is allowable. However, communications

with the intent to influence made by a professional (such as a licensed lawyer) or a technical person (such as a licensed accountant) are not allowable under this Section unless they provided advice and analysis directly applying their professional or technical expertise and unless the advice or analysis is rendered directly and solely in the preparation, submission or negotiation of a covered Federal action. Thus, for example, communications with the intent to influence made by a lawyer that do not provide legal advice or analysis directly and solely related to the legal aspects of his or her client's proposal, but generally advocate one proposal over another are not allowable under this Section because the lawyer is not providing professional legal services. Similarly, communications with the intent to influence made by an engineer providing an engineering analysis prior to the preparation or submission of a bid or proposal are not allowable under this Section since the engineer is providing technical services but not directly in the preparation, submission or negotiation of a covered Federal action.

iii. Requirements imposed by or pursuant to law as a condition for receiving a covered Federal award include those required by law or regulation, or reasonably expected to be required by law or regulation, and any other requirements in the actual award documents.

iv. Persons other than officers or employees of a person requesting or receiving a covered Federal action include consultants and trade associations.

v. Only those services expressly authorized by subparagraph B. 2.) d. of this Section are allowable under subparagraph B. 2.) d.

C. Disclosure

1. Each person who requests or receives from MSDC a Contract with Federal assistance shall file with MSDC a certification entitled "Certification Regarding Lobbying Pursuant to 31 U.S.C. 1352," as set forth following the clause herein entitled “Integrity Monitor” that the person has not made, and will not make, any payment prohibited by subparagraph B. of this Clause.Each person who requests or receives from MSDC a Contract with Federal assistance shall file with MSDC a disclosure form entitled "Disclosure of Lobbying Activities Pursuant to 31 U.S.C. 1352" (Standard Form-LLL), as set forth following the clause herein entitled “Integrity Monitor”, if such person has made or has agreed to make any payment

using non-appropriated funds (to include profits from any covered Federal action), which would be prohibited under subparagraph B. of this Clause if paid for with appropriated funds. Copies of the required certification forms and accompanying instructions are set forth in **Attachment K**.

2. Each person shall file a disclosure form at the end of each calendar quarter in which there occurs any event that requires disclosure or that materially affects the accuracy of the information contained in any disclosure form previously filed by such person under subparagraph C.2 of this Section. An event that materially affects the accuracy of the information reported includes:

    a. A cumulative increase of $25,000 or more in the amount paid or expected to be paid for influencing or attempting to influence a covered Federal action; or
    b. A change in the person(s) or individual(s) influencing or attempting to influence a covered Federal action; or
    c. A change in the officer(s), employee(s), or Member(s) contacted to influence or attempt to influence a covered Federal action.

3. Any person who requests or receives from a person referred to in subparagraph C.1) of this Section a subcontract exceeding $100,000 at any tier under a Federal contract shall file a certification, and a disclosure form, if required, to the next tier above.

4. All disclosure forms, but not certifications, shall be forwarded from tier to tier until received by the person referred to in subparagraph C.1) of this Section. That person shall forward all disclosure forms to MSDC.

D. Agreement

1. In accepting any contract resulting from this solicitation, the person submitting the offer agrees not to make any payment prohibited by this Clause.

E. Penalties

1. Any person who makes an expenditure prohibited under subparagraph A of this Clause shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such expenditure.
2. Any person who fails to file or amend the disclosure form to be filed or amended if required by the Clause, shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

3. Contractors may rely without liability on the representations made by their Subcontractors in the certification and disclosure form.

F. Cost Allowability

Nothing in this Clause is to be interpreted to make allowable or reasonable any costs which would be unallowable or unreasonable in accordance with Part 31 of the Federal Acquisition Regulation. Conversely, costs made specifically unallowable by the requirements in this Clause will not be made allowable under any of the provisions of Part 31 of the Federal Acquisition Regulation.

5. Davis Bacon and Copland Acts

Section 1606 of the Recovery Act requires that all laborers and mechanics employed by contractors and subcontractors on projects funded directly by or assisted in whole or in part by and through the Federal Government pursuant to the Recovery Act shall be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the Secretary of Labor in accordance with subchapter IV of chapter 31 title 40, United States Code. The Davis-Bacon and Copeland Acts are codified at 40 USC 3141, *et seq.* and 18 USC 874. The Acts apply to construction contracts and subcontracts that "at least partly are financed by a loan or grant from the Federal Government." 40 USC 3145(a), 29 CFR 5.2(h), 49 CFR 18.36(i)(5). The Acts apply to any construction contract over $2,000. 40 USC 3142(a), 29 CFR 5.5(a). 'Construction,' for purposes of the Acts, includes "actual construction, alteration and/or repair, including painting and decorating." 29 CFR 5.5(a). The requirements of both Acts are incorporated into a single clause (*see* 29 CFR 3.11) enumerated at 29 CFR 5.5(a) <u>and are applicable to the proposed contract(s)</u>.

* * *

ATTACHMENT A

Moynihan Station Phase 1 Scope of Work Summary

The project would consist of the following, mostly below-grade, elements.

1. A substantially expanded West End Concourse ("**WEC**"), doubled in width and more than doubled in length with multiple access points up to the Farley Building and down to platforms, which will: (i) provide access to eight tracks not currently served by the existing concourse; (ii) significantly increase passenger circulation space; and (iii) for the first time, provide space for the sale of tickets (by vending machine) on the WEC.

2. Nineteen new vertical access points (stairs, escalators, and elevators) connecting the platforms to the WEC and to subway connections and to the street through Farley. Today, no platforms are accessible from Farley; via Part 1, nine platforms (17 tracks) will be accessible from Farley. These new vertical access points will: (i) dramatically increase passenger access/egress and circulation space, which will relieve congestion at platform and concourse levels throughout the Penn Station complex as a whole; (ii) reduce train dwell time, thereby reducing lost passenger time and permitting additional train movements; and (iii) improve safety and security by permitting, as necessary, a much more prompt evacuation of platforms, corridors, and the station as whole than is possible today.

3. Two new above-grade entrances through Farley west of 8th Avenue, at 31st and 33rd Streets respectively, with access directly to the WEC, which will decrease congestion at Penn Station and improve access to the development district to the west. The entrances will face 8th Avenue, flanking the United States Postal Service ("USPS") monumental stairs.

4. A substantially widened and improved underground connection between the WEC, the 8th Avenue Subway, and Level A of Penn Station (the "**33rd Street Connector**"), running under 8th Avenue and 33rd Street between Penn and Moynihan Stations, reconfigured to be compliant with the Americans with Disabilities Act (the "ADA"). The 33rd Street Connector will remain under the control of the Metropolitan Transportation Authority ("**MTA**"), and the proposed improvements will be closely coordinated with MTA and NYC Transit Authority staff.

5. State-of-the-art, emergency platform ventilation for the below-grade trainshed areas west of 8th Avenue (the "**Platform Ventilation Work**"). Phase 1 will include critical design elements and features that will improve adherence, to the maximum extent practicable, to guidelines established by the *National Fire Protection Association (NFPA) Standard 130: Standard for Fixed Guideway Transit and Passenger Rail Systems* and will improve egress time from platforms to station exits.

This scope of work is considered Phase I of the larger Moynihan Station redevelopment project.

ATTACHMENT B

Agreement on Terms of Discussion

MSDC's receipt or discussion of any information (including information contained in any proposal, vendor qualification, ideas, models, drawings or other material communicated or exhibited by MSDC on our behalf) shall not impose any obligations whatsoever on MSDC or entitle us to any compensation therefor (except to the extent specifically provided in such written agreement, if any, as may be entered into between MSDC and us). Any such information given to MSDC before, with or after this Agreement on Terms of Discussion ("Agreement"), either orally or in writing, is not given in confidence. Such information may be used, or disclosed to others, for any purpose at any time without obligation or compensation and without liability of any kind whatsoever. Any statement which is inconsistent with this Agreement, whether made as part of or in connection with this Agreement, shall be void and of no effect. This Agreement is not intended, however, to grant to MSDC rights to any matter, which is the subject of valid existing or potential letters patent. The foregoing applies to any information, whether or not given at the invitation of MSDC.

Notwithstanding the above, and without assuming any legal obligation, MSDC will employ reasonable efforts, subject to the provisions of MSDC's XXXX policy, not to disclose to any competitor of the undersigned, information submitted which are trade secrets or is maintained for the regulation or supervision of commercial enterprise which, if disclosed, would cause substantial injury to the competitive position of the enterprise, and which information is identified by the Respondent as proprietary, which may be disclosed by the undersigned to MSDC as part of or in connection with the submission of a proposal.

