

## **NJ TRANSIT**

### **REQUEST FOR PROPOSALS No. 17-008**

#### **NJ TRANSIT Construction Management Services for Bay Head Substation**

New Jersey Transit Corporation (NJ TRANSIT) is issuing this Request for Proposals (RFP) to retain a Consultant to perform Construction Management (CM) Services for Bay Head Substation.

All firms submitting proposals for this project must have related experience of a similar magnitude. NJ TRANSIT is requesting proposals from firms with the intention of negotiating a contract with the organization whose qualifications and proposal best serves the needs of NJ TRANSIT. Background information, project description, Scope of Services, instructions for proposers and evaluation criteria can be obtained by contacting the Bid Desk via email at [biddesk@njtransit.com](mailto:biddesk@njtransit.com).

A pre-proposal conference has been scheduled for Wednesday, February 14, 2018 at 11:00 am at NJ TRANSIT Headquarters, One Penn Plaza East, Newark, NJ 07105 for the purpose of answering questions and providing directions and clarifications. All interested firms are urged to attend.

Proposals must be received no later than 3:00 pm, March 22, 2018 and sent to the address identified below:

**Office of Procurement  
NJ TRANSIT  
One Penn Plaza East, 6th Floor  
Newark, New Jersey 07105-2246  
Re: NJ TRANSIT Construction Management Services for Bay Head Substation**

**RFP 17-008  
Due Date: 3:00 pm on March 22, 2018  
Attn: Bid Desk**

Firms will be responsible for the delivery of their proposals. Reliance upon the U.S. Mail or other carriers is at firm's risk. Late proposals will not be considered.

This project is subject to the provisions of the Division of Revenue Business Registration Certification Act (P.L. 2009, c.315). Consultants or Sub-consultant's shall not engage in the performance of any work, unless the Consultant or Sub-consultant is registered with the Department of Treasury Division of Revenue.

Bidders are required to comply with the requirements of N.J.S.A. 10:5-31 et seq. and N.J.A.C. 17:27, regarding Equal Employment Opportunity Laws and Regulations. Disadvantaged Business Enterprises, in accordance with the Department of Transportation (DOT) Regulations 49 CFR, Part 26, shall have the maximum opportunity to participate in the performance of this contract. A race neutral DBE goal has been set for this project.

All bids, proposals, contracts, laws and related documentation will be subject to the financial assistance contract between the project sponsor and the U.S. Department of Transportation, under the Federal Transit Act of 1964, as amended, based upon availability of funds.

**NJ TRANSIT  
REQUEST FOR PROPOSAL  
CONSTRUCTION MANAGEMENT SERVICES FOR  
BAY HEAD SUBSTATION**

**RFP NO. 17-008**

**JANUARY 2018**

Philip D. Murphy, Governor  
Sheila Y. Oliver, Lieutenant Governor  
Diane Gutierrez-Scaccetti, Acting Commissioner  
Steven H. Santoro, Executive Director

**NJ TRANSIT**  
One Penn Plaza East  
Newark, NJ 07105-2246  
973-491-7000

February 15, 2018

To Whom it May Concern:

**Re: NJ TRANSIT Request for Proposal No. 17-008  
Construction Management Services for Bay Head Substation  
Addendum No. 1**

The following constitutes Addendum No. 1 and must be acknowledged with each proposal. Prospective firms are advised of the following clarifications, additions and/or revisions to the above referenced Request for Proposal:

- Enclosed for Proposer's information is a Pre-Proposal Data Sheet summarizing information discussed at the Pre-Proposal Conference is included as Attachment A.
- The Attendance Sheet from the Pre-Proposal Conference held February 14, 2018 is included as Attachment B.
- Clarification-NJ TRANSIT will not release the drawings, technical specifications, etc. for the Bay Head Substation construction project. However, a firm may view these documents, in person at NJ TRANSIT headquarters, by scheduling an appointment with the contact person listed below.

This concludes Addendum No. 1. An authorized representative of your organization shall acknowledge receipt of this Addendum in the Exhibit provided with its bid. Failure to acknowledge receipt of all Addenda may cause the rejection of the Bid as non-responsive.

Sincerely,



Maggie Sotolongo  
Senior Contract Specialist  
Procurement Department

# Attachment A

**NJ TRANST RFP NO. 17-008  
CONSTRUCTION MANAGEMENT SERVICES FOR BAY HEAD SUBSTATION  
PRE-BID CONFERENCE AGENDA**

**February 14, 2018 11:00 am**

**Agenda**

- |                                 |  |
|---------------------------------|--|
| I. Introduction                 | Maggie Sotolongo, Senior Contract Specialist |
| II. Proposal Process            | Maggie Sotolongo, Senior Contract Specialist |
| III. DBE Goal and Requirements  | Office Business Development                  |
| IV. Project Overview            | Kelly Giblin, Project Manager                |
| V. Questions and Answer Session |  |

**I. Introduction**

**Attendance Sheet**

<b>Project Dates:</b>	Pre-Bid Conference	February 14, 2018, 11:00 am
	Questions Due:	February 21, 2018 (COB)
	Proposal Due Date:	March 22, 2018, 3:00 pm
	Orals Presentations	Week of April 16, 2018 (tentative)

**II. Proposal Requirements and Process**

**Communications:** Please remember that this RFP is considered confidential and sensitive and may not be disclosed to any third parties

Communications regarding this Request for Proposal are to be conducted through NJ TRANSIT's Procurement Department. All other contacts are considered improper and are prohibited. Violation of this prohibition may cause for removal of a bidder from consideration for award of this contract.

Bidders are also advised that any discussions held regarding this project are considered informal and are not binding. The only means for modifying the Request for Proposal is through a formal written Addendum. Therefore, any inquiries or requests for clarification must be submitted in writing. Inquiries and requests for clarification may be faxed to Maggie Sotolongo (973) 232-1892 or e-mailed [msotolongo@njtransit.com](mailto:msotolongo@njtransit.com). Any response NJ TRANSIT elects to make will be made by a written Addendum to the RFP and issued to all plan holders.

**Receipt of RFP:** **Proposals for this project are due on or before 3:00 pm, March 22, 2018.** The proposal package shall consist of one (1) original and four (4) copies of the Technical Proposal. The proposals shall be submitted in a sealed envelope.

Proposals must be submitted and addressed as follows:

NJ TRANSIT  
Office of Procurement - Bid Desk  
One Penn Plaza East, 6th Floor  
Newark, NJ 07105-2246

**Sealed Bid No. 17-008**  
**BAY HEAD SUBSTATION**  
**Proposal Due Date: March 22, 2018 3:00 pm**

**Proposal Validity:** Proposals shall be valid for the period of time it takes to negotiate an agreement and execute a contract with the successful firm. Said period of time is not expected to exceed six (6) months from the date of proposal receipt.

### **III. DBE Goal and Requirements**

**DBE Goal:** A race neutral DBE goal has been set for this project.

**DBE Requirements:** As an aid in meeting its commitment to the Disadvantaged Business Enterprise (DBE) Program, NJ TRANSIT has assigned a race neutral DBE goal on the gross sum amount of the bid or contract for DBE subcontracting participation. All NJ Unified Certification Program (NJUCP) certified DBE firms, including suppliers, are eligible to participate in this contract.

NJ TRANSIT's DBE Program is accorded the same priority as all compliance with all other legal obligations required by the USDOT. Consultants shall comply with the DBE Program requirements in the award and administration of NJ TRANSIT contracts. Failure by the Consultant to carry out these requirements shall constitute a breach of contract, which may result in the termination of the contract or other such remedy as NJ TRANSIT deems appropriate.

The Consultant shall refer to the DBE Requirements for Federally Funded Procurement Activities included in the RFP for the requirements concerning the DBE obligations and mandatory submissions for this contract. In accordance with those requirements, the Contractor shall identify all DBE and Non-DBE subcontractors and suppliers proposed to participate in or solicited for this contract, and complete and submit the mandatory required forms (A, A1, A2, and B certificate/letter and D if applicable) with their proposal or within seven (5) calendar days of the proposal due date. Consultants are strongly

encouraged to submit these forms with the proposal to prevent delay of award. All forms shall be completed entirely with no blank fields.

The Consultant shall refer to the DBE Requirements for Federally Funded Procurement Activities (Exhibit 3) included in the RFP for the requirements concerning the DBE obligations and mandatory submissions for this contract. In accordance with those requirements, the Consultant shall identify all DBE and Non-DBE subconsultants and suppliers proposed to participate in and solicited for this contract, and complete and submit the mandatory required forms (A, A1, A2) and any applicable supplemental forms (AA, AA1, AA2) with their proposal or within five (5) calendar days of the proposal due date. The Consultant utilizing DBE firms and/or suppliers to participate in this contract shall also submit the mandatory Forms B and BB if applicable and a NJUCP DBE certification letter for each DBE firm/supplier in accordance with the same time frame indicated above. All forms shall be completed entirely with no blank fields.

Any questions regarding the DBE requirements or the mandatory required forms for this contract should be directed to:

Melisa Campusano  
(973) 491-8614

Should the actual contract amount increase or decrease, through approved change order(s), the OBD must be informed. OBD will determine if this will result in an adjustment to DBE participation to reflect the assigned DBE goal.

#### **IV. Project Overview**

#### **V. Question and Answer Session**

Proposers are advised that any discussions held regarding this meeting are considered informal and are not binding. The only means for modifying the RFP is through a formal written Addendum. Therefore, any inquiries or requests for clarification must be submitted in writing. Inquiries and requests for clarification may be faxed to (973) 232-1892 or e-mailed to [msotolongo@njtransit.com](mailto:msotolongo@njtransit.com).

Any response NJ TRANSIT elects to make will be made by a written Addendum to the RFP and sent to all listed holders of the Request for Proposal Package.

# **Attachment B**



NJ TRANST RFP NO. 17-008  
CONSTRUCTION MANAGEMENT SERVICES FOR BAY HEAD SUBSTATION

PRE-BID CONFERENCE ATTENDANCE SHEET

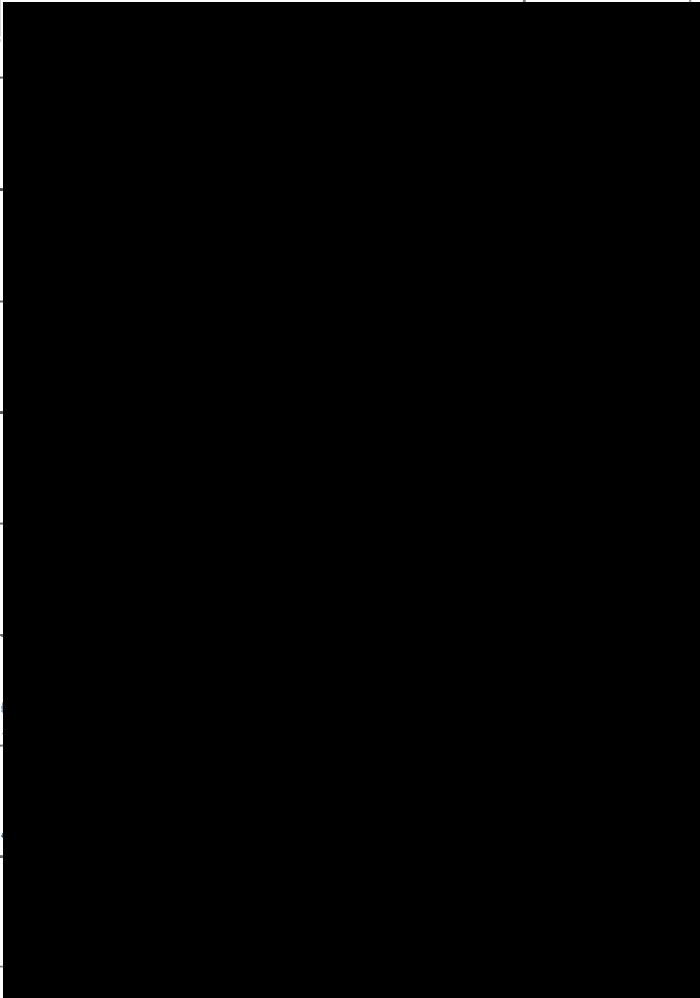
February 14, 2018, 11:00 am

Printed Name of Attendee	Company Name	Email	DBE
Jacqueline Rush Gilbert	NJT-ORD		
L.A. Hernandez	NJT - ORD		
Adonis Abreu	NJT-ORD		
Peter Gentle	HNTB		
NICHOLS J. PANTANA	NJT		
PREMAJA RAJ	NJT		
KELLY A. GIBLIN	NJ TRANSIT		
Magge Soblongo	NJT		

NJ TRANST RFP NO. 17-008  
CONSTRUCTION MANAGEMENT SERVICES FOR BAY HEAD SUBSTATION

PRE-BID CONFERENCE ATTENDANCE SHEET

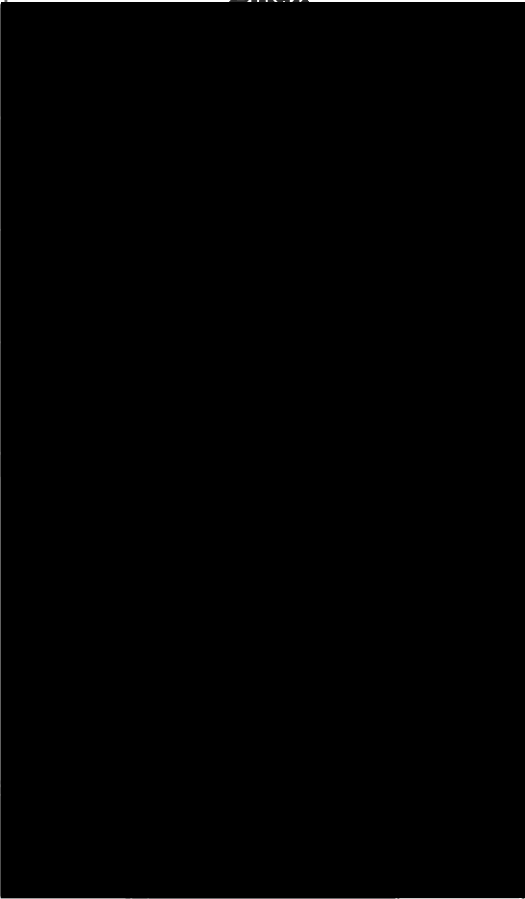
February 14, 2018, 11:00 am

Printed Name of Attendee	Company Name	Email	DBE
Vincent Gaudio	D & B		
HERSCHEL BAXI	CARIAN GROUP		
AARON BETHEA	PRINCIPLE IX ASSOCIATES, LLC		
Christos Diamantidis	Carian Group		
Moe Soliman	Naik Consulting Group.		
HUGH McDERMOTT	AEIS		
JOHN HILL	NAIK CONSULTING GROUP		
Marie Lewis	Munoz Engineering		
Michael Massie	Promatch, Inc. (DBE)		

**NJ TRANST RFP NO. 17-008  
CONSTRUCTION MANAGEMENT SERVICES FOR BAY HEAD SUBSTATION**

**PRE-BID CONFERENCE ATTENDANCE SHEET**

**February 14, 2018, 11:00 am**

Printed Name of Attendee	Company Name	Email	DBE
Robert J. Scancella	K S Engineers, PC		
Steven Panayi	TY. Lim		
JAYANTA DUTTA	JCMS, Inc.		
UMESH JOIS	"		
VINCENT NUÑEZ	LCA ENGINEERING MBE/DBE		✓
Brian Grant/WThompson	Grant Engineering & Construction Group LLC		
Jeffrey A. Moore	WSP USA Inc.		




**February 14, 2018, 11:00 am**

NJ TRANST RFP NO. 17-008  
CONSTRUCTION MANAGEMENT SERVICES FOR BAY HEAD SUBSTATION

PRE-BID CONFERENCE ATTENDANCE SHEET

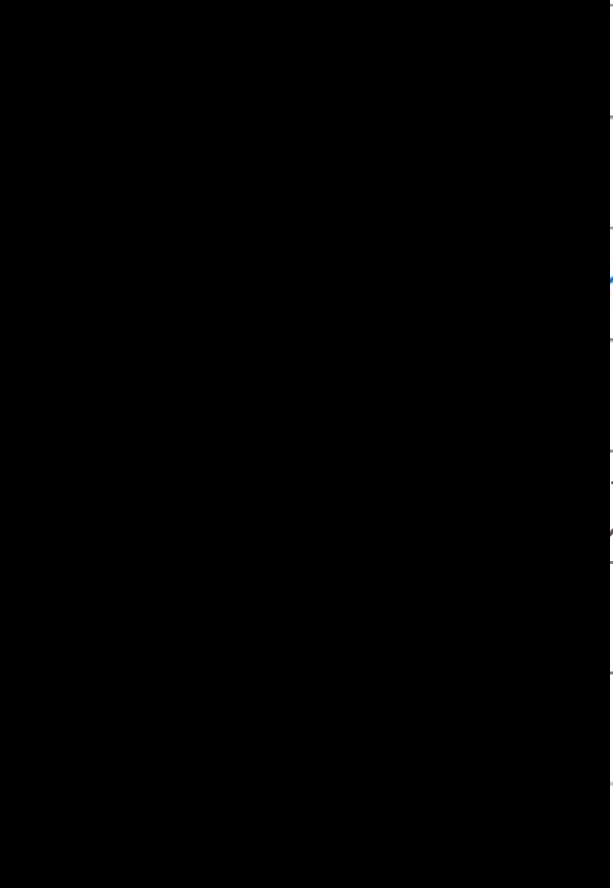
February 14, 2018, 11:00 am

Printed Name of Attendee	Company Name	Email	DBE
LEWIS MINTZER	PACO TECHNOLOGIES		✓
MICHAEL HANSEN	VERINA CONSULTING GROUP		✓
Giovgi Khardzeishvili	Distinct Engineering		✓
Martin Portik	Michael Baker International		
ROGER BESSLER	IJB ELECTRIC CONTRACTORS		✓
LAURIE SPENCER	SI ENGINEERING		
Kamal Shahid	KS Engineers PC		

**NJ TRANST RFP NO. 17-008  
CONSTRUCTION MANAGEMENT SERVICES FOR BAY HEAD SUBSTATION**

**PRE-BID CONFERENCE ATTENDANCE SHEET**

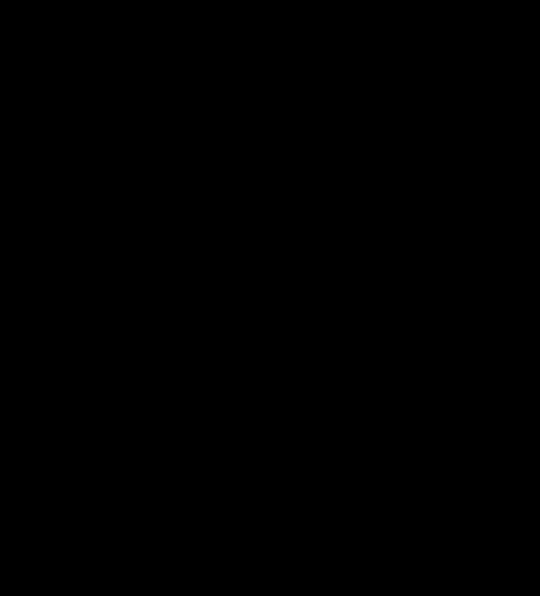
**February 14, 2018, 11:00 am**

Printed Name of Attendee	Company Name	Email	DBE
JOSE A. ORTIZ	LSEA Corp.	joseortiz@lseacorp.com	✓
Chandu Bhoraniya	T.Y. Lin		
ROBERT PARYLAK	Mott MacDonald		
Dario Saravia	PBS Engineering & Associates PC		✓
DEAN R. ROBATEAU	McKISSACK		
Raim Izhar	SI Engineering PC		✓
William Parrish	Noble Strategy		
George Murray, II	Williams Electrical Mechanical group		

**NJ TRANST RFP NO. 17-008  
CONSTRUCTION MANAGEMENT SERVICES FOR BAY HEAD SUBSTATION**

**PRE-BID CONFERENCE ATTENDANCE SHEET**

**February 14, 2018, 11:00 am**

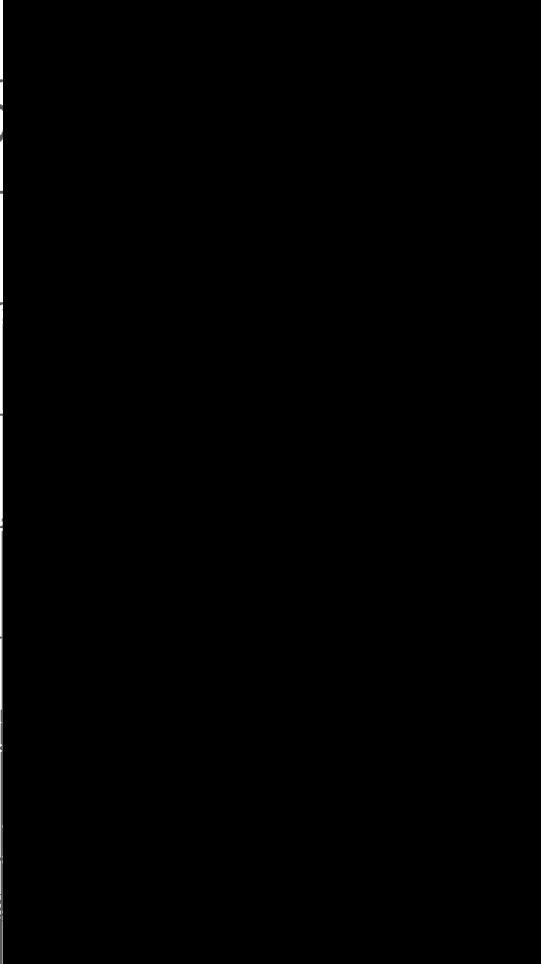
Printed Name of Attendee	Company Name	Email	DBE
Trina Chotilal-Quankey	A.G. Consulting Engineering, PC		✓
Seymour Portes	HAKS -		
Cosmo Iacanzzi	BANK 3		3. Com
GARY S. GULERIA	A.G. Consulting Engineering, P.C.		✓
Neel Ghodasara	MCSS, Inc.		✓



NJ TRANST RFP NO. 17-008  
CONSTRUCTION MANAGEMENT SERVICES FOR BAY HEAD SUBSTATION

PRE-BID CONFERENCE ATTENDANCE SHEET

February 14, 2018, 11:00 am

Printed Name of Attendee	Company Name	Email	DBE
ANJAY SHAH	MP ENGINEERS		✓
MAHENDRA PATEL	MP ENGINEERS (DBE)		✓
RICHARD SERRANO	GPI		
TAYLOR GALUICCHIO	BURNS & McDONNELL		
RABINER REYES	BURNS & McDONNELL		
YOSRY BEKHET	APTIM		
SYED ALI	APTIM		
NANETTE CUADRADO	BREE'S ASSOCIATES, INC.		✓

**NJ TRANST RFP NO. 17-008**  
**CONSTRUCTION MANAGEMENT SERVICES FOR BAY HEAD SUBSTATION**

## PRE-BID CONFERENCE ATTENDANCE SHEET

**February 14, 2018, 11:00 am**

[illegible]

Philip D. Murphy, Governor  
Sheila Y. Oliver, Lieutenant Governor  
Diane Gutierrez-Scaccetti, Acting Commissioner  
Kevin S. Corbett, Executive Director

**NJ TRANSIT**  
One Penn Plaza East  
Newark, NJ 07105-2246  
973-491-7000

March 14, 2018

To Whom it May Concern:

**Re: NJ TRANSIT Request for Proposal No. 17-008  
Construction Management Services for Bay Head Substation  
Addendum No. 2**

The following constitutes Addendum No. 2 and must be acknowledged with each proposal. Prospective firms are advised of the following clarifications, additions and/or revisions to the above referenced Request for Proposal:

- **Revision:** Please incorporate all of the tasks included in P1- Management Procedures and Document Control into Task C1 - Construction Management Administration.
- The due date for the receipt of proposals has been extended to 3:00 p.m. on Thursday, March 29, 2018.
- The responses to questions received have been included.

This concludes Addendum No. 2. An authorized representative of your organization shall acknowledge receipt of this Addendum in the Exhibit provided with its bid. Failure to acknowledge receipt of all Addenda may cause the rejection of the Bid as non-responsive.

Sincerely,



Maggie Sotolongo  
Principal Contract Specialist  
Procurement Department

1. **On page 12 of the RFP a listing of project milestones is provided but no estimated dates are provided. Can NJ Transit provide dates for these schedule milestones along with any other schedule dates that effect the progress of the work and the staffing requirements. Also what is the overall duration of this contract including closeout?**

NJ TRANSIT has included a **tentative** construction schedule to this addendum. The proposed construction duration is approximately thirty-nine (39) months, inclusive of close-out.

2. **The Construction Management Firm/Team shall utilize and maintain in a document control system acceptable to NJ TRANSIT, a construction filing system for tracking all Project correspondence, Request-for-Information, reports, test results, shop drawings, and all other Project related documents. The document control will use NJ Transit's ECMS and be governed by Super Strom Sandy procedures already in place. All such data shall be maintained on-site and made available to NJ TRANSIT at all times."**

- a. **Does the consultant management team need to provide an independent document management system for this project, in addition to the ECMS system provided on NJ TRANSIT?**

Yes, the Construction Management Firm/Team shall utilize and maintain in a document control system acceptable to NJ TRANSIT, a construction filing system for tracking all Project correspondence, Request-for-Information, reports, test results, shop drawings, and all other Project related documents. The document control will use NJ Transit's ECMS and be governed by Super Strom Sandy procedures already in place. All such data shall be maintained on-site and made available to NJ TRANSIT at all times. Detailed information regarding Project Documentation can be found in Section III Scope of Services of the CM RFP, Sub-Section G.3.d under Task C1, beginning on page 18 and continuing through page 20;

3. **Section G, Disadvantaged Business Enterprise (DBE) Goal Assignment, Page 3, Paragraph 3: "The Construction Management Firm/Team shall identify all DBE and Non-DBE sub-consultants and suppliers proposed to participate in and solicited for this contract, and complete and submit the mandatory required forms (A, A1, A2) and any applicable supplemental forms (AA, AA1, AA2) with their proposal for within five (5) calendar days of the proposal due date. Construction Management Firm/Team are strongly encouraged to submit these forms with the proposal to prevent delay of award." Should these forms be submitted as a part of the Technical Proposal, as a separate item in a separate sealed envelope, or only as a part of the Cost Proposal?**

The DBE forms are required when submitting a cost proposal. Do not include any DBE forms at this time.

4. **Will dates be supplied for Project Schedule milestones on page 12, which currently shows “TBD” for design, advertisement, approval, notice to proceed and construction completion?**

NJ TRANSIT has not finalized the dates for the construction of the Bay Head Substation project.

5. **What is the expected duration of the associated construction contract?**

The construction of the Bay Head Substation project is currently scheduled to last for three (3) years.

6. **How much time should the CM budget for close out?**

The Construction Management Firm/Team should budget for a three (3) month time period after the end of construction for the project close-out.

7. **Will there be a pre-construction / constructability phase to the CM contract? If yes, how much time should the CM budget for this phase?**

No there will not be a pre-construction/constructability phase to this contract.

8. **Has the existing substations' equipment been tested for hazardous material? Has the soil in the yard been tested? If yes, what are the results? PM to provide.**

The environmental reports have been included in this addendum.

9. **When will the Contract Plans be available through Web-Ex Procurement to provide**

NJ TRANSIT has not finalized the dates for the construction of the bay head substation project.

10. **Will the CM be responsible for inspection of work performed or installed by NJ TRANSIT Force Account Labor?**

No, the Construction Management Firm/Team will not be responsible for inspecting Force Account work.

11. **The Cost Proposal section of the RFP lists 6 positions, but the RFP refers to additional staff including: Project Manager, Safety Representative, Community Outreach, Structural, Geotechnical, Plumbing, Architectural, HVAC. Are these tasks to be performed by additional personnel?**

The form shown in Attachment B-5 is an example only. Please base your Proposal on the description in Section III Scope of Services, Paragraph F Sections a, b and c.

12. **Does NJT require a full time CM Safety Representative or as-needed?**

As needed or part time.

- 13. Will NJ Transit be uploading or distributing the following drawings:**
- a. New Station One Line Diagram?**
  - b. Equipment Layout Arrangement Drawings?**

NJ TRANSIT will not release the drawings, technical specifications, etc. for the Bay Head Substation construction project. However, a firm may view these documents, in person at NJ TRANSIT headquarters, by scheduling an appointment with the contact person listed below.



Bay Head Substation			Bay Head Schedule				17-Jan-18 14:56																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																			
Activity ID	Activity Name	Remaining Duration	Start Date	Finish Date	Activity % Complete	Total Float	2019												2020												2021												2022												2023												2024																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																							
							F	M	A	M	J	J	A	S	O	N	D	J	F	M	A	M	J	J	A	S	O	N	D	J	F	M	A	M	J	J	A	S	O	N	D	J	F	M	A	M	J	J	A	S	O	N	D	J	F	M	A	M	J	J	A	S	O	N	D	J	F	M	A	M	J	J	A	S	O	N	D	J	F	M	A	M	J	J	A	S	O	N	D	J	F	M	A	M	J	J	A	S	O	N	D	J	F	M	A	M	J	J	A	S	O	N	D	J	F	M	A	M	J	J	A	S	O	N	D	J	F	M	A	M	J	J	A	S	O	N	D	J	F	M	A	M	J	J	A	S	O	N	D	J	F	M	A	M	J	J	A	S	O	N	D	J	F	M	A	M	J	J	A	S	O	N	D	J	F	M	A	M	J	J	A	S	O	N	D	J	F	M	A	M	J	J	A	S	O	N	D	J	F	M	A	M	J	J	A	S	O	N	D	J	F	M	A	M	J	J	A	S	O	N	D	J	F	M	A	M	J	J	A	S	O	N	D	J	F	M	A	M	J	J	A	S	O	N	D	J	F	M	A	M	J	J	A	S	O	N	D	J	F	M	A	M	J	J	A	S	O	N	D	J	F	M	A	M	J	J	A	S	O	N	D	J	F	M	A	M	J	J	A	S	O	N	D	J	F	M	A	M	J	J	A	S	O	N	D	J	F	M	A	M	J	J	A	S	O	N	D	J	F	M	A	M	J	J	A	S	O	N	D	J	F	M	A	M	J	J	A	S	O	N	D	J	F	M	A	M	J	J	A	S	O	N	D	J	F	M	A	M	J	J	A	S	O	N	D	J	F	M	A	M	J	J	A	S	O	N	D	J	F	M	A	M	J	J	A	S	O	N	D	J	F	M	A	M	J	J	A	S	O	N	D	J	F	M	A	M	J	J	A	S	O	N	D	J	F	M	A	M	J	J	A	S	O	N	D	J	F	M	A	M	J	J	A	S	O	N	D	J	F	M	A	M	J	J	A	S	O	N	D	J	F	M	A	M	J	J	A	S	O	N	D	J	F	M	A	M	J	J	A	S	O	N	D	J	F	M	A	M	J	J	A	S	O	N	D	J	F	M	A	M	J	J	A	S	O	N	D	J	F	M	A	M	J	J	A	S	O	N	D	J	F	M	A	M	J	J	A	S	O	N	D	J	F	M	A	M	J	J	A	S	O	N	D	J	F	M	A	M	J	J	A	S	O	N	D	J	F	M	A	M	J	J	A	S	O	N	D	J	F	M	A	M	J	J	A	S	O	N	D	J	F	M	A	M	J	J	A	S	O	N	D	J	F	M	A	M	J	J	A	S	O	N	D	J	F	M	A	M	J	J	A	S	O	N	D	J	F	M	A	M	J	J	A	S	O	N	D	J	F	M	A	M	J	J	A	S	O	N	D	J	F	M	A	M	J	J	A	S	O	N	D	J	F	M	A	M	J	J	A	S	O	N	D	J	F	M	A	M	J	J	A	S	O	N	D	J	F	M	A	M	J	J	A	S	O	N	D	J	F	M	A	M	J	J	A	S	O	N	D	J	F	M	A	M	J	J	A	S	O	N	D	J	F	M	A	M	J	J	A	S	O	N	D	J	F	M	A	M	J	J	A	S	O	N	D	J	F	M	A	M	J	J	A	S	O	N	D	J	F	M	A	M	J	J	A	S	O	N	D	J	F	M	A	M	J	J	A	S	O	N	D	J	F	M	A	M	J	J	A	S	O	N	D	J	F	M	A	M	J	J	A	S	O	N	D	J	F	M	A	M	J	J	A	S	O	N	D	J	F	M	A	M	J	J	A	S	O	N	D	J	F	M	A	M	J	J	A	S	O	N	D	J	F	M	A	M	J	J	A	S	O	N	D	J	F	M	A	M	J	J	A	S	O	N	D	J	F	M	A	M	J	J	A	S	O	N	D	J	F	M	A	M	J	J	A	S	O	N	D	J	F	M	A	M	J	J	A	S	O	N	D	J	F	M	A	M	J	J	A	S	O	N	D	J	F	M	A	M	J	J	A	S	O	N	D	J	F	M	A	M	J	J	A	S	O	N	D	J	F	M	A	M	J	J	A	S	O	N	D	J	F	M	A	M	J	J	A	S	O	N	D	J	F	M	A	M	J	J	A	S	O	N	D	J	F	M	A	M	J	J	A	S	O	N	D	J	F	M	A	M	J	J	A	S	O	N	D	J	F	M	A	M	J	J	A	S	O	N	D	J	F	M	A	M	J	J	A	S	O	N	D	J	F	M	A	M	J	J	A	S	O	N	D	J	F	M	A	M	J	J	A	S	O	N	D	J	F	M	A	M	J	J	A	S	O	N	D	J	F	M	A	M	J	J	A	S	O	N	D	J	F	M	A	M	J	J	A	S	O	N	D	J	F	M	A	M	J	J	A	S	O	N	D	J	F	M	A	M	J	J	A	S	O	N	D	J	F	M	A	M	J	J	A	S	O	N	D	J	F	M	A	M	J	J	A	S	O	N	D	J	F	M	A	M	J	J	A	S	O	N	D	J	F	M	A	M	J	J	A	S	O	N	D	J	F	M	A	M	J	J	A	S	O	N	D	J	F	M	A	M	J	J	A	S	O	N	D	J	F	M	A	M	J	J	A	S	O	N	D	J	F	M	A	M	J	J	A	S	O	N	D	J	F	M	A	M	J	J	A	S	O	N	D	J	F	M	A	M	J	J	A	S	O	N	D	J	F	M	A	M	J	J	A	S	O	N	D	J	F	M	A	M	J	J	A	S



Submitted to:



**Contract No. 13-006**  
**Architectural / Engineering Design**

**NJ Transit Substation**  
**Super Storm Sandy Substation Recovery Program**

Submitted by:



***Gannett Fleming***

*Excellence Delivered **As Promised***

**February 13, 2015**

THIS REPORT IS NOT REPRINTED HERE DUE TO SIZE

## **TABLE OF CONTENTS**

I. GENERAL PROJECT INFORMATION .....	1
A. Request for Proposal .....	1
B. Anticipated Consultant Selection Schedule.....	1
C. Pre-Proposal Conference.....	2
D. Request for Information and Addenda .....	2
E. Joint Venture.....	3
F. Equal Employment Opportunity Requirements .....	3
G. Disadvantaged Business Enterprise (DBE) Goal Assignment.....	3
H. Division of Revenue .....	5
I. Field Visits .....	5
J. Technical Evaluation Committee.....	5
K. Modification or Withdrawal .....	5
L. Disqualification of Firms.....	6
M. Disclosure of Investment Activities in Iran.....	6
N. Ownership Disclosure .....	6
O. Contractor's Certification of Eligibility .....	7
P. Source Disclosure Requirements.....	7
Q. Certification and Political Contribution Disclosure (P.L. 2005, C.271) .....	8
R. Notice of Executive Order 125 Requirement for Posting of Winning Proposal and Contract Documents .....	8
II. PROJECT BACKGROUND AND DESCRIPTION .....	9
A. Construction Management Objectives .....	9
B. Responsibilities Overview .....	10
III. SCOPE OF SERVICES .....	10
A. Project Organization .....	10
B. Description of the Construction Contract Work: .....	11
C. Construction Requirements and Constraints.....	11
D. Construction Management Objectives .....	12
E. Responsibilities Overview .....	13
F. Construction Management Organization .....	13
G. Construction Management Responsibility/Tasks.....	14
IV. SCOPE OF SERVICES – GENERAL.....	30
V. PROPOSAL REQUIREMENTS.....	31
A. General .....	31

B.	Technical Proposal Format .....	33
C.	Oral Presentation Format.....	36
D.	Method of Selection .....	36
E.	Protest Procedure .....	40

## **ATTACHMENTS**

- A. Proposal Evaluation Criteria
- B. Cost Proposal Forms

## **EXHIBITS**

- 1. NJ TRANSIT's Professional Services Agreement
- 2. Acknowledgement of Receipt of Addenda
- 3. NJ TRANSIT Corporation's DBE Requirements for Procurement and Professional Services
- 4. Equal Employment Opportunity Requirements
- 5. Statement of Joint Venture (if applicable)
- 6. Ownership Disclosure Form (PD-ODF-1)
- 7. Source Disclosure Certification Form
- 8. Public Law 2005, Chapter 271 Vendor Certification and Political Contribution Disclosure Form
- 9. Disclosure of Investment Activities in Iran
- 10. Contractor's Certification of Eligibility
- 11. Non-Collusion Affidavit
- 12. Affidavit of Compliance (Code of Vendor Ethics)
- 13. Certification of Contracts, Grants, Loans & Cooperative Agreements
- 14. Travel & Business Reimbursement Guidelines

## **I. GENERAL PROJECT INFORMATION**

### **A. Request for Proposal**

New Jersey Transit Corporation (NJ TRANSIT) is issuing this Request for Proposal (RFP) to retain a Consultant to perform Construction Management (CM) Services required for the Bay Head Substation projects.

The purpose of the Super Storm Sandy Substation Recovery Program is to repair , reconstruct, and/or replace electrical power distribution and control systems equipment, components, and materials related to both traction and facility power at various locations that were storm damaged. Based on the extensive damage to the equipment, reliability, safety concerns and NJDEP regulations, it is recommended that the affected substations and related equipment be rebuilt with new equipment installed a minimum of 2.5 feet above the newly established FEMA 100 Year Base Flood Elevations to protect the equipment from future flooding.

NJ TRANSIT reserves the right to reject any and all proposal(s). Contract award is subject to the availability of funds and consultant agreement to NJ TRANSIT terms and conditions. NJ TRANSIT will not reimburse the Construction Management Firm/Team for expenses incurred in responding to this RFP.

All proposers are notified that NJ TRANSIT reserves the right to delete or modify any task from the scope of services/work at any time during the course of the Contract. NJ TRANSIT also reserves the right to approve all sub-consultants.

Prior to the execution of a Contract with NJ TRANSIT and before commencing any performance of the work hereunder, the consultant shall provide NJ TRANSIT with the required proof(s) of insurance as set forth in Section 12 of Exhibit 1.

