MOYNIHAN STATION
PHASE 1

REQUEST FOR PROPOSALS
INTEGRITY MONITORING SERVICES

ISSUED BY
MOYNIHAN STATION DEVELOPMENT CORPORATION

DECEMBER 15, 2011

Deadline for responses: 12:00 PM (EST) on January 30, 2012

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

All questions, comments, requests for clarification or any other communication regarding this RFP must be submitted no later than ***January 12, 2012*** *to msdc@empire.state.ny.us. MSDC will not accept, and cannot respond to, questions, comments, or requests for clarification via any other methods. Addenda to this RFP, including responses to any questions, will be posted by January 20, 2012 on the* RFPs & Opportunities *section of the MSDC web site: http://www.esd.ny.gov/Subsidiaries_Projects/MSDC/MSDC_RFPsOpportunities.html.*

I. Project Background and Description

The Moynihan Station Development Corporation ("MSDC" or the "Owner"), a subsidiary of the New York State Urban Development Corporation, doing business as the Empire State Development Corporation ("ESDC"), seeks to retain the services of an Integrity Monitor (or "IM") to perform independent oversight and management reporting services in connection with Phase 1 of the Moynihan Station Civic and Land Use Improvement Project (the "Project").

Phase 1 of the Project involves work in the historic James A. Farley Post Office Building (the "Farley Building"), which is owned by ESDC; 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; in the West End Concourse (the "WEC") leased by Long Island Rail Road ("LIRR") from Amtrak; and in the passageway connecting the West End Concourse to the 8th Avenue Subway and Penn Station ("the 33rd Street Connector") operated by MTA New York City Transit ("NYCT").

Phase 1 of the Project will include two new street level entrances at the 31st and 33rd Street corners of the Farley Building to the WEC; the expansion of the WEC to be approximately double in width and length to serve nine of Penn Station's eleven platforms; new vertical access points (stairs, escalators and elevators) from the expanded WEC to the existing Penn Station platforms; a widened and reconfigured 33rd Street Connector to be compliant with the Americans with Disabilities Act ("ADA"); and a new emergency platform ventilation system for the area of the Train Shed below the Farley Building.

Penn Station is expected to remain open and operational during the entire construction period and the United States Postal Service ("USPS") will maintain its retail and mail carrier operations in the Farley Building. In an effort to disrupt service as little as possible for both the railroads and USPS, work on Phase 1 will primarily take place on nights and weekends and is expected to be complete by 2016.

The Project is funded by the Port Authority of New York and New Jersey ("PANYNJ"), the Metropolitan Transportation Authority ("MTA"), and various Federal sources including an $83 million grant from the United States Department of Transportation ("USDOT") from the Transportation Initiatives Generating Economic Recovery ("TIGER") program created under the American Recovery and Reinvestment Act ("ARRA").

MSDC has retained a joint venture of STV Incorporated, Tishman Construction Corporation of New York, and AECOM USA Inc. ("STA Joint Venture") to serve as the Construction Manager on the Project. Architectural, engineering and related consulting services are provided by Skidmore Owings and Merrill LLP ("SOM"), Parsons Brinckerhoff Quade & Douglas, Inc. ("PB"), Systra Engineering, Inc. ("SE") and their associated subconsultants.

Bid packages for the Moynihan Station Phase 1 Construction Services Contract ("Construction Contract") were released on September 30, 2011 and the Construction Contract is expected to be awarded in February 2012 to a contractor (hereinafter, the "Contractor").

II. Scope of Services

MSDC's goals and objectives for this solicitation are to retain the services of an IM to assist in providing the necessary oversight and monitoring of the Project. The purposes of instituting an integrity monitoring program shall be to: prevent fraud, waste and abuse and/or corruption; detect it; and, if detected, to coordinate the definitive and effective actions to be taken in consultation with the MSDC President and the PANYNJ Program Director.

In order to effectively monitor for integrity risks, the IM must understand the types of corruption and fraud that might occur, as well as the safety and environmental violations that can be committed by construction managers and contractors. The team must also have the expertise and industry knowledge to allow it to create proactive, customized solutions to prevent and/or deter fraud, corruption and/or safety and environmental violations from occurring, while not inhibiting the project's schedule, cost, or contractor performance. The IM will have to work cooperatively with the Construction Manager and the Contractor and be able to coordinate its work accordingly.