_____

(Company)

_____

(Signature)

_____

(Title)

_____

(Date)

ATTACHMENT C

Background Qualification Questionnaire

BACKGROUND QUALIFICATION QUESTIONNAIRE

FOR

("The Company")

General Identification

1. Tax ID# (or SSN)_____

   Business Entity Name (the "Company") _____

   D/B/A name, if any_____
   (D/B/A means "doing business as")

   Street address_____

   City/State/Zip_____

   Mailing address (if different)_____

   City/State/Zip_____

   Phone No. _____ Fax No. _____

   E-mail address_____ Website _____

2. a. What project is the Company bidding, proposing, or intending to work on? (Select one).
   - ☐ 1 World Trade Center
   - ☐ Nat'l Sept. 11 Memorial & Museum
   - ☐ Transportation Hub
   - ☐ Retail
   - ☐ Central Chiller Plant
   - ☐ Streets, Utilities, & Infrastructure
   - ☐ Vehicular Security Center
   - ☐ Other (Specify)_____

   b. Prime Contractor (the "Prime")_____
   (The firm that the Company will be contracting with.)

   c. Description of Work_____

3. a. Has the Company changed address(es) in the past five years?
   ☐ No ☐ Yes

   b. Has the Company operated under any other name(s) in the past five years?
   ☐ No ☐ Yes

   c. Does the Company have offices, plants or warehouses at other addresses?
   ☐ No ☐ Yes

   If 'yes', to question 3 a, b, or c provide details below:

Specify (3a-c)	Name	Address	From (Mo./Yr.)	To (Mo./Yr.)

Business Organization and History

4. Type of Entity: ☐ Corporation ☐ Partnership ☐ Sole Proprietorship ☐ Joint Venture*
☐ Limited Liability Company ☐ Other (Specify) _____

* If the Company is a Joint Venture, please provide a list of all partner firms and/or parties to the Joint Venture below. All partners and/or parties listed are also required to individually complete a separate BQQ.

Partner/Party Name	Tax ID# (or SSN)	% of Ownership

5.
a. Date the Company was formed _____
b. Date of incorporation if different than date the Company was formed _____
c. State in which formed or incorporated _____
d. Number of shares authorized for issuance if Company is a corporation_____
e. Number of shares issued to individuals or entities _____
f. Registered Agent (Lawyer/incorporator) _____

6. Was the Company purchased as an existing business by its present owner(s)?
☐ No ☐ Yes (if yes, provide information below)

Date purchased _____
Previous Owner(s) Name(s): _____

7. Does the Company own, rent, or lease any of its office facilities?
☐ Own
☐ Lease/Rent (if leased or rented, provide information below)

Owner Name	Address	Phone Number

8. Does the Company share any office space, staff, or equipment (including telephone exchanges) with any other business or organization?
☐ No ☐ Yes (list below)

Tax ID# (or SSN)	Firm Name	Address	Space	Staff	Equip
			☐	☐	☐
			☐	☐	☐
			☐	☐	☐

9. Identify all Key People

Instructions: Fill in the required information on all present and past **Key People for the past five years.**

"Key People" include:

- Principals, directors, officers
- Shareholders of 5% or more of the Company's issued and outstanding stock
- Any manager or individual who participates in overall policy-making or financial decisions for the Company
- Project managers and project executives
- Any person in a position to control and direct the Company's overall operations
- Authorized signatories to bank accounts and any debt instruments, whether or not otherwise considered Key People

"Shareholders" are owners of stock or other securities that can be converted to stock that, if converted, would constitute 5% of the Company's issued and outstanding stock. Other securities include stock options, secured or unsecured bonds, warrants and rights.

Be sure to include all those who fit the definition of Key People for the past five years whether or not they are currently with the Company. Copy this page if more space is required.

KEY PEOPLE TABLE
COMPLETE ALL BLANK AREAS

	PERSON #1	PERSON #2	PERSON #3
NAME AND HOME ADDRESS*			
Date of Birth			
SS #			
Current Title			
From (Date)			
To (Date)			
% of Ownership			
Number of Shares Owned			
How Shares Were Acquired			
	PERSON #4	PERSON #5	PERSON #6
NAME AND HOME ADDRESS*			
Date of Birth			
SS #			
Current Title			
From (Date)			
To (Date)			
% of Ownership			
Number of Shares Owned			
How Shares Were Acquired			

*Provide current proper legal name and specify any name change, including maiden or married names or aliases.

10. At present or during the past five years:

a. Has the Company been a subsidiary of any other firm?
☐ No ☐ Yes

b. Has the Company consisted of a partnership in which one or more partners are other firms?
☐ No ☐ Yes

c. Has any other firm owned 5% or more of the Company?
☐ No ☐ Yes

d. Has the Company been a joint venture partner with any other firms?
☐ No ☐ Yes

If 'yes' to question 10 a, b, c, or d, list the other firms below and indicate the percent of stock, if any, owned in the Company.

	FIRM #1	FIRM #2
Specify (10a-d)		
Tax ID#		
Firm Name		
Address		
Relationship To The Company (Co. Owner, Partner, Etc.)		
% of the Company Owned		
From (Date)		
To (Date)		
Representative Name/Title		

11. At present or during the past five years:

a. Has the Company had any subsidiaries?
☐ No ☐ Yes

b. Has the Company owned 5% or more of any other firm?
☐ No ☐ Yes

If 'yes' to question 11 a or b, list the firms below and indicate the percent of the other firm's stock owned by the Company.

Specify (11a,b)	Tax Id#	Firm Name and Address	% Owned By The Company	Dates of Ownership From/To

12. At present or during the past five years have any of the Key People of the Company served as a Key Person (see definition in question 9) or owned 5% or more of any other firm (including firms that are inactive or have been dissolved)?
☐ No ☐ Yes

If 'yes' to question 12, list below:

Firm Name and Address	Tax Id#	Key Person	Position Held	% Owned	Remainder Owned By	Dates Owned From/To

All firms listed in questions 10 a-d, 11 a-b, and 12 will be referred to in the following questions as: "Affiliate Firms"

13. Are any Key People of the Company:

a. present or past employees of The Port Authority of New York and New Jersey, or the Prime identified in Question 2(b)?
☐ No ☐ Yes

b. related by kinship or marriage to any present or past employee of The Port Authority of New York and New Jersey, or the Prime identified in Question 2(b)?
☐ No ☐ Yes

If 'yes' to question 13a or b, provide names of such individual(s) and indicate relationship to the current/former employee.

_____
_____
_____
_____

14. Number of employees of the Company (not including Key People) _____

15. Is the Company a union company or non-union company?
☐ Union ☐ Non-Union

If 'Union', provide below which trade(s) the Company has agreements with and the date of their expiration.

Union Name & Local #	Exp. Date	Union Name & Local #	Exp. Date

16. Does the Company currently participate in, or have any applications pending for, any business or job opportunity certification programs with The Port Authority of New York and New Jersey or any other government agency? (i.e. MBE, WBE, SBE, DBE, LBE, etc.)
☐ No ☐ Yes

If 'yes' to question 16, provide details below:

Certification Type	Exp. Date	Certifying Agency	Certification #

Financial Information

17. At present or in the past five years:

a. Has the Company been indebted to an individual or entity other than a commercial lending institution in the cumulative amount of $50,000 or more?
☐ No ☐ Yes

b. Have any of the Company's Key People been indebted to an individual or entity other than a commercial lending institution in the cumulative amount of $50,000 or more, for the benefit of the Company?
☐ No ☐ Yes

c. Has the Company pledged any of its stock to guarantee any of the above obligations?
☐ No ☐ Yes ☐ N/A

d. Has any individual or the Company been a guarantor, co-maker or co-signer of any of these obligations on behalf of the Company?
☐ No ☐ Yes ☐ N/A

If 'yes', to any portion of question 17a-d, provide details below:

Specify (17a-d)	Name of Creditor	Name of Borrower	Amount of Loan & Balance Remaining	Terms of Pledge or Loan	Name of Guarantor, or Co-Signer

e. Have monies generated by the Company in the cumulative amount of $50,000 or more been loaned to another firm or individual by the Company or its Key People? ☐ No ☐ Yes

If 'yes', please provide details below:
Name: _____
Address: _____
_____

f. Has the Company, or any of its Affiliate Firms, or any of its Key People paid commissions or finders fees to obtain contracts or work to anyone other than its own key people? ☐ No ☐ Yes

If yes, explain: _____

18. Has the Company, or any of its Affiliate Firms, or any of its Key People been a party to a bankruptcy or reorganization proceeding?
☐ No ☐ Yes

If 'yes,' provide details below:

Caption	Date	Docket #	Court	County

19. During the past five years, has the Company ever:

a. been the subject of a lien, judgment or litigated claim of $25,000 or more by a subcontractor, supplier or other creditor?
☐ No ☐ Yes

b. failed to complete a contract for a commercial or private owner or government agency?
☐ No ☐ Yes

c. had, or does it currently have, any delinquent local, city, state or federal taxes or liens outstanding?
☐ No ☐ Yes

If 'yes' to question 19 a, b or c, supply details below:

Specify (19a-c)	Agency/Owner	Contract #	Describe Circumstances & Current Status	Date of Events	Name/Phone No. of Contact Person

Experience/Performance

20. On the following table state the Company's gross revenues for the past three years:

	Sales/Gross Revenues	Net Income
Past Fiscal Year		
Past Fiscal Year (-1)		
Past Fiscal Year (-2)		

21. Does the Company have a bonding capacity?
☐ No ☐ Yes

If 'yes', provide information below on all surety companies that have agreed to furnish the Company with performance and payment bonds and answer all related questions:

a. Surety Name: _____
Address: _____
_____
Agent/Broker: _____
Phone No. (_____)_____

b. In writing bonds for the Company, does the surety company rely on the indemnity of any other firm(s) or individual(s)?
☐ No ☐ Yes

If 'yes', supply names & addresses of others:
_____
_____
_____

c. What is the Company's bonding capacity:

Single Job: $ _____ Aggregate: $ _____

22. Has the Company or any of its Key People, officers, owners or managers had any business related or professional licenses, certificates or certifications revoked or suspended in the past five (5) years?
☐ No ☐ Yes (if yes, explain below)

_____
_____

Compliance Information

23. Has the Company or any of its Affiliate Firms ever been the subject of any of the following actions by any government agency:

Government agencies include city, state, federal public agencies, quasi-public agencies, authorities and corporations, public development corporations, public benefit corporations and local development corporations.