All proposers are advised that communications with NJ TRANSIT that in any way relate to this project shall be conducted with or through the authorized representative of the Contracting Officer in NJ TRANSIT's Division of Procurement. All other contacts are strictly prohibited and considered improper. Proposers are advised that violation of this prohibition may result in the removal of the proposer from consideration for this contract and possible suspension/debarment.

### **B. Anticipated Consultant Selection Schedule**

Issue RFP	January 26, 2018
Pre-Proposal Conference	February 14, 2018
Questions Due	February 21, 2018
Proposal Due Date	March 22, 2018
TEC Committee Evaluation	Week of April 2, 2018
Oral Presentations	Week of April 16, 2018
Selection of Firm	Week of April 30, 2018
Cost Proposals Due	Week of May 14, 2018

Begin Negotiations  
Board Approval  
Notice to Proceed

Week of May 21, 2018  
August/September 2018  
December 2018

**C. Pre-Proposal Conference**

Each proposer shall completely familiarize itself with the nature of the work to be accomplished and the type of equipment, facilities and skills required to meet the scope of the Contract specifications.

In order to discuss the project and for addressing questions, NJ TRANSIT will hold a pre-proposal conference on February 14, 2018 at 11:00 am at NJ TRANSIT Headquarters located at One Penn Plaza East, Newark, New Jersey. The location is across the street from Newark Penn Station and easily accessible to Newark Liberty International Airport by AirTrain service connecting to Newark Penn Station. To obtain driving directions please go to the NJ TRANSIT website at [www.njtransit.com](http://www.njtransit.com).

Attendance at the pre-proposal conference is highly recommended but not mandatory. Recipients of this RFP that do not attend may be at a disadvantage when submitting a proposal.

**D. Request for Information and Addenda**

By submitting a proposal, the proposer acknowledges that it has carefully examined the proposal package and satisfied itself as to the conditions affecting the work. NJ TRANSIT assumes no responsibility for any conclusions or interpretations made by the firm on the basis of the information made available by NJ TRANSIT.

Inquiries regarding the Proposal package shall be submitted in writing to NJ TRANSIT at the following address:

NJ TRANSIT  
Procurement Department  
One Penn Plaza East, 6th Floor  
Newark, New Jersey 07105  
Re: RFP No. 16-026  
Attn: Maggie Sotolongo  
Fax: (973) 232-1892  
Email: [msotolongo@njtransit.com](mailto:msotolongo@njtransit.com)

To be given consideration, all such inquiries must adhere to the following:

- a. Be received in writing no later than February 21, 2018 (COB)
- b. Reference contract name and number, section and page number
- c. Requests for information must be emailed in a non-scanned electronic format to Maggie Sotolongo at [msotolongo@njtransit.com](mailto:msotolongo@njtransit.com)

Any response that NJ TRANSIT may choose to make will be by a written addendum to the RFP and sent to all listed holders of the RFP Package. NJ TRANSIT will not be bound by any informal explanation, clarification, or interpretation, oral or written, by whoever made, that is not incorporated into an addendum. Copies of all such Addenda will be mailed to each firm. Receipt of the Addenda by the firm shall be acknowledged as specified below.

A proposer's failure to request a clarification, interpretation, correction or amendment will preclude such firm from, thereafter, claiming any ambiguity, inconsistency or error which should have been discovered by a reasonably prudent firm.

NJ TRANSIT reserves the right to amend the proposal package prior to the date set for receipt of proposals. Such revisions, if any, will be announced by addenda to this Request for Proposal. Copies of such addenda as may be issued will be furnished to all prospective firms. The date set for receipt of proposals may be postponed by such number of days as in the opinion of the Contracting Officer will enable firms to revise their proposal forms. In such cases, the addenda will include the new date for receipt of proposals.

Proposers are required to acknowledge receipt of all addenda by signing the "Acknowledgement of Receipt of Addenda" form. This form (Exhibit 2) shall be included as part of the technical proposal. Failure to acknowledge receipt of all addenda may render the proposal nonresponsive.

**E. Joint Venture**

A firm consisting of more than one business entity must clearly identify itself in the proposal as a joint venture. Each party to a joint venture shall provide financial data (i.e.: financial statement, D&B report, etc.) as a separate business entity. Each party to a joint venture shall bear, jointly and severally, the entire responsibility for Contract performance (Exhibit 4).

**F. Equal Employment Opportunity Requirements**

The proposer will be required to comply with State Equal Employment Opportunity requirements contained in N.J.S.A. 10:5-31 et seq. (P.L. 1975, c.127).

**G. Disadvantaged Business Enterprise (DBE) Goal Assignment**

As an aid in meeting its commitment to the Disadvantaged Business Enterprise (DBE) Program, NJ TRANSIT has assigned a race-neutral DBE goal on the gross sum amount of the bid or contract for DBE subcontracting participation. All NJ Unified Certification Program (NJUCP) certified DBE firms, including suppliers, are eligible to participate in this Contract.

NJ TRANSIT's DBE Program is accorded the same priority as compliance with all other legal obligations required by the USDOT. The Construction Management Firm/Team shall comply with the DBE Program requirements in the award and administration of NJ TRANSIT contracts. Failure by the Construction Management

Firm/Team to carry out these requirements shall constitute a breach of the contract, which may result in the termination of the contract or other such remedy, as NJ TRANSIT deems appropriate.

The Construction Management Firm/Team shall refer to the DBE Requirements for Federally Funded Procurement Activities (Exhibit 3) included in the RFP for the requirements concerning the DBE obligations and mandatory submissions for this contract. In accordance with those requirements, the Construction Management Firm/Team shall identify all DBE and Non-DBE subconsultants and suppliers proposed to participate in and solicited for this contract, and complete and submit the mandatory required forms (A, A1, A2) and any applicable supplemental forms (AA, AA1, AA2) with their proposal or within five (5) calendar days of the proposal due date. Construction Management Firm/Team are strongly encouraged to submit these forms with the proposal to prevent delay of award. The Construction Management Firm/Team utilizing DBE firms and/or suppliers to participate in this contract shall also submit the mandatory Forms B and BB if applicable and a NJUCP DBE certification letter for each DBE firm/supplier in accordance with the same time frame indicated above. All forms shall be completed entirely with no blank fields.

Any questions regarding the DBE requirements or the mandatory required forms for this contract should be directed to:

Any questions regarding the DBE requirements or the mandatory required forms for this Contract should be directed to:

Ms. Leonnette McCoy  
Business Development Specialist  
(973) 491-8061

The Construction Management Firm/Team can refer to [www.njucp.net](http://www.njucp.net), which is a search engine of firms certified by the New Jersey Department of Transportation, the New Jersey Transit Corporation and the Port Authority of New York and New Jersey as Federal Disadvantaged Business Enterprises. This listing is intended as an aid in identifying DBE firms to potential bidders and is not meant to be an all inclusive listing of DBE firms available for subcontracting. The Construction Management Firm/Team may identify other firms; however, all DBE firms must be properly certified prior to award of the contract.

The Construction Management Firm/Team shall comply with the DBE Program requirements in the award and administration of NJ TRANSIT contracts. Failure by the Construction Management Firm/Team to carry out these requirements shall constitute breach of contract, which may result in the termination of the contract or other such remedy, as NJ TRANSIT deems appropriate.

All proposers are notified that it is NJ TRANSIT policy that consultants who do, or may do, business with NJ TRANSIT must avoid all situations where proprietary or financial interest, or the opportunity for financial gain, could lead a NJ TRANSIT officer or employee to secure favored treatment for any organization or individual. Proposers must avoid all circumstances and conduct which may not constitute actual



wrongdoing, or conflict of interest, but might nevertheless appear questionable to the general public, thus compromising the integrity of NJ TRANSIT. All proposers must comply with the NJ TRANSIT Code of Ethics as set forth in Section 30 of Exhibit 1.

#### **H. Division of Revenue**

In accordance with N.J.S.A. 52:32-44, all New Jersey and out of state business organizations must obtain a Business Registration Certificate (BRC) from the Department of Treasury, Division of Revenue and Enterprise Services prior to the time a Contract is awarded or authorized. The business registration form (form NJ-REG) can be found online at:

<http://www.nj.gov/treasury/revenue/gettingregistered.shtml>.

Accordingly, the proposer should submit with its proposal the Business Registration Certificates for all team members, but no later than the date of Contract award.

#### **I. Field Visits**

Before any field visits are conducted by a Construction Management Firm/Team, all persons visiting a construction site or a NJ TRANSIT facility or right of way shall successfully complete all required safety training and instruction. Under no circumstances, may a Construction Management Firm/Team enter NJ TRANSIT property without a properly authorized personnel from NJ TRANSIT.

#### **J. Technical Evaluation Committee**

A Technical Evaluation Committee (TEC) comprised of NJ TRANSIT staff will be responsible for reviewing technical proposals and oral presentations, and recommending the project Construction Management Firm/Team. The TEC will analyze the submitted technical proposal, for the respective tasks outlined in the Scope of Services.

#### **K. Modification or Withdrawal**

Proposal modifications submitted will be considered if received by NJ TRANSIT at the specified location before the time set for receipt of proposals. The modification shall be duly executed by the firm or its authorized representative, and shall be clearly labeled as a modification. Modifications received after the time specified for receipt of proposals will not be considered. Fax modifications will not be considered.

Modifications of proposals already submitted, shall be submitted in a sealed envelope, clearly marked with contract name and number, date of opening and name of firm. Firms shall assume that its failure to comply with these requirements may result in the modification being opened prematurely, or not opened at all.

Proposals may be withdrawn at any time prior to the time specified for the opening of proposals by filing a written withdrawal with NJ TRANSIT, duly executed by the firm or its authorized representative. The withdrawal of a proposal does not prejudice the right of the firm to file a new proposal. Withdrawals received after the time specified

for the opening of proposals will not be considered nor may any proposal be withdrawn after that time.

**L. Disqualification of Firms**

Submission of more than one (1) proposal from an individual, firm, partnership, corporation or combination thereof under the same or different names shall be cause for disqualification of the proposals submitted by such entities. Reasonable grounds for believing that any individual, firm, partnership, corporation or combination thereof is interested as a principal in more than one (1) proposal for the procurement contemplated may cause the rejection of all proposals submitted by such individual, firm, partnership, corporation or combination thereof.

**M. Disclosure of Investment Activities in Iran**

Pursuant to N.J.S.A. 52:32-55 et seq., a proposer that, at the time of bid opening, is identified on a list created pursuant to such law by the New Jersey Department of the Treasury as a person or entity engaging in investment activities in Iran as described in such law, shall be ineligible to, and shall not, propose on or enter in to a contract with NJ TRANSIT. As required by such law, the proposer must complete the certification with its Proposal to attest under penalty of perjury, that neither person or entity nor any of its parents, subsidiaries or affiliates is identified on the Department of Treasury's Chapter 25 list as a person or entity engaging in investment activities in Iran. Failure to complete the certification will render the proposal non-responsive.

**N. Ownership Disclosure**

Pursuant to N.J.S.A. 52:25-24.2, in the event that a proposer is a corporation, partnership, a proposer must complete a current "Ownership Disclosure Form" either prior to the receipt of a proposal or accompanying the proposal, attached hereto as Exhibit 6.

A proposer shall ensure that the Ownership Disclosure Form contains the names and addresses of all stockholders in the corporation or partnership who own ten percent (10%) or more of its stock, of any class or of all individual partners in the partnership who own a ten percent (10%) or greater interest therein, as applicable.

If one or more such stockholder or partner is itself a corporation or partnership, the stockholders holding ten percent (10%) or more of that corporation's stock, or the individual partners owning ten percent (10%) or greater interest in that partnership, as the case may be, shall also be listed. The disclosure shall be continued until names and addresses of every non-corporate stockholder, and individual partner, exceeding the ten percent (10%) ownership criteria established in this act, has been listed.

**O. Contractor's Certification of Eligibility**

The proposer shall certify on the Contractor's Certification of Eligibility that it is not included on the State of New Jersey, Department of Treasury, Consolidated Debarment Report or on the State of New Jersey, Department of Labor and Workforce Development, Division of Wage and Hour Compliance, Prevailing Wage Debarment List.

The Construction Management Firm/Team must also be registered and active with no exclusions with the System for Award Management (S.A.M). To register please go to [www.SAM.gov](http://www.SAM.gov) and follow the registration instructions. If the proposer is included on such report, the proposer may not be eligible for award of Contract.

**P. Source Disclosure Requirements**

Under N.J.S.A. 52:34-13.2 all contracts primarily for services awarded by NJ TRANSIT shall be performed within the United States, except when the Contracting Officer certifies in writing a finding that a required service cannot be provided by a consultant or Subconsultant within the United States and the certification is approved by the Executive Director.

The Construction Management Firm/Team seeking a Contract primarily for services with NJ TRANSIT must disclose the location, by country, where services under the Contract, including subcontracted services, will be performed.

If any of the services cannot be performed within the United States, the proposer shall state with specificity the reasons why the services cannot be so performed. NJ TRANSIT's Contracting Officer shall determine whether sufficient justification has been provided by the proposer to form the basis of his certification that the services cannot be performed in the United States and whether to seek the approval of the Executive Director.

Accordingly, the proposer should submit with its proposal the attached Source Disclosure Certification form. If the information is not submitted with the proposal, it shall be submitted within five (5) business days of NJ TRANSIT's request.

If, during the term of the contract, the proposer or subconsultant, who had on contract award declared that services would be performed in the United States, proceeds to shift the performance of the services outside the United States, the proposer shall be deemed to be in breach of its contract, which contract shall be subject to termination for cause pursuant to Article 16 of the Agreement, unless previously approved by the Contracting Officer and the Executive Director.

Failure to submit sourcing information when requested by NJ TRANSIT shall preclude award of a Contract to the proposer.

### ***Breach of Contract for Shift of Services Outside the United States***

A shift by the Construction Management Firm/Team or Subconsultant to performance of services outside the United States during the term of the Contract shall be deemed a breach of Contract.

If, during the term of the Contract, the Construction Management Firm/Team or Subconsultant, who had on Contract award declared that its services would be performed within the United States, proceeds to shift the performance of the services to outside the United States, the Construction Management Firm/Team shall be deemed to be in breach of its Contract. The Contract shall then be subject to termination for cause pursuant to Article 16 of Agreement, unless previously approved by the Contracting Officer and the Executive Director.

#### **Q. Certification and Political Contribution Disclosure (P.L. 2005, C.271)**

The requirements of Public Law 2005, c.271 are applicable to this procurement. Prior to awarding a contract or agreement to the intended awardee, the awardee shall complete the Contract Certification and Political Disclosure Form included in this solicitation. The awardee shall submit the form to NJ TRANSIT, in care of the Contract Specialist, within five (5) business days of NJ TRANSIT's request.

Firms that do not comply with the certification provisions of Public Law 2005, Chapter 271 will not be precluded from award of a contract; however, a firm's failure to fully, accurately and truthfully complete this form and submit it to the appropriate State agency may result in the imposition of fines by the New Jersey Election Law Enforcement Commission.

In addition, the Construction Management Firm/Team is advised of its responsibility to file an annual disclosure statement on political contributions with the New Jersey Election Law Enforcement Commission (ELEC), pursuant to N.J.S.A. 19:44A-20.13 (P.L. 2005, c.271, section 3) if the Construction Management Firm/Team receives contracts in excess of \$50,000 from a public entity in a calendar year. It is the Construction Management Firm/Team's responsibility to determine if filing is necessary. Failure to so file can result in the imposition of financial penalties by ELEC. Additional information about this requirement is available from ELEC at 888-313-3532 or at <http://www.elec.state.nj.us>.

#### **R. Notice of Executive Order 125 Requirement for Posting of Winning Proposal and Contract Documents**

Pursuant to Executive Order No. 125, signed by Governor Christie on February 8, 2013, the Office of the State Comptroller ("OSC") is required to make all approved State contracts for the allocation and expenditure of federal reconstruction resources available to the public by posting such contracts on an appropriate State website. Such contracts are posted on the New Jersey Sandy Transparency website located at: <http://nj.gov/comptroller/sandytransparency/contracts/sandy/>.

The contract resulting from this Request for Proposal is subject to the requirements of Executive Order No. 125. Accordingly, the OSC will post a copy of the contract, including the Request for Proposal, the winning bidder's proposal and other related contract documents for the above contract on the Sandy Transparency website.

In submitting its proposal, a proposer may designate specific information as not subject to disclosure. However, such proposer must have a good faith legal and/ or factual basis to assert that such designated portions of its proposal (i) are proprietary and confidential financial or commercial information or trade secrets or (ii) must not be disclosed to protect the personal privacy of an identified individual. The location in the proposal of any such designation should be clearly stated in a cover letter, and a redacted copy of the proposal should be provided.

The State reserves the right to make the determination as to what is proprietary or confidential, and will advise the winning proposer accordingly. The State will not honor any attempt by a winning proposer to designate its entire proposal as proprietary, confidential and/or to claim copyright protection for its entire proposal. In the event of any challenge to the winning proposer's assertion of confidentiality with which the State does not concur, the proposer shall be solely responsible for defending its designation.

## **II. PROJECT BACKGROUND AND DESCRIPTION**

### **A. Construction Management Objectives**

The Project requirements for Construction Management Services shall include, at the minimum, the following:

1. Constructability and staging review to minimize change orders, claims exposure and impacts to construction.
2. On-time performance by each Contractor through Critical Path Method (CPM) scheduling, schedule monitoring and analysis.
3. A proper functioning, safe Project, which reflects the work elements as described in the plans and specifications.
4. Appropriate detailed records of all Project activities utilizing the Super Storm Sandy approved document control system.
5. Strict enforcement of all rules, including safety, standards and requirements of NJ TRANSIT Rail Operations Departments.
6. Strict enforcement of the latest Federal, State and local codes, statutes, regulations, and ordinances governing all Project work.
7. Maintenance of safe construction conditions and good construction quality control.
8. Minimizing impact to rail operations and street traffic.

9. Maintaining access to private property during construction.
10. Coordination with Railroad Force Account departments as necessary to facilitate construction schedule adherence.

## **B. Responsibilities Overview**

The selected Construction Management Firm/Team's responsibilities will include, but will not be limited to, the following: provide standard construction management services during construction; inspect all project construction, catenary, civil/structural, electrical, and mechanical work as specified in the Contract documents; CPM Schedule monitoring which will include all Contractors work forces, NJ TRANSIT Force Account and utility services. Analysis and processing of Contractors' invoices; change order administration; systems testing and start-up, assistance to NJ TRANSIT in preparation of the Project's final as-built drawings, and Project close-out and maintaining an approved document control system.

The Construction Management Firm/Team's responsibilities shall include, but not be limited to, monitoring and inspecting all construction activity, installation work, systems implementation and overall contract administration as necessary. Such construction management services shall be conducted to ensure that all work elements will be performed and completed in compliance with contract plans, specifications, codes, permits and other regulations.

The Construction Management Firm/Team shall only employ experienced individuals, including field inspectors, who are qualified and highly proficient in the areas they will be managing. Services to be provided by the selected Construction Management Firm/Team are delineated in greater detail in Section II - Scope of Services and other sections of this RFP.

## **III. SCOPE OF SERVICES**

### **A. Project Organization**

1. Project Management
  - a. Project Management for the Bay Head Substation Project shall be the sole responsibility of NJ TRANSIT's Project Manager with the Construction Management Firm/Team (defined below) providing construction contract inspection, administration and field support with the NJ TRANSIT Designer of Record or designee providing technical support.
2. Selected Construction Management Firm/Team
  - a. The Construction Management Firm/Team shall be responsible for supplying all office and technical field support personnel, including Construction Manager, Resident Engineer(s), Safety Officer and inspector(s), for monitoring and inspecting the work of the Contractor and Force Account.

- b. The Construction Management Firm/Team shall be responsible for supplying all support personnel, including individuals with senior level skills, to assist the Construction Management Firm/Team as it pertains to the actual construction work, sequencing, monitoring the Project schedules and budgetary expenditures, implementation of the approved quality assurance and quality control procedures, change order document preparation, claims avoidance, invoice analysis and overall administrative functions using an approved Document Control System.

**B. Description of the Construction Contract Work:**

The Bay Head Train Yard is at the southern end of the NJ TRANSIT North Jersey Coast Line. The Bay Head Yard has two (2) 34.5kV electrical substations, the General Service Substation and the Layover Power Substation. The older General Service Substation was installed in 1985, and was recently (late 2012 / early 2013) decommissioned. The newer Layover Power Substation was installed in 2006, and is currently servicing the entire electrical distribution system at the Bay Head Train Yard. The existing General Service Substation will be demolished while the Layover Power Substation remains in service to maintain continuous operation of the Bay Head Yard. A new substation which will replace both existing substations will be built where the General Service Substation was located. When the new substation is completely operational, the electrical loads will be sequentially shifted from the Layover Power Substation to the new substation. Once all loads are successfully transferred over to the new substation, the Layover Power Substation will be decommissioned and demolished. A new building to house a new standby generator will be built where the Layover Power Substation was located. Once the new standby generator system is completely operational, the existing generator in the compressor building will be removed from service. Existing substation medium voltage equipment, transformers, and low voltage switchgear were damaged from submergence in 18 inches of contaminated salt water at the Layover Power Substation and 48 inches of contaminated salt water at the General Service Substation. The standby generator and automatic transfer switch in the compressor building were damaged from submergence in 24 inches of contaminated salt water. The intent of this project is to replace the storm damaged equipment and elevate the new equipment to prevent damage from future flooding.

Project includes all demolition, architectural, structural, geotechnical, electrical, HVAC, fire protection, and plumbing work specified on the contract drawings and specifications.

This Project will require NJ TRANSIT flag protection for certain work. This protection will be arranged and coordinated through the Construction Manager and/or the Project Manager.

**C. Construction Requirements and Constraints**

Track/signal outages will be allowed to facilitate construction. Track and/or signal outages are not guaranteed even if scheduled in advance. It is expected the CM

services team will manage the track and power outage process between the Contractor and Rail Operations to ensure optimum use of planned outages.

It is expected that limited CM Services for pre-construction tasks, at a minimum, will begin immediately following the award of this contract. It is anticipated that full CM services, as described herein, will begin when construction begins. CM services will be required beyond the construction phases for Project Closeout.

The following are the current Project schedule milestones:

100% Design	TBD
Advertise Construction Contract	TBD
NJ TRANSIT's Board Approval	TBD
Construction Notice to Proceed (NTP)	TBD
Construction Completion	TBD

#### **D. Construction Management Objectives**

The Project requirements for Construction Management Services shall include, at the minimum, the following:

1. Constructability and staging review to minimize change orders, claims exposure and impacts to construction.
2. On-time performance by each Contractor through (Critical Path Method) CPM scheduling, schedule monitoring and analysis.
3. A proper functioning, safe project, which reflects the work elements as described in the plans and specifications.
4. Appropriate detailed records of all Project activities utilizing the Super Storm Sandy approved document control system.
5. Strict enforcement of all rules, including safety, standards and requirements of NJ TRANSIT Rail Operations Departments.
6. Strict enforcement of the latest Federal, State and local codes, statutes, regulations, and ordinances governing all Project work.
7. Maintenance of safe construction conditions and good construction quality control.
8. Minimizing impact to rail operations and street traffic.
9. Maintaining access to private property during construction.
10. Coordination with Railroad Force Account departments as necessary to facilitate construction schedule adherence.



## **E. Responsibilities Overview**

The Construction Management Firm/Team's responsibilities will include, but will not be limited to, the following: Provide standard construction management services during construction; inspect all project construction, catenary, civil/structural, electrical, and mechanical work as specified in the contract documents; CPM (Critical Path Method) Schedule monitoring which will include all Contractor work forces, NJT Force Account and utility services; Analysis and processing of Contractor invoices; change order administration; systems testing and start-up, assistance to NJ TRANSIT in preparation of the Project's final as-built drawings, and Project close-out and maintaining an approved document control system.

The Construction Management Firm/Team's responsibilities shall include monitoring and inspecting all construction activity, installation work, systems implementation and overall contract administration as necessary. Such construction management services shall be conducted to ensure that all work elements will be performed and completed in compliance with contract plans, specifications, codes, permits and other regulations.

The Construction Management Firm/Team shall only employ experienced individuals, including field inspectors, who are qualified and highly proficient in the areas they will be managing. Services to be provided by the Construction Management Firm/Team are delineated in greater detail in Section II - Scope of Services and other sections of this RFP.

## **F. Construction Management Organization**

### **1. Staffing Requirements**

- a. The Bay Head Substation Project will be constructed in accordance with the Project Documents. The Contractor will be requested to progress the construction in as required due to track, catenary and signal outages. The Construction Management Firm/Team shall be staffed accordingly, to support the construction as required, including (if required) multiple shift operations.
- b. The Construction Management Firm/Team's Construction Manager and full-time Resident Engineer(s) shall have the responsibility for the coordination of all construction activities for the entire Project and shall head the Construction Management Firm/Team's services. In addition to the Resident Engineer(s), and the Safety Officer the Construction Management staff shall include but not be limited to the following:
  - i. As required, inspector(s) as authorized by NJ TRANSIT for each discipline on each shift: civil/structural and building/systems.
  - ii. A part-time scheduler must be included in the staff, participating in the monthly schedule review meetings and review and approval of the different Contractor's schedule updates.

- iii. The Construction Management Firm/Team is required to perform the evaluation of Contractor's requests for change orders and Designer's responses to Contractor's Request for Information; preparation of material take-offs and cost estimates for each Notice-of-Proposed Change (NPC); assist in negotiation of the Contractor's cost proposals for additional work, and processing of the corresponding paper work to incorporate the change orders into the contract by the NJ TRANSIT Contracting Officer.
  - iv. Clerical and field support staff as necessary and approved by NJ TRANSIT.
- c. The on-site Resident Engineers, and Technical/Safety Field Staff shall be assigned solely to the and Substation Project, as long as such individuals remain employed by the Construction Management Firm/Team. Should replacements be required, such replacements shall not be implemented without prior written approval of NJ TRANSIT.

## **G. Construction Management Responsibility/Tasks**

### **1. General**

- a. The Construction Management Firm/Team shall be responsible for all aspects of construction management, including full responsibility for monitoring, site safety, inspection, acceptance and approval of all contract performed work; integration and coordination of force account efforts with that of the Contractor; monitoring of individual project schedules. The Construction Management Firm/Team shall review the Contractor's monthly CPM schedule for acceptance by NJ TRANSIT.
- b. NJ TRANSIT Force Account personnel and utilities may perform a portion of the work if required. If this occurs, CM services will include monitoring of this work, reviewing all associated payment documentation and making a recommendation on acceptability, providing assistance on planning, budget expenditure analysis, job control and technical assistance for particular specialty items, and monitoring/ maintenance of the Construction Schedule. The Construction Management Firm/Team shall also provide coordination and integration of all such force account work into the Contractor CPM schedule.
- c. The Contractor's CPM Construction Schedule will be specified as based in the latest version of Primavera Project Planner (P6) with detailed tasks and sub-tasks as necessary for the respective contract to be completed in a timely fashion. The Construction Management Firm/Team will be responsible to perform a thorough evaluation and recommend acceptance/rejection of the Contractor's initial submission, as well as their monthly update submissions, until substantial completion of the respective construction contract or as directed by NJ TRANSIT. The following are key scheduling related concerns of NJ TRANSIT that will require CM attention:

- i. Review and approval of Baseline Schedule.
  - ii. The Construction Management Firm/Team will monitor baseline durations and milestones.
  - iii. Respective detailed construction tasks and sub-tasks will be clear and logical construction sequences, in order for an on time, on budget and quality/reliable product.
  - iv. The Construction Management Firm/Team will provide timely recommendations to NJ TRANSIT regarding the schedule submission, as well as responses to the respective Contractor regarding their schedule submission.
  - v. Contractor progress payments are thoroughly evaluated, such that the payments reflect the actual work accomplished for the period.
  - vi. The construction Contractor will be responsible for incorporating force account work into their baseline and updated CPM schedule as provided by the Construction Management Firm/Team.
  - vii. The Construction Management Firm/Team shall create and maintain all force account schedules.
  - viii. The Construction Management Firm/Team shall maintain the Master Construction schedule.
- d. The Construction Management Firm/Team shall maintain, at the site office, a record copy of all Project communication in the form of correspondence, meeting minutes, technical conversation summaries, telephone logs, etc. in accordance with the approved document control format.
  - e. The Construction Management Firm/Team shall maintain at the site office a current record copy of all Project documents, drawings, shop drawing, samples, permits, etc.
  - f. The Construction Management Firm/Team shall directly communicate with the NJ TRANSIT Rail Operations regarding such matters as may affect rail operations.
  - g. The Construction Management Firm/Team will maintain a direct line of communication with the Project Designer or designee as it pertains to the Project's technical evaluation issues and resolutions. However, the Construction Management Firm/Team will not direct or take direction from the Designer and will be the only one who will communicate with the Contractor as it pertains to the contracts technical issues or resolutions.

- h. All CM communications, regarding Progress Reports, status reports, and all other submissions, will be transmitted to NJ TRANSIT's Project Manager or his designee in a form suitable to NJ TRANSIT.
- i. Contract administration responsibilities include the preparation of change orders documentation (initial change order evaluation, cost estimating, and schedule impact analysis), as well as the review and recommendation of such work, claims avoidance tasks, coordination and processing of shop drawings reviews, prompt responses to Requests-for-Information (RFI's) and, the timely and safe completion of the Project within schedule.
- j. The responsibilities identified above and hereinafter are not intended to portray the complete extent of the services required. Rather, such responsibilities are intended to highlight areas of particular concern to NJ TRANSIT; as part of contract negotiations with the Construction Management Firm/Team determined to be qualified, scope refinement and adjustment will take place. Proposers are invited to suggest refinements and improvements in their proposals.
- k. The Construction Management Firm/Team will receive, review when required and compare Contractor's SBE reports to contractual goals and report to NJ TRANSIT on compliance.
- l. The Construction Management Firm/Team shall monitor the performance of DBE subconsultants on the Construction Management Firm/Team and collect and report data on DBE participation to the NJ TRANSIT Office of Business Development Programs. DBE subconsultants on the Construction Management Firm/Team shall report their DBE status on the Form E-2, which is to be supplied by the Construction Management Firm/Team, and submit it with the monthly invoice to the Construction Management Firm/Team. As a requirement of the contract and the DBE program this form must be mailed by the 7<sup>th</sup> of every month to the Office of Business Development to determine contract compliance with respect to the DBE goal established for this contract.

## 2. Pre-Construction Phase

- a. The Construction Management is expected to begin mobilizing within (30) days of the Notice-to-Proceed (NTP) and to provide a detailed organizational and management plan covering specific personnel needs for the duration of the Project. The mobilization for pre-construction should consider that the entire CM team is not to be mobilized. Rather, staff should be available only as needed for Tasks P1.
- b. During pre-construction the Construction Management shall be responsible for and shall perform the following pre-construction task:

## Task P1 - Management Procedures and Document Control

- i. The Construction Management Firm/Team will submit for review, detailed methodologies for all standard CM procedures. Such methodologies shall pertain, but not be limited to, guidelines for handling, monitoring and inspecting all completed and installed work, material and equipment testing in the field and at manufacturing sites, development and implementation of quality assurance and quality control measures, and the development of a safety program for CM personnel which shall include monitoring and enforcement of the respective Contractor safety program.
- ii. During this period, the Construction Management Firm/Team shall also formalize document control procedures for recording and logging all Project correspondence and submissions. Such logs shall indicate submittal and review status for shop drawings, equipment and material submissions, change notices or change order request, Request-for-Information, Non-Conformance items, subcontractor approvals, value engineering construction alternatives, Contractor CPM submissions, as-built information, and all other submissions required to be made by the Contractor under the construction contract. The Document Control Program to be used throughout this project, is detailed below in Task C1.
- iii. The Construction Management shall establish a system to monitor all Project expenditures in advance of the first Construction Contract's notice-to-proceed. This system shall include issuance of monthly cost of work control reports indicating the cost of work completed to date, the cost of work remaining to be performed and projections of the cost of partially completed work.

### **Deliverables:**

- Memo or memo series detailing the information in a, b and c above (3 copies).

## 3. Construction Phase

For the construction phase of the Project, the Construction Management shall perform certain tasks, including but not limited to the following:

### Task C1 - Construction Management Administration

#### a. Mobilization at Construction Site

During the construction period, the Construction Management Firm/Team shall be provided through the Construction Contract either an on-site office facility or one within reasonable proximity to the site. This facility will be of such size as to comfortably accommodate CM staffing and at least one NJ TRANSIT personnel assigned to the Project. Furnishing of the facility will

also be provided and include office equipment, (i.e. computers/printer, photo copier, telephone, etc). The Construction Management Construction Manager is to have key staff equipped with mobile phones.

The Construction Management Firm/Team shall provide and equip all field personnel with radio and/or other modes of communication of a type and frequency as required or directed by NJ TRANSIT.

b. Work Coordination

The Construction Management Firm/Team shall coordinate the work of the Contractor with the work of any NJ TRANSIT force account to complete the Project in accordance with NJ TRANSIT's objectives of producing quality construction within schedule and budget. The Construction Management shall also monitor the delivery of all Project materials and equipment as required, and monitor the Contractor to ensure that designated staging and storage facilities are secure, have adequate protection and are otherwise prepared to receive material.

The Construction Management Firm/Team shall ensure that the approved construction work plans are adhered to by the Contractor at all times. During the entire construction phase, the Construction Management shall convene weekly meetings with the Contractor and appropriate representatives of NJ TRANSIT and/or to review, modify, or accept the Contractor's plans for such track occupancies and fouling for work two weeks after this meeting.

c. Force Account Assistance

The Construction Management Firm/Team shall meet with NJ TRANSIT's Project Manager/Designee and Force Account managers to identify construction management needs for the successful controlling of the Project schedule, work plans, and budgets. The Construction Management Firm/Team shall be prepared to give technical advice on selective fieldwork items and work plans, and shall ensure integration of all force account work into the respective Contractor construction schedule.

d. Project Document Control System

NJ TRANSIT has developed and maintains a system to identify and manage correspondence, business documents, current revision of instructions, procedures, drawings, specifications, reports and analyses, etc. The document database developed for this project shall be kept current throughout the term of the Contract. NJ TRANSIT's objective is to establish a "paperless" Project to the extent as practicable.

In addition to routine reporting, Construction Management Firm/Team shall provide at least one staff person to act as the Document Control Specialist (DCS). The DCS will act as Construction Management Firm/Team's representative and will be granted access to the NJ TRANSIT Document

Control System (NJTDCS). The DCS for the Construction Management Firm/Team shall communicate and share data, drawings and reports via the NJTDCS rapidly and efficiently. This system will allow the Construction Management Firm/Team and NJ TRANSIT to utilize the Document Control System as the project's file cabinet and for archiving all project documents and correspondence/e-mail. The documents entered into said system by the DCS shall be in compliance with the NJ TRANSIT Capital Planning & Programs (CP&P) Document Control Procedures and requirements outlined below.

Upon completion of the project or at such time as directed by NJ TRANSIT, the Construction Management Firm/Team shall provide all finalized documents compiled, as part of the project, to NJ TRANSIT, in native form, hard copy and electronic, using computer hardware storage approved by NJ TRANSIT for reconciliation of the project file stored on the NJTDCS.

The Construction Management Firm/Team shall, in compliance with NJ TRANSIT's Document Control Procedures, coordinate and maintain internal procedures to identify and manage correspondence, business documents, current revision of instructions, procedures, drawings, specifications, reports and analyses, etc.

Access to NJTDCS by the Construction Management Firm/Team's DCS is granted after completion of training and documentation by NJ TRANSIT's CP&P Records Management staff. The DCS shall maintain and process files in a manner that complies with NJ TRANSIT's CP&P Document Controls Procedures in order to provide:

- the creation and maintenance of authentic, reliable, and usable records
- proper utilization of NJTRANSIT's NJTDCS to assure the trustworthiness and authenticity of data

The Construction Management Firm/Team's DCS shall manage all hardcopy and electronic documents for the Consultant (if applicable), including, but not limited to the following:

- General Project correspondence
- Contracts, specifications, progress reports, invoices
- Budget & finance data
- Drawings, plans, and images
- Project related e-mail messages and attachments
- CDs, DVDs, and other hard media
- Native files and image files of all documents

The DCS will also be responsible for the following tasks:

- Scanning as a PDF-A and indexing
- Posting of scanned documents for retrieval

- Emailing notification to document recipients
- Maintaining and processing documents provided by the Construction Manager
- Filing of original hardcopy (if applicable)

Upon request by NJ TRANSIT, the Construction Management Firm/Team shall provide DCS personnel, at a designated NJ TRANSIT Office, to assist in the processing of documents uploaded into NJTDCS. The Construction Management Firm/Team DCS uploads shall occur, at a minimum, on a weekly basis to ensure that the project file on NJTDCS is current and adheres to NJ TRANSIT Standards. If necessary, in the event of a situation that prevents the Construction Management Firm/Team DCS from accessing the NJTDCS as a result of technical difficulties deemed unavoidable, NJ TRANSIT will provide a contingency plan to the Construction Management Firm/Team that will enable continued processing of project files.

The Construction Management Firm/Team shall utilize and maintain in a document control system acceptable to NJ TRANSIT, a construction filing system for tracking all Project correspondence, Request-for-Information, reports, test results, shop drawings, and all other Project related documents. The document control will use NJ Transit's ECMS and be governed by Super Storm Sandy procedures already in place. All such data shall be maintained on-site and made available to NJ TRANSIT at all times.

The Construction Management Firm/Team will keep on site a daily updated set of marked up construction drawings, indicating as-built conditions. The as-built conditions should be checked regularly with the Contractor's marked-up drawings and should they differ, the Construction Management Firm/Team shall contact the respective Contractor for clarification of the variance and if necessary a reconciliation meeting shall take place to agree on the true as-built conditions. The Construction Management Firm/Team shall notify NJ TRANSIT's Project Manager/Designee of the variance in the construction drawings and the recommended course of action.

Prior to final payment the Contractor shall submit a copy of the marked-up drawings of all contract drawings whether altered or not to the Construction Management Firm/Team with the Contractor's certifications as to the accuracy of the information.

e. Project Meetings

Prior to the Contractor's Notice to Proceed and mobilization the Construction Management Firm/Team shall conduct a Pre-Construction meeting with personnel representing the Contractor, NJ TRANSIT, the public utilities and any other project entities where such attendance is deemed important. During the duration of the Construction Contract, progress meetings shall be held on a bi-weekly basis, or held more frequently as deemed necessary by NJ TRANSIT. A draft of detailed minutes shall be prepared by the Construction Management Firm/Team and forwarded to NJ TRANSIT's



Project Manager/Designee for review and approval within three (3) days of the conclusion of such meetings. Upon approval of the minutes, the Construction Management Firm/Team will distribute the minutes to all Project participants, or as directed by NJ TRANSIT.

The Construction Management Firm/Team shall also conduct and/or participate in all other meetings as may be scheduled throughout the duration of the Project, including such meetings scheduled with Public Utilities and all Federal, State, Regional and Municipal governmental bodies exercising jurisdiction over the Project. The Construction Management Firm/Team shall also keep a meeting log that will be incorporated into all monthly reports.

f. Community Relations

The Construction Management Firm/Team shall assist NJ TRANSIT in answering all inquiries and complaints received from property owners, citizens and officials relative to the construction activity. The Construction Management Firm/Team shall maintain a log to record each inquiry and/or complaint.

g. Cost Control

The Construction Management Firm/Team shall measure all contract pay items of work, review Contractor invoices and recommend payment for the same, within five (5) calendar days after receipt. The Construction Management Firm/Team shall also maintain cost account records with respect to portions of the work to be performed under Change Orders by unit cost and/or a time and material basis.