It is anticipated that the IM shall have sophisticated legal, forensic auditing, investigative, loss prevention skills with particular expertise in the investigation and prosecution of construction, labor, and environmental fraud schemes. The IM shall also include individuals with expertise in construction, engineering, architecture, and safety compliance. MSDC seeks a firm with expertise in the creation and implementation of policies and procedures to ensure that the entities engaged in the Project comply with relevant laws and regulations, as well as the proven ability to prevent, deter, uncover and report actual or potential conduct that may be or can be perceived to be unethical and/or illegal.

The IM shall report to the MSDC President, the PANYNJ Program Director, and appropriate law enforcement authorities, any suspicious, improper or criminal activity on the part of any contractor, subcontractor, consultant, supplier, labor official, government employees, or any other persons or entities in connection with the Project.

The term of the Agreement shall be a five (5) year period commencing in 2012 with a one (1) year option period. The specific scope of work of the IM may include, but is not limited to, the following tasks:

TASK 1: Conduct a review of all existing procedures and processes for vulnerability to fraud, corruption, cost abuse, safety, and/or environmental risks. At the outset, the IM shall obtain information on all entities performing on the Project. The IM shall review and analyze the risks inherent in all pre-construction, construction, and post-construction procedures, including but not limited to the procurement process, invoice procedures, and the environmental and safety compliance programs. The IM shall also review and understand all contracts, union and trade agreements as necessary.

TASK 2: Design and implement corruption prevention programs. Based on its findings from Task 1, the IM shall recommend and assist in implementing procedures designed to mitigate all risks identified in its initial review. The IM shall provide ongoing audit and investigative services as necessary, to include, but not be limited to, establishing and maintaining a Fraud Prevention

Hotline, conducting on-site inspections of work, inspections of the make- up and use of labor, compliance with collective bargaining agreements and DBE/MBE/WBE requirements (as applicable), compliance with state and federal labor laws, review and monitoring of worker safety plans and procedures, and compliance audits of waste disposal facilities and transports.

TASK 3: Budget review and monitoring. The IM shall periodically review the budgets of the Construction Manager and the Contractor, including specific budgetary amounts allocated for each trade, general condition and contingency costs, and any changes in scope, holds, contingency, allowances, change orders, or other miscellaneous additions or credits.

TASK 4: Records review and compliance. The IM shall periodically review the records of the Construction Manager and the Contractor, with specific attention to documentation and records keeping related to the bidding process, change-orders, payment applications, insurance certifications, and environmental and safety records.

TASK 5: Forensic review and oversight. The IM shall conduct forensic reviews of project cost, including the analysis of requisitions and supporting documentation, payments, change-orders, change-order requisitions and supporting documentation, payments to vendors, equipment invoices, bond payment reconciliation, certified payroll reports, site logs, trucking manifests, etc.

TASK 6: Forensic auditing and investigations. The IM shall provide ongoing forensic auditing and investigative services, as necessary and directed by the MSDC President and the PANYNJ Program Director, to include, but not be limited to: background investigations on contractors, suppliers, consultants; conducting in-field investigations and on-site monitoring of construction work; investigating and evaluating construction contractor use of the labor, compliance with collective bargaining agreements, and compliance with state and federal labor laws; review and monitoring of worker safety and environmental plans and procedures; compliance with DBE/MBE/WBE requirements and goals; and conducting investigations into illegal conduct by MSDC contractor staff, and others. The IM shall provide written reports of its audits and/or investigations, and may be called upon to meet with law enforcement officials as appropriate. The IM shall also provide a post-construction review to include a forensic audit of all Federal-funded costs.

TASK 7: Quality Management Plan oversight. The IM shall audit the Construction Manager and the Contractor to assure construction is being performed in conformance with procedures outlined in the Contract documentation and the Quality Assurance/Quality Control ("QA/QC") Plan. The IM shall be responsible for overseeing the implementation and management of the Quality Management Plans ("QMPs") for the Contractor and their respective subcontractors, vendors and suppliers. The IM shall provide oversight of the implementation and maintenance of the quality elements presented in the various QMP submittals and coordinate with the Engineer of Construction to assure that the other quality control management systems are maintained, up-to-date, and effective. The IM shall conduct audits of quality programs for adequacy and compliance with performance requirements as well as oversee corrective actions to ensure the elimination of problems that may arise from non-conforming procedures and prevent recurrences. The IM shall confirm through scheduled audits, that preventive action procedures are in place to mitigate potential problems and shall review the documented quality policy to verify that it is understood, implemented and maintained throughout the program organization.