*Note: Matters under appeal must be disclosed.

a. been suspended, debarred, disqualified, declared non-responsible or non-responsive, or had its prequalification revoked or otherwise been declared ineligible to bid or to perform work?
☐ No ☐ Yes

b. been barred from bidding or denied a contract as a result of refusal of Key People to testify before a grand jury or administrative board?
☐ No ☐ Yes

c. been denied a contract despite being the low bidder for any other reason?
☐ No ☐ Yes

d. been defaulted on or breached any contract?
☐ No ☐ Yes

e. had a contract terminated, for either "cause" or "convenience"?
☐ No ☐ Yes

f. been given a final unsatisfactory performance evaluation or determination, or deemed a poor performer (by letter or formal proceedings)?
☐ No ☐ Yes

g. been prevented, or barred from bidding for any other reason?
☐ No ☐ Yes

h. been denied a contract for failure to obtain surety or otherwise provide required security?
☐ No ☐ Yes

i. had liquidated damages assessed against it upon completion of a contract or failure to complete a contract?
☐ No ☐ Yes

If 'yes', to any portion of question 23 supply details below:

Specify (23a-i)	Agency	Contract #	Date of Action	Describe Action	Name/Phone # of Agency or Owner Contact Person

24. In the past five (5) years, has the Company or any current or past Key People or Affiliate Firms been a plaintiff or defendant in any lawsuits arising out of the Company's operations?
☐ No ☐ Yes

If 'yes', to question 24, supply details below and submit documentation if applicable. Indicate in P/D column whether the Company's Key People or Affiliate Firms were plaintiffs (P) or defendants (D).

Caption or Action	P/D	Court	Index/Docket No.	Nature of Claim	Date	Status

25. In the past ten (10) years has the Company or any of its current or past Key People or Affiliate Firms:

a. voluntarily engaged the services of an Integrity Monitor, independent private sector inspector general, or integrity compliance consultant (hereinafter collectively referred to as an "Integrity Monitor") in connection with the performance of any public or private contract?
☐ No ☐ Yes

b. been required to engage the services of an Integrity Monitor in connection with the award of, or in order to complete, any public or private contract?
☐ No ☐ Yes

c. been required to submit a Certification in connection with the award of, or in order to complete, any public or private contract?
☐ No ☐ Yes

d. otherwise been the subject of audits/investigations (see definition of investigation below in Question 26a) performed by an Integrity Monitor in connection with any public or private contract?
☐ No ☐ Yes

If yes to any portion of question 25, explain below:

_____

_____

26. In the past five (5) years has the Company or any of its Affiliate Firms been subject to or issued any OSHA violations?
☐ No ☐ Yes

If 'yes', to any portion of question 26 supply details below:

Nature of Violation	Type (Serious, Willful, Repeat, etc.)	Penalty Amt. ($)	Date

27. Has the Company or any of its current or past Key People or Affiliate Firms ever:

a. been under investigation involving any alleged violation of criminal law relating to business activities?
☐ No ☐ Yes

An INVESTIGATION includes an appearance before a grand jury by representatives of a business entity, any oral or written inquiry or review of the entity's documents by a public agency, temporary commission or other investigative body including, but not limited to, subpoenas and/or search warrants, or questioning of employees concerning the general operation or a specific project or activities of such business entity, whether or not such business entity is notified, is in-fact, or otherwise believed to be, the subject or target of any such investigation.

b. had records in its or his/her control, custody or ownership subpoenaed or seized by a search warrant by any law enforcement or government agency?
☐ No ☐ Yes

c. been questioned by any officer or agent of a law enforcement or investigative agency regarding any practices or conduct relating to the providing of services?
☐ No ☐ Yes

d. been advised of being the target, subject, or person of interest of an investigation involving any violation of criminal law?
☐ No ☐ Yes

e. been notified of being the subject of court ordered electronic surveillance?
☐ No ☐ Yes

f. been arrested or indicted or otherwise named as an unindicted co-conspirator in any indictment or other accusatory instrument?
☐ No ☐ Yes

g. been convicted, after trial or by plea, of any felony under state or federal law?
☐ No ☐ Yes

h. been convicted of any misdemeanor involving business-related crimes?
☐ No ☐ Yes

i. entered a plea of nolo contendere to any felony and/or business-related misdemeanor?
☐ No ☐ Yes

j. entered into a consent decree, deferred prosecution agreement, or non-prosecution agreement?
☐ No ☐ Yes

k. been granted immunity from prosecution for any business-related conduct constituting a crime under state or federal law?
☐ No ☐ Yes

l. exercised the Fifth Amendment right against self-incrimination in testimony regarding a business related crime?
☐ No ☐ Yes

If 'yes', to any portion of question 27, supply details below and submit documentation.

Specify (27a-l)	Agency Or Court	Nature Of Action	Person or Entity Named or Involved	Date	Status/Outcome

28. Do any current or past Key People listed in this application have any felony or misdemeanor charges pending against them that were filed either before, during or after their employment with the Company?
☐ No ☐ Yes

If 'yes' to question 28, provide details below:

Agency or Court	Nature of Charges	Key Person Named	Date of Charges

29. Has the Company or any of its current or past Key People or affiliate firms ever engaged in any of the following practices:

a. filed with a government agency or submitted to a government employee a written instrument which the Company or any of its Key People or affiliate firms knew contained a false statement or false information?
☐ No ☐ Yes

b. falsified business records?
☐ No ☐ Yes

c. given, or offered to give, money, gifts or anything of value or any other benefit to a labor official or public servant with intent to influence that labor official or public servant with respect to any of his or her official acts, duties or decisions as a labor official or public servant?
☐ No ☐ Yes

d. given or offered to give, money, gifts or anything of value or any benefit to a labor official or public servant for any reason?
☐ No ☐ Yes

e. given, or offered to give, money or other benefit to an official or employee of a private business with intent to induce that official or employee to engage in unethical or illegal business practices?
☐ No ☐ Yes

f. agreed with another to bid below prevailing market rate?
☐ No ☐ Yes

g. agreed with another to submit identical or complementary bids or otherwise not to bid competitively or agree to withdraw or abstain from bidding?
☐ No ☐ Yes

h. agreed with another not to submit competitive bids in another's territory established either by geography or customers?
☐ No ☐ Yes

i. agreed with another to take turns in obtaining contracts by pre-determining which firm shall submit the lowest bid?
☐ No ☐ Yes

If 'yes', to any portion of question 29, explain below:

_____

_____

30. This document was prepared by (Note: This person must be a Key Person listed in response to Question 9):

_____ (Name) _____ (Title)

_____ (Signature) _____ (Date)

EXHIBIT A
CERTIFICATION

A materially false statement willfully or fraudulently made in connection with this Certification, and/or failure to conduct appropriate due diligence in verifying the information that is the subject matter of this Certification may prevent the Company and/or the undersigned from being found to be responsible bidders/proposers in connection with future agreements. In addition, a materially false statement willfully or fraudulently made in connection with this Certification may subject the Company and/or the undersigned to criminal charges, including charges for violation of New York State Penal Law Sections 175.35 (Offering a False Statement for Filing) and 210.40 (Sworn False Statement), New Jersey Code of Criminal Justice Title 2C:28-3 (Unsworn Falsification to Authorities), and/or Title 13 U.S.C. Sections 1001 (False or Fraudulent Statement) and 1341 (Mail Fraud).

Certifications must be notarized when signed.

I _____, being duly sworn, state that I am _____, an officer of
(Print Name) (Title)
the Company, and that I have read and understood the questions contained in the attached questionnaire.

I certify that to the best of my knowledge the information given in response to each question, whether prepared by me, or by the Key Person identified in Question 30, is full, complete and truthful as of this date hereof. I agree and warrant that truthfully answering the questions is an event entirely within my control.