At all times, the Construction Management Firm/Team shall exercise efforts to minimize all claims for additional time, costs and other contractual liability issues. The Construction Management Firm/Team shall also assist NJ TRANSIT in the review of all Contractor claims, assemble pertinent documentation and provide recommendations for the resolution of all contractual liability claims

h. Labor Relations Assistance

The Construction Management Firm/Team shall ensure that all work being performed by the Contractor is in compliance with State and Federal labor laws. The Construction Management Firm/Team shall ensure that prevailing wages are being paid by the Contractor through the review of certified payrolls, which shall be submitted with the corresponding Contractor invoices.

i. Record Keeping

The Construction Management Firm/Team shall maintain on-site current record copies of all contracts, drawings, specifications, samples, catalogue cuts, test results, NJDCA inspections, etc. and all other pertinent Project

documentation. All such records shall be immediately available to NJ TRANSIT at all times.

The Construction Management Firm/Team's technical, non-clerical staff shall be required to maintain daily job diaries (hard cover) for each contract to record in detail all work accomplished on a daily basis, number and work classification of personnel utilized by the Contractor and force account units, construction equipment in use, material deliveries, weather conditions, material shortages, tests, labor disputes, general observations, force account flag protection units and, any unusual circumstances occurring during the work period.

j. **Project Progress Reports**

The Construction Management Firm/Team shall provide five (5) copies of progress reports on a monthly basis, or more frequently as required, which shall address, as a minimum, actual vs. planned progress, Progress Schedule analysis summary, Contractor payments to date, decision and/or resolution logs, contract modification summaries, Construction Management Firm/Team fees to date, projected work and cost for the next period, etc. The Construction Management Firm/Team shall maintain cost account records with respect to portions of the work performed by change orders on a time and material basis and/or unit cost when required.

The Construction Management Firm/Team will keep a digital camera with a date imprint on site at all times and take pictures of all work as part of the Project records. Photos/slides/electronic media will be submitted to NJ TRANSIT as requested and all negatives/photos/slides/discs will be turned over to NJ TRANSIT at the completion of the job. The Construction Management Firm/Team shall maintain photographic records in both slide and print format detailing the status of all construction work in progress. Such records shall be submitted as part of the monthly reports described above.

**Deliverables:**

- Identification of document control support staff subject to NJ TRANSIT review
- Document Control Logs
- Meeting minutes as required
- Meeting log
- Inquiry & complaint log
- Cost Account records
- Construction cost to date and projection
- Construction Management fees to date and projection
- Force account summary and cost
- Outline of filing system
- Submittal of as-built drawings
- Daily job diaries
- NJDCA Inspection Log/Reports

- Project progress reports
- Project schedule analysis summary
- Project photographs
- Transference of project records at project close-out
- 

#### Task C2 – Inspection

- a. The Construction Management Firm/Team shall conduct on-site inspections of all work performed by the Contractor to determine that such work is being performed in conformance with the respective contract construction plans, specifications, codes, permits and other applicable regulations. The consultant's inspectors will keep daily records of the work on the Inspector's Daily Record of Work in progress in addition to keeping bound daily dairies. All completed work shall be approved by the Construction Management Firm/Team prior to final approval/acceptance of such work by NJ TRANSIT.
- b. The Construction Management Firm/Team shall identify all non-compliant contract work to the respective Contractor within a twenty-four (24) hour period. The Construction Management Firm/Team shall evaluate the non-conformance work and determine if it justifies a STOP WORK notice. Prior to a STOP WORK notice being issued to any Contractor, the Construction Management Firm/Team shall inform NJ TRANSIT's Project Manager of the non-conformance work and obtain NJ TRANSIT's concurrence on the recommended actions to be taken. The Construction Management Firm/Team will enforce the STOP WORK notice on the respective Contractor by not allowing any progress work associated with the non-compliant work to continue until the Contractor has either corrected the work to conform to the Project specifications, or has justified the reasons for the non-compliance to the complete satisfaction of NJ TRANSIT. The Construction Management Firm/Team will not allow progressive work to continue until NJ TRANSIT has issued a directive to do so. The Construction Management Firm/Team shall keep an updated log regarding non-compliant work on site; this log shall conform to the procedures outlined in Section II. C.2: Task P4 - Management Procedures and Document Control.
- c. The Construction Management Firm/Team shall conduct on and off site (if necessary) inspection and testing of all material and equipment to be incorporated and/or installed as part of the Project. All such items shall be approved by the Construction Management Firm/Team prior to placement, installation and/or final acceptance of such work by NJ TRANSIT.

#### Task C3 - Testing

- a. The Construction Management Firm/Team shall be responsible for overseeing all field tests as may be required of the Contractor to ensure material and equipment compliance with the specifications and to evaluate and approve the quality and workmanship of all contract work, within seven (7) calendar days after its installation. As part of the construction contract, all

testing shall be performed by independent laboratory testing agency certified in the areas within which they shall be performing such services, with a written report detailing all test data, results and recommended action. The contractor shall submit this report to CM for review.

- b. The Construction Management Firm/Team shall certify that all manufacturers' testing required under the specifications has been performed prior to any material or equipment being installed or placed into service.
- c. The Construction Management Firm/Team will submit to NJ TRANSIT, a comprehensive testing and commissioning program to be used for interim and final acceptance testing of all systems. This testing program will be incorporated into the bid documents for construction.

**Deliverables:**

- Testing Plans/Programs
- Testing/Monitoring/Survey information as required

**Task C4 - Environmental**

- a. Should any contaminated material be found on the Project site, the Contractor must stockpile it in compliance with Federal, State and local regulations, at an on-site location by the Construction Management Firm/Team with the concurrence of NJ TRANSIT. The contaminated material shall then be sampled and tested for determination of its final disposition. The costs associated with this testing shall be drawn from the allowance established in the Construction Contract.
- b. It shall be the Construction Management Firm/Team's duty to ascertain that handling of any contaminated material by the Contractor is conducted in strict compliance with all Federal, State and local regulations. Upon discovery of any contaminated material, the Construction Management Firm/Team shall immediately notify NJ TRANSIT and recommend the appropriate action to follow.

**Deliverables:**

- Recommendation memos as appropriate

**Task C5 – Schedule Control**

- a. The Construction Management Firm/Team will also have the responsibility of the review of all construction CPM schedules submitted by the Contractor, within fourteen (14) calendar days of receipt of the submission.

Skilled, experienced personnel using the latest versions of Primavera P6 software and tracking software shall conduct review and analysis. The Construction Management Firm/Team review will verify that the Schedule submitted is in conformance with the associated contract requirements and further, that construction work sequences are consistent with the contract

milestones/completion dates and NJ TRANSIT or force account work schedules. The Construction Management Firm/Team shall reject all Contractor submissions that do not meet these requirements and make note of said submission in the submission log. After the Construction Management Firm/Team's initial review, the Construction Management Firm/Team shall submit the Contractor's CPM schedule/monthly updates to NJ TRANSIT Project Manager with their recommended action; the Construction Management Firm/Team shall log all submissions sent out for review and the submission receipt after review. The Construction Management Firm/Team will ensure that the Contractor will receive comments or approval within twenty-five (25) days after the receipt of the submission.

- b. Such schedules shall be updated on a monthly basis, or more frequently as required, to reflect changes and progress in construction. The Construction Management Firm/Team shall review and approve or recommend rejection of such schedules and recommend actions that need to be undertaken for any contract appearing to be behind schedule.
- c. The Construction Management Firm/Team will plan the schedule meetings so that, regardless of frequency, there will always be a meeting taking place on or about the 25th day of the month. During this monthly schedule meeting, in addition to the in-depth review of the Detailed Project Schedule (DPS), the Project progress (i.e., completed activities and percent complete of partially completed activities) shall be discussed. The percent of work complete shall be determined and the Contractor advised accordingly. Subsequent to this meeting, the DPS shall be updated with the progress and the Contractor shall submit the monthly Narrative Report and the revised DPS to the Construction Management Firm/Team as part of its Payment Application.

**Deliverables:**

- Contractor's CPM Reviews
- Project construction schedule and updates
- Impact Analyses and Extension of Time Reviews, as necessary

**Task C6 - Staging and Work Plans**

- a. Within thirty (30) calendar days from Notice to Proceed of the Construction Contract, the Contractor shall prepare Construction Staging Plans for his work to ensure flow control and sequencing of various work elements; such plans shall be coordinated through the Construction Management Firm/Team with NJ TRANSIT Rail Operations. These staging plans shall be submitted to the Construction Management Firm/Team for review and approval by the appropriate NJ Transit representatives.
- b. The Construction Management Firm/Team shall have ten (10) calendar days from receipt, to review all construction, installation or other Work Plans developed and prepared by the Contractor. Each work plan shall indicate the methods proposed to utilize in completing their respective work elements.

The Construction Management Firm/Team will verify that the submitted construction Work Plans are consistent with NJ TRANSIT and, when applicable, NJTRO requirements for construction Work Plans and that they correspond to the staging plans included in the construction bid documents. The Construction Management Firm/Team shall reject all Contractor submissions that do not meet these requirements and make note of said submission in the submission log. After the initial Construction Management Firm/Team review, the Construction Management Firm/Team will submit the work plan to appropriate NJ Transit representations review and approval. The Construction Management Firm/Team will ensure that the Contractor receive comments or approval within thirty (45) days after submission and notify NJ TRANSIT's Project Manager if this period has elapsed. NJ TRANSIT shall approve such plans prior to the subject work commencing in the field.

**Deliverables:**

- Construction staging plans reviews and comments

**Task C7 - Shop Drawings and Material Approval**

- a. The Construction Management Firm/Team shall follow detailed procedures established during the Pre-Construction Phase for expediting the processing and review of shop drawings and materials. The CM Team shall maintain a shop drawing and material submittal log and shall coordinate the processing and review of all such data with the Project Designer. The Construction Management Firm/Team should assume that NJ TRANSIT will complete its review of all submissions within twenty-one (21) calendar days of receipt of the same from the Construction Management Firm/Team.
- b. Upon receipt of the Contractor's construction shop drawing and material submissions, the Construction Management Firm/Team shall have three (3) calendar days to review all submissions for contract conformance prior to forwarding to NJ TRANSIT and/or the respective utility. If this submission is not in conformance with the contract, the Construction Management Firm/Team shall reject the submission and log its rejection, and resubmission. The Construction Management Firm/Team shall log each submission sent to the Project Designers and inform NJ TRANSIT Project Manager when the review has taken in excess of twenty-one (21) calendar days. The Construction Management Firm/Team shall forward to the Contractor the submission with the Designer's approval or comments of rejection, within two (2) calendar days after receipt from the Project Designers.
- c. The Construction Management Firm/Team shall take such actions as may be required to prevent installation of any material or equipment not approved or certified. The Construction Management Firm/Team shall promptly notify the Contractor of any and all work or items that fail to conform to the contract plans or specifications.

d. Requests for Information (RFI):

Any party may initiate a Request for Information (RFI). The normal flow of RFI's is from the Contractor, through the CM, to the Design Engineer. A Contractor initiated RFI may question inconsistencies or request clarification of the Contractor Documents. The CM will generate the RFI form, assign it a number and response date and forward it to the responsible party. RFI's will be logged and tracked.

**Deliverables:**

- Document control sheets
- Contractor submittal log
- RFI Review/response log

Task C8 – Change Orders

- a. The Construction Management Firm/Team shall follow the detailed change order procedures established in the Pre-Construction Phase for expediting the review and negotiations of all Notice of Proposed Change (NPC) and Contractor Initiated Change Order Requests (CICOR), as per the Change Order requirements in the General Provisions for Construction, in coordination with NJ TRANSIT Contracting Officer or duly authorized representative. The Construction Management Firm/Team will maintain a NPC or CICOR log and coordinate the review and negotiations of all NPCs or CICORs with NJ TRANSIT's Project Manager and the Contracting Officer's duly authorized representative.
- b. When a change in the work has been brought to the attention of the Construction Management Firm/Team, and at the sole direction of NJ TRANSIT's Project Manager, the Construction Management Firm/Team will issue a NPC or CICOR to the respective Contractor and prepare the corresponding cost estimate. Upon receipt of the Contractor's NPC or CICOR cost proposal, the Construction Management Firm/Team will have five (5) calendar days to review the submission for entitlement, perform a cost analysis, price analysis, and submit to NJ TRANSIT's Project Manager its recommended action for such requested contract modification.
- c. The Construction Management Firm/Team will coordinate and participate in the negotiation meetings of all NPCs and CICORs. The Construction Management Firm/Team shall not negotiate any NPC or CICOR without the NJ TRANSIT Contracting Officer and Project Manager present. The NJ TRANSIT Contracting Officer is the only person authorized to direct the respective Contractor to proceed with the work as may be changed by our NPC or CICOR.

**Deliverables:**

- Change Order File containing COR's, NPC's and Change Order Status Log and materials developed in "a." above ((i.e. estimates, quotes, price

analysis, cost analysis, negotiation plan, take-offs, schedule back-up, records of negotiations and settlement, etc.)

#### Task C9 - Quality Assurance and Quality Control

- a. The Construction Management Firm/Team shall develop and maintain a Quality Assurance/ Quality Control (QA/QC) program, which shall conform to NJ TRANSIT and Federal Transit Administration (FTA) requirements. The Construction Management Firm/Team shall also designate a member of the CM team who shall ensure the implementation of such QA/QC program and shall approve similar plans prepared and submitted for review by the Contractor.

**Deliverable:**

- Written QA/QC program

#### Task C10 - Project Safety

- a. Prior to commencement of work on NJ TRANSIT property, all Construction Management personnel working on the site shall attend the safety orientation class, which will be provided by NJ Transit at no cost to the Construction Management Firm/Team. The Construction Management Firm/Team's personnel may be required to travel to offices in Newark, NJ for administration of this class. Each trained employee shall be issued a safety sticker to be placed on the employee's hardhat. The employee must display the sticker when working on NJ TRANSIT's property.
- b. The Construction Management Firm/Team shall designate a Safety Officer approved by NJ Transit and shall have full authority to act on behalf of the Construction Management Firm/Team at all times to ensure that all construction work is being performed in accordance with standard industry practices and with State and Federal laws regulating job safety. This person shall review and approve all Contractor Work Plans. Questionable work practices proposed by the Contractor shall be noted by the Construction Management Firm/Team and promptly brought to the attention of the Contractor prior to the commencement of such work in the field.
- c. Given the nature of the construction site within an active train yard, site safety takes on added emphasis not only to construction personnel but also to protect NJ TRANSIT personnel and property. To maximize project safety, the Construction Management Firm/Team will review the Contractor's safety programs and make recommendations to NJ TRANSIT for changes. The Construction Management Firm/Team will conduct periodic meetings with NJ TRANSIT and the Contractor's supervisory personnel for the purpose of reviewing the status of the Project Safety and Loss Prevention Program and reviewing emergency and first aid plans.



- d. Should the Contractor be performing any aspect of the construction work in an unsafe manner that could jeopardize human safety, the Construction Management Firm/Team shall issue the Contractor a STOP WORK ORDER as described in Task C2-b and prepare a detailed report of the occurrence that justified this action. The STOP WORK ORDER shall not be lifted until the Contractor has implemented corrective measures to eliminate the unsafe practice.
- e. The Construction Management Firm/Team will develop procedures with the Contractor so that visitors to the site are first directed to the CM Office, and, if appropriate, NJ TRANSIT can be notified.

**Deliverables:**

- STOP WORK ORDER if applicable
- Accident reports
- Safety checklist
- Minutes of Safety Meetings
- Visitors Log

**Task C11 - Project Closeout**

- a. The Construction Management Firm/Team's Construction Manager shall determine when the Construction Contract is Substantially Complete and have the concurrence of NJ TRANSIT's Project Manager prior to his preparation of a punch list of the work remaining to be finished by the Contractor. In coordination with NJ TRANSIT, the Construction Management Firm/Team will prepare a punch list of incomplete or unsatisfactory items and the scheduled dates of completion. Certificates of Substantial Completion shall be prepared with the NJDCA TCO/CO and punch list attached, and the Certificate approved by the Construction Management Firm/Team, NJ TRANSIT and the Contractor. The Certificate will then be given to NJ TRANSIT's Project Manager for approval. The Construction Management Firm/Team will also submit any necessary documentation for the assessment of liquidated damages.
- b. The Construction Management Firm/Team will coordinate the correction and completion of remaining work identified on the punch list. The Construction Management Firm/Team will generate a monthly report on the status of punch list items.
- c. The Construction Management Firm/Team shall determine final completion and provide written notice to the NJ TRANSIT Project Manager and Designer that punch list items have been resolved and the work is ready for final inspection. After satisfactory final inspection and NJ TRANSIT concurrence, secure and transmit to the Contracting Officer the required guarantees, affidavits, releases, bonds, O&M Manuals, waivers, etc. The Construction Management Firm/Team shall certify in writing that all work has been

completed in accordance with the plans and specifications and, that final estimates of payment to the Contractor is correct.

- d. The Construction Management Firm/Team shall advise NJ TRANSIT's Project Manager in writing when NJDCA issues all TCOs/Cos, all Building Systems (lighting, heaters, etc.) and communications systems have been tested, approved and ready to place into service. This activity should be conducted in accordance with the testing and commissioning program submitted by the CM to meet the requirements of Task C3 Section (c). The Construction Management Firm/Team shall also assist in the preparation of plans for initial start-up of operations and shall provide support to NJ TRANSIT before and after initiating operation.
- e. Prior to NJDCA final inspections and issuance of TCOs/Cos, the Construction Management Firm/Team will coordinate and participate with the NJ TRANSIT Project Manager Start-Up Meetings for NJ TRANSIT and personnel. Meeting are to be held weekly and may need to be held in NJ TRANSIT's Headquarters, One Penn Plaza East, Newark, NJ.
- f. The Construction Management Firm/Team will coordinate with NJ TRANSIT's Project Manager any training necessary for NJ TRANSIT and/or personnel on all applicable equipment and systems, which is a contractual obligation of each Contractor, for each piece of equipment installed. The CM shall submit within five (5) days of receipt of the specific training manuals and session outline, a recommendation of action to NJ TRANSIT's Project Manager. Under no circumstances shall the Construction Management Firm/Team allow training of any NJ TRANSIT personnel without the prior approval by NJ TRANSIT's Project Manager.

**Deliverables:**

- Certificate of Substantial Completion
- Punch List and subsequent updates
- Monthly Punch List Status Report
- Contractor's Certificate of Completion
- NJDCA TCO/CO report
- Affidavit of payment
- Record Drawings

**IV. SCOPE OF SERVICES – GENERAL**

- A. The Construction Management Firm/Team shall furnish all services as required by NJ TRANSIT in accordance with the contract. NJ TRANSIT may terminate the agreement in whole or in part at any time if the Construction Management Firm/Team has materially failed to comply with the terms of the agreement.

- B. The Construction Management Firm/Team will provide an organizational structure that will address each task identified in this project, control the budget, the schedule and product quality, and expedite the successful completion of the project. The Construction Management Firm/Team's organization will be led by the Project Manager, who will coordinate all efforts and will serve as a focal point for contact between all parties affected in implementing this project. In addition, the Construction Management Firm/Team's Project Manager will represent the entire team and be responsible for all communications with NJ TRANSIT. If during the course of this project, it is determined by NJ TRANSIT staff that an extension of time is required to meet new or modified project demands, NJ TRANSIT reserves the right to extend any Construction Management Firm/Team assigned to its projects for a period agreeable to both firms. Likewise, NJ TRANSIT reserves the right to cancel the project or reduce the scope of effort for the Construction Management Firm/Team at any time.
- C. The Construction Management Firm/Team will perform services for NJ TRANSIT, and attend and assist at all meetings required to inform and coordinate work with NJ TRANSIT staff and relevant agencies.
- D. The Construction Management Firm/Team will provide a work plan with timelines and milestones for the management of these services to NJ TRANSIT's Project Manager. In addition, the Construction Management Firm/Team shall keep the Project Manager routinely informed of its progress during the needs analysis, network(s) design and implementation strategy, in written format, as required, during the course of the work.
- E. The Construction Management Firm/Team shall maintain and make available, as requested, all documents, records and other evidence pertaining to service and costs thereof for a period of five (5) years from the final payment under the contract and shall be subject to audit by Office of the State Comptroller within said period.
- F. All work product produced by the Construction Management Firm/Team in accordance with this contract shall become the sole property of NJ TRANSIT. Work product includes, but is not limited to: records, reports, computations, calculations, work sheets, cost estimates, correspondence, computer tapes/discs/programs/data, and all other products resulting from the Construction Management Firm/Team's work performed under this contract.

## **V. PROPOSAL REQUIREMENTS**

### **A. General**

The proposal package shall consist of one (1) original and four (4) copies of the Technical Proposal. The Technical Proposals shall be prepared on 8½" x 11" paper. A limited number of 11" x 17" fold-out sheets for exhibits are acceptable. All pages are to be sequentially numbered.

Clear and concise proposals are sought. Elaborate proposals and artwork, expensive paper and bindings, and expensive visual and other preparation aids are not necessary or desirable.

Proposals are to be delivered to NJ TRANSIT on or before the time specified in the RFP cover letter and once submitted become the property of NJ TRANSIT.

All proposals are to be submitted to:

**NJ TRANSIT**  
**One Penn Plaza East, 6th Floor**  
**Newark, NJ 07105**  
**Attn: Bid Desk**  
**Re: Construction Management Services for Bay Head Substation**  
**RFP No. 17-008**  
**Due Date: March 22, 2018, 3:00 pm**

All inquiries and requests for clarifications shall be submitted to the attention of:

Ms. Maggie Sotolongo  
Senior Contract Specialist  
NJ TRANSIT  
Procurement Department  
One Penn Plaza East, 6<sup>th</sup> Floor  
Newark, NJ 07105  
Office: (973) 491-7588  
Fax: (973) 232-1892  
Email: [msotolongo@nitransit.com](mailto:msotolongo@nitransit.com)

All inquiries and requests for clarifications are due by February 21, 2018 (COB).

***All Consultants submitting a proposal are advised that communications with NJ TRANSIT that in any way relates to this project shall only be conducted with or through the authorized representative of the Contracting Officer in NJ TRANSIT's Division of Procurement. All other contacts are strictly prohibited and are considered improper. Consultants are advised that violation of this prohibition may result in the removal of the firm from consideration for this contract.***

Proposals shall be valid for the period of time it takes to negotiate an agreement and execute a contract with the successful firm. Said period of time is not expected to exceed six (6) months from the date of proposal receipt, but may be longer. A duly authorized official of the firm or joint venture must sign such proposals.

Should the proposal contain data which the firm does not want disclosed for any purpose other than evaluation of the proposal, such data may be so restricted, provided the firm identifies the appropriate pages of the proposal and places a label on those pages.

## **B. Technical Proposal Format**

Technical Proposals shall include the necessary information to establish the firm's expertise and qualifications to accomplish all Tasks as set forth in the Scope of Services. Technical Proposals shall reflect and include the necessary level of effort required to advance the project through completion. Firms are urged to be clear and concise in the preparation of Proposals.

Technical Proposals shall follow the format outlined below.

### **Section 1 - Cover Letter**

The cover letter should summarize key points of the proposal and include any introductory or explanatory remarks. The Construction Management Firm/Team will demonstrate an understanding of the overall project objectives, areas of concern and technical/managerial approaches to be emphasized in pursuing this work.

### **Section 2 - Qualifications of Firm(s)**

This section shall contain pertinent information about the project organizational structure of the team and the number of personnel required for the project. The Construction Management Firm/Team shall show the availability of professional and technical staff exclusively for this project. Also, the section shall show anticipated workload for the duration of this project, taking into account resources involved with existing proposals and active projects.

### **Section 3 - Qualifications of Individuals**

This section shall contain the names and concise experience records of the Construction Management Firm/Team's Project Manager and other key managerial and technical personnel assigned to the project. Specific design, skills or strengths and any other relevant experience should be highlighted. In describing related experience, explain the role of each individual's and firm's assignment in the context of the client's overall project, study, program, etc. Resumes for the Construction Management Firm/Team's Project Manager and other key managerial and technical personnel assigned to the project are to be included in this section and shall cite formal education, professional licenses and certifications, work history, and training in industry skills.

This section must contain a certification that the listed key personnel are presently employed by the Construction Management Firm/Team, or will be on board, and will be assigned to the project in the manner prescribed.

### **Section 4 - References**

Reference checks will be made based on the information supplied in this section, and the information gathered will be used to validate information contained in the Technical Proposal and evaluate the abilities of the firm in all the aspects of quality, budget, responsiveness and expertise. Listed references, therefore, should be

pertinent and recent (within the last five years), and the contact person should have had direct involvement with the firm and the project.

A minimum of three client references must be provided for each firm on the consulting team for completed assignments similar in scope and magnitude to the NJ TRANSIT project to be undertaken.

In addition, each firm having performed services for NJ TRANSIT, as a prime Consultant or Sub-consultant, must provide references as stated above for all prior NJ TRANSIT projects.

Firms having performed services for NJ TRANSIT will be evaluated on the basis of their history of compliance with all contract provisions, including but not limited to: quality assurance, budget adherence, insurance and indemnification responsibility provisions.

References should include client name, client contact name, title and involvement on the project, address, telephone number, name of project worked on, start and end dates of assignment, and description of the assignment including firm's role/responsibility.

## **Section 5 -Technical Section**

This section shall contain the Construction Management Firm/Team's work plan for accomplishing the project. The work plan shall address all tasks described in this RFP and shall include a description of how the Construction Management Firm/Team's time schedule for project completion will at least meet or better the time frames provided. This section most importantly shall contain each key individual's past work experience that demonstrates their ability of a project of similar scope and magnitude.

The Construction Management Firm/Team is encouraged to provide additional narrative on the services to be performed, which can be used to evaluate the Construction Management Firm/Team's understanding of the objectives and overall purpose of the project; the Construction Management Firm/Team's relative specialized experience; technical competence and application of innovative techniques in connection with particular tasks and activities; and the Construction Management Firm/Team's ability to progress the project in a systematic, straightforward, logical manner.

Suggested improvements on the work plan as described in this Request for Proposal should be noted in this section.

## **Section 6 - Team Organization/Resource Allocation**

This section shall address the proposed management structure, manpower allocation, and assigned individuals for performing the work program. Include a clear description of how the management structure and assigned personnel fit into the work program (previously described), how staff assignments will vary over the

project time frame and an explanation of the relationship of the Project Manager to the top management of the firm, and the extent of his/her authority and responsibility. All other project positions and relationships comprising the project's organizational structure will be presented. The following information shall be included in this section:

- a. Team Organization Chart showing the reporting and contractual relationships of all firms included in the proposal.
- b. Matrix of Man-Hours by firm showing, by task and by schedule, the total man-hours for the entire team and separately for each firm included in the team. The percentage of Man-hours allocated to DBE firms should also be shown.
- c. Organization and Staffing Chart showing the organization of key personnel by name, title and reporting relationship.
- d. Matrix of Man-Hours by Individuals showing, for each project staff member, the number of man-hours proposed for each task and by schedule.

## **Section 7- Quality Assurance Plan**

This section shall describe the Construction Management Firm/Team's Quality Assurance/Quality Control Plan as it relates to this project as well as the firm's overall QA/QC Program. This section is not intended for inclusion of the complete QA/QC Plan, but should be detailed enough to provide for a clear understanding of the firm's process. NOTE: Upon award of contract, the Construction Management Firm/Team shall submit for approval to NJ TRANSIT, its detailed QA/QC Program for all of the services to be provided under this RFP.

**THE CONSTRUCTION MANAGEMENT FIRM/TEAM IS REQUIRED TO PROVIDE ONE (1) ORIGINAL COPY OF THE FOLLOWING IN A SEPARATE SEALED ENVELOPE.**

### **Contract Exceptions, Clarifications or Modifications**

The Construction Management Firm/Team shall review NJ TRANSIT's Professional Services Agreement (Exhibit 1) and identify and submit to NJ TRANSIT with its Technical Proposal any proposed modifications to the Agreement. **All exceptions, clarifications, and modifications must be specifically identified and explained in a clearly identified section of the Construction Management Firm/Team's Technical Proposal. The Construction Management Firm/Team's standard terms and conditions will not be considered as an exception, clarification, or modification. Exceptions, clarifications or modifications to NJ TRANSIT's Professional Services Agreement that are not provided with the Technical Proposal will not be entertained.**

## **Certifications**

This section of the proposal will contain signed copies of all required certifications listed in Exhibits 2, 4, 5, 6, 7, 8, 9, 10, 11, 12 & 13. Additionally, please include a copy of your Business Registration Certificate.

### **C. Oral Presentation Format**

Oral presentations shall be made before the TEC and shall consist of an introduction of the Construction Management Firm/Team's project team, a general discussion why the team should be selected for the project, and a detailed account of the particular experience of each major team member. The oral presentations shall also include the methodology and approach that the Construction Management Firm/Team proposes to use for the intended scope of services and explain in necessary detail the basis why this approach was chosen as well as any applicable projects where this approach was used in the past.

The oral presentation period will be scheduled for a maximum of one (1) hour for each proposer. Each proposer shall be granted up to 30 minutes for highlighting significant points of interest to NJ TRANSIT. The balance of the presentation shall be reserved for discussions, with the TEC members, on any and all subjects in regards to the written proposal, oral presentation and other project issues as deemed relevant by the TEC.

Attending and participating in the oral presentation shall be members of the proposed firm/team who will play the key and significant roles in managing the project. Attendance shall enable each TEC member to become acquainted with the individuals so designated.

### **D. Method of Selection**

#### **Proposal Distribution**

Upon receipt of the Technical Proposals, NJ TRANSIT will provide a copy of the Technical Proposals to each member of the TEC.

Duties of the TEC will include:

- Review of Technical Proposals
- Complete technical evaluations and score proposals
- Recommend an award
- Assist the Procurement Department, as required, with negotiations

#### **Proposal Evaluation**

Each individual on the TEC will review and evaluate the written Technical Proposals based on the quality and substance of the submitted proposal. Written Technical



Proposals will be evaluated against the technical evaluation criteria enumerated in Attachment A of this section.

Written technical proposal evaluations will be used by NJ TRANSIT to determine the competitive range. Reference checks will be performed for all Construction Management Firm/Team and the results furnished to the TEC. References will not be scored; however, they will be checked and used in the overall evaluation of proposals.

### **Oral Presentations**

Oral presentations may be required from those firms/teams within the “competitive range” or may be waived at the discretion of NJ TRANSIT. Oral presentations, if necessary, will provide an opportunity for the consultant/team to clarify or elaborate on its written technical proposal. The TEC will conduct the oral presentations, if any. The TEC will use the oral presentations to confirm and/or reassess its understanding of the written technical proposals, and incorporate that information into its evaluation by revising the written technical evaluation scores accordingly.

NJ TRANSIT reserves the right to assess and reassess its understanding of the proposals and revise the rating and ranking of such proposals at any time prior to selection.

### **Cost Proposals**

NJ TRANSIT will request a cost proposal from the highest technically qualified firm. All proposed expenses will be evaluated to determine their reasonableness and whether they are allowable and allocable. The Federal Transit Administration Cost Standards (Federal Acquisition Regulations Part 31; FAC 84-16, 17, 19) will be used as the guideline in determining the reasonableness of the Construction Management Firm/Team’s costs.

One (1) original, three (3) copies and one (1) CD or USB electronic copy of a cost proposal will be requested from the highest technically qualified firms as determined in accordance with Section V, Paragraph D. The firm must provide a detailed Cost Proposal within seven (7) working days of the receipt of the written or verbal notification from NJ TRANSIT regarding their selection. If a firm cannot provide its Cost Proposal within seven (7) working days of request, NJ TRANSIT reserves the right to begin negotiations with the next highest ranked proposer. The cost proposal shall be presented in a person-hour allocation format by discipline and title and shall be separated by salary rate as indicated herein.

Person-hours by discipline and title shall be separated by task, schedule and by salary rate. Direct expenses shall be itemized separately by category for each Phase, Task and Subtask. Direct expenses to the Construction Management Firm/Team are in addition to the compensation for payroll additives, salaries and profit, and include actual expenditures made by the Construction Management Firm/Team’s technical employees and professional consultants for such expenses as:

1. Travel, sustenance and lodging - NJ TRANSIT shall reimburse the Construction Management Firm/Team in accordance with the NJ TRANSIT Travel Policy. Please refer to Exhibit 14: Travel, Subsistence and Lodging Reimbursement Guidelines.
2. Reproduction expenses
3. Subcontracts less than \$10,000.00.
4. Expense of the premium portion for overtime work requiring higher than regular rates, when authorized in writing by NJ TRANSIT.

The person hours and direct expenses shall be summarized by task and by firm in the Construction Management Firm/Team's cost proposal and include overhead, profit, etc. Overhead and profit assumptions are to be shown as per Attachment C. Direct salary cost is defined as base salary paid to technical employees (excluding mandatory and customary benefits such as statutory employees' benefits, insurance, sick leave, holidays and vacations, pensions and similar benefits). Technical employees include engineers, designers, job captains, draftsmen, specification writers and the like, in consultation, research, inspection, design, drawing production, specification development and other similar services pertaining to the project.

If clerical support is required and if it is not included in overhead or direct expenses, it must be itemized in the same fashion as other staff in the proposed cost detail.

A summary of the cost proposal for each firm included in the proposal is required, showing fees for the basic work program, as shown in Attachment C "Cost and Fee Recap - Team." The same summary, but for the entire proposal is also required, as shown in Attachment C "Cost and Fee Recap - Firm".

The contract will be a cost plus fixed fee type with a maximum amount not to be exceeded. The profit (fixed fee) shall be negotiable on a task-by-task basis and shall not exceed ten percent (10%) on labor, overhead and fringe costs; there should be no profit on direct expenses. No overhead burden of profit (fixed fee) is allowed on subcontracting or direct costs.

Each task in this Contract will have a specified amount identified equal to the negotiated proposed cost for each Phase, Task and Subtask. Expenditures greater than the identified amount and incurred by the Construction Management Firm/Team during the course of the execution of the Contract shall not be reimbursed unless previously approved by NJ TRANSIT prior to the performance of the work.

The firm must demonstrate its financial capability, including financial resources to sustain operations between the time expenses are incurred and the time payment is made. The proposal shall include the latest year-end financial statement as prepared by an independent auditing firm.

Each firm on the Construction Management Firm/Team must submit a listing of the items charged to the project overhead rate and the corresponding percentages. Overhead rates are not restricted, but must be documented by a recent (within the past three years) State, Federal or independent certified accounting firm audit. Each firm is also required to submit their overhead projections in schedule format for the duration of the project.

All costs, including indirect cost items are subject to negotiation. NJ TRANSIT intends to negotiate provisional indirect cost rates, which are subject to audit and downward adjustment only.

### **DBE Forms & Affidavits**

The required DBE forms and affidavits shall also be included in the Cost Proposal. The Construction Management Firm/Team shall refer to the DBE Requirements for Federally Funded Procurement Activities (Exhibit 3) included in the RFP for the requirements concerning the DBE obligations and mandatory submissions for this contract.

### **Negotiation**

NJ TRANSIT reserves the right to:

- Reject all proposals submitted
- Accept any proposal as submitted without negotiations
- Require revisions to, correction of, or other changes to any proposal submitted as a condition to it being given any further consideration
- Reject, without entertaining revisions, a proposal with major substantive deficiencies

NJ TRANSIT will enter into negotiations with the highest technically qualified firm to reach an agreement on scope of services and fees. If in the opinion of NJ TRANSIT a satisfactory proposal cannot be negotiated with a selected firm, NJ TRANSIT will formally end negotiations and initiate negotiations with the next most technically qualified firm.

This negotiation procedure will be followed until a satisfactory proposal is negotiated. NJ TRANSIT considers all elements of the Construction Management Firm/Team's proposal subject to negotiation.

### **Approval and Award**

Once negotiations have been completed, a recommendation for award of the Contract to the proposer, whose proposal conforming to the RFP, is in the best interest and offers the best value to NJ TRANSIT will be made for approval by NJ TRANSIT's Board of Directors. Upon approval of the recommendation for award of a Contract, NJ TRANSIT will enter into a cost plus fixed fee contract found in Exhibit

1.

Within ten (10) working days of Receipt of Notice of Award, the successful proposer shall properly execute two (2) copies of the Contract and deliver to NJ TRANSIT both signed copies of the Contract, the specified insurance certificates and any other document as may be specified in the Contract. NJ TRANSIT will execute both copies of the contract and will return one (1) executed copy to the firm.

NJ TRANSIT reserves the right to cancel the award of a Contract before execution if NJ TRANSIT deems such cancellation to be in its best interests. In no event will NJ TRANSIT have any liability for the cancellation of such award. The firm assumes the sole risk and responsibility for expenses incurred prior to execution of the Contract and shall not commence work until receipt of a Notice to Proceed.

#### **E. Protest Procedure**

1. Purpose: This section describes the policies and procedures governing the receipt and resolution of bid protests in connection with an RFP.
2. Definitions: Definitions Applicable to this Section, entitled "Protest Procedure"
  - a. "File" and "Submit" mean date of receipt by NJ TRANSIT's Contracting Officer;
  - b. "Federal Law or Regulation" means any valid requirement imposed by Federal statute or regulation governing contracts awarded pursuant to a grant agreement between NJ TRANSIT and the FTA. This includes the requirements as stated in FTA Circular 4220.1F;
  - c. "Interested Party" means a party that is an actual or prospective bidder or offeror whose direct economic interest would be affected by the award or failure to award the third party contract at issue.
3. General Procedure
  - a. Parties: Only an Interested Party may files a protest.
  - b. Types of Protest/Time Limits:
    - i. Protests based upon a challenge to the specifications or alleged improprieties in NJ TRANSIT's procurement process must be filed no later than fourteen (14) calendar days prior to the Proposal submission date.
    - ii. Protests based upon the rejection of a Proposal shall be filed no later than five (5) business days after the protestor receives notification of rejection from NJ TRANSIT.
    - iii. Protests based upon the award of a contract shall be filed no later than five (5) business days after receipt of NJ TRANSIT's Notice of Intent to Award.
  - c. All protests must be filed in writing. Oral protests will not be accepted.