III. Submission of Proposals

To respond to this RFP, the Proposer shall submit a concise Proposal in accordance with the following criteria:

A. Proposal Format: The Proposal shall be no more than 100 pages (double-sided using 12 point or greater font size). Each resume shall be 2-page maximum, double-sided using 12 point or greater front size. The Proposal pages shall be numbered and bound, or in a 3-ring binder, with "Firm Name", and **Moynihan Station Phase 1 Integrity Monitor Proposal** clearly indicated on the cover. Each section of the Proposal shall be separated with a tab divider that is labeled in accordance with the letter of the requirements specified in the section below entitled Proposal Submission Requirements.

B. Proposal Copies: Submit one (1) reproducible original and five (5) copies, along with one (1) electronic copy on a compact disc, of your Proposal for review. 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.

C. Submission Address: **Moynihan Station Development Corporation, 633 Third Avenue, 37th Floor, New York, NY 10001, Attn: Moynihan Station Phase 1 IM Procurement. Do not address your proposal to any other name.**

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

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

F. Proposal Due Date: Allow sufficient time for delivery of your sealed Proposal so that MSDC receives it by **12:00 noon (EDT) on Monday, January 30, 2012 (the "Proposal Due Date"). The cover of your submittal must include the RFP title: "Moynihan Station Phase 1 Integrity Monitor Proposal"** Late submittals may be rejected.

G. Proposal Delivery: **MSDC assumes no responsibility for delays caused by any delivery services. If the Proposal is to be delivered by hand, please note that the person delivering the Proposal will not be permitted access up to MSDC's offices in the 633 Third Avenue building.** The person delivering the 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 Proposal submission for MSDC. A representative from the mailroom will meet that person in the building lobby to accept the Proposal submission.

H. No Electronic Submission: MSDC will not accept Proposals submitted via electronic mail or fax.

I. Additional Information: MSDC may request additional information from any Proposer at any time.

IV. Proposer Prerequisites

Only Proposals from firms demonstrating previous experience in the performance of services similar to those contemplated herein shall be considered. MSDC will be the sole judge of whether a Proposer meets the prerequisite requirements.

Firms who can demonstrate that they comply with the following should submit Proposals, as only Proposals from such Firms will be considered:

A. The Proposer must demonstrate to the satisfaction of MSDC that it has been in the business of providing integrity monitoring services for at least five (5) years.

B. The Proposer must demonstrate to the satisfaction of MSDC that it has the relevant experience and capability to manage a project of this type as described in the Scope of Services. The Proposer may fulfill this requirement by demonstrating that it has been engaged on at least three (3) projects, with construction values in excess of $50 million in comparable urban locations, in the capacity of providing integrity monitoring services as outlined in the Scope of Services. At least one of the above-referenced construction projects for which integrity monitoring services were rendered should have been executed for a project utilizing Federal funds.

In the event a Proposal is submitted by a joint venture, the foregoing prerequisites will be considered with respect to such Proposal as follows:

With respect to subparagraphs (A) and (B) above, the prerequisites will be considered satisfied if the individual members of the joint venture, separately satisfy all the requirements, so that all the prerequisites have been satisfied by the combined joint venture.

If the Proposal is submitted by a common law joint venture, a joint venture that has not been established as a distinct legal entity, each participant of the joint venture shall be held jointly and severally liable and must individually execute and perform all acts required by this Proposal. Documents signed by a common law joint venture, in connection with this Proposal, shall include the names of all participants of the joint venture followed by the words “acting jointly and severally”. All joint venture proposers must provide documentation of their legal status.

All Proposers must include documentation as requested in the Proposal Submission Requirements section below that they meet the above prerequisites. By furnishing this solicitation document to Proposers, MSDC has not made a determination that the Proposers have met the prerequisites or have otherwise been deemed qualified to perform the services. In addition, a determination that a Proposer has met the prerequisites is no assurance that they will be deemed qualified in connection with other Proposal requirements included herein.