I recognize that all the information submitted in connection with this Questionnaire is for the express purpose of inducing the Port Authority to enter into a contract with, or to approve the award of a contract or subcontract to, or otherwise approve some other relationship with, the Company.

I acknowledge that the Port Authority, may by means it deems appropriate, determine the accuracy, truth and completeness of the answers to the questions in the questionnaire. I authorize the Port Authority or its designee to contact any person or entity for purposes of verifying the information supplied by the Company.

_____
(Print Name)

_____
(Signature)

Sworn to before me
this _____ day of _____20____

_____
Notary Public

ATTACHMENT ___ of ___

Response to Question _____:

_____
_____
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Response to Question _____:

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Response to Question _____:

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Response to Question _____:

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Response to Question _____:

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Please copy this page if more space is required.

ATTACHMENT D

Non-Collusive Bidding Certification

NON-COLLUSIVE BIDDING CERTIFICATION

_____ ("Bidder") which has submitted the attached Proposal, each person signing on behalf of Bidder, 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 bidder 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 Bidder and will not knowingly be disclosed by Bidder prior to opening of the bids, directly or indirectly, to any other bidder or to any competitor; and

(3) No attempt has been made or will be made by Bidder 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 _____, 20__.

Name of Bidder:_____

By:_____
Print Name:_____
Title:_____

IN THE PRESENCE OF:

Signature_____
Print Name:_____

ACKNOWLEDGEMENT OF BIDDER, IF A CORPORATION

STATE OF

ss.:

COUNTY OF

On _____, 20___, before me personally came _____ to me known, who, by me duly sworn, did depose and say that he resides at _____; that he/she is the _____ of _____, the Corporation described in and which executed the foregoing certification; that he/she knows the seal of the Corporation; that the seal affixed to the foregoing certification is the corporate seal; that the foregoing certification was executed and the corporate seal affixed by order of the Board of Directors of the Corporation; that he/she signed his/her name by like order.

ACKNOWLEDGEMENT OF PRINCIPAL, IF A PARTNERSHIP

STATE OF

ss.:

COUNTY OF

On_____, 20___, before me personally came _____ to me known and known to me to be a member of the firm of _____, the firm described in and which executed the foregoing certification, and he duly acknowledged to me that he/she executed the foregoing certification for and on behalf of the said firm for the uses and purposes mentioned therein.

ACKNOWLEDGMENT OF BIDDER, IF AN INDIVIDUAL

STATE OF

ss.:

COUNTY OF

On_____, 20___, before me personally came _____ to me known and known to me to be the individual described in and who executed the foregoing certification, and he/she duly acknowledged to me that he/she executed the same.

ATTACHMENT E-1

MINORITY AND WOMEN-OWNED BUSINESS PARTICIPATION CERTIFICATION

_____ hereby certifies to Moynihan Station Development Corporation that:

It agrees to use its best efforts to achieve an overall goal of 20% Disadvantaged Business Enterprise, Minority Business Enterprise, and Women-Owned Business Enterprise ("DBE/MBE/WBE") participation in the Work and an overall goal of 25% Minority Female Workforce ("M/FWF") participation for the contract.

ATTACHMENT E-2

NON-DISCRIMINATION AND AFFIRMATIVE ACTION BID DOCUMENT PROVISIONS

It is the policy of MSDC, to comply with all federal, State and local law, policy, orders, rules and regulations which prohibit unlawful discrimination because of 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 Disadvantaged Business Enterprises, Minority Business Enterprises, and Women-owned Business Enterprises (DBEs/MBEs/WBEs), Minority Group Members and women share in the economic opportunities generated by MSDC's participation in projects or initiatives, and/or the use MSDC funds (from any source, including the United States of America).

Each proposing bidder must represent and warrant that, if successful in obtaining a Contract, it shall (i) comply with the provisions of this section relating to Non-Discrimination and Affirmative Action and (ii) require its Contracting Parties and/or employees to comply with any and all federal, State and local law, policy, orders, rules and regulations which prohibit unlawful discrimination in employment or hiring because of the race, creed, color, national origin, sex, sexual orientation, age, disability or marital status of any individual.

A copy of the bidder's Equal Employment Opportunity ("EEO") policy statement shall be included as part of the response to any bid document. The bidder's EEO policy statement shall contain, but not necessarily be limited to, and the bidder, **as a precondition to entering into a valid and binding Contract**, shall, during the performance of said Contract, agree to the following:

(i) The Contracting Party will (a) not unlawfully discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, sexual orientation, age, disability or marital status, (ii) undertake or continue existing programs of affirmative action to ensure that Minority Group Members and women are afforded equal employment opportunities, and (iii) make and document its conscientious and active efforts to employ and utilize DBEs/MBEs/WBEs, Minority Group Members and women in its workforce relative to contracts executed by MSDC or to projects or initiatives utilizing MSDC funds (from any source, including the United States of America). Such action shall be taken with reference to, but not limited to, solicitations or advertisements for employment, recruitment, job assignment, promotion, upgrading, demotion, transfer, layoff or termination, rates of pay or other forms of compensation, and selection for training or retraining, including apprenticeship and on-the-job training.

(ii) At the request of MSDC, the Contracting Party shall request each employment agency, labor union, or authorized representative of workers with whom it has a collective bargaining or other agreement or understanding, to furnish a written

statement that such employment agency, labor union, or representative does not unlawfully discriminate, and that such union or representative will affirmatively cooperate in the implementation of the Contracting Party's obligations herein.

The successful bidder shall, to the extent permitted by law, agree to undertake a program of affirmative action as directed by and substantially in accordance with the affirmative action program of ESD as implemented by MSDC. MSDC requests that responding bidders agree to use their best efforts to provide for the meaningful participation of DBEs/MWBs/WBEs, Minority Group Members and women: and implement the following affirmative action program for the construction management work (the "work") as set forth in the Bid Document:

- The utilization of DBE/MBE/WBE firms equal to 20% of the total value of the work. The bidders are encouraged to utilize DBEs/MBEs/WBEs for any product/materials or services necessary for the completion of the work.

- The successful bidder will be required to use its best efforts to achieve an overall 25% minority/female workforce participation goal in connection with the project or initiative.

The successful bidder is required to use its best efforts to consider forming joint ventures, associations, partnerships, or other similar entities with DBE/MBE/WBE firms, where appropriate or feasible, to assist in meeting this affirmative action program. Bidders are requested to complete Schedule A-1 to denote the subcontractors that the bidders propose to use in achieving DBE/MBE/WBE participation.

Attachment F is a partial listing of New York State Certified M/WBE firms that could provide services in completion of the work. The firms on the list in Attachment F have been certified by the State of New York as meeting all required criteria as a Minority and/or Women-owned Business Enterprise. This listing should not be construed as an endorsement or recommendation for any particular firm. If you require additional trade listings, please call the ESD Affirmative Action Office at (212) 803-3225.

The United States Department of Transportation regulations on Disadvantaged Business Enterprises (“DBEs”) are contained in Part 26 of Title 49 of the Code of Federal Regulations. Firms owned and controlled by socially and economically disadvantaged individuals and certified as DBEs pursuant to the New York State Uniform Certification Program (“NYSCUP”) are eligible to be treated as DBEs. Eligible DBE firms are listed on the NYSUCP website.

Commencing not more than 30 days after (i) execution of the Contract, or (ii) start of the work, the Contracting Party shall submit to the AAO a Monthly Employment Utilization Report (Schedule A-2) of the workforce actually utilized on the project, itemized by ethnic background, gender, and Federal Occupational Categories or other appropriate categories specified by the AAO. Accuracy of the information contained in the reporting documentation (Schedule A-1 and Schedule A-2) shall be certified to by an owner or officer of the Contracting Party.

SCHEDULE A-1

DISADVANTAGED BUSINESS ENTERPRISE (DBE), MINORITY OWNED BUSINESS ENTERPRISE (MBE) & WOMEN OWNED BUSINESS ENTERPRISE (WBE) PARTICIPATION

(No substitutions may be made on this submission except by prior written approval from Empire State Development)

_____ Contract/Project Title:

Name of Respondent

_____ Respondent's Contract Amount:

Address

_____ Telephone Number:_(___)

Name/Address/Phone No. of DBE/MBE/WBE	DBE,MBE or WBE	Joint Venture, Subconsultant, or Supplier	Scope of Work to be Performed	Proposed Contract Price or Purchase Amount & Percentage

CERTIFICATION:

I, _____ (Print Name), the _____ (Title), do certify that (i) I have read this Schedule of Minority/Women Owned Business Participation and (ii) to the best of my knowledge, information and belief the information herein is complete and accurate.

Signature _____ Date

Forward to:

Empire State Development
Affirmative Action Unit – Helen Daniels
633 Third Avenue
New York, NY 10017 Office: (212) 803-3225 Fax: (212) 803-322_

ATTACHMENT E-3

NON-DISCRIMINATION AND AFFIRMATIVE ACTION DEFINITIONS

Affirmative Action

Shall mean the actions to be undertaken by the Borrower, Grantee and any Contracting Party in connection with any project or initiative to ensure non-discrimination and Minority/Women-owned Business Enterprise and minority/female workforce participation, as set forth herein, and as developed by Empire State Development ("ESD").