- d. Where to File: Protests must be filed directly with NJ TRANSIT's Contracting Officer at the address of One Penn Plaza East, Sixth Floor, Newark, New Jersey 07105, and identifying the RFP number.
  - e. A written protest must contain the following information:
    - i. The name, address and telephone number of the protestor;
    - ii. Identity of the RFP (by number and description);
    - iii. A statement of the specific grounds for protest and any supporting documentation. Any additional supporting materials will be considered only if filed within the time limits designated herein;
    - iv. Request for the ruling or relief sought from NJ TRANSIT.
4. Confidentiality of the Protest: Materials submitted by a protestor will not be withheld from any interested party, except to the extent that the withholding of information is permitted or required by law or regulation. If the protestor believes the protest and any supporting documentation contains proprietary material that should be withheld, the protest shall submit a statement advising of this fact affixed to the front page of the protest documents and the alleged proprietary information must be so identified wherever it appears. In the event that a public request is made for materials that the protestor has identified as confidential, NJ TRANSIT shall have the sole discretion and final authority to determine whether the materials are exempt from public disclosure and shall take action as required by applicable law.
5. Protest Procedures: Challenges to a Specification
- a. An Interested Party finding cause to challenge a specification contained within the RFP may submit a written protest to NJ TRANSIT's Contracting Officer setting forth in detail the grounds for such protest;
  - b. A written protest may be submitted by an Interested Party only after NJ TRANSIT has formally responded to any questions raised by prospective proposers and must be submitted at least fourteen (14) calendar days prior to the Proposal submission date to permit a review of the merits of the protest and to take appropriate action, as may be necessary, prior to the scheduled deadline for proposal submission
  - c. A protest of a specification of any advertised RFP shall contain the following:
    - i. The RFP number and description; and
    - ii. The specification(s) at issue and the specific grounds for challenging the cited specification(s), including all arguments, materials, or other documentation in support of the protestor's position.
  - d. NJ TRANSIT's Contracting Officer may disregard a protest not containing all of the items set forth in (c) above
  - e. NJ TRANSIT's Contracting Officer may, upon timely receipt of a protest of a specification, issue a final written decision on the protest prior to the proposal submission date. Where a decision is issued, such determination shall be a final agency decision. NJ TRANSIT's Contracting Officer has

the sole discretion to determine if an in-person presentation by the protestor is necessary to reach an informed decision on the protest.

- f. NJ TRANSIT's Contracting Officer may resolve a protest of a specification by amending the RFP and extending the deadline for proposal submission, by canceling the procurement, or by any other appropriate means.

6. Protest Procedures: Challenges to Rejection of a Proposal or Contract Award

- a. An Interested Party finding cause to challenge the rejection of a proposal or award of the Contract for this RFP may submit a written protest to NJ TRANSIT's Contracting Officer setting forth in detail the grounds for such protest.
- b. All written protests must conform to the time requirements as set forth above. Failure to timely submit a protest may result in the disregard of a protest.
- c. A protest under this section shall contain the following information:
  - i. The RFP number and description;
  - ii. The specific grounds for the protest including all arguments, materials, or other documentation in support of the protestor's position; and
  - iii. A statement as to whether the protestor requests an opportunity for an in-person hearing and the reason(s) for the request. The opportunity for an in-person presentation is at the sole discretion of the NJ TRANSIT Contracting Officer and subject to the terms set forth below.
- d. Failure by a protestor to include all required information may result in a dismissal of the protest.
- e. Protests accepted by NJ TRANSIT shall be resolved in writing on the basis of NJ TRANSIT's review of the record, including, but not limited to, the written protest, the terms, conditions and requirements of the RFP, pertinent administrative rules, statutes, and case law, and any associated documentation NJ TRANSIT deems appropriate. In cases where no in-person hearing is held, the written record shall, in and of itself, constitute a hearing. The determination by NJ TRANSIT shall be a final agency decision.
  - i. NJ TRANSIT has the sole discretion to determine if an in-person presentation by the protestor is necessary to reach an informed decision on the matter(s) of the protest. In-person presentations are for the benefit of NJ TRANSIT. NJ TRANSIT also has the discretion to limit attendance at an in-person presentation, when granted.
  - ii. NJ TRANSIT's decision will address only the issues raised originally by the protestor.

7. Request for Additional Information:

- a. NJ TRANSIT's Contracting Officer, or designee, is entitled to request, receive, and review copies of any and all records and documents deemed appropriate and relevant to the issues and arguments set forth in the

protest. Upon receipt of a request by NJ TRANSIT's Contracting Officer, or designee, the protestor shall promptly provide the requested records and documents free of charge within the time frame specified by NJ TRANSIT.

- b. If a protestor fails to comply with the provisions of this section, such failure may constitute a reasonable basis for NJ TRANSIT to resolve the protest against the protestor submitting the protest. Failure of a protestor to comply expeditiously with a request for information as specified by NJ TRANSIT's Contracting Officer, or designee, may also result in determination of the protest without consideration of the additional information
- 8. Status of the Procurement: Upon timely receipt of a protest, NJ TRANSIT will delay the opening of proposal until after resolution of a protest for those protests filed prior to the proposal submission date, or withhold award until after resolution of a protest for those protests filed after the proposal submission date. However, NJ TRANSIT may open proposals or award a contract whenever NJ TRANSIT, at its sole discretion, determines that:
  - a. The items or work to be procured are urgently required; or
  - b. Delivery or performance will be unduly delayed by failure to make the award promptly; or
  - c. Failure to make prompt award will otherwise cause undue harm to NJ TRANSIT or the Federal Government
- 9. Federal Transit Administration (FTA) Involvement: Where procurements are funded by the FTA, the protestor may protest to the FTA only where the protest alleges that NJ TRANSIT failed to have or to adhere to its protest procedures, failed to review a complaint or protest, or violated a Federal law or regulation. Any protest to the FTA must be filed in accordance with the requirements set forth in FTA Circular 4220.1F.

## ATTACHMENTS



# ATTACHMENT A

# ATTACHMENT A

## PROPOSAL EVALUATION CRITERIA

(LISTED IN DESCENDING ORDER OF IMPORTANCE)

### Proposal Evaluation Criteria

1. **Qualifications of Firm(s)**: Has the firm/team successfully done similar Substation Construction Projects before for other organizations or NJ TRANSIT? Has the firm/team successfully completed a substation facility construction project in an active railroad yard? Does the firm have adequate resources and demonstrated technical expertise to sustain the contract?
2. **Qualifications of the Proposed Project Manager**: Does the proposed Project Manager have the appropriate background, skills, experience (supported by references) to successfully advance this substation construction project? What is the project manager's time availability? Is it readily apparent that the project manager will be fully empowered to deploy staff resources, impose deadlines, and otherwise supervise the work that needs to be completed?
3. **Qualifications of Key Individuals**: Do the proposed task leaders/key staff members have the appropriate background, skills, experience to successfully advance these Substation Construction Projects? What is the time availability of these individuals? Are key staff members readily available without significant travel?
4. **Person-power/Hours Allocation**: Is the size and structure of the proposal team adequate to perform the contract services for this project? Does the proposal have the appropriate person hour allocation for each task? Are DBE firms effectively employed in the technical work and have goals been proposed to meet assigned goal?
5. **Technical Proposal**: Does the proposal demonstrate an understanding of the project? Was the scope of each task developed? Is the proposal responsive to the RFP, complete and thorough, clearly organized and well written?
6. **Budget/Project Management**: Does the management / control structure convincingly show that the team can deliver substation construction projects on time, within budget and with high quality? Has the firm established a reasonable internal structure for processing a task assignment, including billing and progress reporting?

**Reference Evaluation Criteria** (sample reference check questions).

1. Was the reference accurate and applicable to this assignment and proposed staff?
2. How would the reference rank the overall performance of the firm?
3. Would they recommend the firm to perform this type of project?
4. Was the reference satisfied with the quality of the deliverables and work effort?
5. Did the firm maintain the availability of the individuals offered in the proposal?
6. Were there any significant problems with the work and how were the problems resolved?
7. Was the firm responsive and easy to work with?
8. Did the firm meet the established schedules? Adhere to their budgets?
9. Did the firm anticipate needs and keep the reference informed in a timely way about budget, schedule and problems?
10. Was the Project Manager effective in managing the work, representing the team, and technically proficient?

## ATTACHMENT B

**NEW JERSEY TRANSIT CORPORATION**  
**REQUEST FOR PROPOSAL NO. \_\_\_\_**

**ATTACHMENT B-1**

**COST AND FEE FIRM RECAP - TEAM SUMMARY**

FIRM	MAN HOURS	TOTAL DIRECT LABOR COST	INDIRECT LABOR COST (OVERHEAD) @ XXX.XX%	SUBTOTAL	FIXED FEE @ XX%	DIRECT EXPENSES	TOTAL COST
PRIME CONSULTANT							
SUBCONSULTANT 1							
SUBCONSULTANT 2							
SUBCONSULTANT 3							
SUBCONSULTANT 4							
SUBCONSULTANT 5							
TOTAL							

**NEW JERSEY TRANSIT CORPORATION**  
**REQUEST FOR PROPOSAL NO. \_\_\_\_**

**ATTACHMENT B-2**  
**COST AND FEE TASKS RECAP - TEAM SUMMARY**

TASK	DESCRIPTION	MAN HOURS	TOTAL DIRECT LABOR COST	INDIRECT LABOR COST (OVERHEAD) @ XXX.XX%	SUBTOTAL	FIXED FEE @ XX%	DIRECT EXPENSES	TOTAL COST
Task 1								
Task 2								
Task 3								
Task 4								
Task 4								
Task 5								
Task 6								
Task 7								
<b>TEAM TOTALS</b>								

**NEW JERSEY TRANSIT CORPORATION**  
**REQUEST FOR PROPOSAL NO. \_\_\_\_**

**ATTACHMENT B-3**  
**COST AND FEE TASKS RECAP BY FIRM**

**FIRM** \_\_\_\_\_

	TASK DESCRIPTION	TOTAL MAN- HOURS PER TASK	DIRECT LABOR COST	INDIRECT LABOR COST (OVERHEAD) @ XXX.XX%	SUBTOTAL	FIXED FEE @ XX%	DIRECT EXPENSES	TOTAL COST
Task 1								
Task 2								
Task 3								
Task 4								
Task 5								
Task 6								
Task 7								
<b>FIRM TOTAL</b>								

**NEW JERSEY TRANSIT CORPORATION**  
**REQUEST FOR PROPOSAL NO. \_\_\_\_**  
**ATTACHMENT B-4**  
**PERSONNEL TEAM DETAIL**

**TASK:** \_\_\_\_\_

**FIRM:** \_\_\_\_\_

STAFF				
STAFF PERSON/ CLASSIFICATION	PROJECT TITLE OR DISCIPLINE	ESTIMATED HOURS	HOURLY RATE	TOTAL SALARY
TOTAL ESTIMATED HOURS				

TOTAL SALARY (BARE COST)		
OVERHEAD @ XXX.XX% OF BARE COST		
SUBTOTAL -- SALARY + OVERHEAD		
FIXED FEE @ XX % OF BARE COST + OVERHEAD		
DIRECT EXPENSES ITEMIZED		
	\$	
	\$	
	\$	
TOTAL DIRECT EXPENSES	\$	
TOTAL THIS TASK		



**NEW JERSEY TRANSIT CORPORATION**  
**REQUEST FOR PROPOSAL NO. \_\_\_\_**

**ATTACHMENT B-5**  
**STAFFING SCHEDULE BY FIRM**

FIRM \_\_\_\_\_

[illegible]

Construction Management Services (CMS) Cost Proposal							
	CMS Consultant						
Task No.	Description	Units	Est. Qty.		Unit Cost Mat./ Labor		Proposed Amount
P1	Management Procedures & Document Control						
	<b>CMS Consultant Labor</b>						
	Construction Manager	Hr					\$ -
	Resident Engineer	Hr					\$ -
	Office Engineer	Hr					\$ -
	Estimator/Scheduler	Hr					\$ -
	Electrical Inspector	Hr					\$ -
	Systems Inspector	Hr					\$ -
	<b>Total Task Hrs</b>	<b>#####</b>	<b>Hrs</b>		<b>Sub-Total Labor</b>		\$ -
					Overhead Office		
					Overhead Field		
							\$ -
					Fixed Fee at 10%		\$ -
					<b>Total Direct Labor, OH &amp; Fee</b>		\$ -
	<b>Consultant Direct Expenses</b>						
	Miscellaneous	LS	#####				\$ -
	Photocopying/Printing	LS	#####				\$ -
	Copying/Postage	LS	#####				\$ -
					<b>Total Direct Expenses</b>		\$ -
	Sub-Contractor Expenses						
	<b>TOTAL MANAGEMENT PROCEDURES &amp; DOCUMENT CONTROL</b>						\$ -
C1	Construction Management Administration						
	<b>CMS Consultant Labor</b>						
	Construction Manager	Hr					\$ -
	Resident Engineer	Hr					\$ -
	Office Engineer	Hr					\$ -
	Estimator/Scheduler	Hr					\$ -
	Electrical Inspector	Hr					\$ -
	Systems Inspector	Hr					\$ -
	<b>Total Task Hrs</b>	<b>#####</b>	<b>Hrs</b>		<b>Sub-Total Labor</b>		\$ -
					Overhead Office		
					Overhead Field		
							\$ -
					Fixed Fee at 10%		\$ -
					<b>Total Direct Labor, OH &amp; Fee</b>		\$ -
	<b>Consultant Direct Expenses</b>						
	Miscellaneous	LS	#####				\$ -

	Photocopying/Printing		LS	#####				\$ -
	Copying/Postage		LS	#####				\$ -
						<b>Total Direct Expenses</b>		\$ -
	Sub-Contractor Expenses							
	<b>TOTAL CONSTRUCTION MANAGEMENT ADMINISTRATION</b>							\$ -
<b>C2</b>	<b>Inspection</b>							
	<b><i>CMS Consultant Labor</i></b>							
	Construction Manager		Hr					\$ -
	Resident Engineer		Hr					\$ -
	Office Engineer		Hr					\$ -
	Estimator/Scheduler		Hr					\$ -
	Electrical Inspector		Hr					\$ -
	Systems Inspector		Hr					\$ -
	<b>Total Task Hrs</b>			#####	<b>Hrs</b>	<b>Sub-Total Labor</b>		\$ -
						Overhead Office		
						Overhead Field		
								\$ -
						Fixed Fee at 10%		\$ -
						<b>Total Direct Labor, OH &amp; Fee</b>		\$ -
	<b><u>Consultant Direct Expenses</u></b>							
	Miscellaneous		LS	#####				\$ -
	Photocopying/Printing		LS	#####				\$ -
	Copying/Postage		LS	#####				\$ -
						<b>Total Direct Expenses</b>		\$ -
	Sub-Contractor Expenses							
						<b>TOTAL INSPECTION</b>		\$ -

<b>C3</b>	<b>Testing</b>							
	<b><i>CMS Consultant Labor</i></b>							
	Construction Manager		Hr					\$ -
	Resident Engineer		Hr					\$ -
	Office Engineer		Hr					\$ -
	Estimator/Scheduler		Hr					\$ -
	Electrical Inspector		Hr					\$ -
	Systems Inspector		Hr					\$ -
	<b>Total Task Hrs</b>	<b>#####</b>	<b>Hrs</b>			<b>Sub-Total Labor</b>		\$ -
						Overhead Office		
						Overhead Field		
								\$ -
						Fixed Fee at 10%		\$ -
						<b>Total Direct Labor, OH &amp; Fee</b>		<b>\$ -</b>
	<b><u>Consultant Direct Expenses</u></b>							
	Miscellaneous		LS	<b>#####</b>				\$ -
	Photocopying/Printing		LS	<b>#####</b>				\$ -
	Copying/Postage		LS	<b>#####</b>				\$ -
						<b>Total Direct Expenses</b>		<b>\$ -</b>
	Sub-Contractor Expenses							
						<b>TOTAL TESTING</b>		<b>\$ -</b>
<b>C4</b>	<b>Environmental</b>							
	<b><i>CMS Consultant Labor</i></b>							
	Construction Manager		Hr					\$ -
	Resident Engineer		Hr					\$ -
	Office Engineer		Hr					\$ -
	Estimator/Scheduler		Hr					\$ -
	Electrical Inspector		Hr					\$ -
	Systems Inspector		Hr					\$ -
	<b>Total Task Hrs</b>	<b>#####</b>	<b>Hrs</b>			<b>Sub-Total Labor</b>		\$ -
						Overhead Office		
						Overhead Field		
								\$ -
						Fixed Fee at 10%		\$ -
						<b>Total Direct Labor, OH &amp; Fee</b>		<b>\$ -</b>
	<b><u>Consultant Direct Expenses</u></b>							
	Miscellaneous		LS	<b>#####</b>				\$ -
	Photocopying/Printing		LS	<b>#####</b>				\$ -
	Copying/Postage		LS	<b>#####</b>				\$ -
						<b>Total Direct Expenses</b>		<b>\$ -</b>
	Sub-Contractor Expenses							
						<b>TOTAL ENVIRONMENTAL</b>		<b>\$ -</b>

C5	Schedule Control							
	<b><i>CMS Consultant Labor</i></b>							
	Construction Manager		Hr					\$ -
	Resident Engineer		Hr					\$ -
	Office Engineer		Hr					\$ -
	Estimator/Scheduler		Hr					\$ -
	Electrical Inspector		Hr					\$ -
	Systems Inspector		Hr					\$ -
	<b><i>Total Task Hrs</i></b>		<b><i>##### Hrs</i></b>			<b>Sub-Total Labor</b>		\$ -
						Overhead Office		
						Overhead Field		
								\$ -
						Fixed Fee at 10%		\$ -
						<b>Total Direct Labor, OH &amp; Fee</b>		<b>\$ -</b>
	<b><i>Consultant Direct Expenses</i></b>							
	Miscellaneous		LS	<b><i>#####</i></b>				\$ -
	Photocopying/Printing		LS	<b><i>#####</i></b>				\$ -
	Copying/Postage		LS	<b><i>#####</i></b>				\$ -
						<b>Total Direct Expenses</b>		<b>\$ -</b>
	Sub-Contractor Expenses							
						<b>TOTAL SCHEDULE CONTROL</b>		<b>\$ -</b>

C6	Staging & Work Plans							
	<b><i>CMS Consultant Labor</i></b>							
	Construction Manager		Hr					\$ -
	Resident Engineer		Hr					\$ -
	Office Engineer		Hr					\$ -
	Estimator/Scheduler		Hr					\$ -
	Electrical Inspector		Hr					\$ -
	Systems Inspector		Hr					\$ -
	<b>Total Task Hrs</b>	<b>#####</b>	<b>Hrs</b>			<b>Sub-Total Labor</b>		\$ -
						Overhead Office		
						Overhead Field		
								\$ -
						Fixed Fee at 10%		\$ -
						<b>Total Direct Labor, OH &amp; Fee</b>		<b>\$ -</b>
	<b><u>Consultant Direct Expenses</u></b>							
	Miscellaneous		LS	<b>#####</b>				\$ -
	Photocopying/Printing		LS	<b>#####</b>				\$ -
	Copying/Postage		LS	<b>#####</b>				\$ -
						<b>Total Direct Expenses</b>		<b>\$ -</b>
	Sub-Contractor Expenses							
						<b>TOTAL STAGING &amp; WORK PLANS</b>		<b>\$ -</b>
C7	Shop Drawings & Material Approval							
	<b><i>CMS Consultant Labor</i></b>							
	Construction Manager		Hr					\$ -
	Resident Engineer		Hr					\$ -
	Office Engineer		Hr					\$ -
	Estimator/Scheduler		Hr					\$ -
	Electrical Inspector		Hr					\$ -
	Systems Inspector		Hr					\$ -
	<b>Total Task Hrs</b>	<b>#####</b>	<b>Hrs</b>			<b>Sub-Total Labor</b>		\$ -
						Overhead Office		
						Overhead Field		
								\$ -
						Fixed Fee at 10%		\$ -
						<b>Total Direct Labor, OH &amp; Fee</b>		<b>\$ -</b>
	<b><u>Consultant Direct Expenses</u></b>							
	Miscellaneous		LS	<b>#####</b>				\$ -
	Photocopying/Printing		LS	<b>#####</b>				\$ -
	Copying/Postage		LS	<b>#####</b>				\$ -
						<b>Total Direct Expenses</b>		<b>\$ -</b>
	Sub-Contractor Expenses							
						<b>TOTAL SHOP DRAWINGS &amp; MATERIAL APPROVAL</b>		<b>\$ -</b>

C8	Change Orders							
	<b><i>CMS Consultant Labor</i></b>							
	Construction Manager		Hr					\$ -
	Resident Engineer		Hr					\$ -
	Office Engineer		Hr					\$ -
	Estimator/Scheduler		Hr					\$ -
	Electrical Inspector		Hr					\$ -
	Systems Inspector		Hr					\$ -
	<b><i>Total Task Hrs    #####    Hrs</i></b>				<b>Sub-Total Labor</b>			\$ -
					Overhead Office			
					Overhead Field			
								\$ -
					Fixed Fee at 10%			\$ -
				<b>Total Direct Labor, OH &amp; Fee</b>				<b>\$ -</b>
	<b><i>Consultant Direct Expenses</i></b>							
	Miscellaneous		LS	#####				\$ -
	Photocopying/Printing		LS	#####				\$ -
	Copying/Postage		LS	#####				\$ -
					<b>Total Direct Expenses</b>			<b>\$ -</b>
	Sub-Contractor Expenses							
			<b><i>TOTAL CHANGE ORDERS</i></b>					<b>\$ -</b>

C9	Quality Assurance & Quality Control						
	<b>CMS Consultant Labor</b>						
	Construction Manager		Hr				\$ -
	Resident Engineer		Hr				\$ -
	Office Engineer		Hr				\$ -
	Estimator/Scheduler		Hr				\$ -
	Electrical Inspector		Hr				\$ -
	Systems Inspector		Hr				\$ -
	<b>Total Task Hrs</b>	<b>#####</b>	<b>Hrs</b>		<b>Sub-Total Labor</b>		\$ -
					Overhead Office		
					Overhead Field		
							\$ -
					Fixed Fee at 10%		\$ -
					<b>Total Direct Labor, OH &amp; Fee</b>		<b>\$ -</b>
	<b>Consultant Direct Expenses</b>						
	Miscellaneous		LS	<b>#####</b>			\$ -
	Photocopying/Printing		LS	<b>#####</b>			\$ -
	Copying/Postage		LS	<b>#####</b>			\$ -
					<b>Total Direct Expenses</b>		<b>\$ -</b>
	Sub-Contractor Expenses						
					<b>TOTAL QUALITY ASSURANCE &amp; QUALITY CONTROL</b>		<b>\$ -</b>
C10	Project Safety						
	<b>CMS Consultant Labor</b>						
	Construction Manager		Hr				\$ -
	Resident Engineer		Hr				\$ -
	Office Engineer		Hr				\$ -
	Estimator/Scheduler		Hr				\$ -
	Electrical Inspector		Hr				\$ -
	Systems Inspector		Hr				\$ -
	<b>Total Task Hrs</b>	<b>#####</b>	<b>Hrs</b>		<b>Sub-Total Labor</b>		\$ -
					Overhead Office		
					Overhead Field		
							\$ -
					Fixed Fee at 10%		\$ -
					<b>Total Direct Labor, OH &amp; Fee</b>		<b>\$ -</b>
	<b>Consultant Direct Expenses</b>						
	Miscellaneous		LS	<b>#####</b>			\$ -
	Photocopying/Printing		LS	<b>#####</b>			\$ -
	Copying/Postage		LS	<b>#####</b>			\$ -
					<b>Total Direct Expenses</b>		<b>\$ -</b>
	Sub-Contractor Expenses						
					<b>TOTAL PROJECT SAFETY</b>		<b>\$ -</b>



<b>C11</b>	<b>Project Close-out</b>							
	<b><i>CMS Consultant Labor</i></b>							
	Construction Manager		Hr					\$ -
	Resident Engineer		Hr					\$ -
	Office Engineer		Hr					\$ -
	Estimator/Scheduler		Hr					\$ -
	Electrical Inspector		Hr					\$ -
	Systems Inspector		Hr					\$ -
	<b><i>Total Task Hrs</i></b>		<b><i>##### Hrs</i></b>			<b>Sub-Total Labor</b>		\$ -
						Overhead Office		
						Overhead Field		
								\$ -
						Fixed Fee at 10%		\$ -
						<b>Total Direct Labor, OH &amp; Fee</b>		<b>\$ -</b>
	<b><i>Consultant Direct Expenses</i></b>							
	Miscellaneous		LS	<b><i>#####</i></b>				\$ -
	Photocopying/Printing		LS	<b><i>#####</i></b>				\$ -
	Copying/Postage		LS	<b><i>#####</i></b>				\$ -
						<b>Total Direct Expenses</b>		<b>\$ -</b>
	Sub-Contractor Expenses							
						<b><i>TOTAL PROJECT CLOSE-OUT</i></b>		<b>\$ -</b>
						<b><u>TOTAL PROPOSED COST</u></b>		<b>\$ -</b>

<b>CMS's Cost Proposal Summary</b>								
	<b>TOTAL PROGRAM HOURS</b>	<b>Combined Tasks</b>			0	Hours		
		<b>Subcontractors</b>			-	Hours		
					#####	Hours		
	<b>COSTS</b>	Labor			\$	-		
		Overhead Office			\$	-		
		Overhead Field			\$	-		
		Fixed Fee			\$	-		
		Labor Sub-Total			\$	-		
		Direct & Misc. Expenses			\$	-		
		Subcontract Expenses			\$	-		
		Expenses Sub-Total			\$	-		
		<b>Project Total</b>			\$	-		
<b>Notes:</b>	-Labor Sub-total Includes overhead & fee							
	-Difference is CMS's Cost Proposal minus Engineer's Independent Cost Estimate							
	-Color Codes							
		Task Labor Hours						
		Task Labor Costs						
		Task Direct & Misc. Expenses						
		Subcontract Expenses						
		Subtask and Project Totals						

# EXHIBITS

## EXHIBIT 1

**AGREEMENT NO. \_\_\_\_\_**  
**BETWEEN**  
**NEW JERSEY TRANSIT CORPORATION**  
**AND**  
**FOR PROFESSIONAL SERVICES**

This Agreement made as of \_\_\_\_\_ 20\_\_\_\_, between the New Jersey Transit Corporation (hereinafter "NJ TRANSIT"), a public instrumentality of the State of New Jersey and \_\_\_\_\_ having its principal place of business at \_\_\_\_\_ (hereinafter the "Consultant").

**WITNESSETH:**

WHEREAS, the Board of Directors of NJ TRANSIT, at its meeting of \_\_\_\_\_, authorized the Executive Director to enter into this Agreement ("Agreement" or "Contract") with the Consultant for \_\_\_\_\_; and

WHEREAS, the said Consultant, for and in consideration of the payments hereinafter specified and agreed to be made by NJ TRANSIT, hereby covenants and agrees to commence and complete the work as follows:

NOW, THEREFORE, in consideration of the mutual covenants and conditions herein contained, the parties hereto covenant and agree with each other as follows:

1. CONSULTANT SERVICES: The Consultant, at the direction of NJ TRANSIT, shall provide to NJ TRANSIT services in conformance with the description of services, deliverables, standards of performance, and acceptance criteria set forth in Exhibit A (Scope of Services), annexed hereto and made a part hereof.

2. COMPENSATION: This Agreement is a cost plus fixed fee contract. NJ TRANSIT will, subject to the availability of funds and audits, pay the Consultant for work identified in Exhibit A (Scope of Services). The Consultant's total costs and fees have been identified as an amount not to exceed \$\_\_\_\_\_ as set forth in Exhibit B (Cost Information), annexed hereto and made part hereof. The costs have been identified as \$\_\_\_\_\_ for direct labor, \$\_\_\_\_\_ for indirect costs, and \$\_\_\_\_\_ for direct expenses. The fixed fee has been identified as \$\_\_\_\_\_. Payment shall only be made for work that is actually performed and accepted by NJ TRANSIT. The Consultant shall render monthly invoices for direct and indirect charges incurred pursuant to this Agreement no later than two (2) weeks after the end of the month. NJ TRANSIT will make payment within forty-five (45) calendar days after approval of the Consultant's invoice. The invoices shall be detailed in accordance with procedures and formats prescribed by NJ TRANSIT.

Prompt Payment: The Consultant agrees to pay each Subconsultant and Supplier under this Contract for satisfactory performance of completed work under its subcontract no later than ten (10) calendar days from the receipt of each payment the Consultant receives from NJ TRANSIT. The Consultant shall ensure that all lower tier Subconsultants and Suppliers are paid all invoiced amounts that meet all applicable requirements within fifteen (15) calendar days from the time the Subconsultant receives payment from the Consultant.

All costs incurred under this Agreement by the Consultant and approved Subconsultants, including those costs resulting from changes to, modifications of and termination of the Agreement, at a minimum, must be considered allowable and allocable in accordance with the cost principles of Part 31 of the Federal Acquisition Regulations (48 C.F.R., Part 31). The Contracting Officer's determination on the allowability, allocability and reasonableness of incurred costs shall be final and conclusive. The Contracting Officer for NJ TRANSIT shall be the Chief of Procurement & Support Services or his/her designees within NJ TRANSIT's Procurement Department.

Direct labor rates shall be the wages or salaries actually paid to employees, principals or partners directly charging time to the project for work performed as required by Exhibit A (Scope of Services).

Maximum provisional indirect cost rates (e.g. fringes, overhead, G&A, etc.) have been computed by the Consultant for it and its Subconsultants and are considered acceptable by NJ TRANSIT. The following provisional rates shall be in effect for the duration of the Agreement unless revised as mutually agreed or adjusted as provided below:

<i><b>Firm</b></i>	<i><b>Contract Year XX</b></i>	<i><b>Contract Year XX</b></i>	<i><b>Contract Year XX</b></i>

Should the Consultant's or any of its Subconsultant's actual indirect cost rates for their fiscal year be determined to be less than the established maximum provisional indirect cost rates, and should the amount invoiced by and paid to the Consultant exceed those rates for that fiscal year, then the amounts invoiced shall be adjusted downward as compared to the actual indirect cost rate and overpayment amounts including the corresponding fixed fee shall be remitted to NJ TRANSIT.

Direct expenses shall be only those costs which are necessary to accomplish the scope of services and not excludable as direct costs by the Federal Acquisition Regulations or not otherwise compensated under the Consultant's direct labor and indirect cost rates. All direct expense purchases of goods, materials and services made by the Consultant on behalf of NJ TRANSIT shall be competitively procured wherever practicable.

Direct expense compensation for travel, subsistence and lodging costs shall comply with the NJ TRANSIT Travel and Business Reimbursement Guidelines (Exhibit C).

Direct labor rates, hours and costs, indirect labor rates and costs and direct expenses invoiced by the Consultant and paid by NJ TRANSIT are subject to audit and downward adjustment by NJ TRANSIT, in its sole discretion. Any determination of an overpayment by NJ TRANSIT as a result of an audit shall be final and conclusive of the amounts to be refunded. All overpayments shall be reimbursed to NJ TRANSIT within thirty (30) calendar days of notification. Alternatively, NJ TRANSIT may deduct the overpayment amount from payments owed to the Consultant under this or any other agreement with NJ TRANSIT. No upward adjustments shall be allowed.

Within 180 calendar days after the end of the Consultant's and Subconsultant's fiscal year or for accounting periods of no less than three months should the contract terminate, the Consultant and Subconsultants shall furnish NJ TRANSIT with a Statement of Indirect Labor Costs (Statement of Overhead) attesting that the statement has been prepared in conformity with accounting principles generally accepted in the United States and reflect all adjustments required by Part 31 of the Federal Acquisition Regulations. Such fiscal year or stub period statements must be certified by an independent public accountant. Failure to provide the requisite Statement of Indirect Labor Costs (Statement of Overhead) in a format acceptable to NJ TRANSIT may result in NJ TRANSIT withholding payment of fee and all or a portion of Indirect Labor Costs in an amount determined by NJ TRANSIT.

Interest payable on excess direct labor cost, indirect labor costs (overhead) or any other excess amounts paid to the Consultant by NJ TRANSIT, and not previously remitted to NJ TRANSIT within thirty (30) calendar days of notification by NJ TRANSIT, shall accrue at the prime rate as established by the United States Federal Reserve and published in The Wall Street Journal. Interest shall be applied to balances owed to NJ TRANSIT in excess of \$5,000. Application of interest to excess payments made in the preceding fiscal year shall begin six (6) months after the close of the Consultant's fiscal year. Interest shall continue to accrue monthly at the prime rate until all amounts have been remitted to NJ TRANSIT, unless amounts owed NJ TRANSIT, including accrued interest, have been



deducted by NJ TRANSIT from any payments owed the Consultant on this or any other agreement.

Costs incurred above the contract amounts identified in Exhibit B (Cost Information) are not reimbursable, except as authorized by the Contracting Officer in writing in accordance with Article 5, MODIFICATION OF AGREEMENT.

3. LIMITATION OF FUNDS:

A.) The Consultant estimates that performance of this Agreement will not cost NJ TRANSIT more than the estimated amount specified in Exhibit B (Cost Information). The Consultant agrees to make every effort to perform the work specified in Exhibit A (Scope of Services) and all obligations under this Agreement within the estimated amount specified in Exhibit B (Cost Information).

B.) The Purchase Order specifies the amount presently available for payment by NJ TRANSIT and allotted to the Scope of Services and the tasks the allotted amount will cover. The parties contemplate that NJ TRANSIT will allot additional funds incrementally to the Purchase Order up to the full estimated cost as specified in Exhibit B (Cost Information) inclusive of all fees. The Consultant agrees to perform, or have performed, work on the Agreement up to the point at which the total amount paid and payable by NJ TRANSIT under the Agreement approximates but does not exceed the total amount actually allotted by NJ TRANSIT for each of the tasks identified in the Agreement.

C.) The Consultant shall notify the Contracting Officer in writing whenever it has reason to believe that within the next sixty (60) calendar days the costs it expects to incur under this Agreement to complete the Scope of Services, when added to all costs previously incurred, will exceed seventy-five percent (75%) of the total amount so far allotted by NJ TRANSIT. The notice shall state the estimated amount, if any of additional funds required to continue and complete performance of the Scope of Services, as specified in Exhibit A (Scope of Services), beyond the total allotted amount specified in Exhibit B (Cost Information).

D.) If, after notification by the Consultant pursuant to paragraph C above, additional funds are not allotted for the Scope of Services, the Contracting Officer may terminate this Agreement, in whole or in part, in accordance with the provisions of Article 15, TERMINATION OF THE AGREEMENT FOR CONVENIENCE.

E.) Except as required by other provisions of this Agreement:

1.) NJ TRANSIT is not obligated to reimburse the Consultant for costs incurred in excess of the amount allotted in total by NJ TRANSIT for this Agreement; and

2.) The Consultant is not obligated to continue performance under this Agreement (excluding actions under Article 15, TERMINATION OF THE AGREEMENT FOR CONVENIENCE) or otherwise incur costs in excess of the amount then allotted to the Agreement by NJ TRANSIT until the Contracting Officer notifies the Consultant in writing that the amount allotted by NJ TRANSIT has been increased and specifies an increased amount, which shall then constitute the total amount allotted by task and in total by NJ TRANSIT for this Agreement.

F.) No notice, communication, or representation in any form other than that specified by the Contracting Officer in writing shall affect the amount allotted by NJ TRANSIT to this Agreement. In the absence of the notice specified in Paragraph C, NJ TRANSIT is not obligated to reimburse the Consultant for any costs in excess of the total costs and fees specified in Exhibit B (Cost Information) to this Agreement, whether incurred during the course of the Agreement or as a result of termination.

G.) Change Orders shall not be considered an authorization to exceed the amount allotted by NJ TRANSIT specified in Exhibit B (Cost Information), unless they contain a statement increasing the amount allotted.

H.) Nothing in this clause shall affect the right of NJ TRANSIT to terminate this Agreement.

I.) If NJ TRANSIT does not allot sufficient funds to allow completion of the work, the Consultant will be entitled to the actual costs incurred plus a percentage of the fixed fee specified in

Exhibit B (Cost Information) not to exceed the percentage of completion of the work contemplated by this Agreement.

4. EFFECTIVE DATE AND TERM OF AGREEMENT: This Agreement shall become binding upon the parties hereto when executed on behalf of NJ TRANSIT by the Contracting Officer or his/her designee. The Consultant shall commence work upon the Scope of Services within five (5) calendar days upon receipt of a written Notice to Proceed to that effect which shall be issued on behalf of NJ TRANSIT by its Contracting Officer or his/her designee upon the execution of the Agreement by NJ TRANSIT. The Consultant shall complete the Scope of Services by

---

5. MODIFICATION OF AGREEMENT:

A.) The Scope of Services set forth in Exhibit A of this Agreement may be reduced, modified or expanded within the scope of this Agreement by written contract modifications executed by NJ TRANSIT's Contracting Officer or his/her designee and the Consultant.

Except as provided in Paragraph B, below, in the event that NJ TRANSIT requires a reduction, expansion, or modification of the Scope of Services of this Agreement, the Contracting Officer will issue to the Consultant a written notification which specifies such reduction, expansion, or modification. Within fifteen (15) calendar days after receipt of the written notification, the Consultant shall provide the Contracting Officer with a detailed cost and schedule proposal for the work to be performed or to be reduced. This proposal may be accepted by NJ TRANSIT's Contracting Officer or his/her designee or modified by negotiations between the Consultant and NJ TRANSIT's Contracting Officer or his/her designee. A contract modification (Change Order) shall be effective only if executed in writing by both parties.

B.) Notwithstanding Paragraph A. above, the Contracting Officer may at any time, by written order, make changes within the general scope of this Agreement to the work to be performed by the Consultant. If any such change causes an increase or decrease in the estimated cost of, or the time

required for, the performance of any part of the work under this Agreement, whether or not changed by the order, the Contracting Officer may make such adjustments as are appropriate and equitable and shall modify the Agreement in writing accordingly. Any claim by the Consultant for adjustment under this clause must be asserted within thirty (30) calendar days from the date of receipt by the Consultant of the notification of change; provided however, that the Contracting Officer, if he decides that the facts justify such action, may receive and act upon such claim asserted at any time prior to final payment under this Agreement. Failure to agree to any adjustment shall be a dispute within the meaning of Article 35, DISPUTES. However, nothing in this clause shall excuse the Consultant from proceeding with the Agreement as changed.

C.) No services for which an additional cost or fee will be charged by the Consultant shall be furnished without the prior express written authorization of the Contracting Officer.

D.) Unless specified in a written contract modification, no change, reduction, modification or expansion of the Scope of Services within or beyond the scope of this Agreement shall serve to modify the terms and conditions of this Agreement.

E.) Whenever an "AS DIRECTED TASK" appears in Exhibit A (Scope of Services) and Exhibit B (Cost Information), NJ TRANSIT has provided an allowance for additional or supplemental work that has not yet been defined. This allowance is provided for the sole convenience of NJ TRANSIT and may only be used for work authorized by NJ TRANSIT's Contracting Officer or his/her designee.

All additional or supplemental work authorized under this provision will be incorporated into the Agreement by Change Order pursuant to Article 5, MODIFICATION OF AGREEMENT. The Change Order will describe the additional or supplemental work with any associated cost changes and will reduce the "AS DIRECTED TASK" allowance in the amount specified in the Change Order. Residual amounts remaining in the "AS DIRECTED TASK" allowance may be deleted from the Agreement by NJ TRANSIT at any time at NJ TRANSIT's sole discretion or at the completion of all work.