V. Evaluation Criteria

Each Proposal will be evaluated by a Selection Committee composed of MSDC and Port Authority personnel experienced in the disciplines necessary to make a value judgment and decision regarding the technical qualifications of the Proposer and its oral presentation, if necessary.

The Selection Committee members will base their evaluation on criteria, which are listed below in relative order of importance, identifying which, if any, are equally weighted:

A. Depth and Quality of Firm Experience
B. Proposed Technical Approach
C. Proposed Management Approach

Award will be made to the responsible firm whose Proposal is most advantageous to MSDC. In determining which Proposal is most advantageous, MSDC will evaluate Proposals to determine which Proposal offers the greatest business value to MSDC based upon an analysis of the qualitative technical factors and price/cost in order to derive which Proposal represents the "best value" to MSDC. In the event that two or more Proposals are considered by MSDC to be basically equal in their technical merit, the evaluated cost or price becomes more important; in such a case, cost or price may ultimately be the deciding factor. Accordingly, MSDC may not necessarily make an award to the Proposer with the highest technical ranking nor award to the Proposer with the lowest Price Proposal, if doing so would not be in the overall best interest of MSDC.

VI. Oral Presentations

After review of all Proposal submissions, an oral presentation to the Selection Committee and others, as appropriate, may be requested by MSDC. Presentations will be limited to approximately thirty (30) minutes, and will be followed by an approximately thirty (30) minute question and answer session. Presentations should only include the material contained in the Proposal. No handouts or additional information can be submitted to the Selection Committee during the presentations unless specifically requested by MSDC.

Proposer'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 subconsultants who are proposed to work or advise MSDC on the Project.

It should be noted that if the Proposer is selected to make a presentation, the Proposer may be given only short advance notice. 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 primary contact person is unavailable.

VII. Proposal Submission Requirements

To respond to this RFP, the Proposer shall provide the following information:

A. Depth and Quality of Firm Experience

Please provide a brief profile of your Firm(s), including organizational history, size, and dollar volume of work completed in the last five (5) years. Please provide examples of at least three (3) construction projects that best demonstrate your firm's experience performing the type of integrity monitoring services outlined in the Scope of Services, particularly with projects of similar size and complexity with construction values in excess of $50 million in comparable urban locations.

For all projects, please provide the name and location of the project, the owner of the project and his or her contact information, a brief description of the project, including size, value and duration of construction, any distinguishing characteristics of the project, and a full description of the scope of services provided.

B. Proposed Technical Approach

Please provide a detailed description of the proposed technical approach to be taken for the performance **of each task** in the Scope of Services. Demonstrate in detail the technical adequacy and feasibility of the approaches, audit and analytical techniques, methods and/or models proposed for the execution and completion of required tasks and the development and implementation of corruption prevention programs. Discuss in detail proposed strategies to monitor the Construction Manager, the Contractor, and Subcontractors.

C. Proposed Management Approach

Please provide a detailed description of the proposed management approach to be taken for the performance of the required services. Factors addressed in Proposer's management approach shall include, but are not limited to the following: proposed organizational structure to be responsive to MSDC's as well as other stakeholders' needs; proposed approach and schedule for keeping MSDC appraised of the Project status; proposed approach to ensuring the quality of the work product to be produced, proposed practices and procedures to control the costs of the project and stay within budget, including the costs associated with any subconsultants utilized to perform the required services.

Please provide an organizational chart for the proposed Project Management Team along with resumes for all members of the Project Management Team. Please identify the proposed role and scope of responsibility for each member of the team and the percentage of time dedicated to the Project. Please provide resumes for each member of the team that includes a description of the last three (3) projects each of these individuals worked on, identifying the role (title, scope of responsibility, reporting structure) each individual played and what firm they were affiliated with.

If your firm is selected, there will be no substitution of the proposed Project Management Team without the written consent of MSDC, and MSDC will not consent until the firm has proffered a candidate with similar and/or equal credentials acceptable to MSDC.

Please identify subconsultants, if any, and indicate their experience and qualifications. Provide the terms and conditions for their compensation, their DBE/MBE/WBE status and the technical qualifications of their key personnel to be assigned to the subject project.

If the Proposer is a joint venture, please address how the joint venture is structured, how the firms intend to coordinate their efforts, what role each firm expects to play on the Project, and why a joint venture is being proposed. All joint venture Proposers must also provide documentation of their legal status.