Affirmative Action Officer ("AAO")

Shall mean ESD's Affirmative Action Officer or his/her designee, managing the affirmative action program for ESD.

Contract

Shall mean (i) a written agreement or purchase order instrument, or amendment thereto, executed by or on behalf of a **Contracting Party**, providing for a total expenditure in excess of $5,000 for labor, services, supplies, equipment, materials or any combination of the foregoing funded in whole or in part with MSDC or ESD funds (from any source) and (ii) any loan or grant agreement funded in whole or in part with ESD funds.

Contracting Party

Shall mean (i) any contractor, subcontractor, consultant, subconsultant or vendor supplying goods or services, pursuant to a contract or purchase order in excess of $1,500, in connection with any projects or initiatives funded in whole or in part by MSDC or ESD and (ii) **any borrower or grantee** receiving funds from ESD pursuant to a loan or grant document.

Subcontract

Shall mean an agreement providing for a total expenditure in excess of $1,500 between a **Contracting Party** and any individual or business enterprise, for goods or services rendered in connection with any project or initiative funded in whole or in part with ESD funds.

Disadvantaged Business Enterprise

The United States Department of Transportation regulations on Disadvantaged Business Enterprises are contained in Part 26 of Title 49 of the Code of Federal Regulations. Firms owned and controlled by socially and economically disadvantaged individuals and certified as DBEs pursuant to the New York State Uniform Certification Program ("NYSCUP") are eligible to be treated as DBEs. Eligible DBE firms are listed on the NYSUCP website http://www.nyscup.net.

Minority Business Enterprise ("MBE")

Shall mean a business enterprise, including a sole proprietorship, partnership or corporation that is: (i) at least fifty-one percent (51%) owned by one or more Minority Group Members; (ii) an enterprise in which such minority ownership is real, substantial and continuing; (iii) an enterprise in which such minority ownership has and exercises the authority to control and operate, independently, the day-to-day business decisions of the enterprise; (iv) an enterprise authorized to do business in the State of New York and is independently owned and operated; and (v) an enterprise certified by New York State as a minority business.

Minority Group Member

Shall mean a United States citizen or permanent resident alien who is and can demonstrate membership in one of the following groups: (i) Black persons having origins in any of the Black African racial groups; (ii) Hispanic persons of Mexican, Puerto Rican, Dominican, Cuban, Central or South American descent of either Indian or Hispanic origin, regardless of race; (iii) Asian and Pacific Islander persons having origins in any of the Far East countries, South East Asia, the Indian subcontinent or the Pacific Islands; and (iv) Native American or Alaskan native persons having origins in any of the original peoples of North America.

Women-owned Business Enterprise ("WBE")

Shall mean a business enterprise, including a sole proprietorship, partnership or corporation that is: (i) at least fifty-one percent (51%) owned by one or more citizens or permanent resident aliens who are women; (ii) an enterprise in which the ownership interest of such women is real, substantial and continuing; (iii) an enterprise in which such women ownership has and exercises the authority to control and operate, independently, the day-to-day business decisions of the enterprise; (iv) an enterprise authorized to do business in the State of New York and is independently owned and operated; and (v) an enterprise certified by New York State as woman-owned.

Best Efforts – DBE, MBE and WBE Participation

Best efforts are not limited to the efforts specified herein, and (ii) the roles of DBE/MBE/WBE firms are not restricted to that of a subcontractor/subconsultant. Where applicable, DBE/MBE/WBE firms should be considered for roles as prime contractors. Such best efforts shall include at least the following:

(a) Dividing the contract work into smaller portions in such a manner as to permit subcontracting to the extent that it is economically and technically feasible to do so;

(b) Actively and affirmatively soliciting bids from qualified DBEs/MBEs/WBEs, including circulation of solicitations to Minority and Women's trade associations and to eligible DBEs are listed on the NYSUCP website http://biznet.nysucp.net.

(c) Each Contracting Party shall maintain records detailing the efforts made to provide for meaningful M/WBE participation in the work, including the names and addresses of all M/WBEs contacted and, if an M/WBE is the low bidder and is not selected for such work or portion thereof, the reasons for such decision;

(d) Making plans and specifications for prospective work available to DBEs/MBEs/WBEs in sufficient time for review;

(e) Utilizing the services and cooperating with those organizations providing technical assistance to the Contracting Party in connection with potential DBE/MBE/WBE participation on the Contract;

(f) Utilizing the resources of the (i) ESD Affirmative Action Unit to identify New York State certified M/WBE firms and for the purpose of soliciting bids and subcontracts and (ii) New York State Uniform Certification Program, including its website http://biznet.nysucp.net to identify eligible DBEs and fro the purpose of soliciting bids and contracts;

(g) Encouraging the formation of joint ventures, associations, partnerships, or other similar entities, where appropriate, to ensure that the Contracting Party will meet its obligations herein; and

(h) Remitting payment in a timely fashion.

(i) A Contracting Party's best efforts will be assessed by examining the total dollar value of the work performed by DBEs/MBEs/WBEs. The total dollar value of the work performed by DBEs/MBEs/WBEs will be determined as: (i) the dollar value of the work subcontracted to DBEs/MBEs/WBEs; (ii) where the Contracting Party is a joint venture, association, partnership or other similar entity including one or more DBEs/MBEs/WBEs - the contract price multiplied by the percentage of the entity's profits/losses which are to accrue to DBE(s)/MBE(s)/WBE(s) under the Contracting Party's agreement; or (iii) where the M/WBE is the Contracting Party - the contract price.

Best Efforts - Minority Group Member and Female Workforce Participation

The Contracting Party shall use best efforts to provide for meaningful Minority Group Member and female workforce participation; such best efforts shall include at least the following in connection with the work:

(a) Ensure and maintain a working environment free of harassment, intimidation, and coercion at the premises. The Contracting Party shall specifically ensure that all foremen, superintendents, and other on-site supervisory personnel are aware of and carry out the obligation to maintain such a working environment, with specific attention to Minority Group Member or female individuals working at the premises;

(b) State in all solicitations or advertisement for employees that all qualified applicants will receive consideration for employment without regard to race, creed, color, national origin, sex, sexual orientation, age disability or marital status;

(c) Send to each labor union or representative of workers with which a collective bargaining agreement or understanding is in place, a notice advising the said labor union or workers' representative of commitments under this Section, and post copies of the notice in conspicuous places available to employees and applicants for employment;

(d) Establish and maintain a current list of Minority Group Member and female recruitment sources and community organizations, and provide written notification to them when employment opportunities are available. Maintain a record of the organizations' responses;

(e) Maintain a current file of the name, address and telephone number of each Minority Group Member and female applicant and any referrals from a union, recruitment source or community organization, and of the action taken with respect to each individual. If such individual was sent to the union hiring hall for referral and was not referred back by the union or, if referred, was not employed, this shall be documented in writing in the file with the reasons therefor, along with whatever additional actions the Contracting Party may have taken;

(f) Disseminate the Contracting Party's equal employment opportunity policy by providing notice of the policy to unions and training programs and requesting their cooperation in meeting its Equal Employment Opportunity obligations, by including it in any policy manual and collective bargaining agreement, by publicizing it in the company newspaper, annual report, and other similar items, by specific review of the policy with all management personnel and with all Minority Group Member and female employees at least once a year, and by posting the company Equal Employment Opportunity policy on bulletin boards accessible to all employees at each location where work is performed under this Contract;

(g) Disseminate the Contracting Party's Equal Employment Opportunity policy externally by including it in any advertising in the news media, specifically including Minority Group Member and female news media, and providing written notification to and discussing the Equal Employment Opportunity policy with any contractor with whom the Contracting Party does or anticipates doing business; and,

(h) Ensure that all facilities and company activities are non-segregated except that separate or single-user toilets and necessary changing facilities shall be provided to assure privacy between the sexes.

(i) A Contracting Party's best efforts will be assessed by calculating a percentage equal to the person hours of training and employment of minority or female workers, as the case may be, used by any Contracting Party, divided by the total person hours of training and employment of all workers (including supervisory personnel).

(j) The required participation for minority and female employment and training must be substantially uniform throughout the work.

(k) Contracting Party shall not participate in the transfer of minority or female employees or trainees from employer-to-employer or from project-to-project for the sole purpose of meeting the Contracting Party's obligations herein.

(l) In striving to provide for meaningful M/FWF participation, Contracting Party shall use its best efforts to identify and employ qualified minority and female supervisory personnel and journey persons.

(m) The non-working hours of trainees or apprentices may not be considered in measuring M/FWF participation unless (1) such trainees or apprentices are employed by Contracting Party during the training period; (2) the Contracting Party has made a commitment to employ the trainees or apprintices at the completion of their training, subject to the availability of employment opportunities; and (3) the trainees are trained pursuant to an approved training program.

