

MTA Construction & Development Company

Non-Disclosure and Confidentiality Agreement

Each of the undersigned (each, a “Recipient”) has executed this Non-Disclosure and Confidentiality Acknowledgement (the “Acknowledgement”) as of the date set forth below their signature (with respect to such Recipient, the “Effective Date”) in connection with its participation as a Bidder, under the terms of the IFB (as defined below).

RECITALS

WHEREAS, the MTA Construction & Development Company (“MTA C&D”) intends to issue an Invitation for Bids for the procurement of Contract No. C52155, Electronic Security System (ESS) at the West 4th Street Subway Station (as amended by any addenda, the “IFB”) on or about July 13, 2022;

WHEREAS, as part of the IFB, MTA C&D will provide certain “Security Sensitive Information” or “SSI” to the Bidders for use in preparing its Bid (each, a Recipient);

WHEREAS, MTA C&D has determined that it is necessary and appropriate that the SSI be made available subject to enhanced protections and assurances regarding confidentiality and disclosure; and

WHEREAS, MTA C&D desires to provide such SSI to Recipient on such basis, subject to the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of mutual covenants, terms and conditions set forth herein, each Recipient and MTA C&D agree as follows:

1. Except as set forth in Section 2 below, “Security Sensitive Information” or “SSI” means:
 - a. any CAD files provided by MTA C&D to the Recipient; and
 - b. any other non-public, confidential or proprietary documents which are identified by MTA C&D as such in writing and which are disclosed before, on or after the Effective Date, by MTA C&D to the Recipient, or to any of such Recipient’s employees, officers, directors, partners, shareholders, agents, attorneys, accountants or advisors (collectively, “Representatives”).
2. Except as required by applicable federal, state or local law or regulation, the term “SSI” as used in this Acknowledgement shall not include information that at the time of disclosure is, or thereafter becomes, generally available to and known by the public other than as a result of, directly or indirectly, any breach of this Acknowledgement, act or omission by the Recipient or any of its Representatives.
3. In addition to complying with its obligations under the IFB, the Recipient will:
 - a. use SSI only in the development of the Bid, as set forth in the IFB, and for no other purpose;
 - b. not disclose or publish any SSI in an unauthorized manner;
 - c. hold SSI in strict confidence using at least the degree of care it uses to protect its own most sensitive information and no less than a reasonable degree of care, including, but not limited to, requiring password protection for SSI files and storing SSI-related material in a secure location;
 - d. not discuss with or otherwise make available SSI to any unauthorized person;
 - e. not physically retain, photograph, video-record, publish (including through social-media) or otherwise make any record of any SSI; and

- f. institute Information Barriers designed to preserve the confidentiality of the SSI and prevent their unauthorized disclosure, including to Representatives who do not require access to SSI in the course of their participation in the IFB.
4. Further, in addition to complying with its obligations under the IFB, the Recipient will:
 - a. obtain a signed acknowledgement of this Acknowledgement from each subcontractor, consultant, and vendor of the Recipient which is not otherwise a Bidder and which requires access to the SSI in the form attached hereto as Appendix A, as applicable; and
 - b. submit copies of such signatures promptly upon written request to MTA C&D, Contracts Representative, Vaughn Chisholm, at vaughn.chisholm@mtacd.org.
5. If the Recipient is served with a subpoena or discovery request or receives a Freedom of Information Law request relating to SSI, Recipient will immediately notify MTA C&D and cooperate with MTA C&D to seek a protective order or take other necessary action to protect its SSI.
6. If at any time, any person or firm who/which has received SSI from Recipient in accordance with the terms hereof, has been discharged or terminated by Recipient, or is no longer participating with Recipient in the procurement or, if Recipient has been awarded the Project Agreement, and such person or firm is no longer participating with Recipient in the performance of the Project Agreement, Recipient shall terminate all access of such person or firm to SSI and shall cause such person or firm to surrender and relinquish all SSI he/she/it has received from Recipient.
7. MTA C&D does not grant Recipient any right, title or interest of any kind in any intellectual property contained in or relating to SSI.
8. Upon the issuance of a Notice of Award or as otherwise requested by MTA C&D, the Recipient shall promptly deliver all SSI (including any notes, photographs, renderings whether manual or electronic, sketches, scans, or diagrams) in its possession (in whatever form) or the possession of its subcontractors, consultants, vendors, and Representatives to MTA C&D at the Recipient's expense, or otherwise destroy and/or delete such SSI with MTA C&D's consent, and thereafter certify in writing to MTA C&D its compliance with the foregoing.
9. MTA C&D reserves the right to periodically audit the Recipient's security practices during the procurement process to ensure the Recipient is undertaking adequate measures to protect SSI in accordance with this Acknowledgement and the IFB. MTA C&D may create an inventory of all SSI disclosed to Recipient and, upon request by MTA C&D, Recipient shall check all SSI provided to it against such inventory and ensure that it has taken steps to protect and safeguard SSI in accordance with the terms hereof.
10. The Recipient acknowledges and agrees that its obligations under this Acknowledgement shall be perpetual or until such time as the SSI is publicly available.
11. The Recipient will promptly give MTA C&D written notice of any breach of this Acknowledgement and promptly take all necessary steps to mitigate the same.
12. The Recipient acknowledges and agrees that its obligations hereunder are extraordinary, unique and vital to the security and well-being of the MTA C&D and its customers. Further, the Recipient agrees that any breach of this Acknowledgement will cause injury to MTA C&D for which money damages would be an inadequate remedy and that, in addition to remedies at law, MTA C&D is entitled to equitable relief as a remedy for any such breach. MTA C&D shall be entitled, in addition