6. STATUS REPORTS: The Consultant shall submit to NJ TRANSIT monthly or more frequently, at the discretion of NJ TRANSIT, a written status report outlining the status of the Project to date. Each status report shall be a concise narrative description of activities to date and planned activities for the coming month or other period and include, at a minimum: the period's accomplishments by deliverable and/or task; status of deliverables; work-in-progress; next steps; listings and status of documents/data requested; potential impacts to the scope of work, cost or schedule; items or issues identified; total weekly and cumulative hours by task, deliverable, and person; projected hours to complete each task/deliverable; and any other information NJ TRANSIT may require. A final report, one (1) original and seven (7) copies, and one copy in an electronic format acceptable to NJ TRANSIT shall be submitted by the Consultant upon completion of the project.

7. REVIEWS: Until the completion of the Scope of Services by the Consultant and the final payment made by NJ TRANSIT, the Consultant shall allow representatives of NJ TRANSIT to visit the offices and other places of work of the Consultant periodically without prior notice to monitor the Consultant's work completed or in progress pursuant to this Agreement. NJ TRANSIT will, within a reasonable time, review and act upon all documents submitted by the Consultant. Both parties agree that if either party deems it advisable to hold either a conference or any inspection of work in progress, all parties shall be notified and may participate.

8. ACCEPTANCE OF THE CONSULTANT'S WORK: All services and deliverables that the Consultant must provide and deliver to NJ TRANSIT, as specified in Exhibit A (Scope of Services), shall be provided and delivered to the designated NJ TRANSIT Project Manager. The Project Manager will examine and inspect the deliverables and shall have the right in his/her reasonable judgment to refuse to accept any services or deliverables if they do not meet the requirements of the Scope of Services. Such inspection does not relieve the Consultant of its liability regarding any deficiencies in the performance of the Scope of Services or deliverables, whether obvious or not. If any

deliverables are not accepted, NJ TRANSIT may terminate this Agreement, in whole or in part, in accordance with Article 16, TERMINATION OF THE AGREEMENT FOR CAUSE.

9. OVERPAYMENTS: If at any point NJ TRANSIT determines that the Consultant has been overpaid, NJ TRANSIT shall notify the Consultant in writing of the overpayment. The Consultant shall repay the amount of overpayment to NJ TRANSIT within thirty (30) calendar days of said notification including interest as applicable.

10. ASSIGNMENT, SUBCONTRACT AND DISPOSITION APPROVAL: The Consultant shall not sell, transfer or otherwise dispose of this Agreement or its interest therein to any other parties without the prior written consent of NJ TRANSIT's Contracting Officer or his/her designee. The Consultant shall not, without the prior written approval of NJ TRANSIT's Contracting Officer or his/her designee, assign or subcontract any of the Scope of Services under this Agreement. Neither shall any assignee or Subconsultant, without the prior written approval of NJ TRANSIT, further assign or subcontract any of the work to be performed pursuant to this Agreement.

The terms of this Agreement shall be incorporated into and made part of any assignment or subcontract pursuant to this Agreement. As a condition of obtaining NJ TRANSIT's approval of any proposed assignee or Subconsultant, the Consultant shall provide NJ TRANSIT with sufficient documentation regarding the proposed Subconsultant or assignee for NJ TRANSIT's review and approval and shall provide to NJ TRANSIT a copy of the agreement established between the Consultant and its Subconsultant or assignee. Any assignment or subcontract of work to be performed under this Agreement, entered into without prior written approval by NJ TRANSIT's Contracting Officer or his/her designee, shall be void and unenforceable unless NJ TRANSIT's Contracting Officer or his/her designee subsequently gives written approval or consent.

If the Consultant's assignee or Subconsultant fails to perform in accordance with the terms of its assignment or subcontract, the Consultant shall complete or pay to have completed the work which the assignee or Subconsultant failed to complete at no additional cost to NJ TRANSIT.

11.INDEMNIFICATION: The Consultant shall defend, indemnify and save harmless the State of New Jersey, NJ TRANSIT, the U.S. Department of Transportation (USDOT), the Federal Transit Administration (FTA) (if the Agreement is in whole or part federally funded), , and their officers, employees, servants and agents ("Indemnified Parties") from all suits, actions, claims of any character including, but not limited to, expenditures and costs of investigations, hiring of witnesses, court costs, counsel fees, settlements, judgments or otherwise, brought because of any injuries or damage received or sustained by any person, persons, or property on account of the operations of said Consultant or its Subconsultant in the performance of the work, specified in this Agreement or because of any act, omission, neglect, or misconduct of said Consultant or its Subconsultant in the performance of the work specified in this Agreement; or from any claims or amounts arising or recovered under the Worker's Compensation Act, or any other law, ordinance, order, or decree. So much of the money due the said Consultant under and by virtue of this Agreement as may be considered necessary by NJ TRANSIT for such purpose may be retained for the use of NJ TRANSIT; except that money due to the Consultant will not be withheld when the Consultant produces satisfactory evidence that it is adequately protected by the insurance coverages required in Article 12, INSURANCE. NJ TRANSIT shall, as soon as practicable after a claim has been made against it, give written notice thereof to the Consultant along with full and complete particulars of the claim. If the suit is brought against NJ TRANSIT, NJ TRANSIT shall immediately forward to the Consultant every claim, demand, complaint, notice, summons, pleading or other process received by NJ TRANSIT. NJ TRANSIT shall have the right, but not the obligation, to participate, to the extent it deems appropriate, in the defense of the matter and must concur in the terms of any settlement or other voluntary disposition of the matter. In the defense of any such claims, demands, suits, actions and proceedings, the Consultant shall not raise or introduce, without the express written permission in advance of the Office of the Attorney General of the State of New Jersey, any defense involving in any way the immunity of NJ TRANSIT or the State of New Jersey, the jurisdiction of

the tribunal over NJ TRANSIT or the State of New Jersey, or the provisions of any statutes respecting suits against NJ TRANSIT or the State of New Jersey.

The Consultant is an independent professional firm contracting with NJ TRANSIT to provide specialized services. The Consultant, its officers, partners, employees, agents and servants are not to be deemed employees, agents, extensions of staff or servants of NJ TRANSIT. The Consultant assumes full responsibility for liability arising out of its conduct and the conduct of its Subconsultants whether by action or inaction. NJ TRANSIT assumes no liability or responsibility for the acts of the Consultant, its officers, partners, employees, agents, or servants, by virtue of entering into this Agreement.

12.INSURANCE: The Consultant agrees to carry and shall require its assignees and Subconsultants, if any, to carry professional liability insurance of the type necessary to protect the Consultant from professional liability arising out of the negligent acts, errors or omissions of the Consultant in connection with the performance of the Consultant's services pursuant to this Agreement. Said insurance shall be in an amount not less than \$5,000,000 for any one claim and annual aggregate with a deductible not to exceed \$50,000 for any one claim, unless approved otherwise by NJ TRANSIT. The Consultant agrees to maintain this coverage for three (3) years after completion of this Agreement including any amendments thereto. There shall be no exclusions in coverage for the insured's interest in a joint venture or Limited Liability Company or Limited Liability Partnership. There shall be no exclusions in coverage for pollution, mold or asbestos. The policy shall include contractual liability coverage.

The Consultant agrees to carry, and shall require its assignees and Subconsultants, if any, to carry, commercial general liability insurance using ISO Occurrence Form CG0001 10/93 or equivalent. The policy shall provide a minimum amount of \$5,000,000 each occurrence, \$5,000,000 personal and advertising injury, \$5,000,000 general aggregate and \$5,000,000 products completed operations aggregate. Coverage provided under this liability policy shall be on an occurrence basis and shall include, but not be limited to, bodily injury and property damage coverage including products



liability/completed operations coverage, premises operations liability, blanket contractual liability, personal injury liability, advertising injury coverage, independent contractors liability, mobile equipment, damage from explosion, collapse and underground hazards, and cross liability and severability of interests clause. Additional insured endorsement CG2026 11/85, CG 2010 11/85 or CG 2010 10/93 (but only if modified to include both ongoing and completed operations) naming NJ TRANSIT and the State of New Jersey and the Indemnified Parties and coverage must apply on a primary and non-contributory basis. The policy shall allow the Consultant to waive its and its insurer's rights of subrogation. There shall be no coverage exceptions for property containing or adjacent to railroad facilities or other transportation facilities. The Consultant shall furnish completed operations insurance written to the limits stipulated herein for Commercial General Liability Insurance. Coverage shall be required and maintained in force for a minimum of three (3) years following acceptance of the overall Contract, regardless of any beneficial occupancy by NJ TRANSIT during the Contract term.

The Consultant agrees to carry, and shall require its assignees and Subconsultants, if any, to carry automobile liability insurance applicable to all owned, non-owned, hired or leased vehicle with a minimum of \$1,000,000 combined single limit for bodily injury and property damage. With respect to said insurance, NJ TRANSIT and the Indemnified Parties shall be named as an additional insured at no additional cost to NJ TRANSIT.

The Consultant shall take out, secure and maintain during the term of this Agreement and shall require its assignees and Subconsultants, if any, to secure and maintain during the term of this Agreement, a policy of workers' compensation insurance in compliance with the laws of the state where the work is to be performed. In case any class of employees on the project under this Agreement is not protected under the Worker's Compensation Statute, the Consultant shall provide and shall cause each Subconsultant to provide employer's liability insurance for the protection of each of its employees as are not otherwise protected. Limits of Employer Liability are as follows: Employer's Liability: \$1,000,000 each accident / \$1,000,000 each employee disease / \$1,000,000 policy limit – disease.

The Consultant agrees to carry, and shall require its assignees and Subconsultants, if any, to carry, contractor's pollution liability insurance covering the liability arising out of any sudden and/or non-sudden pollution or impairment of the environment, including clean-up and disposal costs and defense that arise from the operation of Consultant or its Subconsultants. Coverage under this policy shall have limits of liability with a minimum of \$2,000,000 per occurrence. Transport of any hazardous waste generated under this Agreement shall require Hazardous Waste Haulers Insurance (MCS90) in an amount of \$2,000,000 per occurrence or statutory minimum, whichever is greater. This policy shall name NJ TRANSIT and the Indemnified Parties as additional insured at no cost to NJ TRANSIT.

Should it be required, NJ TRANSIT will provide Railroad Protective Comprehensive General Liability Insurance coverage for this Agreement.

All policies are to be written by insurance companies authorized to do business in New Jersey with an A.M. Best and Company rating of "A-" or better (or equivalent rating). All policies shall contain an endorsement that if the policy is canceled, non-renewed or is subject to any material reduction in limits, the Insurer will provide written notice to NJ TRANSIT at least thirty (30) calendar days prior to the occurrence of such event in accordance with Article 34, NOTIFICATION with a copy to NJ TRANSIT's Senior Director of Risk Management as follows:

NJ TRANSIT  
One Penn Plaza East  
Newark, New Jersey 07105-2246  
Attn: Senior Director, Risk Management

The foregoing insurance coverage is not intended to nor does it limit the liability of the Consultant to hold the Indemnified Parties harmless.

The Consultant shall provide NJ TRANSIT with evidence of the Consultant's insurance. Said insurance shall be maintained in full force and effect by the Consultant, Subconsultant and assignee, if any, from the effective date of this Agreement until completion of and final payment for the Scope of Services. If the Consultant (Subconsultant or assignee) shall fail or refuse to renew its insurance, as necessary, NJ TRANSIT may cancel or refuse to make payment of any further monies due under this

Agreement. In lieu of requiring its assignees or Subconsultants to carry this coverage, the Consultant may elect to cover them under its policies of insurance.

13. AUDIT AND INSPECTION OF RECORDS: The Consultant shall retain all records and permit the authorized representatives of NJ TRANSIT, the State of New Jersey, the USDOT, the FTA and the Comptroller of the United States and their duly authorized representatives, such as Project Management Oversight (PMO), Integrity Oversight Monitors (IOM) etc., to inspect and audit all financial data, operational data and other records of the Consultant including but not limited to disclosure forms, payment requests, change orders, invoices, certified payrolls, manifests, etc. related to products, transactions or services provided under this Agreement including the performance of its Subconsultants from the Advertisement of this Request for Proposal (RFP) and for five years after final payment under this Agreement has been made.

NJ TRANSIT, the State of New Jersey, the USDOT, the FTA and the Comptroller General of the United States and their duly authorized representatives also shall have the right to inspect all services hereunder and specifically reserves the right to conduct on-site visits and perform financial audits and operational reviews. Any inspection, audit or review or lack thereof shall not relieve the Consultant of responsibility for satisfactory performance of the Scope of Services. Consultant shall maintain a true and correct set of Records for all financial and operational data in sufficient detail to permit reasonable verification or correction of charges and performance in accordance with this Agreement from the date of Advertisement of this RFP and for five (5) years after final payment under this Agreement has been made.

Any such audit shall be conducted at Consultant's principal place of business during Consultant's normal business hours and at NJ TRANSIT's expense, provided all costs incurred by NJ TRANSIT in conducting any such audit shall be reimbursed by Consultant in the event such audit reveals an aggregate discrepancy in any invoice or cumulative invoice not previously audited by NJ TRANSIT of

more than two percent (2%) of the final total costs and fees for the period under audit as determined by NJ TRANSIT.

The Consultant further agrees to include in all its subcontracts hereunder a provision requiring the Subconsultant to keep all Contract records and that NJ TRANSIT, the State of New Jersey, the USDOT, the FTA and the Comptroller General of the United States or any of their duly authorized representatives, such as PMO, IOM, etc. shall, until the expiration of five (5) years after final payment under the subcontract, have access to and the right to examine pertinent books, documents, papers and records of such subcontract, involving transactions related to the Subconsultant. The term "Subconsultant" as used in this clause excludes (1) purchase orders not exceeding \$10,000 and (2) subcontracts or purchase orders for public utility services at rates established for uniform applicability to the general public.

Documents of every nature prepared pursuant to this Agreement shall be available to and become the property of NJ TRANSIT, and basic notes and other pertinent data shall be made available to NJ TRANSIT upon request without restriction as to their future use. Such documents shall be provided or made available within thirty (30) calendar days of NJ TRANSIT's request.

Pursuant to N.J.S.A. 52:15C-14(d), the Consultant shall maintain all documentation related to products, transactions or services under this contract for a period of five (5) years from the date of final payment. Such records shall be made available to the New Jersey Office of State Comptroller upon request.

The periods of access and examination described above, for Records which relate to: (1) appeals under Article 35, DISPUTES; (2) litigation or the settlement of claims arising out of the performance of this Agreement; or (3) costs and expenses of this Agreement as to which exception has been taken by NJ TRANSIT, State of New Jersey, the Office of State Comptroller, USDOT, FTA or any of their authorized representatives, shall continue until such appeals, litigation, claims, or exceptions have been disposed of.

14. SUSPENSION OF WORK: NJ TRANSIT may, for any reason, issue a stop order directing the Consultant to suspend work under the contract for a specific time. The Consultant shall be paid for goods ordered, goods delivered, or services requested and performed until the effective date of the stop order. The Consultant shall resume work upon the date specified in the stop order, or upon such other date as the Contracting Officer or his or her designee, may thereafter direct in writing. The period of suspension shall be deemed added to the Consultant's approved schedule of performance. The Contracting Officer or his or her designee shall make an equitable adjustment, if any is required, to the contract price. The Consultant shall provide whatever information that the Contracting Officer or his or her designee may require related to the equitable adjustment.

15. TERMINATION OF THE AGREEMENT FOR CONVENIENCE: NJ TRANSIT may terminate the Consultant's services in whole or in part for any reason at any time before completion. In that event, the Consultant will be given written notice by the Contracting Officer of such termination specifying the effective date thereof. Compensation will be paid to the Consultant pursuant to the terms of Article 2, COMPENSATION for the work actually performed prior to such date. All documents begun or completed by the Consultant pursuant to this Agreement shall become the property of NJ TRANSIT. After receipt of such written notice, the Consultant shall not incur any new obligations without the prior written approval of the Contracting Officer and shall cancel as many outstanding obligations so related as possible. NJ TRANSIT will evaluate each obligation deemed non-cancellable by the Consultant in order to determine its eligibility for inclusion in compensable costs. No damages of any nature shall be claimed against NJ TRANSIT in the event it exercises this right of termination.

16. TERMINATION OF THE AGREEMENT FOR CAUSE: NJ TRANSIT may terminate this Agreement in whole or in part at any time if the Consultant has materially failed to comply with terms of the Agreement. In the event of such failure, NJ TRANSIT shall promptly give written notification to the Consultant of its intent to terminate and the reasons therefor. The Consultant shall have ten (10) calendar days, or such additional time as NJ TRANSIT may grant, after receipt of notice to

cure its failure. If the failure is not cured to the satisfaction of NJ TRANSIT, NJ TRANSIT may terminate this Agreement (in whole or in part) effective immediately.

After receipt of notice of termination, the Consultant shall not incur any new obligations without the approval of NJ TRANSIT and shall cancel as many outstanding obligations as possible. NJ TRANSIT will evaluate each obligation deemed non-cancelable by the Consultant in order to determine its eligibility for inclusion in compensable costs. Compensation shall be made for Scope of Services identified in Exhibit A (Scope of Services) pursuant to the terms of this Agreement for work actually performed, completed and approved by NJ TRANSIT prior to the date of termination.

If this Agreement or any part thereof is terminated for cause, NJ TRANSIT may procure services similar to those so terminated. The Consultant shall be liable to NJ TRANSIT for any reasonable excess costs incurred for such similar services.

The Consultant shall not claim any damages of any nature against NJ TRANSIT in the event NJ TRANSIT exercises this right of termination. The rights and remedies available to NJ TRANSIT in this Article shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.

If, after notice of termination of this Agreement under the provisions of this Article, it is determined for any reason that the Consultant was not in default under the provisions of this Article, or that the default was excusable under the provisions of this Article, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to Article 15, TERMINATION FOR CONVENIENCE.

17. BUSINESS REGISTRATION NOTICE: In accordance with N.J.S.A. 52:32-44, all New Jersey and out of State business organizations must obtain a Business Registration Certificate (BRC) from the Department of the Treasury, Division of Revenue. It is requested that proof of valid business registration be submitted by a proposer with its proposal. Failure to submit such valid business registration with a proposal will not render the proposal materially non-responsive. If not submitted with

the proposal, the Business Registration Certificate (BRC) must be submitted prior to award of an Agreement. The certificate must be valid at time of award. The Business Registration Certificate (BRC) form (Form NJ-REG) can be found online at <http://www.state.nj.us/treasury/revenue/gettingregistered.shtml>.

No contract with a Subconsultant shall be entered into by any Consultant unless the Subconsultant first provides proof of valid business registration. The Consultant shall maintain a list of the names of any Subconsultants and their current addresses, updated as necessary during the course of the contract performance and the Consultant shall submit the complete and accurate list to NJ TRANSIT before final payment is made for services rendered under the Agreement.

The Consultant and any Subconsultant performing services under the Agreement, and each of their affiliates, shall, during the term of the contract, collect and remit to the Director of the Division of Taxation in the Department of the Treasury the use tax due pursuant to the "Sales and Use Tax Act, P.L. 1966, c. 30 (N.J.S.A. 54:32B-1 et seq.) on all their sales of tangible personal property delivered into the State.

18. SOURCE DISCLOSURE:

A. Under N.J.S.A. 52:34-13.2, all contracts primarily for services awarded by NJ TRANSIT shall be performed within the United States, except when the Contracting Officer certifies in writing a finding that a required service cannot be provided by a Consultant or Subconsultant within the United States and the certification is approved by the Executive Director of NJ TRANSIT.

All Consultants seeking a contract primarily for services with NJ TRANSIT must disclose the location, by country, where services under the contract, including subcontracted services, will be performed.

If any of the services cannot be performed within the United States, the Consultant shall certify with specificity the reasons why the services cannot be so performed. NJ TRANSIT's Contracting Officer shall determine whether sufficient justification has been provided by the Consultant to form the basis of

his certification that the services cannot be performed in the United States and whether to seek the approval of the Executive Director.

B. Breach of Contract for Shift of Services outside the United States

If, during the term of the Agreement, the Consultant or Subconsultant, who had on contract award certified that services would be performed in the United States, proceeds to shift the performance of the services outside the United States, the Consultant shall be deemed to be in breach of the Agreement, which shall be subject to termination for cause pursuant to Article 16, TERMINATION OF THE AGREEMENT FOR CAUSE, unless previously approved by NJ TRANSIT.

19. USE OF BRAND NAME PRODUCTS IN DESIGN: Consultants engaged to prepare specifications or to perform design work, or both, for NJ TRANSIT shall prepare such specifications to encourage full and open competition. A situation considered to be restrictive of competition involves specifying only a "brand name" product instead of allowing "an equal" product to be offered and listing the products' salient characteristics. Accordingly, Consultants engaged in preparing specifications or performing design work for NJ TRANSIT are required to include the salient characteristics of a product when it is identified by "brand name" and allow for an equivalent. Consultants may define salient characteristics by using language similar to the following:

- (a) 'Original Equipment Manufacturer (OEM) part #123 or approved equal that complies with the original equipment manufacturer's requirements or specifications and will not compromise any OEM warranties'; or
- (b) 'Original Equipment Manufacturer part #123 or approved equal that is appropriate for use with and fits properly in [describe the bus, engine, or other].

20. PATENT RIGHTS AND RIGHTS IN DATA:

A.) Rights in Data

1.) The term "subject data" as used herein means recorded information, whether or not copyrighted, that is delivered or specified to be delivered under this Agreement. The term



includes graphic or pictorial delineations in media such as drawings or photographs; text in specifications or related performance or design-type documents; machine forms such as punched cards; magnetic tape, or computer memory printouts; and information retained in computer memory. Examples include, but are not limited to, computer software, engineering drawings and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog item identifications, and related information. The term does not include financial reports, cost analyses, and similar information incidental to contract administration.

2.) All "subject data" first produced in the performance of this Agreement shall be the sole property of NJ TRANSIT. The Consultant agrees not to assert any rights at common law or equity and not to establish any claim to statutory copyright in such data. Except for its own internal use, the Consultant shall not publish or reproduce such data in whole or in part, or in any manner or form, nor authorize others to do so, without the written consent of NJ TRANSIT until such time as NJ TRANSIT may have released such data to the public.

3.) The Consultant agrees to grant and does hereby grant to NJ TRANSIT and to its officers, agents, and employees acting within the scope of their official duties, a royalty-free, nonexclusive, and irrevocable license throughout the world:

a.) To publish, translate, reproduce, deliver, perform, use, and dispose of, in any manner, any and all data not first produced or composed in the performance of this Agreement, but which is incorporated in the work furnished under this Agreement; and

b.) To authorize others so to do.

4.) The Consultant shall indemnify and save and hold harmless NJ TRANSIT, its officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from any willful or intentional violation by the Consultant of proprietary rights, copyrights, or rights of privacy, arising out of the publication, translation, reproduction, delivery, performance, use, or disposition of any data furnished under this Agreement.

5.) Nothing contained in this Article shall imply a license to NJ TRANSIT under any patent or be construed as affecting the scope of any license or other right otherwise granted to NJ TRANSIT under any patent.

6.) Paragraphs 3 and 4, above, are not applicable to material furnished to the Consultant by NJ TRANSIT and incorporated in the work furnished under the Agreement; provided that such incorporated material is identified by the Consultant at the time of delivery of such work.

7.) In the event that the project, which is the subject of this Agreement, is not completed, for any reason whatsoever, all data generated under this Agreement shall become subject data as defined in this clause and shall be delivered as NJ TRANSIT may direct.

B.) Patent Rights

1.) If any invention, improvement, or discovery of the Consultant is conceived or first actually reduced to practice in the course of or under this Agreement, which invention, improvement or discovery may be patentable under the laws of the United States of America or any foreign country, the Consultant shall immediately notify NJ TRANSIT and provide a detailed report to FTA.

2.) The rights and responsibilities of NJ TRANSIT, the Consultant and the FTA with respect to such invention, improvement, or discovery will be determined in accordance with applicable Federal laws, regulations, policies and any waiver thereof.

21. PUBLICATION AND PUBLICITY: The Consultant, its Subconsultants, assignees, employees or agents shall not release or publish any information or material generated from this project to others outside of NJ TRANSIT without the express written permission of NJ TRANSIT except as specified in the Scope of Services.

22. EQUAL EMPLOYMENT OPPORTUNITY:

22.1 The Consultant hereby acknowledges that pursuant to N.J.A.C. 17:27-3.1, NJ TRANSIT cannot award a contract or pay money to any Consultant or Subconsultant which has not agreed and guaranteed to afford equal employment opportunity in performance of the contract in accordance with an affirmative action program and, except with respect to affectional or sexual orientation, approved under the terms established in N.J.A.C. 17:27.

MANDATORY EQUAL EMPLOYMENT OPPORTUNITY LANGUAGE FOR GOODS, GENERAL SERVICES, AND PROFESSIONAL SERVICES CONTRACTS (required by N.J.S.A. 10:5-31 et seq. and N.J.A.C. 17:27-1.1 et seq.) – EXHIBIT A (last revised 4/10)

During the performance of this contract, the contractor agrees as follows:

The Consultant or Subconsultant, where applicable, will not discriminate against any employee or applicant for employment because of age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex. Except with respect to affectional or sexual orientation and gender identity or expression, the contractor will ensure that equal employment opportunity is afforded to such applicants in recruitment and employment, and that employees are treated during employment, without regard to their age, race, creed, color, national origin, ancestry, marital status, affection-al or sexual orientation, gender identity or expression, disability, nationality or sex. Such equal employment opportunity shall include, but not be limited to the following: employment, up-grading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Public Agency Compliance Officer setting forth provisions of this nondiscrimination clause.

The Consultant or Subconsultant, where applicable will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to age, race, creed, color, national origin,

ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex.

The Consultant or Subconsultant will send to each labor union, with which it has a collective bargaining agreement, a notice, to be provided by the agency contracting officer, advising the labor union of the contractor's commitments under this chapter and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

The Consultant or Subconsultant, where applicable, agrees to comply with any regulations promulgated by the Treasurer pursuant to N.J.S.A. 10:5-31 et seq., as amended and supplemented from time to time and the Americans with Disabilities Act.

The Consultant or Subconsultant agrees to make good faith efforts to meet targeted county employment goals established in accordance with N.J.A.C. 17:27-5.2. The Consultant or Subconsultant agrees to inform in writing its appropriate recruitment agencies including, but not limited to, employment agencies, placement bureaus, colleges, universities, and labor unions, that it does not discriminate on the basis of age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex, and that it will discontinue the use of any recruitment agency which engages in direct or indirect discriminatory practices.

The Consultant or Subconsultant agrees to revise any of its testing procedures, if necessary, to assure that all personnel testing conforms with the principles of job related testing, as established by the statutes and court decisions of the State of New Jersey and as established by applicable Federal law and applicable Federal court decisions.

In conforming with the targeted employment goals, the Consultant or Subconsultant agrees to review all procedures relating to transfer, upgrading, downgrading and layoff to ensure that all such actions are taken without regard to age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex, consistent

with the statutes and court decisions of the State of New Jersey, and applicable Federal law and applicable Federal court decisions.

The Consultant shall submit to the public agency, after notification of award but prior to execution of a goods and services contract, one of the following three (3) documents:

- Letter of Federal Affirmative Action Plan Approval;
- Certificate of Employee Information Report; or
- Employee Information Report Form AA-302 (electronically provided by the Division and distributed to the public agency through the Division's website at: [http://www.state.nj.us/treasury/contract\\_compliance](http://www.state.nj.us/treasury/contract_compliance)).

The Consultant and its Subconsultant shall furnish such reports or other documents to the Division of Purchase & Property, CCAU, EEO Monitoring Program as may be requested by the office from time to time in order to carry out the purposes of these regulations, and public agencies shall furnish such information as may be requested by the Division of Purchase & Property, CCAU, EEO Monitoring Program for conducting a compliance investigation pursuant to N.J.A.C. 17:27-1.1 et seq.

22.2 Non-Discrimination: In accordance with the provisions of N.J.S.A. 10:2-1 the Consultant agrees that:

- a. In the hiring of persons for the performance of work under this Agreement or any subcontract hereunder, or for the procurement, manufacture, assembling or furnishing of any such materials, equipment, supplies or services to be acquired under this Agreement, no Consultant, nor any person acting on behalf of such Consultant or Subconsultant, shall, by reason of race, creed, color, national origin, ancestry, marital status, gender identity or expression, affectional or sexual orientation, or sex, discriminate against any person who is qualified and available to perform the work to which the employment relates;
- b. No Consultant, Subconsultant, nor any person on his behalf shall, in any manner, discriminate

against or intimidate any employee engaged in the performance of work under this Agreement or any subcontract hereunder, or engaged in the procurement, manufacture, assembling or furnishing of any such materials, equipment, supplies or services to be acquired under such Agreement, on account of age, race, creed, color, national origin, ancestry, marital status, gender identity or expression, affectional or sexual orientation, disability, nationality, or sex;

- c. There may be deducted from the amount payable to the Consultant by the contracting public agency, under this Agreement, a penalty of \$50.00 for each person for each calendar day during which such person is discriminated against or intimidated in violation of the provisions of the Agreement; and
- d. This Agreement may be canceled or terminated by the contracting public agency and all money due or to become due hereunder may be forfeited, for any violation of this Article of the Agreement occurring after notice to the Consultant from the contracting public agency of any prior violation of this Article of the Consultant.

23. EQUAL OPPORTUNITY FOR INDIVIDUALS WITH DISABILITIES: The Consultant and NJ TRANSIT agree that the provisions of Title II of the Americans With Disabilities Act of 1990 (the "Act") (42 U.S.C. 12101 et seq.), which prohibit discrimination on the basis of disability by public entities in all services, programs, and activities provided or made available by public entities, and the rules and regulations promulgated thereto, are made a part of this Agreement. In providing any aid, benefit, or service on behalf of NJ TRANSIT pursuant to this Agreement, the Consultant agrees that the performance shall be in strict compliance with the Act. In the event that the Consultant, its agents, servants, employees, or Subconsultants violate or are alleged to have violated the Act during the performance of this Agreement, the Consultant shall defend NJ TRANSIT and the State of New Jersey in any action or administrative proceeding commenced pursuant to this Act. The Consultant shall indemnify, protect, and save harmless NJ TRANSIT and the State, their agents, servants, and employees from and against any and all suits, claims, losses, demands, or damages of whatever kind or nature arising out of or claimed to arise out of the alleged violation. The Consultant shall, at its own expense, appear, defend,

and pay any and all charges for legal services and any and all costs and other expenses arising from such action or administrative proceeding or incurred in connection therewith. In any and all complaints brought pursuant to the owner's grievance procedure, the Consultant agrees to abide by any decision of the owner which is rendered pursuant to such said grievance procedure. If any action or administrative proceeding results in an award of damages against NJ TRANSIT or the State or if NJ TRANSIT or the State incur any expense to cure a violation of the Act which has been brought pursuant to its grievance procedure, the Consultant shall satisfy and discharge the same at its own expense.

NJ TRANSIT shall, as soon as practicable after a claim has been made against it, give written notice thereof to the Consultant along with full and complete particulars of the claim. If any action or administrative proceeding is brought against NJ TRANSIT or any of its agents, servants, and employees, NJ TRANSIT will forward or have forwarded to the Consultant every demand, complaint, notice, summons, pleading, or other process received by it or its representatives.

It is expressly agreed and understood that any approval by NJ TRANSIT of the services provided by the Consultant pursuant to this Agreement will not relieve the Consultant of the obligation to comply with the Act and to defend, indemnify, protect, and save harmless NJ TRANSIT pursuant to this paragraph.

The Consultant expressly understands and agrees that the provisions of this indemnification clause shall in no way limit the Contractor's obligations assumed in this Agreement, nor shall they be construed to relieve the Consultant from any liability, nor preclude NJ TRANSIT from taking any other actions available to it under any other provisions of this Agreement or otherwise at law.

24. DISADVANTAGED BUSINESS ENTERPRISES: Disadvantaged Business Enterprises (DBE), as defined in 49 C.F.R. Part 26, shall have the maximum opportunity to participate in the performance of this Agreement and any subcontract under it. NJ TRANSIT and the Consultant shall take all necessary and reasonable steps, in accordance with 49 C.F.R. Part 26 and the provisions set

forth in Exhibit E, annexed hereto, to ensure that Disadvantaged Businesses have equal opportunity to participate.

The term "disadvantaged business enterprise" means a for-profit small business concern that is owned and controlled by one or more socially and economically disadvantaged persons, as defined by 49 C.F.R., Part 26. Such disadvantage may arise from cultural, racial, chronic economic circumstances or background or other similar cause. Such persons would include, but not be limited to, Black Americans (not of Hispanic origin); Hispanic Americans; Native Americans; Asian-Pacific Americans; Subcontinent Asian Americans; and Women, regardless of race or ethnicity.

NJ TRANSIT's DBE Program is accorded the same priority as compliance with all other legal obligations required by the USDOT. Consultants shall comply with the DBE Program requirements in the award and administration of NJ TRANSIT contracts. Failure by the Consultant to carry out these requirements shall constitute a breach of the contract, which may result in the termination of the contract or other such remedy, as NJ TRANSIT deems appropriate.

Should the actual contract amount increase or decrease, through approved change order(s), the Office of Business Development (OBD) must be informed. OBD will determine if this will result in an adjustment to DBE participation to reflect the assigned DBE goal.

The Consultant shall fully comply with the requirements and provisions set forth in the New Jersey Transit Corporation DBE Requirements for Federal Procurement Activities set forth in Exhibit E, annexed hereto.

25. COMPLIANCE WITH FEDERAL, STATE AND LOCAL LAW:

(a) The Consultant shall comply with applicable laws, ordinances, and codes of the United States, the State of New Jersey and local governments within the State. If NJ TRANSIT determines that the Consultant has violated or failed to comply with applicable federal, state or local laws with respect to its performance under this Agreement, NJ TRANSIT may withhold payments for such performance and take such other action that it deems appropriate under the circumstances until



compliance or remedial action has been accomplished by the Consultant to the satisfaction of NJ TRANSIT.

(b) Incorporation of FTA Terms

This Professional Service Agreement includes, in part, certain standard terms and conditions required by USDOT, whether or not expressly set forth in this Agreement. All contractual provisions required by USDOT, as set forth in FTA Circular 4220.1F, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Consultant shall not perform any act, fail to perform any act, or refuse to comply with any NJ TRANSIT requests which would cause NJ TRANSIT to be in violation of the FTA Master Agreement between NJ TRANSIT and the FTA.

(c) Changes to Federal Requirements

The Consultant shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between NJ TRANSIT and the FTA, as they may be amended or promulgated from time to time during the term of this Agreement. Consultant's failure to so comply shall constitute a material breach of this Agreement unless the FTA determines otherwise.

26. CONFLICT OF INTEREST: In the event that the Consultant deems that any work currently being performed by it on other projects or any work to be performed on future projects is in conflict directly or indirectly with this Agreement, the Consultant shall immediately so notify NJ TRANSIT. NJ TRANSIT, in its sole discretion, shall have the right to terminate this Agreement in accordance with Article 15, TERMINATION OF THE AGREEMENT FOR CONVENIENCE hereof.

27. CONSULTANT'S EMPLOYEES: All personnel employed on this project and their daily rates shall be approved in writing by NJ TRANSIT prior to assignment to this project and, in addition,

any employee of the Consultant or its Subconsultants declared undesirable by NJ TRANSIT shall be relieved of any work under this Agreement.

The Consultant must receive NJ TRANSIT's prior written approval of any change in the project organization/manpower and Subconsultant project team approved for this project.

28. PROHIBITED INTEREST: No member, officer, or employee of NJ TRANSIT or its subsidiaries shall have any interest, direct or indirect, in this Agreement or the proceeds thereof. No former member, officer or employee of NJ TRANSIT or its subsidiaries who, during his tenure, had a direct, substantial involvement with matters that are closely related to this Agreement, shall have any interest, direct or indirect, in this Agreement or the proceeds thereof.

29. INTERESTS OF MEMBERS OF OR DELEGATES TO CONGRESS: No member of or delegate to the Congress of the United States shall be admitted to any share or part of this Agreement or to any benefit arising therefrom.

30. NJ TRANSIT CODE OF ETHICS FOR CONSULTANTS:

It is NJ TRANSIT policy that Consultants must avoid all situations where proprietary or financial interest, or the opportunity for financial gain, could lead an officer or employee of NJ TRANSIT to secure favored treatment for any organization or individual. Consultants must also avoid circumstances and conduct which may not constitute actual wrongdoing, or conflict of interest, but might nevertheless appear questionable to the general public, thus compromising the integrity of NJ TRANSIT. For the purposes of this Article only, NJ TRANSIT shall be deemed to include any person contracting with NJ TRANSIT to perform services on the Project. All Consultants must comply with NJ TRANSIT's Code of Ethics contained in this Article.

A.) The Consultant shall not employ any NJ TRANSIT officer or employee in the business of the Consultant or in professional activity in which the Consultant is involved with the NJ TRANSIT officer or employee.

The Consultant shall not offer or provide any interest, financial or otherwise, direct or indirect, to any NJ TRANSIT officer or employee, in the business of the Consultant or professional activity in which the Consultant is involved with the NJ TRANSIT officer or employee.

The Consultant shall not cause or influence, or attempt to cause or influence, any NJ TRANSIT officer or employee to act in his or her official capacity in any manner which might tend to impair the objectivity or independence of judgment of that NJ TRANSIT officer or employee.

The Consultant shall not cause or influence, or attempt to cause or influence, any NJ TRANSIT officer or employee to use or attempt to use his or her official position to secure any unwarranted privileges or advantages for that Consultant or any other person.

The Consultant shall not offer any NJ TRANSIT officer or employee any gift, favor, service or other thing of value under circumstances from which it might be reasonably inferred that such gift, service or other thing of value was given or offered for the purpose of influencing the recipient in the discharge of his or her official duties. In addition, employees or officers of NJ TRANSIT will not be permitted to accept breakfasts, lunches, dinners, alcoholic beverages, tickets to entertainment and/or sporting events, or any other item which could be construed as having more than nominal value.

B.) In accordance with N.J.A.C. 16:72-4.1, the Consultant may be suspended and/or debarred if the Consultant:

1.) Makes any offer or agreement to pay or to make payment of, either directly or indirectly, any fee, commission, compensation, gift, gratuity, or other thing of value of any kind to any NJ TRANSIT Board member, officer, or employee or to any member of the immediate family of such Board member, officer, or employee, or any partnership, firm, or corporation with which they are employed or associated, or in which such Board member, officer, or employee has an interest within the meaning of N.J.S.A. 52:13D-13g;

2.) Fails to report to the Attorney General and to the Executive Commission on Ethical Standards in writing forthwith the solicitation of any fee, commission, compensation, gift, gratuity or other thing of value by any NJ TRANSIT Board member, officer, or employee;

3.) Undertakes, directly or indirectly, any private business, commercial, or entrepreneurial relationship with, whether or not pursuant to employment, contract or other agreement, express or implied, or sale, directly or indirectly of any interest in such Consultant to, any NJ TRANSIT Board member, officer, or employee having any duties or responsibilities in connection with the purchase, acquisition, or sale of any property or services by or to NJ TRANSIT, or with any person, firm, or entity with which he is employed or associated or in which he has an interest within the meaning of N.J.S.A. 52:13D-13g. Any relationship subject to this provision shall be reported in writing forthwith to the Executive Commission on Ethical Standards, which may grant a waiver of this restriction upon application of the NJ TRANSIT Board member, officer, or employee upon a finding that the present or proposed relationship does not present the potential, actuality, or appearance of a conflict of interest;

4.) Influences or attempts to influence or causes to be influenced, any NJ TRANSIT Board member, officer, or employee in his official capacity in any manner which might tend to impair the objectivity or independence of judgment of such Board member, officer, or employee; or

5.) Causes or influences or attempts to cause or influence, any NJ TRANSIT Board member, officer, or employee to use, or attempt to use, his official position to secure unwarranted privileges or advantages for the Consultant or any other person.