ATTACHMENT E-4

MONTHLY EMPLOYMENT UTILIZATION REPORT ("MEUR") FOR THE MINORITY & FEMALE WORKFORCE PARTICIPATION ("M/FWF")

Minority & Female Workforce participation are expressed as a percentage equal to the persons hours of training and employment of minority and female workers as the case may be used by the Contractor or Subcontractor in the work, divided by the total person-hours of training and employment of all workers (including supervisory personnel) used by the Contractor and any Subcontractor in the work. ESD requires that all contractors and their subcontractors complete and submit the MEUR activity forms for each month of work. The MEUR activity forms are to be completed and forward by the fifth day of each month.

Schedule A-2

MONTHLY EMPLOYMENT UTILIZATION REPORT

(See reverse side for instructions)

EMPIRE STATE DEVELOPMENT

COMPANY NAME: _____

ADDRESS: _____

_____

TELEPHONE NUMBER: _____

FEDERAL ID NO.: _____

CHECK IF NOT-FOR-PROFIT:

PROJECT NAME: _____

PROJECT LOCATION: _____

COUNTY: _____ ZIP: _____

REPORTING PERIOD: Month_____Year

CONTRACTOR START DATE: _____

ESTIMATED COMPLETION DATE: _____

PERCENT OF JOB COMPLETED *(for reporting period)*

CONTRACT NO.: _____

CONTRACT AMOUNT: _____

CLASSIFICATION	**1. WORKER HOURS OF EMPLOYMENT**											**2. NUMBER OF WORKERS**				**3. CONSTRUCTION TRADES**
	1a. ALL WORKER HOURS			1b. BLACK (Not of Hispanic Origin)		1c. HISPANIC		1d. ASIAN or PACIFIC ISLANDER		1e. NATIVE AMERICAN/ ALASKAN NATIVE		2a. ALL		2b. MINORITY		
	MALE	FEMALE	TOTAL	MALE	FEMALE	MALE	FEMALE	MALE	FEMALE	MALE	FEMALE	MALE	FEMALE	MALE	FEMALE	
Supervisory																
Journey Worker																
Apprentice																
Trainee																
Subtotal																
Journey Worker																
Apprentice																
Trainee																
Subtotal																
Journey Worker																
Apprentice																
Trainee																
Subtotal																
TOTAL SUPERVISORS																
TOTAL JOURNEY WORKERS																
TOTAL APPRENTICES																

COMPANY NAME: _____ ADDRESS: _____ _____ TELEPHONE NUMBER: _____ FEDERAL ID NO.: _____ CHECK IF NOT-FOR-PROFIT:	PROJECT NAME: _____ PROJECT LOCATION: _____ COUNTY: _____ ZIP: _____ _____ REPORTING PERIOD: Month_____Year	CONTRACTOR START DATE: _____ ESTIMATED COMPLETION DATE: _____ PERCENT OF JOB COMPLETED *(for reporting period)* CONTRACT NO.: _____ CONTRACT AMOUNT: _____

TOTAL TRAINEES																
GRAND TOTAL																

CERTIFICATION: I, _____ (Print Name), the _____(Title), do certify that (i) I have read this Monthly Employment Utilization Report and (ii) to the best of my knowledge, information and belief the information contained herein is complete and accurate.

SIGNATURE _____ DATE

MONTHLY EMPLOYMENT UTILIZATION REPORT

Instructions for Completion

The Monthly Employment Utilization Report ("MEUR") is to be completed by each subject contractor (both Prime and Sub) and signed by a responsible official of the company. The reports are to be filed by the 5th day of each month during the term of the project, and they shall include the total work-hours for each employee classification in each trade in the covered area for the monthly reporting period. The prime contractor is responsible for submitting its subcontractors report, along with its own. Additional copies of this form may be obtained from Empire State Development ("ESD").

Minority: Includes Blacks, Hispanics, Native Americans, Alaskan Natives, and Asian and Pacific Islanders, both men and women.

1. *Worker Hours of Employment (a-e)*:

   a) All Worker Hours: The total number of male hours, the total number of female hours, and the total of both male and female hours worked under each classification.

   b) through e) Minority Worker Hours The total number of male hours and the total number of female hours worked by each specified group of minority worker in each classification.

2. *Number of Workers (a-b)*:

   a) All Workers Total number of males and total number of females working in each classification of each trade in the contractor's aggregate workforce during reporting period.

   b) Minority Workers Total number of male minorities and total number of female minorities working in each classification, in each trade in the contractor's aggregate workforce during reporting period.

3. *Construction Trade*: Only those construction crafts which contractor employs in the covered area.
   Construction Trades include: Field Office Staff (Professionals and Office/Clerical), Laborers, Equipment Operators, Surveyors, Truck Drivers, Iron Workers, Carpenters, Cement Masons, Painters, Electricians, Plumbers and Other.

Note: ESD may demand payroll records to substantiate work hours listed on the Monthly Employment Utilization Report, if discrepancies should arise.

OCCUPATIONAL CODES

Officials/Administrators	100
Professionals	110
Technicians	120
Sales Workers	130
Office & Clerical	140
Craft Workers	150
Operatives	160
Laborers	170
Service Workers	180

FORWARD TO:

Empire State Development
Affirmative Action Unit – Laverne Poole
633 Third Avenue
New York, NY 10017 Office: (212) 803-3224 FAX: (212) 803-3223

ATTACHMENT F

Policy Regarding Permissible Contacts under State Finance Law Section 139-j and 139-k, (applicable to all ESD subsidiaries, including MSDC)

As of January, 2007

Policy Regarding Permissible Contacts under State Finance Law Section 139-j and 139-k with respect to procurements by New York State Urban Development Corporation d/b/a Empire State Development Corporation and its subsidiaries (including MSDC)

1. Definitions

The following terms shall have the following meanings:

a. "contact" or "contacts" shall mean any oral, written or electronic communication with the Corporation under circumstances from which a reasonable person would infer that the communication was intended to influence a procurement by the Corporation.

b. "Corporation" shall mean ESD or any of its subsidiaries (such as MSDC), as the case may be.

c. "ESD" shall mean the New York State Urban Development Corporation d/b/a Empire State Development Corporation.

d. "offerer" shall mean the individual or entity, or any employee, agent or consultant or person acting on behalf-of such individual or entity that makes a contact during the restricted period.

e. "procurement" shall mean (i) the, preparation of terms of the specifications, bid documents, request for proposals, or evaluation criteria for a procurement contract; (ii) solicitation for a procurement contract; (iii) evaluation of a procurement contract; (iv) award, approval, denial or disapproval of a procurement contract, or (v) approval or denial of an assignment, amendment (other than amendments that are authorized and payable under the terms of the procurement contract as it was finally awarded or approved), renewal or extension of a procurement contract, or any other material change in the procurement contract resulting in a financial benefit to the offerer.

f. "procurement contract" shall mean any contract or other agreement for a commodity, service, technology, public work, construction. the grant of a franchise or concession, the purchase, sale or lease of real property or an acquisition or granting of other interest in real property which contract or other agreement involves an estimated annualized expenditure in excess of fifteen thousand dollars. Grants, eminent domain transactions and other transactions listed in subdivision (1)(g) of Section 139-j of the State Finance Law shall not be deemed procurement contracts.

g. "restricted period" shall mean the period of time commencing with the earliest written notice or advertisement of the availability of the solicitation document for a procurement contract and concluding with the execution of a final procurement contract.

2. Permissible Contacts during the Restricted Period

a. With respect to each procurement that it conducts, the Corporation shall designate a person or persons who may be contacted by offerers relative to the procurement. All comments and questions from offerers regarding a procurement should generally be in writing and must be addressed only to the contact person(s) identified in the solicitation document or otherwise identified to offerers.

b. During the restricted period, offerers shall only communicate, with respect to any procurement, in the manner and with the individuals set forth in Section 2 (a) of *this* Policy.

c. Notwithstanding Section 2(b) of this Policy, offerers may:

i. submit proposals in response to a solicitation document;
ii. submit written questions as may be provided **for in** the solicitation document;
iii. participate in any pre-bid conference or site visit as may be provided for in the solicitation document;
iv. make a complaint in writing to the general counsel of the Corporation if a communication by an offerer made in accordance with Section 2(a) of this policy has not been responded to in a timely manner;
v. after being notified of a tentative award of a procurement contract, engage in communications solely for the purpose of negotiating the terms of the **final** contract or contracts and any interim agreements in advance of the final contract or contract, including any conditional designation document;
vi. request the review of an award of a procurement contract;
vii. participate in protests, appeals or other review proceedings (including the apparent successful respondent and its representatives) seeking a final administrative or judicial determination;
viii. make a complaint to the attorney general, inspector general, district attorney or court of competent jurisdiction regarding alleged improper conduct with respect to the procurement; and
ix. communicate with a member of the New York State legislature or legislative staff about the procurement.

d. Offerers shall not attempt to influence the conduct of, and award of a contract under, the procurement in a manner that would result in a violation or an attempted violation of Section 73(5) (regarding certain gifts) and Section 74 (code of ethics) of the Public Officers Law.

e. As early as practicable during the restricted period, the Corporation shall seek a written affirmation from each offerer as to its understanding of and agreement to comply with State Finance Law Section 139-j and this Policy regarding permissible contacts during the restricted period. Each respondent to a solicitation who has not submitted such an affirmation prior to submitting a proposal, must submit such a written affirmation with its proposal.