D. Pricing and Compensation Proposal

The Proposer shall submit a complete set of Pricing and Compensation Proposal forms (available in Microsoft Excel format on the *RFPs & Opportunities* section of the MSDC web site: http://www.esd.ny.gov/Subsidiaries_Projects/MSDC/MSDC_RFPsOpportunities.html).

The Pricing and Compensation Proposal must include the following for the initial five (5) year period commencing in 2012:

1. Proposed Fixed Fee, representing Consultant's profit.

2. Proposed Direct Personnel Costs, including the name, title and actual hourly labor rates of all staff working on the project, per each task in the Scope of Services.

3. Proposed Overhead Rate, expressed as a percentage (*i.e.,* 145%). The Proposer should submit any backup material deemed appropriate, including but not limited to the computation of the Overhead Rate and the firm's Certified Overhead Statement. Failure by a Proposer to submit such material as requested may deem such Proposer as ineligible for award.

4. Proposed Reimbursable Expenses, as an itemized list for out-of-pocket expenses and other direct costs.

5. Proposed Costs of Subconsultants, if any, detailing each of the above elements.

Please submit five (5) copies of your Pricing and Compensation Proposal in a separate sealed envelope labeled "Pricing and Compensation Proposal". The Pricing and Compensation Proposal will not be opened until all Proposals have been initially evaluated. MSDC reserves the right to negotiate pricing and compensation with one or more Proposers. No Proposer shall have any rights against MSDC arising at any stage of the solicitation from any negotiations that take place, or from the fact that MSDC does not select a Proposer for negotiations.

E. 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 Proposer (or if Proposer 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. The Proposer 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 Proposer, 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 Proposers (and if Proposer is a joint venture, each participant) demonstrate the ability and willingness to provide for meaningful participation for Disadvantaged Business Enterprises ("DBE"), Minority-owned Business Enterprises ("MBE"), and Women-owned Business Enterprises ("WBE") and the participation of Minority and Female Workforce ("M/FWF"), and to implement the following Affirmative Action Program for the Proposer's work in connection with the Project.

1. The Proposer is required to use good faith 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 the Proposer wishes to subcontract a portion of the work through, or joint venture with, a firm not listed in the NYSCUP directory, but which the Proposer 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, the Proposer 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. The Proposer 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. The Proposer shall complete **Attachment A-1**. Other non-discrimination and affirmative action bid document provisions are set forth in **Attachment A-2**. Certain non-discrimination and affirmative action definitions and related information are set forth in **Attachment A-3**.

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

MSDC strongly encourages Proposers 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.

F. Financial Information

The Proposer will be required to demonstrate that it is financially capable of performing the Agreement resulting from this RFP. The determination of the Proposer's financial qualifications and ability to perform this Agreement will be in the sole discretion of MSDC.

Please provide certified financial statements, including applicable notes, reflecting the Proposer's assets, liabilities, net worth, revenues, expenses, profit or loss and cash flow for the most recent calendar year or the Proposer's most recent fiscal year. Where the certified financial statements are not available, then reviewed statements from an independent Certified Public Accountant setting forth the aforementioned information shall be provided. Where the statements submitted pursuant to the aforementioned do not cover a period which includes a date not more than forty-five (45) days prior to the Proposal Due Date, then the Proposer shall also submit a statement in writing, signed by an executive officer or his/her designee, that the present financial condition of the Proposer is at least as good as that shown on the statements submitted.

Please provide a statement of work which the Proposer has on hand, including any work on which a bid and/or Proposal has been submitted, containing a description of the work, the annual dollar value, the location by City and State, the current percentage of completion, the expected date for completion, and the name of an individual most familiar with the Proposer's work on these jobs.

Please provide the Proposer's (or if Proposer is a joint venture, each participant's) Federal Employer Identification Number (*i.e.*, the number assigned to firms by the Federal Government for tax purposes) certified on IRS Form W-9.

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

G. Vendor Responsibility Questionnaire

ESDC encourages vendors to register in New York State's Vendor Responsibility System ("VendRep System"). The VendRep System allows business entities to enter and maintain their Vendor Responsibility Questionnaire information in a secure, centralized database.