31. POLITICAL ACTIVITY PROHIBITED: None of the funds or services contributed by NJ TRANSIT or the Consultant under this Agreement shall be used for any partisan political activity, or to further the election or defeat of any candidate for public office.

32. NONSOLICITATION: The Consultant warrants that it has not retained any party other than a bona fide employee working for the Consultant to solicit this Agreement, and that it has not paid or agreed to pay any outside party consideration in any form contingent upon securing this

Agreement. For breach of this warranty, NJ TRANSIT shall have the right to terminate this Agreement for cause.

33. MERGER AND SEVERABILITY: This Agreement embodies the entire agreement between the parties. If any provision herein is held invalid, it shall be considered deleted herefrom and shall not invalidate the remaining provisions hereof.

34. NOTIFICATION: Any request, demand, authorization, direction, notice, consent, waiver or other document provided or permitted by this Agreement to be made upon, given or furnished to, or filed with one party by another party shall be in writing and shall be delivered by hand or by deposit in the mails of the United States, postage paid, in an envelope addressed as follows:

If to NJ TRANSIT:

Chief of Procurement & Support Services  
NJ TRANSIT  
One Penn Plaza East  
Newark, New Jersey 07105-2246  
Attn: \_\_\_\_\_

With a copy to:

NJ TRANSIT  
One Penn Plaza East  
Newark, New Jersey 07105-2246  
Attn: \_\_\_\_\_  
Project Manager

If to the Consultant:

Attn: \_\_\_\_\_

Either party to the Agreement may redesignate the recipient or change the address of the recipient of notifications hereunder by notifying the other party to this Agreement, in writing, of such change.

35. DISPUTES: Disputes regarding whether a party has failed to make payments may be submitted to a process of alternative dispute resolution. Disputes arising in the performance of this Agreement which are not resolved by agreement of the parties will be decided in writing by the

authorized representative of the Contracting Officer. This decision shall be final and conclusive unless within ten (10) calendar days from the date of receipt of its copy, the Consultant mails or otherwise furnishes a written appeal to the Contracting Officer. In connection with any such appeal, the Consultant shall be afforded an opportunity to be heard and to offer evidence in support of its position. Pending final decision of a dispute hereunder, the Consultant shall proceed diligently with performance of the Contract in accordance with the decision of the authorized representative of the Contracting Officer.

36. OUT OF STATE CORPORATIONS: If the Consultant is a corporation organized under laws of a state other than New Jersey, the Consultant shall have a certificate of authority to do business in New Jersey in accordance with N.J.S.A. 14A:13-3. In addition, pursuant to N.J.S.A. 14A:4-1 et seq., the Consultant shall maintain a registered office in New Jersey, have a registered agent with a business office in New Jersey and shall file with the Secretary of State the name of said agent and address of said office and provide a copy thereof to NJ TRANSIT.

Inquiries should be directed to:

State of New Jersey  
Department of State  
Division of Commercial Recording  
CN-308  
Trenton, New Jersey 08625  
[www.state.nj.us/njbgs](http://www.state.nj.us/njbgs)

37. SUCCESSORS: This Agreement shall bind the heirs, representatives, successors, and assignees of the Consultant.

38. GOVERNING LAW: The Agreement shall be governed by and interpreted pursuant to the laws of the State of New Jersey.

39. QUALITY ASSURANCE PLAN: The Consultant shall perform all work according to the highest standards of professional care. The Consultant shall establish and maintain a Quality Assurance Plan, subject to NJ TRANSIT's approval, setting forth the Consultant's policy for quality assurance and procedures for implementing that policy. Such plan must apply to all persons engaged in work under this Agreement, include regular and written procedures for performance of all Project

activities, and provide sufficient information to senior managers to enable effective supervision of the Project. The procedures shall provide for sufficient documentation to allow review and audit by NJ TRANSIT, and NJ TRANSIT may, in its discretion, review the Consultant's implementation of the procedures.

40. PROJECT SUPERVISION: If engineering, design, architectural or surveying services are provided under this Agreement, the Consultant shall assign an engineer or architect authorized to practice in the State of New Jersey to supervise the Scope of Services. The design and engineering services for this project shall be performed and/or approved by a Professional Engineer or Registered Architect licensed to practice in the State of New Jersey.

The Consultant shall exercise all due care in its preparation of documents for construction to ensure that they conform to all applicable legal and other requirements in effect at the time of issuance of the contract documents. The approval of plans and specifications which have been submitted to NJ TRANSIT by the Consultant is not to be construed as authority to violate, cancel or set aside any provisions of such requirements or this Agreement. Nothing contained in this Agreement is intended to relieve the Consultant of responsibility for maintaining adequate supervision over the design in order to guard against deficiencies in the design work.

The Consultant shall be liable to NJ TRANSIT for any reasonable costs incurred by NJ TRANSIT to correct, modify or redesign any drawings submitted by the Consultant that are found to be defective or not in accordance with the provisions of this Agreement as a result of any act, error or omission on the part of the Consultant, or its agents, servants or employees. The Consultant shall be given reasonable opportunity to correct any deficiencies at no additional cost to NJ TRANSIT.

The Consultant shall also be liable to NJ TRANSIT for any reasonable costs incurred to correct, modify or reconstruct contractor work which was done based on any drawings submitted by the Consultant that are found to be defective or not in accordance with the provisions of this Agreement as a result of any act, error or omission on the part of the Consultant, or its agents, servants or employees.

The Consultant shall be given reasonable opportunity to correct any deficiencies at no additional cost to NJ TRANSIT.

41. HISTORIC PRESERVATION: The Consultant shall submit to NJ TRANSIT, pursuant to this Agreement, a final design which meets the "Standards for Rehabilitation" established and published by the United States Department of the Interior at 36 C.F.R. Part 67, which standards are applied by the Commissioner of Environmental Protection in the statutory review, required by N.J.S.A. 13:1B-15.131, of projects which will encroach upon a site included in the New Jersey Register of Historic Places. In the event that the final design for the Project is submitted for review pursuant to N.J.S.A. 13:1B-15.131 and is not approved or is approved with conditions by the Commissioner of Environmental Protection, for reasons that the final design does not meet said standards, the Consultant shall correct or modify said design immediately upon notification of non-approval, or shall reimburse NJ TRANSIT for any reasonable costs incurred by NJ TRANSIT to correct or modify the design, so that it may be approved by the Commissioner of Environmental Protection.

42. FALSE OR FRAUDULENT STATEMENTS AND CLAIMS:

A.) The Consultant recognizes that the requirements of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 et seq. and USDOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to the project. Accordingly, by signing the Agreement, the Consultant certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, or it may make pertaining to the Agreement. In addition to other penalties that may be applicable, the Consultant also acknowledges that if it makes a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986, as amended, on the Consultant to the extent the Federal Government deems appropriate.

B.) The Consultant also acknowledges that if it makes a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government in connection with an urbanized



area formula project financed with Federal Assistance authorized by 49 U.S.C. § 5307, the Government reserves the right to impose on the Consultant the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n) (1), to the extent the Federal Government deems appropriate.

43. NO FEDERAL GOVERNMENT OBLIGATIONS TO THIRD PARTIES: The Consultant agrees that, absent the Federal Government's express written consent, the Federal Government shall not be subject to any obligations or liabilities to any subrecipient, any third party contractor, or any other person not a party to the contract in connection with the performance of the project. Notwithstanding any concurrence provided by the Federal Government in the approval of any solicitation, subagreement, or third party contract, the Federal Government continues to have no obligations or liabilities to any party, including the subrecipient and third party contractor.

44. EXCLUSIONARY OR DISCRIMINATORY SPECIFICATIONS: Apart from inconsistent requirements imposed by Federal statute or regulations, the Consultant agrees that it will comply with the requirements of 49 U.S.C. § 5323(h) (3) by refraining from using any Federal Assistance awarded by FTA to support procurements using exclusionary or discriminatory specifications.

45. CLEAN WATER AND CLEAN AIR ACTS:

45.1 The Contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. § 1251 et seq.:

(a) With the notification of violating facilities provisions of Executive Order No. 11738; "Administration of the Clean Air Act and the Federal Water Pollution Control Act with Respect to Federal Contracts, Grants, or Loans", 42 U.S.C. S 7606. The Contractor agrees to report each violation to NJ TRANSIT and understands and agrees that NJ TRANSIT will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

(b) With the provisions of the Safe Drinking Water Act of 1974, as amended, 42 U.S.C. § 300h et seq.

45.2 The Contractor agrees to comply with all applicable, standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq. The Contractor agrees to report each violation to NJ TRANSIT and understands and agrees that NJ TRANSIT will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

45.3 The Contractor agrees to include both the Clean Water and Clean Air requirements in each subcontract exceeding \$100,000. The \$100,000 limit includes indefinite quantities where the amount is expected to exceed \$100,000 in any year.

46. ENERGY CONSERVATION: The Consultant shall comply with mandatory standards and policies relating to energy efficiency contained in applicable State of New Jersey Energy Conservation Plans issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. 6321 et seq.).

47. CIVIL RIGHTS: During the performance of this Contract, the Consultant, for itself, its assignees and successors in interest and its Subconsultant at every tier (hereinafter referred to as the "Consultant") agrees as follows:

(a) Compliance with Regulations

The Consultant shall comply with the Regulations relative to nondiscrimination in federally-assisted programs of the United States Department of Transportation, Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this Contract.

(b) Nondiscrimination

In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, and N.J.S.A. 10:3-1, the Consultant agrees that it will not discriminate against any employee or applicant

for employment because of race, color, religion, national origin, sex, age, or disability. In addition, the Consultant agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

(c) Equal Employment Opportunity

The following equal employment opportunity requirements apply to the underlying contract:

(1) Race, Color, Religion, National Origin, Sex

In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Consultant agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect activities undertaken in the course of the Project. The Consultant agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, national origin, sex, sexual orientation, gender identity, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Consultant agrees to comply with any implementing requirements FTA may issue.

(2) Age

In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § § 623 and Federal transit law at 49 U.S.C. § 5332 and N.J.S.A. 10:3-1, the

Consultant agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Consultant agrees to comply with any implementing requirements FTA may issue.

(3) Disabilities

In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Consultant agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Consultant agrees to comply with N.J.S.A. 10:5-29.1 and any implementing requirements FTA may issue.

(d) The Consultant also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

(e) Information and Reports

The Consultant shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Recipient or NJ TRANSIT or the FTA to be pertinent to ascertain compliance with such Regulations, orders and instruction. Where any information is required or a Consultant is in the exclusive possession of another who fails or refuses to furnish this information, the Consultant shall so certify to NJ TRANSIT, or the FTA, as appropriate, and shall set forth what efforts it has made to obtain the information.

(f) Sanctions for Noncompliance

In the event of the Consultant's noncompliance with the nondiscrimination provisions of this Contract, NJ TRANSIT shall impose such contract sanctions as it or the FTA may determine to be appropriate, including but not limited to:

(1) Withholding of payments to the Consultant under the Contract until the Consultant complies; and/or

(2) Cancellation, termination or suspension of the Contract, in whole or in part.

48. CONTRACT WORK HOURS AND SAFETY STANDARDS: During the performance of this Agreement, the Consultant, for itself, its assignees and successors in interest (hereinafter referred to as the "Consultant") agrees as follows:

A.) Overtime Requirements: No Consultant or Subconsultant contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any work week in which he or she is employed on such work to work in excess of forty (40) hours in such work week unless such laborer or mechanic receives compensation at rate not less than one and one-half (1 ½ ) times the basic rate of pay for all hours worked in excess of forty (40) hours in such work week, whichever is greater.

B.) Violation; Liability for Unpaid Wages; Liquidated Damages: In the event of any violation of the clause set forth in subparagraph (b)(1) of 29 C.F.R. Section 5.5, the Consultant and any Subconsultant responsible therefore shall be liable for the unpaid wages. In addition, such Consultant and Subconsultant shall be liable to the United States (in case the work done under contract for the District of Columbia or a territory, to such district or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in subparagraph (b)(1) of 29 C.F.R. Section 5.5 in the sum of \$25 for each calendar day on which such individual was required or permitted to work in excess of eight (8) hours or in excess of the standard work week of forty (40) hours without payment of the overtime wages required by the clause set forth in subparagraph (b)(1) of 29 C.F.R. Section 5.5.

C.) Withholding for Unpaid Wages and Liquidated Damages: NJ TRANSIT shall upon its own action or upon written request of an authorized representative of the U.S. Department of Labor withhold or cause to be withheld, from any monies payable on account of work performed by the Consultant or Subconsultant under any such contract or any other Federal contract with the same prime Consultant, or any other Federally-assigned contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime Consultant, such sums as may be determined to be necessary to satisfy any liabilities of such Consultant or Subconsultant for unpaid wages and liquidated damages as provided in the clause set forth in subparagraph (B)(2) of 29 C.F.R. Section 5.5.

D.) Nonconstruction Grants: The Consultant or Subconsultant shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three (3) years from the completion of the Agreement for all laborers and mechanics, including guards and watchmen, working on the Agreement. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. These records shall be made available by the Consultant or Subconsultant for inspection, copying, or transcription by authorized representatives of NJ TRANSIT, the FTA and the Department of Labor, and the Consultant or Subconsultant will permit such representatives to interview employees during working hours on the job.

E.) Subcontracts: The Consultant or Subconsultant shall insert in any subcontracts the clauses set forth in Paragraphs A through E of this Section and also a clause requiring the Subconsultants to include these clauses in any lower tier subcontracts. The prime Consultant shall be responsible for compliance by any Subconsultant or lower tier Subconsultant with the clauses set forth in Paragraphs A through E of this Section.

49. CERTIFICATIONS REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY  
AND VOLUNTARY EXCLUSION – LOWER TIER COVERED TRANSACTION

By signing this agreement, the lower tier participant, defined as the Consultant and its Subconsultants, is providing the certification set out below.

The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, NJ TRANSIT may pursue available remedies, including suspension and/or debarment.

The lower tier participant shall provide immediate written notice to NJ TRANSIT if at any time the lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

Certain terms used in this clause have the meanings set out in 2 C.F.R. Part 1200 and 2 C.F.R. Part 180.

The lower tier participant agrees by signing this agreement that it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized in writing by NJ TRANSIT.

The lower tier participant further agrees by signing this agreement that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tier Covered Transaction", without modification, in all lower tier covered transactions (valued at \$25,000 or more) and in all solicitations for lower tier covered transactions.

A participant in a covered transaction may rely upon a certification of a participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. Each participant shall check the U.S. Government System for Award Management (SAM) database.

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.

Except for transactions authorized under the fifth paragraph above, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to all remedies available to the Federal Government, NJ TRANSIT may pursue available remedies including suspension and/or debarment.

The lower tier participant certifies by signing this agreement that neither it nor its "principals" (as defined 2 C.F.R. 180.995) is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency. A participant may decide the method and frequency by which it determines the eligibility of its principals.

When the lower tier participant is unable to certify to the statements in this certification, such participant shall submit a written explanation.

The lower tier participant shall also be currently registered and active with no exclusion on the U.S. Government System for Award Management (SAM) database.

50. LIMITATIONS ON LOBBYING: The Consultant and its Subconsultants shall comply with 31 U.S.C. 1352, entitled "Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions".

A.) 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.

B.) Any Consultant and any Subconsultant at any tier who requests or receives a Federally-assisted contract or subcontract in excess of \$100,000 from NJ TRANSIT shall file with NJ TRANSIT the certification attached to this Agreement and entitled "Certification for Contracts, Grants, Loans and Cooperative Agreements" which certifies that the Consultant or Subconsultant, as applicable, has not made, and will not make, any payment prohibited by paragraph A.) of this Section.

C.) Any Consultant and any Subconsultant who has made or has agreed to make any payment using nonappropriated funds (to include profits from any covered Federal action) which would be prohibited under paragraph A.) of this Section if paid for with appropriated funds, shall file with NJ TRANSIT a disclosure form entitled "Disclosure of Lobbying Activities", which is available from NJ TRANSIT.

D.) Any certification or disclosure form filed under paragraphs B.) and C.) of this Section shall be forwarded from tier to tier until received by NJ TRANSIT. Any certification or disclosure form shall be treated as a material representation of fact upon which all receiving tiers shall rely. All liability arising from an erroneous representation shall be borne solely by the tier filing that representation and shall not be shared by any tier to which the erroneous representation is forwarded.

E.) The prohibition on the use of appropriated funds does not apply in the case of a payment of reasonable compensation to an officer or employee of the Consultant or Subconsultant if the payment is for agency and legislative liaison activities not directly related to a covered Federal action.

F.) The prohibition on the use of appropriated funds does not apply in the case of any reasonable payment to an officer or employee of a Consultant or Subconsultant or to a person, other than an officer or employee of a Consultant or Subconsultant, if the payment is for professional or

technical services rendered directly in the preparation, submission or negotiation of any bid, proposal or application for a Federal contract, grant, loan or cooperative agreement.

51. BUY AMERICA DESIGN REQUIREMENTS: The Consultant shall design the project to ensure that the plans and specifications produced by the Consultant under this Agreement permit compliance with Section 165 of the Surface Transportation Assistance Act of 1982 (P.L. 97-424). All iron, steel and manufactured products specified by the Consultant shall be of domestic manufacture or origin, except as otherwise approved by NJ TRANSIT. Whenever the Consultant lists a product by make, manufacturer or model number in the specifications, the Consultant shall first ensure that the product is of domestic manufacture or origin. Should the Consultant find it necessary to specify iron, steel, or manufactured products which are not produced in the United States in sufficient and reasonably available quantities, then the Consultant shall submit a written justification to the Contracting Officer describing in detail the product, its estimated cost, the rationale for its use in the project and the basis for the Consultant's belief that the product is of limited domestic availability. NJ TRANSIT, in its sole discretion, will determine whether to seek a waiver of the Buy America requirements from the U.S. Secretary of Transportation. Should NJ TRANSIT determine that there is insufficient basis for seeking a waiver or if a waiver request is denied by USDOT, the Consultant shall redesign the project to conform with Buy America requirements at no additional cost to NJ TRANSIT.

e. 52. FLY AMERICA REQUIREMENTS: The Consultant agrees to comply with 49 U.S.C. 40118 (the "Fly America" Act) in accordance with the General Services Administration's regulations at 41 C.F.R. Part 301-10, which provide that recipients and subrecipients of Federal funds and their Consultant s are required to use U.S. Flag air carriers for U.S. Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. The Consultant shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a U.S. flag air carrier was not

available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements. The Consultant agrees to include the requirements of this section in all subcontracts that may involve international air transportation.

- f. 53. SEISMIC SAFETY: The Consultant agrees that any new building or addition to an existing building will be designed and constructed in accordance with the standards for Seismic Safety required in Department of Transportation Seismic Safety Regulations 49 C.F.R. Part 41 and will certify to compliance to the extent required by the regulation. The Consultant also agrees to ensure that all work performed under this contract including work performed by a Subconsultant is in compliance with the standards required by the Seismic Safety Regulations and the certification of compliance issued on the project.

54. SETTING OFF TAX ARREARS AGAINST SUMS OWED: Whenever a taxpayer under contract with the State of New Jersey is indebted for any State Tax in accordance with N.J.S.A. 54:49-19, the State of New Jersey shall seek to set off the indebtedness as follows:

Whenever any taxpayer under contract to provide goods or services to the State of New Jersey or its agencies or instrumentalities, and including the legislative and judicial branches of State government, is entitled to payment for the goods or services or on that construction project and at the same time the taxpayer is indebted for any State tax, the Director of the Division of Taxation shall seek to set off so much of that payment as may be necessary to satisfy the indebtedness. The Director, in consultation with the Director of the Division of Budget and Accounting in the Department of the Treasury, shall establish procedures and methods to effect a set-off. The Director shall give notice of the set-off to the taxpayer, the provider of goods or services or the Contractor or Subcontractor of construction projects and provide an opportunity for a hearing within thirty (30) calendar days of such notice under the procedures for protests established under N.J.S.A. 54:49-18, but no request for conference, protest, or subsequent appeal to the Tax Court from any protest under this Article shall stay the collection of the indebtedness. No payment shall be made to the taxpayer, the provider of goods or services or the

Contractor or Subcontractor of construction projects pending resolution of the indebtedness. Interest that may be payable by the State pursuant to N.J.S.A. 52:32-32 et seq. to the taxpayer, the provider of goods and services or the Contractor or Subcontractor of construction projects shall be stayed.

- g. 55. DISCLOSURE OF INVESTMENT ACTIVITIES IN IRAN: Pursuant to N.J.S.A. 52:32-55 et seq., any person or entity that submits a proposal or otherwise proposes to enter into or renew a contract must complete the certification to attest, under penalty of perjury, that neither the person or entity, nor any of its parents, subsidiaries, or affiliates, is identified on the Department of Treasury's Chapter 25 list as a person or entity engaging in investment activities in Iran. The Chapter 25 list is found on the Division's website at <http://www.state.nj.us/treasury/purchase/pdf/Chapter25List.pdf>. Consultants must review this list prior to completing the Disclosure of Investment Activities In Iran Certification. If NJ TRANSIT finds a person or entity to be in violation of law, NJ TRANSIT shall take action as may be appropriate and provided by law, rule or contract, including but not limited to, imposing sanctions, seeking compliance, recovering damages, declaring the party in default and seeking debarment or suspension of the party.
- h. 56. ATTACHMENTS/EXHIBITS: All Appendices, Attachments and Exhibits, as listed below, are incorporated into this Contract:

- i.
- j.
- k.

I. IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed the \_\_\_\_ day of \_\_\_\_\_ to be effective as of the day and year first above written.

**WITNESS:**

**NEW JERSEY TRANSIT CORPORATION**

By: \_\_\_\_\_  
Title  
Designee

By: \_\_\_\_\_  
Contracting Officer or Duly Authorized

**WITNESS:**

**CONSULTANT**

By: \_\_\_\_\_  
Title

By: \_\_\_\_\_  
Title

The aforementioned Agreement has been reviewed and approved as to form only.

**CHRISTOPHER S. PORRINO**  
**ATTORNEY GENERAL OF NEW JERSEY**

By: \_\_\_\_\_  
Deputy Attorney General

## EXHIBIT 2

## **ACKNOWLEDGMENT OF RECEIPT OF ADDENDA**

Proposers are required to acknowledge receipt of all addenda issued prior to the proposal due date. This acknowledgment is made by the Proposer, if an individual; by a partner, if a partnership; or by an officer of the corporation, if a corporation.

The undersigned acknowledges receipt of the following addenda.

Addendum Number

Date

---

---

---

---

---

---

---

---

---

---

---

---

---

---

---

---

By:

\_\_\_\_\_  
Signature of Company Official

\_\_\_\_\_  
Official's Title

\_\_\_\_\_  
Company Name

## EXHIBIT 3



## **Procurement Staff Checklist (for federal contracts)**

Upon completion of the Required and/or Supplemental Forms packet(s), please be sure that the completed checklist and the forms listed below are included for each DBE subcontractor listed on the Form A and submitted to the Office of Business Development (OBD) for review.

**Note:** Failure to complete and submit the forms below will delay the OBD from issuing approval to move forward in the contract award process.

### **Required Forms**

- ☐ Form A - First Tier DBE Utilization
- ☐ Form A1 - Bidder/Proposer Solicitation and Contractor Information
- ☐ Form A2 - Non-DBE Sub Utilization
- ☐ Form B - Intent to Perform as a DBE Sub
- ☐ Form D - DBE Good Faith Effort Form
- ☐ Trucking Commitment Agreement (if applicable)

### **Supplemental Forms (if applicable)**

- ☐ Form AA - Second Tier DBE Utilization
- ☐ Form AA1 - Second Tier Bidder/Proposer Solicitation and Contractor Information
- ☐ Form AA2 - Second Tier Non-DBE Sub Utilization
- ☐ Form BB - Intent to Perform as a Second Tier DBE Sub
- ☐ Trucking Commitment Agreement (if applicable)

**NEW JERSEY TRANSIT CORPORATION  
DBE REQUIREMENTS FOR  
RACE-NEUTRAL GOAL PROGRAM  
FEDERAL PROCUREMENT ACTIVITIES**

**TABLE OF CONTENTS**

TITLE OF ARTICLE	PAGE
1.1 POLICY.....	2
1.2 ASSURANCE.....	3
1.3 DBE GOAL FOR THIS PROJECT.....	3
1.4 GUIDANCE TO BIDDER/PROPOSERS/PRIMES.....	3
1.5 TRANSIT VEHICLE MANUFACTURERS (TVM).....	4
1.6 RESPONSIBLE BID/PROPOSAL CRITERIA.....	4
2.1 GUIDANCE ON A GOOD FAITH .....	4-5
2.2 A GOOD FAITH EFFORT.....	5-6
2.3 REQUIRED FORMS.....	6-7
2.4 SUPPLEMENTAL REQUIRED FORMS (IF APPLICABLE).....	7
2.5 INSTRUCTIONS FOR COMPLETING REQUIRED FORMS.....	7-10
2.6 INSTRUCTIONS FOR COMPLETING SUPPLEMENTAL REQUIRED FORMS.....	10-11
3.1 GUIDANCE ON COUNTING DBE PARTICIPATION .....	11
3.2 COUNTING DBE PARTICIPATION.....	11-12
3.3 DBE PRIME CONTRACTOR GUIDANCE.....	12
3.4 DBE TRUCKING FIRM GUIDANCE.....	12
3.5 LEASING TRUCKS.....	12-13
3.6 COUNTING MATERIALS AND SUPPLIES.....	13
4.1 TERMINATION OF DBE(s).....	14
4.2 ADDITION OF DBE(s).....	14
4.3 REPLACEMENT OR REMOVAL OF DBE(s).....	14-15
4.4 WITHDRAWN DBE(s).....	15
4.5 DECERTIFIED DBE(s).....	15-16
5.1 AWARD OBLIGATIONS.....	16
5.2 POST AWARD DELIVERABLES .....	16-17
5.3 PROMPT PAYMENT OF INVOICES TO SUBCONTRACTORS.....	17-18
5.4 SUBCONTRACT PAYMENT DISPUTE RESOLUTION.....	18
5.5 PROMPT PAYMENT OF SUBCONTRACTOR RETAINAGE.....	18-19
5.6 REMEDIES AND PENALITIES.....	19
5.7 LIQUIDATED DAMAGES.....	19-20
APPENDIX 1 (GLOSSARY).....	20-21

**NEW JERSEY TRANSIT CORPORATION  
DBE REQUIREMENTS FOR  
RACE-NEUTRAL GOAL PROGRAM  
FEDERAL PROCUREMENT ACTIVITIES**

This project is a component of our Race Neutral Goal Program; therefore, a Race-Neutral (RN) Disadvantaged Business Enterprise (DBE) goal has been established. NJ TRANSIT will meet a portion of its overall agency goal by using Race-Neutral means of facilitating DBE participation. NJ TRANSIT encourages Contractors to award subcontracts to DBEs.

NJ TRANSIT will track and report the extent of your Race-Neutral and Race-Conscious business assistance efforts. For reporting purposes, Race-Neutral/DBE participation includes, but is not necessarily limited to, the following:

- 1) DBE participation through a prime contract, a DBE obtains through customary competitive procurement procedures,
- 2) DBE participation through a subcontract on a prime contract that does not carry a DBE goal; DBE participation on a prime contract exceeding a contract goal; and
- 3) DBE participation through a subcontract from a prime contractor that did not consider a firm's DBE status in making the award.

Pursuant to Federal Regulations 49 CFR Part 26, the following pages will provide bidders/proposers with information about the New Jersey Transit Corporation (NJ TRANSIT) DBE Program requirements, which is administered by the Office of Business Diversity (OBD) Office. Clarification of the DBE specifications along with assistance in completing the forms can be obtained by calling (973) 491-7593. Prospective bidders will also have an opportunity to ask questions regarding the directives contained in the DBE specifications at the pre-bid/pre-proposal conference(s).

A list of certified DBE firms may be found in the NJ Unified Certification Program (NJUCP) Directory at [www.njucp.net](http://www.njucp.net).

**Note: Use of this list does not relieve the Bidder/Proposer/Prime contractor/consultant of responsibility to seek DBE participation from other sources. The list is updated daily and must be checked periodically, as firms are certified and decertified daily.**

These DBE specifications are a part of the Contract and shall be binding upon the successful Bidder/Proposer and Prime in the pre and post-award stages of NJT professional services, construction, and goods and services contracts. These specifications shall be binding upon sub-recipients and imposed on their contractors.

#### **1.1 POLICY**

As defined in the U.S. Department of Transportation (USDOT) Regulation 49 CFR Part 26, it is the policy of NJT that Disadvantaged Business Enterprises shall have the opportunity to compete for and participate in the performance of contracts financed in whole or in part with federal funds. Each subcontract a Prime signs with a

subcontractor/subconsultant must include the following assurance referenced in **article 1.2**.

## **1.2 ASSURANCE**

- 1.2.1 The Prime contractor/consultant, or subcontractor/subconsultant shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Prime contractor/consultant shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor/consultant to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy, as the recipient deems appropriate (49 CFR 26.13).
- 1.2.2 **This language is included to comply with relevant Federal law and to ensure that all persons who enter into any direct or indirect form of contractual agreement with NJT are aware of their responsibilities and the commitment of NJT to see that NJT's DBE Policy is carried out in all instances.**

## **1.3 DBE GOAL FOR THIS PROJECT**

As an aid in meeting the commitment of its DBE Program, NJT is setting a *race neutral* goal of the gross sum bid/proposal to certified NJUCP DBE firms. A **race-neutral measure** is one that is used to assist all small businesses, including DBEs. For the purposes of this part, **race-neutral** includes gender-neutrality.

## **1.4 GUIDANCE TO BIDDER/PROPOSERS/PRIMES**

- 1.4.1 Failure by a Bidder/Proposer/Prime to comply with any of the requirements contained herein shall result in breach of contract and it shall be subject to the appropriate penalties, remedies, or liquidated damage(s). **Refer to articles 5.6-5.7**
- 1.4.2 All required forms, including the supplemental section (**see articles 2.3-2.4**) must be submitted in accordance with the requirements. **Firms must be certified under the NJUCP at the time of contract award in order to obtain DBE credit toward the goal.**
- 1.4.3 Price alone is not an acceptable basis for rejecting a DBE subcontractor/subconsultant's bid.
- 1.4.4 The Bidder/Proposer/Prime shall, at a minimum, seek DBEs in the same geographic area in which it generally seeks subcontractors/subconsultants. However, the Bidder/Proposer/Prime may be required to expand its search under specific circumstances as determined by OBD. **Refer to article 2.0**
- 1.4.5 Agreements between a Bidder/Proposer/Prime and a DBE in which the DBE promises not to provide subcontracting quotations to other Bidder/Proposers are prohibited.
- 1.4.6 The desire of a Bidder/Proposer/Prime to self-perform the work of a contract with its own organization is not an acceptable basis to not meet the goal or demonstrate a good faith effort to do so.
- 1.4.7 The Bidder/Proposer/Prime is responsible for verifying that the DBE is certified under the appropriate NAICS code for the scope of work identified. DBE credit shall be given only for work performed in the NAICS code(s) under which the DBE is certified.
- 1.4.8 A DBE firm listed on the First-Tier DBE Utilization Form (Form A) shall constitute a binding representation to NJT, by the Bidder/Proposer/Prime, that the DBE firm is qualified, available, and certified under the appropriate DBE Requirements for Federal Procurement Activities

and required NAICS code to perform the scope of work identified. **Refer to article 2.5a**

## **1.5 TRANSIT VEHICLE MANUFACTURERS (TVM)**

1.5.1 As a transit vehicle manufacturer, you must establish and submit for FTA's approval an annual overall DBE percentage goal. A TVM must certify that it submitted the annual DBE goal required by 49 CFR 26.49 and FTA has approved it or not disapproved it.

(a) As a condition of being authorized to bid or propose on FTA assisted transit vehicle procurements, the Bidder/Proposer must complete and submit the TVM Certification form with the bid/proposal certifying that it has complied with the requirements of 49 CFR 26.49.

1.5.2 NJT may, with FTA approval, establish project-specific goals for DBE participation in the procurement of transit vehicles in lieu of complying with the procedures of this section.

## **1.6 RESPONSIBLE BID/PROPOSAL CRITERIA**

1.6.1 As a matter of responsibility, the two lowest Bidders or two highest ranked Proposers must submit the required forms, including the supplemental section (if applicable), with the bid/proposal or within seven (7) days after the bid opening or proposal due date. *NJT may grant a formal written request to extend this 7-day requirement at its sole discretion on a case-by-case basis.*

1.6.2 Failure to satisfactorily complete or submit all required forms when due may result in determination by NJT that the Bidder/Proposer is non-responsible and may cause rejection of the bid or proposal.

1.6.3 If the two lowest Bidders/highest ranked Proposers submit the DBE forms, but fail to meet the DBE goal, the OBD will consider the efforts made to determine if a Bidder/Proposer/Prime has in fact, demonstrated a good faith effort. **See article 2.0**

1.6.4 If it is determined that efforts were made to include DBE participation on the contract, however these efforts did not result in meeting the goal, NJT may request that additional efforts be made within 10 business days of the request. If at this time the Bidder/Proposer fails to demonstrate a good faith effort to achieve the goal, NJT shall consider awarding the contract to the next lowest bidder or highest ranked proposer who offers a reasonable price and meets the DBE goal or demonstrates a good faith effort and other bid requirements or requirements of 49 CFR Part 26.

## **2. GUIDANCE ON A GOOD FAITH EFFORT**

2.1 To demonstrate a good faith effort to meet the DBE goal, a Bidder/Proposer/Prime shall provide written documentation in addition to Form D (article 2.3e), of the steps it has taken, prior to the bid opening/proposal due date, or during the life of the contract to obtain DBE participation. **The Bidder/Proposer/Prime can meet this requirement in either of two ways:**

(1) The Bidder/ Proposer/Prime can meet the goal.

(2) The Bidder/Proposer/Prime shall exhaust the available options referenced in **article 2.2** in making a continuous good faith effort to meet the assigned contract goal for the life of the contract.

(a) The efforts employed by the bidder should be those that one could reasonably expect a bidder to take if the

- bidder were actively and aggressively trying to obtain DBE participation sufficient to meet the contract goal.
- (b) In determining a good faith effort, the OBD will consider the quality, quantity, and intensity of the different kinds of efforts that the Bidder/Proposer/Prime has made. Mere *pro forma* efforts will not be considered as demonstration of good faith effort to meet the DBE contract requirements.
  - (c) The Bidder/Proposer/Prime shall use good business judgment and consider a number of factors in negotiating with subcontractors/subconsultants, including DBE subcontractors/ subconsultants, and should take a firm's price and capabilities as well as contract goals into consideration. **The fact that there may be some additional costs involved in finding and using DBEs is not in itself sufficient reason for a Bidder's/Proposer's failure to meet the contract DBE goal, as long as such costs are reasonable as determined by NJT. Primes are not, however, required to accept higher quotes from DBEs if the price difference is excessive or unreasonable.**
  - (d) The Bidder/Proposer/Prime's **ability or desire to perform the work of a contract with its own organization (self-performance) does not relieve the Bidder/Proposer/Prime of the responsibility to meet the goal or demonstrate a good faith effort.**
  - (e) The Bidder/Proposer/Prime shall not reject DBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities. The Bidder/Proposer/Prime's standing within its industry, membership in specific groups, organizations, or associations and political or social affiliations (for example, union vs. non-union employee status) are not legitimate causes for the rejection or non-solicitation of bids in the Bidder/Proposer/Prime's efforts to meet the assigned project goal.
  - (f) The OBD will support the Bidder/Proposer/Prime in indentifying ways to meet the assigned contract goal.

## 2.2 A GOOD FAITH EFFORT

The following is a list of actions that NJT will consider as evidence of a Bidder/Proposer/Prime's good faith effort to obtain DBE participation. While exhausting the available options in this list may count as a good faith effort, this list is not intended to be a mandatory checklist, nor is this list intended to be exclusive or exhaustive of all the efforts a Bidder/Proposer/Prime might make to achieve the assigned DBE goal. NJT may require a Bidder/Proposer/Prime to take action above and beyond those listed below to meet the assigned DBE goal.

- (a) The Bidder/Proposer/Prime shall solicit through all reasonable and available means (e.g. attendance at pre-bid meetings, advertising and/or written notices) the interest of all certified DBEs who have the capacity to perform the work of the contract.
  - (1) The Bidder/Proposer/Prime must solicit this interest within sufficient time to allow the DBE to respond to the solicitation.
  - (2) The Bidder/Proposer/Prime must take appropriate steps to follow up on initial solicitations in order to determine with certainty if the DBE firms are interested.
- (b) The Bidder/Proposer/Prime shall select portions of the work to be performed by DBEs in order to increase the likelihood that the DBE goals will be achieved. This includes, where appropriate, breaking out contract work items into economically feasible units to facilitate DBE participation, even when the Prime might otherwise prefer to perform these work items with its own forces.
- (c) The Bidder/Proposer/Prime shall provide interested DBEs with adequate information about the plans,  
DBE Requirements for Federal Procurement Activities

specifications, and requirements of the contract in a timely manner to assist them in responding to a solicitation.

- (d) The Bidder/Proposer/Prime shall negotiate with a DBE(s) with the intent to enter into a contract. It is the Bidder/Proposer's responsibility to make a portion of the work available to DBE subcontractors/subconsultants and suppliers and to select those portions of the work or material needs consistent with the available DBE Primes and suppliers, so as to facilitate DBE participation.
  - (1) **Evidence of such negotiation includes:** the names, addresses, and telephone numbers of DBEs that were considered; a description of the information provided regarding the plans and specifications for the work selected for subcontracting; and evidence as to why additional agreements could not be reached for DBEs to perform the work.
- (e) The Bidder/Proposer/Prime shall make efforts to assist interested DBEs in obtaining bonding, lines of credit, or insurance as required by NJT or the Prime contractor.
- (f) The Bidder/Proposer/Prime shall make efforts to assist interested DBEs in obtaining necessary equipment, supplies, materials, or related assistance or services.
- (g) The Bidder/Proposer/Prime shall effectively use the services of available minority/women community organizations; minority/women Prime contractors groups; local, State and Federal minority/women business assistance offices; and other organizations as allowed on a case-by-case basis to provide assistance in the recruitment and placement of DBEs.