Recording of Contacts

Upon receiving any contact during the restricted period, Corporation staff shall make a record of such contact, including the name, address, telephone number, place of principal employment and occupation of the person or organization making the contact and whether the person or organization making the contact was the potential respondent itself or was retained, employed or designated by or on behalf of the potential respondent.

4. Violations of Requirements Regarding Permissible Contacts

a. Any member, officer or employee of the Corporation who becomes aware that an offerer has violated the provisions of State Finance Law 139-j(3) or Section 2 of this Policy regarding permissible contacts during the restricted period shall immediately notify the General Counsel of the Corporation of the impermissible contact and shall provide the Corporation's General Counsel with a copy of the record of contact.

b. If any member, officer or employee of a governmental entity other than the Corporation becomes aware that violation regarding permissible contacts with respect to a procurement has occurred involving such other governmental entity, then such member, officer or employee shall make a record of such impermissible contact and shall immediately notify the ethics officer, inspector general, if any, or other official of **the** other governmental entity responsible for investigating such matters, who shall in turn notify the Corporation's General Counsel and provide the General Counsel with a copy of the record of contact.

c. Upon receiving notice of an impermissible contact with respect to a procurement, the Corporation's General Counsel will conduct an investigation to determine whether an impermissible contact occurred and, if so, whether such impermissible contact was knowing and willful. The investigation shall include review of the record of contact and may include an interview of the individual making the report and other involved staff. The investigation may include review of such other documents or the interview of such other individuals as the General Counsel in his or her discretion may consider appropriate.

d. The Corporation's General Counsel shall endeavor to make a determination, within ten business days of receiving any notice of impermissible contact, whether sufficient cause exists to believe that the impermissible contact occurred and that such contact was knowing and willful , but in any event shall make such determination before the award of a final procurement contract or contracts. In the event it is determined that sufficient cause exists to

believe that the impermissible contact occurred and *was* knowing and willful, then the General Counsel shall notify the involved offerer of the date and nature of the alleged impermissible contact and of the preliminary determination that such contact was knowing and willful.

e. The offerer shall be provided with an opportunity to submit a written response to the alleged impermissible contact within ten business days of receiving such notice. In the General Counsel's discretion, an interview with the offerer may be granted or required. In making a final determination regarding an allegation of impermissible contact, the General Counsel shall take into consideration any information provided by the offerer during the course of the investigation.

f. In the event the General Counsel makes a final determination that an offerer has knowingly and willfully violated this policy or Section 139-j of the State Finance Law and such violation involved misconduct by a Corporation employee in the implementation of this policy, then the General Counsel shall report such instance of employee misconduct to the Corporation's President.

g. The notice provided for in Section 4(d) above may be sent by facsimile transmission or electronic mail provided that hard copy of such notice is also sent by overnight, personal or other method of delivery providing a delivery receipt, to the offerer at the address listed on the report of contact, in the offerer's proposal or such other address as the General Counsel may deem most appropriate.

h. Prior to awarding any procurement contract, the Corporation shall make a determination of responsibility with respect to the proposed awardee. In making a determination of responsibility with respect to any offerer, the Corporation shall consider the proposed awardee's ability to perform the services provided for in the proposed contract including but not limited to such factors as the offerer's financial capability; level of relevant expertise; depth and qualifications of staff; if applicable, the offerer's prior performance under contracts with ESD or any subsidiary of ESD or other instrumentality of the State of New York; and any prior findings of non-responsibility with respect to such offerer (by any governmental entity, as defined in section (1)(a) of State Finance Law Section 139-j) made within the preceding four years.

i. Notwithstanding any of the criteria set forth in section 4(g) above, either of the following shall result in a determination of non-responsibility with respect to any offerer: (I) a final determination, pursuant to the procedure set forth in this section 4, that such offerer has knowing and willfully violated the provisions of this policy or State Finance Law Section 139-j, and (II) the failure by such offerer to timely disclose accurate and complete information or otherwise cooperate with the Corporation in administering this policy and the provisions of State Finance Law Section 139-j.

j. In the event an offerer is determined to be non-responsible, such offerer and its subsidiaries and any related or successor entity with substantially similar function. management, board of

directors, officers and shareholders shall not be awarded any contract pursuant to the procurement unless, by action of the Board of Directors, the Corporation finds that the award is necessary to protect public property or public health or safety and that the offerer is the only source capable of performing the contract. Any such action by the Corporation's Board of Directors shall state the basis for the finding of necessity and a record of the action and the basis shall be included in the procurement record.

k. Any subsequent determination of non-responsibility due to a violation of State Finance Law Section 139-j within four years of a determination of non-responsibility due to such a violation shall result in the offerer's being rendered ineligible to submit a proposal on or be awarded any procurement contract for any governmental entity subject to the provisions of State Finance Law Section 139-j for a period of four years from the date of the second determination of non-responsibility.

l. Upon making any determination of non-responsibility or ineligibility under this Section 4, the Corporation shall notify the New York State Office of General Services so that the offerer that is the subject of such determination will be included in the list of all offerers who have been determined to be non-responsible or ineligible, which list is published on the Office of General Services' website and is publicly available.

5. Required Contractual Provisions

Each procurement contract awarded by the Corporation shall contain (a) a certification by the offerer that all information provided to the Corporation with respect to State Finance Law Section 139-j is true, complete and accurate; and (b) a provision authorizing the Corporation to terminate the contract in the event such certification is found to be intentionally false or intentionally incomplete.

6. Procurement Record

a. The Corporation shall maintain a procurement record with respect to the procurement and the ultimate award of contracts thereunder. The procurement record shall contain such documents as evidence the material decisions made and approach taken in the procurement process, including, without limitation, the following:

i. a full copy of the solicitation document(s) and all addenda thereto;

ii. a copy of all questions and answers made available to offerers;

iii. copies of all proposals submitted in response to the solicitation;

iv. all records of contacts, Offerer Disclosure of Prior Non-Responsibility Determinations and Offerer Affirmation of Understanding of and Agreement pursuant to State Finance Law Section 139-j made or submitted in accordance with said Section of the State Finance Law;

v. all complaints to the General Counsel made pursuant to this policy; all records of the General Counsel with respect to any investigation into any allegation of a knowing and willful violation of the provisions of this policy and the State Finance Law Section 139-j regarding permissible contacts and all determinations made pursuant to such investigation;

vi. all determinations of responsibility or non-responsibility and other documentation of evaluations by or on behalf of the Corporation of responses to the solicitation; and

vii. a statement describing the basis for any action taken to terminate the procurement contract because of a false, incomplete or inaccurate certification of compliance with or other violation of State Finance Law Section 139-j.

b. All documents comprising the procurement record shall be subject to disclosure in accordance with the provisions of the Freedom of Information Law and any other applicable law.

7. Miscellaneous

a. Complaints or other notices to the General Counsel of the Corporation regarding the implementation of this policy shall identify the solicitation with respect to which the complaint or notice is being submitted; the entity conducting the procurement at issue; and the nature of the complaint or notice, and should be submitted to the General Counsel of ESD at the following address, for further forwarding, if necessary:

General Counsel
Empire State Development Corporation
633 Third Avenue
New York, NY 10017

b. This policy is adopted pursuant Sections I39 -j and 139-k of the State Finance Law. Nothing in this policy shall be construed as limiting the application of this law. In the event of a conflict between the provisions of this policy and the provisions of State Finance Law Sections 139-j and 139-k, the provisions of said Law shall govern.

ATTACHMENT G

Offerer Disclosure of Prior Non-Responsibility Determinations

Model Language to Obtain the Offerer Disclosure of Prior Non-Responsibility Determinations

Background:

Under New York State Finance Law § 139-k(2), covered governmental entities are obligated to obtain specific information regarding prior non-responsibility determinations. This information must be collected in addition to the information that is separately obtained pursuant to State Finance Law § 163(9). In accordance with State Finance Law § 139-k, an Offerer must be asked to disclose whether there has been a finding of non-responsibility made within the previous four (4) years by an Governmental Entity due to: (a) a violation of State Finance Law § 139-j or (b) the intentional provision of false or incomplete information to a Governmental Entity. The terms "Offerer" and "Governmental Entity" are defined in State Finance Law § 139-k(1). State Finance Law § 139-j sets forth detailed requirements about the restrictions on Contacts during the procurement process. A violation of State Finance Law § I39 -j includes, but is not limited to, an impermissible Contact during the restricted period (for example, contacting a person or entity other than the designated contact person, when such Contact does not fall within one of the exemptions).