New York State Procurement Law requires that state agencies award contracts only to responsible vendors. Vendors are invited to file the required Vendor Responsibility Questionnaire online via the New York State VendRep System or may choose to complete and submit a paper questionnaire. To enroll in and use the New York State VendRep System, see the VendRep System Instructions available at www.osc.state.ny.us/vendrep or go directly to the VendRep system online at https://portal.osc.state.ny.us. For direct VendRep System user assistance, the OSC Help Desk may be reached at 866-370-4672 or 518-408-4672 or by email at helpdesk@osc.state.ny.us.

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

H. Integrity Certification

If Proposer is designated and selected for performance of the subject services, the Proposer (or if the Proposer is a joint venture, each participant in the joint venture) will be asked to sign a certification (the "Certification Statement") certifying the Proposer's (or if the Proposer is a joint venture, each participant's) compliance with the integrity provisions set forth in the Agreement. By submitting the Proposal, the Proposer (or if the Proposer is a joint venture, each participant) shall be deemed to have made the certifications contained therein unless said Proposer submits a statement with its Proposal explaining the inability to make such certification(s). Such statement shall be submitted in a separate envelope along with your proposal, clearly marked "CERTIFICATION STATEMENT".

I. General Conflict of Interest

If the Proposer (or if the Proposer is a joint venture, any participant) or any employee, agent or subcontractor of the Proposer (or any joint venture participant) may have a possible conflict of interest, or may give the appearance of a possible conflict of interest, the Proposer shall include in its 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 Proposer (or any joint venture participant) performing in any capacity for MSDC has a conflict (or potential conflict) of interest, MSDC may reject or decline to review the Proposal. However, a Proposer 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 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 exist, or may exist in the future:

1. 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.

2. 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.

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

4. 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.

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

6. 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.

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

8. The Proposer (or if the Proposer 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 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 Proposer if, in its 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.

J. Organizational Conflict of Interest

The Agreement 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 may, without some form of restriction on future activities result in an unfair competitive advantage to the Proposer.

1. If the Proposer is awarded the work (*i.e.*, becomes the "Integrity Monitor" pursuant to the Agreement), the Proposer will have access to confidential and/or sensitive MSDC and Project information in the course of Agreement performance. Additionally, the Proposer may be provided access to proprietary information obtained from other contracted entities during Agreement performance. The Proposer 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.

2. If the Proposer is awarded the work (*i.e.*, becomes the "Integrity Monitor" pursuant to the Agreement), then to the extent that the Proposer 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 Proposer 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 Proposer was ineligible to complete.

The Proposer, by submitting its 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 Proposer has violated any term of this clause entitled "Organizational Conflict of Interest", MSDC may take any appropriate action available under the law or regulations to obtain redress to include, but not be limited to, requiring the Proposer to terminate any affiliation or contractual arrangement with a MSDC prime contractor or first-tier subcontractor at no cost to MSDC, determining the Proposer ineligible to compete for or be awarded any subsequent or "follow-on" contracts that may

be based upon the Proposer's actions under the Agreement or violations of this clause, or terminating the Agreement, in whole or in part.

K. Non-Collusive Bidding Certification

Proposer (and if the Proposer is a joint venture, each participant) shall submit a properly subscribed and affirmed Non-Collusive Bidding Certification (**Attachment B**), and Proposer's failure to include it may result in MSDC rejection of the Proposal; provided, however, that if the Proposer (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.

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

State Finance Law Sections 139-j and 139-k (collectively, the "Section 139 Requirements") apply to this solicitation. These requirements (1) govern permissible communications between potential Proposers 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 only with the MSDC contact person listed in this solicitation; (ii) the completion by Proposers 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 available at www.esd.ny.gov/CorporateInformation/Data/RFPs/RequiredForms/SF_Law139_JK.pdf; and (iii) periodic updating of such forms during the term of any contract resulting from this solicitation. Proposers must submit both of these forms, properly completed, as part of their Proposals.

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

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

M. New York State Tax Law Section 5-a

Any contract resulting from this solicitation is also subject to the requirements of State Tax Law Section 5-a ("STL 5-a"). STL 5-a prohibits 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 Proposers must include in their Proposals a properly completed Form ST-220-CA, (a copy of the form is available at www.tax.ny.gov/pdf/current_forms/st/st220ca_fill_in.pdf) or a satisfactory affidavit that the entity is not required to register (a copy of the affidavit form is available at www.esd.ny.gov/CorporateInformation/Data/RFPs/RequiredForms/STL_5A_Affidavit.pdf). Proposers must submit a properly completed ST-220-CA or an Affidavit of Non-Applicability as part of their Proposals.