## 2.3 REQUIRED FORMS

- (a) **Form A - First Tier DBE Utilization:** Lists all First Tier DBE firms scheduled to participate on this contract.
- (b) **Form A1 - Bidder/Proposer Solicitation and Contractor Information:** Lists all DBE and Non-DBE sub contractor/subconsultants, including suppliers, solicited for, and participating on this contract.
- (c) **Form A2- Non-DBE Sub Utilization:** Lists all DBE and Non-DBE subcontractors/ subconsultants, including suppliers, participating on this contract.
- (d) **Form B - Intent to Perform as a DBE Sub:** Identifies the work the 1<sup>st</sup> Tier DBE intends to perform including scope of work, subcontract dollar value, etc.
- (e) **DBE Good Faith Effort Form (if applicable):** Identifies any DBE subcontractor invited to quote, but declined to do so for any reason.
- (f) **Trucking Commitment Agreement (if applicable):** Identifies all trucking firms (DBE and Non-DBE) participating on this contract, at any tier.
- (g) **NJ UCP DBE Certification & NAICS Code Verification:** Confirms the DBE status and NAICS code(s) of each First Tier DBE subcontractor/subconsultant.
- (h) **\*Form E - Contractor's Monthly DBE Payment Report & Payment Certification Voucher (Post-Award):** Records monthly payments issued to each DBE subcontractor/subconsultant/supplier and monthly payments issued by NJ TRANSIT to the Prime. Certifies that DBE subs have been paid for previous month's invoices.
- (i) **Form E2 – DBE's Monthly Payment Report (Post-Award):** Records monthly invoices submitted by the DBE,

payments owed to the DBE on past due invoices and payments received from the prime by each DBE subcontractor/subconsultant.

- (j) **Form E1- DBE Prime's Monthly Payment Report (For DBE Prime Only):** Records monthly payments issued to each DBE Prime by NJ TRANSIT to.

*\*This form is due from the Prime in each month following the notice to proceed issued by NJ TRANSIT. Refer to article 5.2.4*

## 2.4 SUPPLEMENTAL REQUIRED FORMS (IF APPLICABLE)

- (a) **Form AA – Second Tier DBE Utilization:** Lists all Second Tier DBE firms scheduled to participate on the DBE sub-Prime's contract.
- (b) **Form AA1 – Second Tier Bidder/Proposer Solicitation and Contractor Information:** Lists all Second Tier DBE firms participating on this contract as indicated on Form AA and Form AA2.
- (c) **Form AA2- Second Tier Non-DBE Sub Utilization:** Lists all DBE and Non-DBE firms including suppliers participating on the DBE sub-Prime's contract.
- (d) **Form BB - Intent to Perform as a Second Tier DBE Sub:** Identifies the work the 2<sup>nd</sup> Tier DBE intends to perform including scope of work, subcontract dollar value, etc.
- (e) **NJ UCP DBE Certification & NAICS Code Verification:** Confirms the DBE status and NAICS code(s) of each Second Tier DBE subcontractor/subconsultant.

## 2.5 INSTRUCTIONS FOR COMPLETING REQUIRED FORMS (see glossary for definition of terms)

- (a) **Form A - First Tier DBE Utilization:**

Form A is a formal agreement between the Bidder/Proposer and the DBE(s). Replacement/removal of DBE subcontractors/subconsultants/supplier identified on Form A is prohibited after the bid or proposal is submitted to NJT. **Refer to article 4.3.** A DBE Bidder/Proposer, which lists itself on Form A, is committed to performing the work indicated with its own personnel.

DBEs performing as second tier sub(s) to a **non-DBE sub Prime** should be listed with the name of the non-DBE sub Prime's firm name in parenthesis next to the DBE sub's name. {Ex: DBE Electric Co. (Prime Contractor, Inc.)}

(1) A first Tier DBE is required to perform at least 51% of its subcontract value with its own forces.

Bidders/Proposers/Primes will not receive any credit for DBEs performing less than 51% and therefore must not be listed on this form.

(2) **For DBE suppliers**, identify all manufacturers, regular dealers, and brokers. If a DBE supplier is a **manufacturer**, indicate the full value of its subcontract. If a DBE supplier is a **regular dealer**, show its total contract value multiplied by 60% (Ex. \$100K x 60%= \$60K). If a DBE supplier is **neither a manufacturer nor a dealer**, indicate the fee/commission only, not the cost of materials or supplies.

See **article 3.0** for direction on determining credit toward the goal.



(3) A detailed scope of work must be provided; one-word descriptions are not acceptable. (Ex. Haul and dispose of approximately 192,000 tons of contaminated soil to a clean earth facility at \$34.00 a ton).

(b) **Form A1 - Bidder/Proposer/Prime Solicitation and Contractor Information:**

The Bidder/Proposer must complete and submit **page one** (1). The DBE and non-DBE subcontractors/subconsultants, including suppliers, solicited for, participating on, or expressed interest in this contract must complete **page two** (2).

(c) **Form A2- Non-DBE Sub Utilization:**

Bidders/Proposers are required to report and submit all dollars committed to non-DBE subcontractors/subconsultants/suppliers. The non-DBE portion of work is not counted toward the assigned DBE goal. **See article 3.0**

A detailed scope of work must be provided; one-word descriptions are not acceptable.

(Ex. Haul and dispose of approximately 192,000 tons of contaminated soil to a clean earth facility at \$34.00 a ton).

(d) **Form B - Intent to Perform as a First Tier DBE Sub:**

Each DBE subcontractor/subconsultant/supplier listed on Form A must complete and sign Form B. **Note: The Bidder/Proposer/Prime is prohibited from completing any portion of the form and from directing DBE(s) to sign a blank form.**

(1) The Bidder/Proposer/Prime must provide interested DBEs with a copy of appropriate plans, specifications, and requirements of the contract in a timely manner to allow the DBE to prepare an appropriate price quote and submit on time.

(2) First Tier DBEs must perform at least 51% of the total dollar value of its subcontract, with its own forces. The firm must indicate the percentage of the total portion of work to be subcontracted to DBE and non-DBE firms. The non-DBE percentage of work is not counted toward the assigned goal.

(3) The OBD encourages DBE-to-DBE subcontracting in order to preserve DBE participation credit. **See article 3.0**

(4) The DBE must provide a detailed scope of work; one-word descriptions are not acceptable. Descriptions should include: *type of services provided, total number of units, price per unit, total cost, etc.*

(e) **DBE Good Faith Effort: (If Applicable)**

Form D applies to any Bidder/Proposer/Prime who failed to meet the assigned DBE goal. This form will assist the Bidder/Proposer/Prime in demonstrating a good faith effort.

If the DBE(s) solicited declines to sign this form, the completed form should be submitted with the Bidder/Proposer's signature only and the OBD will verify the information provided with the firm. **Refer to articles 2.0-2.2** for guidance.

**(f) Trucking Commitment Agreement: (If Applicable)**

DBEs must provide information for all DBE and non-DBE trucking firms it will lease from or subcontract to. Subcontracting to a non-DBE trucker means that the non-DBE will perform a portion of the DBE firm's subcontract. **Refer to article 3.4**

The following documents must be attached for all trucks owned: copy of title(s)/finance agreement(s), registration card(s), insurance card(s), apportioned cab card(s) and/or hazardous material license(s) if applicable. A copy of the title or finance agreement is the only acceptable proof of ownership.

The following documents must be attached for all trucks leased: copy of lease agreement(s) established between both firms, title(s), registration card(s), insurance card(s), lease agreement(s), apportioned cab card(s) and/or hazardous material license(s) if applicable.

**(g) NJ UCP DBE Certification and NAICS Code Verification:**

All DBEs listed on Form A must be certified at the time of contract award. It is the Bidder/ Proposer's responsibility to ensure that DBEs are certified and that their NAICS code(s) match the scope of work to be performed on this contract. Credit will not be given for any work to be performed without the appropriate NAICS code. Status can be verified through [www.njucp.net](http://www.njucp.net) and [www.census.gov/eos/www/naics/](http://www.census.gov/eos/www/naics/).

**(h) Form E - Contractor's Monthly DBE Payment Report & Payment Certification Voucher:**

Beginning the month following the contract's notice to proceed, the Prime must report monthly payment activity for each DBE subcontractor/subconsultant/supplier; certifies each DBE sub has been paid any amounts due from previous or current progress payments paid to the Prime. **(article 5.2.4)**

All invoices 30 days past due from NJT must be listed in the appropriate field.

This report is due even if there is no payment activity. This form must be completed and submitted to the OBD **by the 7<sup>th</sup> of each month** to the attention of the OBD's Manager of Contract Compliance.

**(i) Form E1- DBE Prime's Monthly Payment Report (For DBE Prime Only)**

Beginning the subsequent month following the contract's execution date, the DBE Prime must report its monthly payments received by NJT. **Refer to article 5.2.5.**

All invoices 30 days past due from NJT must be listed in the appropriate field.

This report is due even if there is no payment activity. This form must be completed and submitted to the OBD **by the 7<sup>th</sup> of each month** to the attention of the OBD's Manager of Contract Compliance.

**(j) Form E2 – DBE's Monthly Payment Report:**

The Prime must provide a copy of the Form E2 to each DBE subcontractor/subconsultant/ supplier(s).

Beginning the subsequent month following the DBE's execution date, the DBE firm must report its monthly

payment activity.

This report is due even if there is no payment activity. **This form must be completed and submitted by the DBE only** to the OBD by the 7<sup>th</sup> of each month to the attention of the OBD's Manager of Contract Compliance.

All invoices 30 days past due must be listed in the appropriate field. Identify concerns or issues in the comments section to be addressed by the OBD. (Refer to article 5.2.6)

## 2.6 INSTRUCTIONS FOR COMPLETING SUPPLEMENTAL REQUIRED FORMS:

- (a) **Form AA – Second Tier DBE Utilization:** The Second Tier DBE must perform 100% of its subcontract with its own forces. A formal request to waive this requirement may be granted, solely at the discretion of the OBD; however, approval is required.

A detailed scope of work must be provided; one-word descriptions are not acceptable.

*(Ex. Haul and dispose of approximately 192,000 tons of contaminated soil to a clean earth facility at \$34.00 a ton).*

- (b) **Form AA1 – Second Tier Bidder/Proposer Solicitation and Contractor Information:**

The DBE sub-Prime must submit and complete **page one** (1). Second Tier DBE(s) solicited for and participating on this contract must complete **page two** (2).

- (c) **Form AA2- Second Tier Non-DBE Subcontractor Utilization:**

DBE sub-Primes are required to report and submit all dollars committed to non-DBEs. The non-DBE portion of work is not counted toward DBE participation credit. **Refer to article 3.0**

A detailed scope of work must be provided; one-word descriptions are not acceptable.

*(Ex. Haul and dispose of approximately 192,000 tons of contaminated soil to a clean earth facility at \$34.00 a ton).*

- (d) **Form BB - Intent to Perform as a Second Tier DBE Subcontractor:**

Each DBE firm listed on Form AA, must complete, and sign. **Only Second Tier DBE(s) must complete and sign this form.**

The Second Tier DBE must provide a detailed scope of work; one-word descriptions are not acceptable. Descriptions should include: type of services provided, total number of units, price per unit, total cost, etc

- (e) **NJ UCP DBE Certification & NAICS Code Verification:**

All DBEs listed on Form AA must be certified at the time of contract award. It is the Bidder/Proposer/Prime's responsibility to ensure that DBEs are certified and that their NAICS code(s) match the scope of work to be performed on this contract. Credit will not be given for any work to be performed without the appropriate NAICS code. Status can be verified through [www.nicup.net](http://www.nicup.net) and [www.census.gov/eos/www/naics/](http://www.census.gov/eos/www/naics/).

## 3.0 GUIDANCE ON COUNTING DBE PARTICIPATION

- 3.1 If a firm is not currently certified as a DBE in accordance with 49 CFR part 26 at the time of the execution of the DBE Requirements for Federal Procurement Activities

contract, the firm's participation will not count toward the DBE goal.

- 3.1.1 A DBE performing less than 51% of its subcontract will not count toward the assigned goal and should not be listed on any forms.
- 3.1.2 When a DBE subcontracts part of the work of its contract to another firm, the value of the subcontracted work may be counted toward DBE goals only if the DBE's subcontractor/subconsultant is a DBE.
  - (a) Work that a DBE subcontracts to a **non-DBE firm does not count** toward the DBE contract goal.
  - (b) When a DBE performs as a participant in a **joint venture with a Non-DBE**, count the portion of the total dollar value of the contract equal to the distinct, clearly defined portion of the work of the contract that the DBE performs with its own forces toward DBE goals.
  - (c) A DBE performs a *commercially useful function* when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing and supervising the work involved.

**A DBE does not perform a *commercially useful function* if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of DBE participation.**

### 3.2 COUNTING DBE PARTICIPATION

- 3.2.1 When a DBE participates in a contract, only the value of the work actually performed by the DBE is counted toward DBE goals.
  - (a) The entire amount of that portion of a contract that is performed by the DBE's own forces is counted. This includes the cost of supplies and materials obtained by the DBE for the work of the contract, as well as supplies purchased or equipment leased by the DBE (*except supplies and equipment the DBE subcontractor/subconsultant purchases or leases from the Prime contractor or its affiliate*).
- 3.2.2 The entire amount of fees or commissions charged by a DBE firm for providing a bona fide service, such as professional, technical, consultant, or managerial services, or for providing bonds or insurance specifically required for the performance of a contract, is counted toward DBE goals, provided the fee is reasonable and not excessive as compared with fees customarily allowed for similar services by a DBE.

### 3.3 DBE PRIME CONTRACTOR GUIDANCE

- 3.3.1 If a **DBE Prime**, expenditures are counted toward DBE goals only if the DBE is performing a commercially useful function on that contract.
- 3.3.2 A DBE Prime must perform or be responsible at least 30% of the total cost of its contract with its own workforce.
- 3.3.3 **If a DBE Prime does not perform or exercise responsibility for at least 30% of the total cost of its contract with its own workforce** or subcontracts a greater portion of the work of a contract than would be expected on the basis of normal industry practice for the type of work involved, NJT will consider that it is not performing a commercially useful function and the DBE Prime shall be in breach of the contract and subject to the appropriate remedies and penalties. **Refer to Articles 5.6-5.7**

### 3.4 DBE TRUCKING FIRMS GUIDANCE

- 3.4.1 A DBE **trucking firm** is performing a commercially useful function if:

- (a) The DBE is responsible for the management and supervision of the entire trucking operation for which it is responsible on a particular contract, and there is not a contrived arrangement for the purpose of meeting DBE goals.
- (b) The DBE itself **owns and operates at least one** fully licensed, insured, and operational truck to be used on the contract.

3.4.2 The DBE receives credit for the total value of the transportation services it provides on the contract using trucks it owns, insures, and operates using drivers it employs.

### 3.5 LEASING TRUCKS

3.5.1 Leased trucks must display the name and identification number of the DBE.

3.5.2 The DBE may lease trucks from another DBE firm, including an owner-operator that is certified as a DBE.

The DBE who leases trucks from another DBE receives credit for the total value of the transportation services the lessee DBE provides on the contract.

3.5.3 The DBE may also lease trucks from a **non-DBE firm**, including an owner-operator.

- (a) **The DBE who leases trucks from a non-DBE is entitled to credit only for the fee or commission it receives as a result of the lease arrangement.**

3.5.4 For the purposes of this section (Leasing), a lease must indicate that the DBE has exclusive use of and control over the truck.

- (a) This does not preclude the leased truck from working for others during the term of the lease with the consent of the DBE, so long as the lease gives the DBE absolute priority for use of the leased truck.

### 3.6 COUNTING MATERIALS AND SUPPLIES

3.6.1 Expenditures with DBEs for materials or supplies are counted toward DBE goals as provided in the following:

- (a) If the materials or supplies are obtained from a **DBE manufacturer**, 100% of the cost of the materials or supplies are counted toward DBE goals.
  - (1) For purposes of this paragraph 3.6.1(a), a manufacturer is a firm that operates or maintains a factory or establishment that produces, on the premises, the material, supplies, articles, or equipment required under the contract and of the general character described by the specifications.
- (b) If the materials or supplies are purchased from a **DBE regular dealer**, sixty percent (60%) of the cost of the materials or supplies is counted toward DBE goals.
  - (1) For purposes of this paragraph 3.6.1(b), a regular dealer is a firm that owns, operates, maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business.
  - (2) The firm must be an established, regular business that engages, as its principal business and under its own name, in the purchase and sale or lease of the products in question.
  - (3) A person may be a regular dealer in such bulk items as petroleum products, steel, cement, gravel, stone,

or asphalt without owning, operating, or maintaining a place of business as provided above if the person both owns and operates distribution equipment for the products. Any supplementing of regular dealers' own distribution equipment shall be by a long-term lease agreement and not on an ad hoc or contract-by-contract basis.

- (4) Packagers, brokers, manufacturers' representatives, or other persons who arrange or expedite transactions are not regular dealers within the meaning of this paragraph 3.6.1(b).
- (c) With respect to materials or supplies purchased from a DBE, **which is neither a manufacturer nor a regular dealer**, only the entire amount of fees or commissions charged for assistance in the procurement of the materials and supplies, or fees or transportation charges for the delivery of materials or supplies required on a job site, is counted toward DBE goals, provided the fees are determined to be reasonable and not excessive as compared with fees customarily allowed for similar service. **However, any portion of the cost of the materials and supplies themselves do not count toward DBE goals.**

#### 4.0 TERMINATION OF DBE(s)

- 4.1 The Bidder/Proposer/Prime may not terminate for convenience, or any other reason, and then perform the work of the terminated subcontractor/subconsultant with its own forces or those of an affiliate without NJT's prior written consent. **Refer to Article 4.3.**

***Submission of all REQUIRED FORMS is mandatory for the following Articles 4.2 through 4.5***

#### 4.2 ADDITION OF DBE(s)

- 4.2.1 Should the Bidder/Proposer/Prime wish to add a DBE not listed on Form A, a written request for the addition of a DBE(s) must be submitted by the Bidder/Proposer/Prime.
- 4.2.2 The Bidder/Proposer/Prime must receive written approval of the OBD **prior to** the addition of the DBE subcontractor/subconsultant in order for the addition to be credited toward the goal.

#### 4.3 REPLACEMENT OR REMOVAL OF DBE(s)

- 4.3.1 When a Prime is considering replacing or removing a DBE due to performance issues, the OBD must be contacted as soon as possible.
- 4.3.2 Request for DBE replacement or removal may be made under the following conditions:
  - 1) The DBE materially fails to successfully perform the contract tasks.
  - 2) Under unusual situations referenced in article 4.3.8.
- 4.3.3 A written request for replacement or removal of a DBE(s) listed on Form A, must be submitted by the Bidder/Proposer/Prime to the OBD with complete justification for the request. The process to follow such requests is as follows:
  - (a) Written communications (over a period) from the Prime and/or NJT's PM/CM team to the DBE, notifying the DBE of its poor performance must be provided to the OBD.
  - (b) **The OBD will arrange a meeting with the DBE, the Prime, and a representative from Procurement and project management to discuss the specifics of the performance issue.**

- (c) The DBE must provide a written plan identifying the efforts it will make to correct the deficiencies.
  - (d) The Prime must provide the DBE with a minimum of 30 calendar days from acceptance of its plan to improve its performance. Throughout the 30-day window, the Prime and/or NJT PM/CM team must provide written communication to the DBE of any additional/continued performance issues, with a copy to the OBD.
- 4.3.4 The Bidder/Proposer/Prime must receive written approval of the OBD **prior to** replacement or removal of the DBE subcontractor/subconsultant can be made, regardless of the reason for the replacement or removal.
- 4.3.5 If the OBD issues written approval for the removal of a DBE(s), NJT will require a Bidder/Proposer/Prime to continue to demonstrate a good faith effort to replace the removed DBE to the extent needed to meet the contract goal established by NJT for the procurement.
- These good faith efforts shall be directed at finding another DBE to perform at least the same amount of work under the contract as the removed DBE.**
- 4.3.6 Failure to obtain approval from the OBD **prior to** replacing or removing a DBE shall result in the Bidder/Proposer/Prime being found in breach of the contract and subject to the appropriate remedies, audits and penalties. **Articles 5.6-5.7**
- 4.3.7 If NJT finds that the Bidder/Proposer/Prime upon submission of its bid/proposal committed itself to the goal in good faith, the Bidder/Proposer/Prime may, in "unusual situations", be permitted to substitute a DBE subcontractor(s)/subconsultant(s).
- 4.3.8 The term "unusual situations", includes, but is not limited to, the following circumstances:
- (a) Failure to qualify as a DBE, or maintain DBE certification status.
  - (b) Death or physical disability of a key individual.
  - (c) Dissolution, if a corporation or partnership.
  - (d) Bankruptcy of the subcontractor/subconsultant, subject to applicable bankruptcy law, and only in instances where the bankruptcy affects the subcontractor/subconsultant's ability to perform.
  - (e) Inability to obtain, or loss of, a license necessary for the performance of the particular category of work.
  - (f) Failure or inability to comply with a requirement of law applicable to Primes or, subcontractors/subconsultants.

#### **4.4 WITHDRAWN DBE(s)**

- 4.4.1 When a DBE is unable to complete a subcontract (withdraws), for any reason, NJT will require a Bidder/Proposer/Prime to make a good faith effort to replace a withdrawn DBE at least to the extent needed to ensure that the Prime contractor is able to meet the contract goal established by NJT for the procurement. **These good faith efforts shall be directed at finding another DBE to perform at least the same amount of work under the contract as the removed DBE.**
- 4.4.2 The Bidder/Proposer/Prime is required to make a good faith effort to seek other DBE subcontractors/subconsultants in substitution of the original DBE. The good faith efforts described in **article 2** are required in finding another DBE to perform at least the same amount of work under the contract as the DBE that was terminated, to the extent needed to meet the contract goal established for the procurement.

#### **4.5 DECERTIFIED DBE(S)**

- 4.5.1 If the Prime has reason to doubt that a proposed DBE is still eligible due to change in ownership, management, or size, the Prime shall, within 10 days of learning this information, notify NJT of that fact in writing.
- 4.5.2 If the subcontract has not been executed before the DBE's ineligibility occurs, the Prime will not receive credit toward the contract goal for the ineligible DBE. The Prime may continue to use the ineligible DBE, however, DBE participation credit will not be granted.
- (a) To the extent necessary to meet the assigned contract goal, the Prime will make a good faith effort to replace the ineligible DBE within 10 days after notification by the OBD. The OBD will support the Prime in its efforts to replace with an eligible DBE firm in order to meet the contract goal.
- 4.5.3 If the contract has been executed before the firm has been notified of its ineligibility, the Prime may continue to use the firm on the contract and receive credit toward its DBE goal for the duration of that particular phase of or option in the contract. This may not apply to future phases or options, which will be handled on a case-by-case basis at the sole discretion of the OBD.
- 4.5.4 **Exception:** If the DBEs ineligibility is caused solely by its having exceeded the size standard during the performance of the contract the Prime may continue to count its participation on that contract only toward the contract goals. This may not apply to future phases or options and will be subject to determination by the OBD.

## 5.0 AWARD OBLIGATIONS

- 5.1 The Prime must designate a **DBE Liaison Officer**. The liaison officer will be responsible to NJT regarding DBE subcontract matters.
- 5.1.1 If at any point during the contract's life, the Prime's DBE participation falls below the assigned goal, the Prime must identify additional work or new work items for which it will subcontract to DBEs to the extent necessary to meet the assigned goal. Any new scope of work issued to the Prime shall still be subject to the assigned goal.
- 5.1.2 The OBD will support the Prime in identifying current/future opportunities in the contract to meet the assigned contract goal.
- 5.1.3 Should the Prime seek a change that addresses the DBE's performance, or affects the work scope and/or compensation, the OBD must be notified, prior to implementation, for its review and approval of the changes as soon as possible. No change will be allowed without prior review and approval by the OBD. Failure to notify the office and obtain approval prior to a change shall result in breach of the contract and may be subject to the appropriate remedies, audits, and penalties.
- 5.1.4 Whenever NJT issues project change orders the goal may still apply; the OBD will determine if increased DBE participation will be required.
- 5.1.5 To ensure that all obligations under subcontracts awarded to DBEs are met NJT shall review the Prime's DBE involvement efforts during the performance of the contract.

## 5.2 POST AWARD DELIVERABLES

- 5.2.1 After the execution of a contract with NJT, **signed copies** of subcontractor/subconsultant agreements between the Prime and DBE subcontractors must be submitted to the OBD no later than 10 business days after the Prime's contract execution date. The agreement between the Prime and DBE subcontractor shall remain firm for the duration of the contract.



- 5.2.2 The Prime shall provide a list of the anticipated job start date for all DBE subcontractors/subconsultants **no later than two days** after the initial pre-construction meeting.
- 5.2.3 **Certification of DBE(s) Payments** – submit monthly with the Form E to the Manager of the OBD and with its monthly invoice submittal to NJT project manager of this project. **Refer to article 5.3.2**
- (a) The Prime will certify, prior to the issuance of each progress payment by NJT, that all DBE subs have been paid any amounts due on past due invoices from previous or current progress payments.
- 5.2.4 **Form E (Contractor's Monthly DBE Payment Report & DBE Payment Certification Voucher)** - submit monthly to the Manager of the OBD. **Refer to articles 2.5h and 5.3.2.**

**Failure to submit this report on a monthly basis may result in breach of the contract and be subject to the appropriate remedies, penalties or liquidated damages as indicated in articles 5.6-5.7.**

- 5.2.5 **Form E1 (DBE Prime's Monthly Payment Report) (For DBE Prime Only)** - submit monthly to the Manager of the OBD.
- 5.2.6 **Form E2 (DBE's Monthly Payment Report)** – Refer to article 2.5j
- (a) Forms E/E1 and E2 will be reviewed monthly to determine compliance with the assigned DBE goal, the subcontractor prompt payment regulation, and the DBE Program.
- (b) Attainment of goals will be monitored and based upon actual payments received by the DBE.
- Failure to submit Form E/E1 may result in suspension of payments or such other remedies as provided in **article 5.6**. *If at any time, NJT has reason to believe that any person or firm has willfully and knowingly provided incorrect information or made false statements, it shall refer the matter to the USDOT for inquiry.*

### **5.3 PROMPT PAYMENT OF INVOICES TO SUBCONTRACTORS**

- 5.3.1 The Prime must pay each subcontractor under this contract for satisfactory performance of its work **no later than ten (10) days** from the receipt of each payment the Prime receives from NJT for the subcontractor's work. Failure to comply with this requirement shall result in breach of the contract and shall be subject to the appropriate remedies as determined by OBD.
- 5.3.2 In accordance with 49 CFR 26.29, the Prime shall certify, prior to the issuance of a progress payment by NJT that all subcontractors have been paid any amounts due on past due invoices (greater than 30 days) from previous or current progress payments. **The Prime must submit the Certification of DBE(s) Payments with its monthly invoice submittals to NJT project manager, and with its Form E to the OBD.**
- 5.3.3 The Prime will not be reimbursed for work performed by subcontractors/subconsultants unless and until the Prime ensures that the subs are promptly paid for the work performed. Alternatively, the Prime shall certify that a valid basis exists under the terms of the subcontractor's/subconsultant's or supplier's contract to withhold payment from the subcontractor/subconsultant and therefore payment is withheld.
- 5.3.4 If the Prime withholds payment from the subcontractor/subconsultant, the Prime shall provide to the subcontractor/subconsultant or supplier written notice thereof. The notice shall detail the reason for withholding payment and state the amount of the payment withheld. If a performance/payment bond has been provided under this contract, the Prime shall send a copy of the notice to the surety providing the bond for the Prime. A

copy of the notice shall also be submitted to NJT with the certification that payments are being withheld.

5.3.5 If withholding payment is due to the Prime's failure to promptly pay the DBE in accordance with the prompt payment of invoices and/or retainage clauses, the OBD may request proof of payment to DBE(s) for delinquent invoices and/or retainage in order to issue release of payment to Prime.

5.3.6 Failure to comply with the above shall result in breach of the contract and may be subject to the appropriate penalties. **See article 5.6**

#### **5.4 SUBCONTRACTOR PAYMENT DISPUTE RESOLUTION**

5.4.1 The Prime is required to notify the OBD of its intention to withhold payment from a DBE as soon as possible and in advance of taking action. Should the Prime provide notice and proceed to withhold payment from any subcontractor/subconsultant or supplier due to a performance issue or unapproved work performed, an OBD representative shall make an effort to resolve the dispute.

- (a) OBD's efforts shall be limited to meeting with the Prime and the subcontractor/ subconsultant, and reviewing the relevant facts with both parties.
- (b) OBD will not act as a decider of fact nor will OBD direct a settlement to the dispute.
- (c) Any OBD effort is solely intended to assist the parties in understanding their respective positions and to encourage a reasonable resolution of the dispute. The Prime is required to send written notification of the above to the OBD immediately.

5.4.2 Should payments be withheld that are not related to the previous items mentioned, and/or a determination can be made that the withholding of payments violates the prompt payment clause, NJT may execute the appropriate remedies in accordance with article 5.6.

#### **5.5 PROMPT PAYMENT OF SUBCONTRACTOR RETAINAGE (FOR CONSTRUCTION CONTRACTS ONLY)**

5.5.1 **The Prime must include a contract clause in the subcontractor agreement obligating the Prime to pay all retainage owed to the subcontractor/subconsultant for satisfactory completion of the accepted scope of work no later than 15 days after the DBE subcontractor's/subconsultant's work is satisfactorily completed.**

5.5.2 Only subcontractors/subconsultants whose work has been 100% completed, including all punch list work or remaining work, and who have supplied closeout documents shall be eligible for release of retainage. *Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of NJT.*

5.5.3 NJT may agree to release an equivalent amount of Prime retainage provided that:

- (a) There is no offsetting claims from NJT (including, but not limited to, liquidated damages), other subcontractors/subconsultants, material men, or workers;
- (b) None of the other reasons to withhold payments specified under the Prime contract exists.

5.5.4 Prior to release of the Prime's retainage, the Prime shall provide to NJT executed copies of the following subcontractor closeout documents, (shown in Appendix A of the contract) as appropriate:

- (a) Consent of Surety to Final Payment to the Subcontractor

- (b) Certificate of Amounts Due and Owing to Subcontractor Employees
- (c) Subcontractor Release of Claims
- (d) Subcontractor Release of Liens and a Certificate of Final Acceptance of Subcontractor Work

5.5.5 Notwithstanding NJT's release or partial release of retainage, nothing in this clause shall be deemed to constitute NJT's partial or final acceptance of the work, or any portion thereof, unless either a Certificate of Partial Acceptance or a Certificate of Final Acceptance has been executed by NJT, in the form(s).

## **5.6 REMEDIES AND PENALTIES**

5.6.1 Where a Prime is found to be in breach of the requirements of the DBE Program during the performance of the contract, and does not promptly take corrective action, the following sanctions may be instituted (singularly, in any combination, and in addition to any other contractual remedies or otherwise provided by law):

- (a) The Prime may be ordered to stop work without penalty to NJT.
- (b) The contract may be terminated for breach.
- (c) Suspension or debarment proceedings may be commenced in accordance with New Jersey law.
- (d) The relevant performance bond may be enforced.
- (e) NJT may withhold payment of specific invoices.

## **5.7 LIQUIDATED DAMAGES**

5.7.1 Liquidated damages (LD) may be assessed when the Prime fails to meet the established DBE goal on the contract.

5.7.2 If the DBE goal is not met, and the Prime has not demonstrated a good faith effort to do so, NJT may elect to subtract from the Prime's payment, as liquidated damages and not a penalty, the following:

The amount equal to the difference (in dollars) between the total contract value multiplied by the assigned DBE goal percentage, (originally established or as subsequently modified) and the actual DBE participation percentage (total dollars paid to DBEs divided by total dollars paid to the Prime).

5.7.3 This may be withheld from a series of payments or from the Prime's final payment, depending on the size of the liquidated damage.

5.7.4 If the Prime's final payment is not sufficient to satisfy the LD in full, the balance shall be due and owing from the Prime and subject to repayment terms as determined by NJT. NJT shall waive liquidated damages where good cause is shown for the deficiency in DBE participation upon determination by the OBD.

## APPENDIX I

### GLOSSARY

**A Good Faith Effort**-the efforts employed by the bidder, which should be those that one could reasonably expect a bidder to take if the bidder were actively and aggressively trying to obtain DBE participation sufficient to meet the contract goal.

**Certification** - means the process by which a business is determined to be a bona fide DBE. Any business applying for DBE certification must complete the appropriate NJ Unified Certification Program Application. Certification Applications are available at the OBD.

**Disadvantaged Business Enterprise or DBE** - means a small business concern:

Which is at least 51 percent owned by one or more socially and economically disadvantaged individuals, or in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more socially and economically disadvantaged individuals; and where one or more of the socially and economically disadvantaged owners controls management and daily business operations. A DBE shall not include a small business concern where that concern or a group of concerns controlled by the same socially and economically disadvantaged individual or individuals has annual average gross receipts in excess of **\$22,410,000** over the previous three fiscal years or is not otherwise eligible as a small business as defined by the Small Business Administration in 13 CFR Part 121.

**DBE Goal** - means numerically expressed objectives for DBE participation on federal contracts Prime contractors are required to make a good faith effort to achieve to the extent necessary to meet the assigned DBE goal.

**DBE Sub-Prime** - means any 1<sup>st</sup> Tier DBE subcontractor/subconsultant listed on the Form A that will subcontract any portion of its subcontract/scope of work to a DBE(s) and/or non-DBE(s) firm(s).

**DBE Ineligibility** – means a firm's DBE status changes or ceases due to change in ownership, management, or size, etc.

**DBE Prime** – means the successful Bidder is a DBE firm and has a direct contract with NJT.

**DBE Trucking Firm** – owns and operates at least one fully licensed, insured, and operational truck used on the contract. Is responsible for the management and supervision of the entire trucking operation for which it is responsible on a particular contract.

**First Tier DBE** - refers to any DBE listed on the Bidder/Proposer/Prime's Form A and having a direct contract with the Prime.

**Joint Venture**—means an association of a DBE firm and one or more other firms to carry out a single, for-profit business enterprise, for which parties combine their property, capital, efforts, skills and knowledge, and in which the DBE is responsible for a distinct, clearly defined portion of the work of the contract and whose share in the capital contribution, control, management, risks, and profits of the joint venture are commensurate with its ownership interest.

**Prime** - means any contractor or consultant, including a DBE contractor/consultant, who enters into a direct contractual relationship with NJT.

**Race-conscious Measure or Program** - is one that is focused specifically on assisting only DBEs, including women-owned DBEs.

**Race-neutral Measure or Program**- is one that is focused specifically on assisting all small businesses equally, including DBEs. Such activities include bonding, insurance, and technical assistance. For the purposes of this part, race-neutral includes gender-neutrality.

**Reasonable Bid Price** - means a price that shall be considered reasonable if the Bidder/Proposer/Prime would have been awarded the contract had the firm submitted the only bid.

**Regular Dealer** - means a firm that owns, operates, or maintains an establishment in which the materials or supplies required for the performance of a contract are bought, kept in stock and regularly sold to the public in the usual course of business.

The firm must engage in, as its principal business, and in its own name, the purchase and sale of products in question. Bulk items such as steel, cement and petroleum products need not be stocked, if the dealer owns or operates distribution equipment.

**Note: Brokers and packagers are not regarded as regular dealers.**

**Second Tier DBE** - refers to any DBE listed on the DBE Sub-Prime's Form AA.

**Subcontractor/ Subconsultant** - means any contractor/consultant, including suppliers, who enters into a contract issued by a Prime contractor.

**Transit Vehicle Manufacturer (TVM)** - is a manufacturer of vehicles used by NJT for the primary program purpose of public mass transportation (e.g., buses, railcars, vans). The term does not apply to firms, which rehabilitate old vehicles, or to manufacturers of locomotives or ferryboats. The term refers to distributors of or dealers in transit vehicles with respect to the requirements of 49 CFR Section 26.49.

**U.S. DOT** – means the U.S. Department of Transportation, including the Office of the Secretary, the Federal Highway Administration (FHWA), the Federal Transit Administration (FTA), and the Federal Railroad Administration (FRA).

**Withdrawn DBE** – a DBE withdraws, or drops out of its contract, or fails to complete its work on the contract for any reason.

## **Bidders Checklist (for federal contracts)**

Upon completion of the Required and/or Supplemental Forms packet(s), please be sure that the completed checklist and the forms listed below are included for each DBE subcontractor listed on the Form A and submitted to the Office of Business Development (OBD) for review.

**Note:** Failure to complete and submit the forms below will delay the OBD from issuing approval to move forward in the contract award process.

### **Required Forms**

- ☐ Form A - First Tier DBE Utilization
- ☐ Form A1 - Bidder/Proposer Solicitation and Contractor Information
- ☐ Form A2 - Non-DBE Sub Utilization
- ☐ Form B - Intent to Perform as a DBE Sub
- ☐ Form D - DBE Good Faith Effort Form
- ☐ Trucking Commitment Agreement (if applicable)

### **Supplemental Forms (if applicable)**

- ☐ Form AA - Second Tier DBE Utilization
- ☐ Form AA1 - Second Tier Bidder/Proposer Solicitation and Contractor Information
- ☐ Form AA2 - Second Tier Non-DBE Sub Utilization
- ☐ Form BB - Intent to Perform as a Second Tier DBE Sub
- ☐ Trucking Commitment Agreement (if applicable)

# **REQUIRED FORMS**

**ENCLOSED FOR COMPLETION (MANDATORY):**

- **Form A; A1; A2; B; D & Trucking Commitment Schedule**

**TO BE OBTAINED AND SUBMITTED (MANDATORY):**

- **Copy of a valid NJUCP DBE Certificate (Provided by 1<sup>st</sup> Tier DBEs.)**

Consult DBE Program Requirements for further guidance.

## First Tier DBE UTILIZATION - FORM A

Project Name: \_\_\_\_\_ NJT Contract No: \_\_\_\_\_

Assigned DBE Goal %: \_\_\_\_\_ NJT Procurement Specialist: \_\_\_\_\_ Contract Value (\$): \_\_\_\_\_

First Tier DBE must perform at least 51% of its subcontract value if subcontracting to a Second -Tier DBE or Non-DBE. Do not count Non-DBE portion toward the goal.

Name, Address and Telephone # of DBE Subcontractor/Subconsultant	Provide Detailed Scope of Work to be Performed (Identify all suppliers)	Dollar Value of Subcontract/Subconsultant Work (\$) Awarded	Percentage of Subcontract Work (%)
			%
			%
			%
			%
			%
For DBE suppliers, show original subcontract value multiplied by 60% (\$2,000*60%=\$1200). For DBE portion of work, subtract Non-DBE portion of work from original subcontract value.		TOTALS \$	%

The undersigned will enter into a formal agreement with the DBE(s) listed in this schedule conditioned upon execution of a contract with NJ TRANSIT for the above referenced project. The undersigned understands that removal/replacement of the DBE(s) listed is NOT PERMISSIBLE for any reason (pre or post-award), without submitting a written request to the Office of Business Development and receiving WRITTEN APPROVAL from the Office of Business Development. Failure to obtain written approval shall result in the breach of contract and subject to corrective action to be determined by NJ TRANSIT.