As part of its responsibility determination, a covered governmental entity must consider whether an Offerer fails to timely disclose accurate or complete information regarding the above non-responsibility determination. In accordance with law, no Procurement Contract shall be awarded to any Offerer that fails to timely disclose accurate or complete information under this section, unless a finding is made that the award of the Procurement Contract to the Offerer is necessary to protect public property or public health safety, and that the Offerer is the only source capable of supplying the required Article of Procurement within the necessary timeframe.

Instructions:

A Governmental Entity must include a disclosure request regarding prior non-responsibility determinations in its solicitation of proposals or bid documents or specifications or contract documents, as applicable, for procurement contracts. The attached form is to be completed and submitted by the individual or entity seeking to enter into a Procurement Contract.

Offerer Disclosure of Prior Non-Responsibility Determinations

Name of Individual or Entity Seeking to Enter into the Procurement Contract: ,

_____

Address: _____

_____

Name and Title of Person Submitting this Form: _____

_____

Contract Procurement Number: _____
Date:

1. Has any Governmental Entity made a finding of non-responsibility regarding the individual or entity seeking to enter into the Procurement Contract in the previous four years?
(Please circle): No Yes
If yes, please answer the next questions:

2. Was the basis for the finding of non-responsibility due to a violation of State Finance Law § 139-j?
(Please circle) No Yes

3. Was the basis for the finding of non-responsibility due to the intentional provision of false or incomplete information to a Governmental Entity?
(Please circle) No Yes

4. If you answered yes to any of the above questions, please provide details regarding the finding of non-responsibility below.

Governmental Entity:

Date of Finding of Non-Responsibility:

Basis of Finding of Non-Responsibility:

(Add additional pages as necessary)

5. Has any Governmental Entity or other governmental agency terminated or withheld a Procurement Contract with the above-named individual or entity due to the intentional provision of false or incomplete information? (Please circle)
No Yes

6. If yes, please provide details below. Governmental Entity:
Date of Termination or Withholding of Contract:
Basis of Termination or Withholding:
(Add additional pages as necessary) Offerer certifies that all information provided to the Governmental Entity with respect to State Finance Law § 139-k is complete, true and accurate By. Date:
Signature Name.
Title:

ATTACHMENT H

Offerer's Affirmation of Understanding of and Agreement

Model Language to Obtain Offerer's Affirmation of Understanding of and Agreement pursuant to State Finance Law § 139-j (3) and § 139-j (6) (b)

Background:

State Finance Law § 139j(6)(b) provides that:

> Every Governmental Entity shall seek written affirmations from all Offerers as to the Offerer's understanding of and agreement to comply with the Governmental Entity's procedures relating to permissible contacts during a Governmental Procurement pursuant to subdivision three al this section.

Instructions:

A Governmental Entity must obtain the required affirmation of understanding and agreement to comply with procedures on procurement lobbying restrictions regarding permissible Contacts in the restricted period for a procurement contract in accordance with State Finance Law § § 139-j and 139-k. It is recommended that this affirmation be obtained as early as possible in the procurement process, such as when the Offerer submits its proposal or bid. The following language can be used to obtain the affirmation.

Offerer affirms that it understands and agrees to comply with the procedures of the Government Entity relative to permissible Contacts as required by State Finance Law § 139-j (3) and § 139-j (6) (b).

Signed:_____ Date: _____

Name: _____

Title: _____

Contractor Name: _____

Contractor Address: _____

_____

_____

ATTACHMENT J

Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion (Primary Contractor)
&
Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion – Lower Tiered Covered Transactions

CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS--PRIMARY COVERED TRANSACTIONS

Instructions For Certification

1. By signing and submitting this proposal, the prospective primary participant is providing the certification set out below.

2. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.

3. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

4. The prospective primary participant shall provide immediate written notice to the department or agency to which this proposal is submitted if at any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

5. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the department or agency to which this proposal is being submitted for assistance in obtaining a copy of those regulations.

6. The prospective primary participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

7. The prospective primary participant further agrees by submitting this proposal that it will include the clause titled ``Certification Regarding Debarment, Suspension, Ineligibility and

Voluntary Exclusion- Lower Tier Covered Transaction,'' provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

8. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and Non-procurement Programs.

9. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

10. Except for transactions authorized under paragraph 6 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS--PRIMARY COVERED TRANSACTIONS

(1) The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any Federal department or agency;

(b) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal,
State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification;

(d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

(2) Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

_____	_____
Signature/Authorized Certifying Official	Typed Name and Title
_____	_____
Applicant/Organization	Date Signed

CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION - LOWER TIER COVERED TRANSACTIONS

1. The prospective lower tier participant,

_____, certifies by submission of this bid or proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

3. The prospective lower tier participant shall provide immediate written notice to MSDC (and the Contractor, if applicable) if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

Executed this day _____ of _____, 20____.

_____

BY SIGNATURE OF AUTHORIZED OFFICIAL

_____

NAME AND TITLE OF AUTHORIZED OFFICIAL

ATTACHMENT K

CERTIFICATION REGARDING LOBBYING PURSUANT TO 31 U.S.C. 1352

CERTIFICATION REGARDING LOBBYING PURSUANT TO 31 U.S.C. 1352

The undersigned

_____

(name of authorized officer)

certifies, to the best of my knowledge and belief, that:

- No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

- If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form LLL, "Disclosure of Lobbying, Activities" in accordance with its instructions.

- The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by, 31, U.S. C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Note: Pursuant to 31 U.S.C § 1352(c)(I)-(2)(A), any person who makes a prohibited expenditure or fails to file or amend a required certification or disclosure form shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such expenditure or failure.

The Contractor certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. § 3801, et seq., apply to this certification and disclosure, if any.

Executed this day _____of _____, 2010__

By:_____

Signature of Authorized Official

_____

Official Name and Title of Authorized Official

STANDARD FORM LLL - DISCLOSURE OF LOBBYING ACTIVITIES

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352

1. Type of Federal Action: _X_ a. contract ____ b. grant ____ c. cooperative agreement ____ d. loan ____ e. loan guarantee ____ f. loan insurance	**2. Status of Federal Action:** _X_ a. bid/offer/application ____ b. initial award ____ c. post award	**3. Report Type:** _X_ a. initial filing ____ b. material change **For material change only:** Year _____ quarter _____ Date of last report_____

4. Name and Address of Reporting Entity: _X_ Prime _____Subawardee Tier_____, if Known: **Congressional District,** *if known*:	**5. If Reporting Entity in No. 4 is Subawardee,** Enter Name and Address of Prime: **Congressional District,** *if known*:
6. Federal Department/Agency:	**7. Federal Program Name/Description:** CFDA Number, *if applicable*: _____
8. Federal Action Number, *if known:*	**9. Award Amount**, *if known:* **$**
10. a. Name and Address of Lobbying Registrant *(if individual, last name, first name, MI):*	**b. Individuals Performing Services** *(including address if different from No. 10a)* *(last name, first name, MI):*
11. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This	**Signature:** _____ **Print Name:** _____ **Title:** _____

information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.	**Telephone No.: _____ Date: _____**
Federal Use Only	**Authorized for Local Reproduction** **Standard Form - LLL (Rev. 7-97)**

INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. Section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.
2. Identify the status of the covered Federal action.
3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.
4. Enter the full name, address, city, State and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.
5. If the organization filing the report in item 4 checks "Subawardee," then enter the full name, address, city, State and zip code of the prime Federal recipient. Include Congressional District, if known.
6. Enter the name of the federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.
7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.
8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitations for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Included prefixes, e.g., "RFP-DE-90-001."
9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.

10. (a) Enter the full name, address, city, State and zip code of the lobbying registrant under the Lobbying Disclosure Act of 1995 engaged by the reporting entity identified in item 4 to influence the covered Federal action.

    (b) Enter the full names of the individual(s) performing services, and include full address if different from 10(a). Enter Last Name, First Name, and Middle Initial (MI).
11. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

According to the Paperwork Reduction Act, as amended, no persons are required to respond to a collection of information unless it displays a valid OMB control Number. The valid OMB control number for this information collection is OMB No. 0348-0046. Public reporting burden for this collection of information is estimated to average 10 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, DC 20503.

ATTACHMENT L

MSDC Procurement Protest Procedure

PROCUREMENT PROTESTS

Protest Procedure

The following protest procedure is the sole administrative remedy for protesting procurement decisions of the Moynihan Station Development Corporation (MSDC).

Any bidder or proposer submitting a bid or proposal in response to a MSDC solicitation may protest the award or decision to award a contract by submitting to MSDC Vice President, Development 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 MSDC's website or actual knowledge by the protester that a decision by MSDC to award to other than the protester has been made whichever occurs first, addressed as follows:

Vice President, Development
Moynihan Station Development Corporation
633 Third Avenue
New York, NY 10017

The written protest must be received in MSDC 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 therefor.

The MSDC Vice President, Development shall, within three (3) business days of receipt of the protest, appoint a Protest Officer who will be a manager or other employee of MSDC or New York State Urban Development Corporation d/b/a Empire State Development Corporation (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 in 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.