to all other rights and remedies, to seek injunctions restraining any breach by Recipient, without being required to show any actual damage or to post any bond or other security.

13. To the fullest extent permitted by law, the Recipient will release, defend, indemnify and hold harmless MTA C&D, and each of their affiliates and respective shareholders, officers, directors, employees, agents, successors and permitted assigns from and against all losses, damages, liabilities, deficiencies, actions, judgments, interest, awards, penalties, fines, costs or expenses of whatever kind, including reasonable attorneys' fees, resulting from a breach of this Acknowledgement by the Recipient.
14. Capitalized terms not otherwise defined herein have their meaning set forth in the IFB.
15. Each provision of this Acknowledgement is severable. If a court should find any provision of this Acknowledgement to be unenforceable, all other provisions of this Acknowledgement shall remain in full force and effect.
16. This Acknowledgement shall be governed by and construed in accordance with the laws of the State of New York, without reference to its conflicts of laws principles.

[remainder of page intentionally left blank]

Under penalty of perjury, I hereby swear and affirm that I am authorized to act on behalf of the Bidder in signing and delivering this Acknowledgement, and acknowledge that MTA C&D is relying on my representation to this effect.

Bidder: _____

By: _____

Name: _____

Title: _____

Date: _____

Instructions: Each Major Participant that is not itself the Bidder to sign. For any Major Participant that is a Joint Venture, include signature by each joint venture partner or member. Replicate page as needed for additional signatures.

* * *

Under penalty of perjury, each of the undersigned Major Participants: (a) certifies on behalf of the entity for which they sign that the person named on the prior signature page above is authorized by the relevant entity to sign this Acknowledgement on behalf of the Proposer; and (b) swears and affirms that they are authorized to act on behalf of the entity for which they sign and acknowledge that MTA C&D is relying on their representation to this effect.

On behalf of: _____

By: _____

Name: _____

Title: _____

Date: _____

On behalf of: _____

By: _____

Name: _____

Title: _____

Date: _____

On behalf of: _____

By: _____

Name: _____

Title: _____

Date: _____

On behalf of: _____

By: _____

Name: _____

Title: _____

Date: _____

Appendix A
Form of Sub-Recipient Acknowledgment

The undersigned acknowledges receipt of a copy of, and acknowledges and understands all terms of, the Non-Disclosure and Confidentiality Acknowledgment (the “Acknowledgment”) in relation to the Invitation for Bids (the “IFB”) for the procurement of Contract No. C52155 issued on or about July 13, 2022 by MTA C&D executed by a Bidder, to which the undersigned is a subcontractor, consultant, and/or vendor in connection with the procurement being undertaken pursuant to the IFB.

The undersigned furthermore agrees to comply with the terms of such Acknowledgment as a “Recipient” (as such term is defined in the Acknowledgment), notwithstanding the undersigned being a subsidiary recipient of SSI by virtue of its receipt of such SSI from or on behalf of the Primary Recipient.

Under penalty of perjury, I hereby swear and affirm that I am authorized to act on behalf of the Recipient named below in signing and delivering this Sub-Recipient Acknowledgement, and acknowledge that MTA C&D is relying on my representation to this effect.

Recipient: _____

By: _____

Name: _____

Title: _____

Date: _____