N. Federal Funding Requirements

Proposer 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 this Section, Federal Funding Requirements.

The contract which is to be procured pursuant to this RFP is funded in whole or in part by the Federal Railroad Administration ("FRA") under the American Recovery and Investment Act of 2009 ("ARRA" or the "Recovery Act") and consequently, the contractor and all subcontracting activity associated with the Agreement will be subject to certain FRA and United States Department of Transportation ("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 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.

2. Federal Certifications

This RFP is a covered transaction for purposes of 2 CFR Parts 180 and 1200. As such, the Proposer is required to verify that none of the Proposer, 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 Proposer 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 Proposer 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 Proposer 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 Proposer agrees to comply with the requirements of 2 CFR 180, Subpart C while this solicitation is valid and throughout the period of any contract that may arise from this offer. The Proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

a. 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 – Lower Tiered Covered Transactions" for itself and its principals. Copies of the required Certification forms and accompanying instructions are set forth in **Attachment C**.

b. In the event that the Proposer 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 Proposer will be liable for any

and all damages incurred by MSDC because of such cancellation, termination or suspension because of such false certification.

c. The Proposer 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 below.

d. 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 the contract must execute and submit to the contractor the certification entitled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tiered Covered Transactions" which will be deemed a part of the resulting subcontract and supplier agreement.

e. The originals of any Certifications or correspondence relating hereto shall be sent to Moynihan Station Development Corporation, 633 Third Avenue, 37th Floor, New York, NY 10017 with the reference "Moynihan Station Phase 1 Integrity Monitor" written thereon.

f. The Proposer 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.

g. As required by USDOT, the Proposer 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.

3. Lobbying Restrictions

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 in **Attachment D**, 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 set forth in **Attachment D**, 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 of 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. 1.) 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," in the form set forth the in **Attachment D** certifying 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 in **Attachment E**, 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.

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.

5. The originals of any certifications or correspondence relating hereto shall be sent to Moynihan Station Development Corporation, 633 Third Avenue, 37th Floor, New York, NY 10017 with the reference "Moynihan Station Phase 1 Integrity Monitor" written thereon.

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.

VIII. Additional Information

A. Insurance

The selected contractor will be required to provide the following insurance:

- Commercial General Liability of $1 million per occurrence and $2 million in the aggregate;
- Commercial Automobile insurance with a limit of not less than $1million;
- Professional Liability insurance of $2 million; and
- Evidence of Workers Compensation/Employer's Liability insurance.

B. Protest Procedures

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

C. Disposal of Contract Documents

The Proposers 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.

The issuance of this Request for Proposals (RFP), and the submission of a Proposal by any firm and the acceptance of a Proposal by MSDC, does not obligate MSDC in any manner. MSDC is not responsible for any costs incurred by a firm in the preparation of a Proposal. MSDC reserves the right to amend, modify or withdraw this RFP, including the right to amend deficient responses, at its sole discretion.

ATTACHMENT A-1

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

_____ hereby certifies to Moynihan Station Development Corporation that:

It agrees to use good faith 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 A-2

NON-DISCRIMINATION AND AFFIRMATIVE ACTION 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.

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: http://biznet.nysucp.net.

ESD's Affirmative Action Officer ("AAO") is available to assist you in identifying New York State certified M/WBEs that can provide goods and services in connection with the project. If you require M/WBE listings, please call the AAO at (212) 803-3225 or go to http://www.esd.ny.gov/MWBE/directorySearch.html.

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 Proposer

_____ Proposer'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 Disadvantaged/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) 803-3223

ATTACHMENT A-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.

Good Faith 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 for 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.

Good Faith 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 therefore, 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 apprentices 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 A-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 – Helen Daniels
633 Third Avenue
New York, NY 10017 Office: (212) 803-3225 FAX: (212) 803-3223

ATTACHMENT B

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 C

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 D

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 _____, 20_____

By:_____

Signature of Authorized Official

_____

Official Name and Title of Authorized Official

ATTACHMENT E

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

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 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.	**Signature:** _____ **Print Name:** _____ **Title:** _____ **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 F

PROCUREMENT PROTEST PROCEDURE

PROCUREMENT 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.