Company Name: \_\_\_\_\_ Authorized Signature: \_\_\_\_\_

Company Address: \_\_\_\_\_ Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Federal Tax ID #: \_\_\_\_\_ Prime Contractor's DBE Liaison Officer: \_\_\_\_\_

Company Tel #: \_\_\_\_\_ Date Signed: \_\_\_\_\_



## BIDDER SOLICITATION &amp; CONTRACTOR INFORMATION - FORM A1

NJ Contract No: \_\_\_\_\_

Project Title: \_\_\_\_\_

Prime Contractor: \_\_\_\_\_

Telephone #: \_\_\_\_\_

Date: \_\_\_\_\_

**Complete the information below for Bidder/Proposer/Prime(s) working on the project. Use Page 2 for all subcontractors/subconsultants participating on or solicited for this project.**

	Bidder/Proposer/Prime	Bidder/Proposer/Prime	Bidder/Proposer/Prime
Company's Full Name			
Address			
City			
Zip			
County			
Phone			
Fax			
E-mail			
Owner			
Date Established			
Date Certified			
Ethnicity			
Gender			
Certification Status: DBE or Non-DBE			
Federal Tax ID # / SSN #			
Annual Gross Receipts: A - Less than \$500K B - \$500K to \$1M C - \$1M to \$2M D - \$2M to \$5M E - \$5M and over <b>Indicate the letter that applies</b>			
Primary NAICS Code:			

BIDDER SOLICITATION & CONTRACTOR INFORMATION - FORM A1

NJT Contract No: \_\_\_\_\_

Prime Contractor: \_\_\_\_\_

Date: \_\_\_\_\_

Project Title: \_\_\_\_\_

Telephone #: \_\_\_\_\_

Complete the information below for "all" subcontractors/subconsultants solicited for or participating on this project.

	Subcontractor/Subconsultant	Subcontractor/Subconsultant	Subcontractor/Subconsultant
Company's Full Name			
Address			
City			
Zip			
County			
Phone			
Fax			
E-mail			
Owner			
Date Established			
Date Certified			
Ethnicity			
Gender			
Certification Status: DBE or Non-DBE			
Federal Tax ID # / SSN #			
Annual Gross Receipts: A - Less than \$500K B - \$500K to \$1M C - \$1M to \$2M D - \$2M to \$5M E - \$5M and over indicate the letter that applies			
Primary NAICS Code:			

## NON-DBE SUBCONTRACTOR UTILIZATION - FORM A2

*Directions: To be completed by any Bidder/Proposer/Prime for "all" subs including suppliers participating on this contract.*

NJ Transit Contract No: \_\_\_\_\_ Date: \_\_\_\_\_ Prime Contract Value: \_\_\_\_\_

Bidder/Proposer Prime Name: \_\_\_\_\_ Project Title: \_\_\_\_\_

Name, Address and Telephone # of all Subcontractor/Subconsultants	FEIN #	Provide Detailed Scope of Work to be Performed	Dollar Amount of Subcontractor/Subconsultant Work (\$)	Percentage of Subcontract or Work (%)
			\$	%
			\$	%
			\$	%
			\$	%
			\$	%
Must provide a detailed scope of work; one-word descriptions are not acceptable.			\$	%
TOTALS			\$	%

**INTENT TO PERFORM AS A 1<sup>ST</sup> TIER DBE - FORM B**

The Bidder/Proposer/Prime is prohibited from completing any portion of this form and directing the DBE to sign a blank form.

**DIRECTIONS:** DBE(s) listed on the Form A must complete all information on this form.

Name of Bidder/Proposer/Prime: \_\_\_\_\_

Name of DBE Firm: \_\_\_\_\_

Project/Contract Name: \_\_\_\_\_

IFB/RFP Contract Number: \_\_\_\_\_

**Does the undersigned DBE (Answer Accordingly):**

Intend to perform subcontract work in connection with the above-mentioned project as a Joint Venture? Circle one. (Yes or No)

Intend to subcontract any portion of its scope of work to a DBE(s)?

Circle one. (Yes or No)

If yes, DBE Sub-Primes must complete and submit Form AA.

At what percent? \_\_\_\_\_%

Intend to subcontract any portion of its scope of work to a Non-DBE(s)?

Circle one. (Yes or No)

If yes, must complete and submit Form AA2.

At what percent? \_\_\_\_\_%

The undersigned will perform the following described work on the above-referenced project: *(Provide a detailed description of the type of work you will perform on your subcontract. Attach a copy of quote approved and signed by Bidder (optional)).*

Dollar Value of DBE Subcontract: \$ \_\_\_\_\_

Total Quantity/Units (if applicable): \_\_\_\_\_ Per Unit Cost (if applicable): \$ \_\_\_\_\_

The undersigned based the above scope of work and subcontract value on detailed project specs received from the Bidder contractor named above. Circle one. (Yes or No)

The Prime Contractor projected the following commencement and completion date for such work as follows:

DBE Contract Start Date: \_\_\_\_\_ DBE Contract Completion Date \_\_\_\_\_

The undersigned DBE will enter into a formal agreement for the above work with the Prime Contractor conditioned upon execution of a contract with NJ TRANSIT. As a DBE subcontractor, I will cooperate with the certification, compliance and monitoring process set forth by NJ TRANSIT. I attest that I will perform at least 51% of my subcontract with my own workforce for the referenced project.

Signature of 1<sup>st</sup> Tier DBE \_\_\_\_\_

Date \_\_\_\_\_

Title \_\_\_\_\_

Print Name \_\_\_\_\_

Telephone #: \_\_\_\_\_

Failure to adhere to these instructions or the falsification of any information on this form shall result in breach of contract and subject to the appropriate penalties to be determined by NJ TRANSIT.

ADDENDUM

**FORM D INSTRUCTION SHEET**  
**PRE AND POST AWARD GOOD FAITH EFFORT (IF APPLICABLE)**

**Required for all DBE subcontractors who decline to provide a quote.**  
**Applies in pre and post-award.**

**Important**

Bidder/proposer/prime compliance with contract goals and good faith efforts are handled as a matter of responsibility. If the bidder/proposer/prime did not meet the goal, they must document that they made Good Faith Efforts to do so. This requirement is an important and serious one. NJ Transit's Office of Business Diversity will make a fair and reasonable judgment as to whether the bidder made adequate Good Faith Efforts.

Bidders/proposers/primes are required to read the DBE Program Requirements and the guidelines/ instructions of all forms; and required to submit all forms in the Addendum (mandatory) and Supplemental Section (if applicable) with the bid/proposal or within seven (7) days after bid/proposal submission.

**Guidelines to Bidder/Proposer/Prime:**

- FORM D outlines actions that may be considered good faith efforts though it is not a mandatory checklist, nor is it intended to be exclusive or exhaustive. Please read DBE Program Requirements for further guidance.
- Bidder/Proposer/Prime must complete FORM D if and when it fails to meet the DBE goal.
- FORM D must be completed in this instance for any DBE firms which were solicited but declined to quote for the project.
- DBE firm must sign Page 2 of FORM D. If DBE declines to do so, submit completed form with bidder/proposer/prime signature only and the Office of Business Diversity will verify information with DBE.
- If/when the contract goal is not met, the fact that there may be some additional costs involved in finding and using DBEs is not in itself sufficient reason for a bidder's failure to meet the contract DBE goal, as long as such costs are reasonable. Prime contractors are not, however, required to accept higher quotes from DBEs if the price difference is excessive or unreasonable.
  - In short, unless the price difference is excessive or unreasonable, incurring additional costs in using and finding a DBE is not sufficient reason to reject the DBE quote or not to meet the contract goal.

**Instructions:**

- On Page 1 of FORM D, indicate with a check mark the various types of detailed good faith efforts made and attach documentation of such efforts. Types of acceptable documentation are listed on Page 2.
- Document any other type of good faith efforts not listed on Page 1.
- Complete this form entirely.

Bidders/proposers/primes are to provide the required forms and instruction sheet, including the Supplemental section to their 1<sup>st</sup> Tier DBE subs. DBE sub-primes must provide required forms under Supplemental section to their 2<sup>nd</sup> Tier DBE/Non-DBE subs, if applicable. Please contact the compliance officer identified for this contract at the pre-bid/proposal conference for guidance on completing any of these forms.

**DBE GOOD FAITH EFFORT– FORM D**

IFB/RFP Number: \_\_\_\_\_

Project Title: \_\_\_\_\_

Bidder/Proposer/Prime Name: \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_

Phone: \_\_\_\_\_ Email: \_\_\_\_\_

Date Signed: \_\_\_\_\_

The following is a list of the types of actions that may be considered good faith efforts. It is not intended to be a mandatory checklist, nor is it intended to be exclusive or exhaustive. Other factors or types of efforts may be relevant in appropriate cases, however please check all that apply in this instance. Please provide documentation for ALL instances selected.

- ☐ Selected portions of work to be performed by DBEs and, where appropriate, broke down contracts into economically feasible units to facilitate DBE participation.
- ☐ Provided interested DBE with adequate information about plans, specifications, and requirements of the contract.
- ☐ Negotiated in good faith with interested DBE, not rejecting DBEs as unqualified without sound reasons based on a thorough investigation of their capabilities.
- ☐ Made efforts to assist interested DBE in obtaining bonding, lines of credit, or insurance required by NJ Transit or Bidder.
- ☐ Made efforts to assist interested DBEs in obtaining necessary equipment, supplies, materials, or related assistance or services.
- ☐ Advertised subcontracting opportunities in appropriate media.
- ☐ Used the services of minority organizations, minority contractors' groups, local state and federal minority business assistance offices and other organizations that provide assistance identifying subcontractors.
- ☐ Provided written notice to DBEs in sufficient time to allow the DBE to respond. (Provide copy of documentation with Page 2.)
- ☐ Followed up initial solicitation of interest by contacting DBE to determine interest. (Provide proof of follow up with Page 2.)

Describe any other efforts not covered above that may indicate Good Faith Efforts to obtain DBE participation on this project and provide documentation.

## PRIME CONTRACTOR Monthly DBE Payment Report - Form E

Name of Project: \_\_\_\_\_ NJT Contract #: \_\_\_\_\_

Prime Original Contract Value: \_\_\_\_\_ Report for the Month of: \_\_\_\_\_

Change Orders (Overall Inc/Dec.): \_\_\_\_\_ Notice to Proceed Date: \_\_\_\_\_

Total Contract Amount to Date: \_\_\_\_\_ NJT Project Mgr Name: \_\_\_\_\_

Total Payments Received from NJT Date: \_\_\_\_\_ Assigned DBE Goal %: \_\_\_\_\_

Name of DBE Subcontractor	Work Task Performed	Original Contract Amount \$	Change Order Amount \$ (+/-)	Amount of Invoice Received this Month (\$)	Date of Invoice Received in this Month	Payment(s) Made to DBE in this Month in \$\$ (Itemize)	Date(s) Payment Made This Month	Total DBE Payments made to Date in (\$)	% Overall Work Finished	Final Pmt (Y/N)
	Total(s)→	\$	\$	\$	Total(s)	\$	Total(s)	\$		

Itemize payments/invoices and dates if paid/received more than one payment/invoice between the 1<sup>st</sup> and 31<sup>st</sup> of THIS Month.

## Prime Contractor Information:

Prime Firm Name: \_\_\_\_\_ Project Director Name: \_\_\_\_\_

Address: \_\_\_\_\_ Project Director Signature: \_\_\_\_\_

Telephone #: \_\_\_\_\_ Date: \_\_\_\_\_ Federal TIN #: \_\_\_\_\_

Prime's Past Due Invoice Information: List any invoice more than 40 days past due from the date submitted to NJT at the time you complete this form.

Invoice #	Invoice Date	Invoice Amount (\$)	Number of Days Past Due	Comments:

This form is not to be altered in any way.

For assistance completing this form, call 973-491-7539, 8058, 8768, 8575, 8069, 8941

## Form E - Prime Contractor's DBE Payment Certification

1. Have all DBE subcontractors with executed subcontracts been paid amounts due from previous progress payments?

☐ If yes, skip the next section and go to number 3.

☐ If no, please complete fields in box below: (Use additional paper, if needed)

DBE SubContractor Name	Amount Withheld From Invoice (\$)	Total of Invoice Amount (\$)	Invoice Number	Invoice Date	Specific Reason for Withholding

2. Have you notified the DBE subcontractor(s) that you are withholding payment and the reason(s) why?

☐ If yes, provide a copy of written notification to the DBE subcontractor with this form, indicating the date of notification.

☐ If no, lack of prior written notification to the DBE(s) that you are withholding payment violates the prompt payment clause guidelines. Please contact the DBE immediately, and provide a copy of written notification to the subcontractor with this form.

3. By signing this form, I certify that all of the above represent true and accurate information.

Note: CFO or equivalent Sr. Manager must complete and sign off on this form.

PROJECT DIRECTOR NAME (PRINT)

PROJECT DIRECTOR (SIGNATURE)

/ / DATE

Additional Reasons/Comments for Withholding Payment:

DO NOT WRITE BELOW. DEPARTMENTAL USE ONLY.

☐ Approved

☐ Denied

THIS FORM IS DUE ON THE 7TH OF EACH MONTH Please forward to:  
Office of Civil Rights and Diversity Programs

Business Development

NJ TRANSIT

One Penn Plaza East, 6<sup>th</sup> Fl

Newark, New Jersey 07105-2246

This form is not to be altered in any way.

For assistance completing this form, call 973-491-7539, 8058, 8768, 8575, 8069, 8941 Fed Form E rev Sept 2010



## DBE PRIME CONTRACTOR'S MONTHLY PAYMENTS FROM NJ TRANSIT

INFORMATION ON CONTRACT

DATE CONTRACT EXECUTED: \_\_\_\_\_ CONTRACT NUMBER: \_\_\_\_\_

REPORT FOR THE MONTH OF: \_\_\_\_\_ YEAR \_\_\_\_\_

ORIGINAL CONTRACT AMOUNT: \_\_\_\_\_ FED TAX ID #: \_\_\_\_\_

CHANGE ORDERS (OVERALL INC/DEC.): \_\_\_\_\_ PURCHASE ORDER #: \_\_\_\_\_

TOTAL CONTRACT AMOUNT TO DATE: \_\_\_\_\_

NAME OF PROJECT: \_\_\_\_\_

Original Contract Value	Change Order Amount +/-	Date of Change Order	New Contract Value	Payments Received This Month	Total Payments Received to Date	% Work Completed To Date	Final Pmt Y/N
<b>TOTALS:</b>							

PRIME INVOICE 30 DAYS PAST DUE FROM NJT:NJ TRANSIT

Invoice Date \_\_\_\_\_ Reference # \_\_\_\_\_ No. Days Past Due Amount \_\_\_\_\_

Project Manager (Name): \_\_\_\_\_

Telephone #: \_\_\_\_\_

PRIME CONTRACTOR INFORMATION

Firm Name: \_\_\_\_\_

Compliance Officer (Name): \_\_\_\_\_

Date: \_\_\_\_\_ Telephone #: \_\_\_\_\_

FORM IS DUE ON THE 7<sup>TH</sup> OF EACH MONTH.

PLEASE FORWARD TO:

NJ TRANSIT

Manager, Contract Compliance

Office of Business Diversity – 6<sup>TH</sup> FL

One Penn Plaza East

Newark, New Jersey 07105-2246

THIS FORM IS NOT TO BE ALTERED OR CHANGED IN ANY WAY.

## DBE SUBCONTRACTOR Monthly Payment Report - Form E2

Name of DBE Firm: \_\_\_\_\_ Report for the Month of: \_\_\_\_\_  
 DBE's FEIN#: \_\_\_\_\_ Contract Number: \_\_\_\_\_  
 DBE Address: \_\_\_\_\_ Contract Name: \_\_\_\_\_  
 DBE Telephone #: \_\_\_\_\_ DBE Contract Start Date: \_\_\_\_\_

## Prime Contractor's Information:

Name of Prime: \_\_\_\_\_ Address: \_\_\_\_\_ Telephone #: \_\_\_\_\_

DBE PAYMENT INFO: *Itemize payments/invoices and dates if received/submitted more than one payment/invoice between the 1<sup>st</sup> and 31<sup>st</sup> of THIS Month.*

Work Task Performed	Original Subcontract Amount \$	Change Order Amount (+/-)	Invoice # (s) Submitted in this month	Dollar Amount of Each Invoice Submitted in this Month	Date of Invoice(s) Submitted this Month	Total Payments Received by DBE In this Month * (\$)	Date Payment(s) Received in this Month	Total Payments Received by DBE To Date (\$)	Total % Work To Date	Final Payment? Y or N
TOTALS →	\$	\$	TOTALS →	\$	TOTALS →	\$	TOTALS →	\$		

Is retainage held on your subcontract? Yes or No (circle one) If yes, how much? \$ \_\_\_\_\_. Did your final payment include retainage? Yes or No (circle one)

**Past Due Invoice(s) Information:** List any invoice more than 40 days past due from date submitted to prime at the time you complete this form.

Invoice #	Invoice Date	Invoice Amount (\$)	Number of Days Past Due	Comments: use additional paper if necessary

*Note: CFO or equivalent Sr. Manager must complete and sign off on this form.*

Name: \_\_\_\_\_ Signature: \_\_\_\_\_ Title: \_\_\_\_\_ Date: \_\_\_\_\_

THIS FORM IS DUE ON THE 7<sup>TH</sup> OF EACH MONTH IMMEDIATELY FOLLOWING DBE's SUBCONTRACT START DATE, EVEN IF PAYMENT NOT RECEIVED.

Please mail this form to:

NJ TRANSIT, Office of Business Development, One Penn Plaza East, 6<sup>th</sup> Fl, Newark, New Jersey 07105-2246

Do not alter this form in any way.

If you need assistance completing this form please call 973-491-7539, 8058, 8768, 8069, or 8941.

Rev Fed Form E2 - Sept 2010

## **SUPPLEMENTAL SECTION REQUIRED FORMS**

**ENCLOSED FOR COMPLETION (IF APPLICABLE):**

- **Form AA; AA1; AA2; BB; & Trucking Commitment Schedule**

**TO BE OBTAINED AND SUBMITTED (IF APPLICABLE):**

- **Copy of a valid NJUCP DBE Certificate (Provided by 2<sup>nd</sup> Tier DBEs.)**

Consult DBE Program Requirements for further guidance.

## SECOND TIER DBE UTILIZATION- FORM AA

Project Name: \_\_\_\_\_ NJT Contract No: \_\_\_\_\_

DBE Sub-Prime (First Tier) Subcontractor Contract Value (\$): \_\_\_\_\_

I plan to subcontract \_\_\_\_\_ % of my subcontract to Second Tier DBE subcontractor(s)/subconsultant(s) listed on the chart below to perform/supply the following:

*Second Tier DBE subs must perform 100% of their scope of work.*

Name, Address and Telephone # of Second Tier DBE Subcontractor/Subconsultant	Provide Detailed Scope of Work to be Performed	Dollar Value of Subcontractor/Subconsultant Work (\$) Awarded	Percentage of Subcontractor Work (%)
			%
			%
			%
Any First-Tier DBE firm listed on the Form A must identify any DBE firm it will use to perform its scope of work.	TOTALS	\$	%

The undersigned understands its approval to perform on the above contract is based upon its identified DBE team listed above and its Non-DBE team listed on the Form AA2. The DBE Sub-Prime must receive written approval from the Office of Business Development for any changes to its DBE and/or Non-DBE subcontractors, their dollar values or scope of work identified on the Form AA and/or AA2 before making any changes. It attests that the identified firms will perform all work. Failure to adhere to, or falsification of any information contained herein shall result in breach of contract and subject to corrective action to be determined by NJ TRANSIT.

DBE Sub-Prime Firm: \_\_\_\_\_ Authorized Signature: \_\_\_\_\_

Company Address: \_\_\_\_\_ Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Federal Tax ID #: \_\_\_\_\_ Sub-Prime's DBE Liaison Officer: \_\_\_\_\_

Company Tel #: \_\_\_\_\_ Date Signed: \_\_\_\_\_

## BIDDER SOLICITATION &amp; CONTRACTOR INFORMATION - FORM AA1

NJT Contract No: \_\_\_\_\_ Project Title: \_\_\_\_\_

DBE Sub-Prime: \_\_\_\_\_ Telephone #: \_\_\_\_\_

Date: \_\_\_\_\_

Complete the information below for Second Tier contractor(s) participating on the project.

	Subcontractor/Subconsultant	Subcontractor/Subconsultant	Subcontractor/Subconsultant
Company's Full Name			
Address			
City			
Zip			
County			
Phone			
Fax			
E-mail			
Owner			
Date Established			
Date Certified			
Ethnicity			
Gender			
Certification Status: DBE or Non-DBE			
Federal Tax ID # / SSN #			
Annual Gross Receipts: A - Less than \$500K B - \$500K to \$1M C - \$1M to \$2M D - \$2M to \$5M E - \$5M and over Indicate the letter that applies			
Primary NAICS Code:			

## NON-DBE SECOND TIER SUBCONTRACTOR UTILIZATION - FORM AA2

**Directions: To be completed by any DBE Sub-Prime Contractor for "all" subs including suppliers participating on this contract.**

NJ Transit Contract No: \_\_\_\_\_ Date: \_\_\_\_\_ DBE Sub-Prime Contract Value: \$ \_\_\_\_\_

DBE Sub-Prime Contractor Name: \_\_\_\_\_ Project Title: \_\_\_\_\_

Name, Address and Telephone # of all Second Tier Subcontractor(s)/Subconsultant(s)	FEIN #	Provide Detailed Scope of Work to be Performed	Dollar Amount of Subcontractor/Subconsultant Work (\$) Awarded	Percentage of Subcontractor Work (%)
			\$	%
			\$	%
			\$	%
			\$	%
			\$	%
Must provide a detailed scope of work; one-word descriptions are not acceptable.			\$	%
TOTALS			\$	%

**INTENT TO PERFORM AS A SECOND TIER DBE - FORM BB**

The Bidder is prohibited from completing any portion of this form and directing the DBE to sign a blank form.

**DIRECTIONS:** DBE(s) listed on the Form AA must complete all information on this form and must complete Form AA2 for any Non-DBE subcontractor performing a portion of its subcontract.

\_\_\_\_\_  
Name of First Tier DBE/Sub-Prime:

\_\_\_\_\_  
Name of Second Tier DBE Firm:

Project/Contract Name: \_\_\_\_\_

IFB/RFP Contract Number: \_\_\_\_\_

Does the undersigned intend to perform subcontract work in connection with the above-mentioned project as a Joint Venture? Circle one. (Yes or No)

Will you subcontract any portion of your scope of work to a DBE(s)? Circle one. (Yes or No)

Will you subcontract any portion of your scope of work to a Non-DBE(s)? Circle one. (Yes or No)

The undersigned will perform the following described work on the above-referenced project: *(Provide a detailed description of the type of work you will perform on your subcontract. Attach a copy of quote approved and signed by Bidder (optional)).*

\_\_\_\_\_  
Dollar Value of DBE Subcontract: \$ \_\_\_\_\_

Total Quantity/Units (if applicable): \_\_\_\_\_ Per Unit Cost (if applicable): \$ \_\_\_\_\_

The undersigned based the above scope of work and subcontract value on detailed project specs received from the DBE Sub-Prime named above. Circle one. (Yes or No)

The Prime Contractor projected the following commencement and completion date for such work as follows:

DBE Contract Start Date: \_\_\_\_\_ DBE Contract Completion Date \_\_\_\_\_

The undersigned DBE will enter into a formal agreement for the above work with the DBE Sub-Prime conditioned upon execution of a contract with the Prime on the project. As a Second Tier DBE subcontractor, I will cooperate with the certification, compliance and monitoring process set forth by NJ TRANSIT. I attest that I will perform 100% of my subcontract with my own workforce for the referenced project.

\_\_\_\_\_  
Signature of Second Tier DBE

\_\_\_\_\_  
Date

\_\_\_\_\_  
Title

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Telephone #:

Failure to adhere to these instructions or the falsification of any information on this form shall result in breach of contract and subject to the appropriate penalties as determined by NJ TRANSIT.

## **DBE TRUCKING COMMITMENT**

### **AGREEMENT**

The DBE Trucking Firm Commitment Agreement sheet attached must be signed and completed entirely. Make duplicate copies for additional subcontractors as needed. Please read DBE Requirement Language for details.

- DBEs must provide information for all DBE/Non-DBE trucking firms it will lease from or subcontract to.
  - *Subcontracting to a Non-DBE trucker means that the Non-DBE will perform a portion of the DBE firm's subcontract.*
  - *2<sup>nd</sup> Tier DBE trucking firms must perform 100% of their total subcontract value.*
- For Non-DBE leased trucks, credit will only be given for the fee/commission that is received for arranging the transportation services.
  - *All DBE-leased trucks are required to reflect the DBE firm's company name and identification number.*

**Copies of the following items must be attached for ALL trucks owned by the DBE:**

- Proof of ownership: title(s) or finance agreement(s) ONLY
- registration card(s)
- insurance card(s)
- hazardous waste license(s), if applicable
- apportioned cab card(s), if applicable

**Copies of the following items must be attached for ALL DBE/non-DBE trucks leased by the DBE:**

- lease agreement(s)
- title(s)
- registration card(s)
- insurance card(s)
- hazardous waste license(s), if applicable
- apportioned cab card(s), if applicable



## MANDATORY FORM

## DBE TRUCKING FIRM COMMITMENT AGREEMENT

This commitment is subject to the award and receipt of a signed contract from NJ TRANSIT for the subject project. Note that copies of all supporting documents must be attached.

The DBE trucking firm will perform the following described work on the project: *(Specific work details should include: Type of material to be handled, quantities to be hauled, dollar amount per unit, location the material will be transported)*.

Dollar Value of DBE Subcontract: \$\_\_\_\_\_

Total Quantity/Units (if applicable): \_\_\_\_\_ Per Unit Cost (if applicable): \$ \_\_\_\_\_

Total Number of fully operational DBE-owned trucks to be used on contract? \_\_\_\_\_.

Total Number of fully operational trucks to be leased from a DBE? \_\_\_\_\_.

(Provide a copy of lease agreement(s) for each trucking firm).

Total Number of fully operational trucks to be leased from a non-DBE? \_\_\_\_\_.

(Provide a copy of lease agreement(s) for each trucking firm. \*Note that subcontracting is different from leasing as it relates to trucking).

**Specify ALL Vehicle Information on Page 1 and 2, if applicable**

[illegible]

## MANDATORY FORM

[illegible]

*I hereby certify that the information present above is correct. I agree to inform the Office of Business Diversity in writing within 10 days, if anything changes.*

1<sup>st</sup> Tier DBE Signature: \_\_\_\_\_

Date: \_\_\_\_\_

Print Name: \_\_\_\_\_

## EXHIBIT 4

**STATE OF NEW JERSEY  
EQUAL EMPLOYMENT OPPORTUNITY PROVISIONS  
FOR PROCUREMENT, PROFESSIONAL AND SERVICE CONTRACTS**

**I. BID REQUIREMENTS**

This contract is subject to the provisions of N.J.S.A. 10:2-1 through 10:2-4 and N.J.S.A. 10:5-31 et seq. (P.L. 1975, c.127), and in accordance with the rules and regulations promulgated pursuant thereto, the proposer agrees to comply with the following:

At the time the signed contract is returned to NJ TRANSIT, the said proposer (contractor) shall submit one of the following three documents:

1. A Federal Affirmative Action Plan Approval which consists of a valid letter from the Office of Federal Control Compliance Programs; or
2. A Certificate of Employee Information Report from the State of New Jersey, Department of Treasury, Division of Public Contracts Equal Employment Opportunity Compliance; or
3. A Division of Public Contracts Equal Employment Opportunity Compliance Employee Information Report (Form AA-302).

A contractor shall not be eligible to submit an employee information report unless contractor certifies and agrees that it has never before applied for a certificate of employee information report in accordance with rules promulgated pursuant to N.J.S.A. 10:5-31 et seq.; and agrees to submit immediately to the Division of Public Contracts Equal Employment Opportunity Compliance a copy of the employee information report.

Contractors that have previously filed an Employee Information Report are required to apply for a renewal of the Certificate of Employee Information Report with the Department of Treasury, Division of Public Contracts Equal Employment Opportunity Compliance and submit a valid Certificate of Employee Information Report.

**(NOTE: FOR THE PURPOSE OF THIS CONTRACT THE "PUBLIC AGENCY COMPLIANCE OFFICER" REFERENCED BELOW IS NJ TRANSIT'S ASSISTANT EXECUTIVE DIRECTOR, DIVERSITY PROGRAMS AND THE "PUBLIC AGENCY" IS NJ TRANSIT.)**

**II. SUBCONTRACTS; EQUAL EMPLOYMENT GOALS**

The contractor agrees to incorporate these State of New Jersey EEO Provisions for Procurement, Professional and Service Contracts in its subcontracts for services.

In accordance with N.J.A.C. 17:27, Contractors and subcontractors are required to make a good faith effort to provide equal employment opportunity for minorities and women. Failure to make good faith efforts to provide equal employment opportunity for minorities and women may result in sanctions including fines/penalties, withholding of payment, termination of the contract, suspension/debarment or such other action as provided by law.

### III. MANDATORY CONTRACT LANGUAGE

#### MANDATORY EQUAL EMPLOYMENT OPPORTUNITY LANGUAGE

N.J.S.A. 10:5-31 et seq. (P.L. 1975, C. 127)

N.J.A.C. 17:27

#### GOODS, PROFESSIONAL SERVICE AND GENERAL SERVICE CONTRACTS

During the performance of this contract, the contractor agrees as follows:

The contractor or subcontractor, where applicable, will not discriminate against any employee or applicant for employment because of age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex. Except with respect to affectional or sexual orientation and gender identity or expression, the contractor will ensure that equal employment opportunity is afforded to such applicants in recruitment and employment, and that employees are treated during employment, without regard to their age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex. Such equal employment opportunity shall include, but not limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Public Agency Compliance Officer setting forth provisions of this nondiscrimination clause.

The contractor or subcontractor, where applicable will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex.

The contractor or subcontractor will send to each labor union, with which it has a collective bargaining agreement, a notice, to be provided by the agency contracting officer advising the labor union of the contractor's commitments under this chapter and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

The contractor or subcontractor where applicable, agrees to comply with any regulations promulgated by the Treasurer pursuant to **N.J.S.A. 10:5-31 et seq.** as amended and supplemented from time to time and the Americans with Disabilities Act.

The contractor or subcontractor agrees to make good faith efforts to meet targeted county employment goals established in accordance with N.J.A.C. 17:27-5.2.

The contractor or subcontractor agrees to inform in writing appropriate recruitment agencies including, but not limited to, employment agencies, placement bureaus, colleges, universities, and labor unions, that it does not discriminate on the basis of age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex, and that it will discontinue the use of any recruitment agency which engages in direct or indirect discriminatory practices.

The contractor or subcontractor agrees to revise any of its testing procedures, if necessary, to assure that all personal testing conforms with the principles of job-related testing, as established by the statutes and court decisions of the State of New Jersey and as established by applicable Federal law and applicable Federal court decisions.

In conforming with the targeted employment goals, the contractor or subcontractor agrees to review all procedures relating to transfer, upgrading, downgrading and layoff to ensure that all such actions are taken without regard to age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity, or expression, disability, nationality or sex, consistent with the statutes and court decisions of the State of New Jersey, and applicable Federal law and applicable Federal court decisions.

The contractor shall submit to the public agency, after notification of award but prior to execution of a goods and services contract, one of the following three documents:

Letter of Federal Affirmative Action Plan Approval

Certificate of Employee Information Report

Employee Information Report Form AA302 (electronically provided by the Division and distributed to the public agency through the Division's website at [www.state.nj.us/treasury/contract\\_compliance](http://www.state.nj.us/treasury/contract_compliance))

The contractor and its subcontractors shall furnish such reports or other documents to the Division of Purchase & Property, CCAU, EEO Monitoring Program as may be requested by the office from time to time in order to carry out the purposes of these regulations, and public agencies shall furnish such information as may be requested by the Division of Purchase & Property CCAU EEO Monitoring Program for conducting a compliance investigation pursuant to Subchapter 10 of the Administrative Code (N.J.A.C. 17:27).

## EXHIBIT 5

**STATEMENT OF JOINT VENTURE  
FOR  
PROFESSIONAL SERVICES**

WE, THE UNDERSIGNED, BEING DULY SWORN ACCORDING TO LAW, UPON OUR RESPECTIVE OATHS DEPOSE AND SAY THAT:

1. THE CONSULTANT, UNDER WHOSE NAME WE HAVE AFFIXED OUR RESPECTIVE SIGNATURES, HAS DULY AUTHORIZED AND EMPOWERED US TO EXECUTE THIS STATEMENT OF JOINT VENTURE IN THE NAME OF AND ON BEHALF OF SUCH CONSULTANT FOR THE PURPOSES HEREIN FURTHER SET FORTH.

2. THE FOLLOWING NAMED CONSULTANTS:

(a) .....;  
( ) Individual                      ( ) Partnership                      ( ) Corporation

(b) .....;  
( ) Individual                      ( ) Partnership                      ( ) Corporation

(c) .....;  
( ) Individual                      ( ) Partnership                      ( ) Corporation

HAVE ENTERED INTO A JOINT VENTURE FOR THE SPECIAL PURPOSE OF CARRYING ON THE WORK AND PROFESSIONAL SERVICES HEREINAFTER DESCRIBED.

3. UNDER THE PROVISIONS OF SUCH JOINT VENTURE THE ASSETS OF EACH OF THE CONSULTANTS NAMED IN PARAGRAPH 2 HEREOF, AND IN CASE ANY CONSULTANT SO NAMED ABOVE IS A PARTNERSHIP THE ASSETS OF THE INDIVIDUAL MEMBERS OF SUCH PARTNERSHIP, WILL BE AVAILABLE FOR THE PERFORMANCE OF SUCH JOINT VENTURE AND LIABLE THEREFOR AND FOR ALL OBLIGATIONS INCURRED IN CONNECTION THEREWITH.

4. THIS STATEMENT OF JOINT VENTURE IS EXECUTED SO THAT THE NAMED CONSULTANTS MAY, UNDER SUCH JOINT VENTURE, PROPOSE TO PERFORM THE WORK AND PROFESSIONAL SERVICES HEREIN MENTIONED AND THEY MAY, IF THE SUCCESSFUL PROPOSER THEREFOR, BE AWARDED THE CONTRACT FOR SUCH WORK AND PROFESSIONAL SERVICES. ANY CONTRACT RELATING TO THE WORK AND PROFESSIONAL SERVICES HEREINAFTER SPECIFIED SHALL BE EXECUTED BY ANY PERSON AUTHORIZED TO BIND ANY MEMBER OF THIS JOINT VENTURE, AND WHEN SO EXECUTED SHALL BIND THIS JOINT VENTURE AND EACH AND EVERY CONSULTANT NAMED HEREIN, SEVERALLY AND JOINTLY. SIMULTANEOUS WITH THE EXECUTION OF THE CONTRACT THE JOINT VENTURERS SHALL DESIGNATE AND APPOINT A PROJECT MANAGER/DIRECTOR TO ACT AS THEIR TRUE AND LAWFUL AGENT WITH FULL POWER AND AUTHORITY TO DO AND PERFORM ANY AND ALL ACTS OR THINGS NECESSARY TO CARRY OUT THE WORK AND PROFESSIONAL SERVICES SET FORTH IN SAID CONTRACT.



**STATEMENT OF JOINT VENTURE  
FOR  
PROFESSIONAL SERVICES  
(Continued)**

5. AS JOINT VENTURERS, WE BIND THE CONSULTANT FOR WHOM WE RESPECTIVELY EXECUTE THIS STATEMENT OF JOINT VENTURE IN FIRM AGREEMENT WITH NJ TRANSIT THAT EACH OF THE REPRESENTATIONS HEREIN SET FORTH IS TRUE.

6. THE WORK AND PROFESSIONAL SERVICES FOR WHICH THIS JOINT VENTURE HAS BEEN ENTERED INTO IS IDENTIFIED AS:

.....  
.....  
.....  
.....

SUBSCRIBED AND SWORN TO BEFORE ME,

THIS ..... DAY OF  
....., 20.....

(a) .....  
(Name of Consultant)

BY .....  
(Also type or print name of signer)

SUBSCRIBED AND SWORN TO BEFORE ME,

THIS ..... DAY OF  
....., 20.....

(b) .....  
(Name of Consultant)

BY .....  
(Also type or print name of signer)

SUBSCRIBED AND SWORN TO BEFORE ME,

THIS ..... DAY OF  
....., 20.....

(c) .....  
(Name of Consultant)

BY .....  
(Also type or print name of signer)

**TO BE EXECUTED BY EACH JOINT VENTURER**

(a) ..... HEREBY CERTIFIES THAT  
(Name of Consultant)

TO SIGN THE STATEMENT OF JOINT VENTURE ATTACHED HERETO AS THE AUTHORIZED  
REPRESENTATIVE OF .....  
(Name of Consultant)

ATTEST.....

● ● ● ● ● ● ●

..... HAS BEEN AND IS HEREBY EMPOWERED  
(Name of Representative)

TO SIGN THE STATEMENT OF JOINT VENTURE ATTACHED HERETO AS THE AUTHORIZED  
REPRESENTATIVE OF .....  
(Name of Consultant)

ATTEST.....

● ● ● ● ● ● ●

..... HAS BEEN AND IS HEREBY EMPOWERED  
(Name of Representative)

TO SIGN THE STATEMENT OF JOINT VENTURE ATTACHED HERETO AS THE AUTHORIZED  
REPRESENTATIVE OF .....  
(Name of Consultant)

ATTEST.....

**(SEAL NECESSARY IF CORPORATION)**

## EXHIBIT 6



STATE OF NEW JERSEY  
DEPARTMENT OF THE TREASURY  
DIVISION OF PURCHASE AND PROPERTY

33 WEST STATE STREET, P.O. BOX 230  
TRENTON, NEW JERSEY 08625-0230

OWNERSHIP DISCLOSURE FORM

BID SOLICITATION #: \_\_\_\_\_ VENDOR/BIDDER: \_\_\_\_\_

**PART 1**

PLEASE COMPLETE THE QUESTIONS BELOW BY CHECKING EITHER THE "YES" OR THE "NO" BOX. ALL PARTIES ENTERING INTO A CONTRACT WITH THE STATE ARE REQUIRED TO COMPLETE THIS FORM PURSUANT TO N.J.S.A. 52:25-24.2

**PLEASE NOTE THAT IF THE VENDOR/BIDDER IS A NON-PROFIT ENTITY, THIS FORM IS NOT REQUIRED.**

- |   | YES | NO |
|---|-----|----|
| 1. Are there any individuals, corporations, partnerships, or limited liability companies owning a <b>10% or greater</b> interest in the Vendor/Bidder?  |     |    |
| <b>IF THE ANSWER TO QUESTION 1 IS "NO", PLEASE SIGN AND DATE THE FORM.</b><br><b>IF THE ANSWER TO QUESTION 1 IS "YES", PLEASE ANSWER QUESTIONS 2 – 4 BELOW.</b>                                 |     |    |
| 2. Of those parties owning a 10% or greater interest in the Vendor/Bidder, are any of those parties individuals?  |     |    |
| 3. Of those parties owning a 10% or greater interest in the Vendor/Bidder, are any of those parties <b>corporations, partnerships, or limited liability companies</b> ?                         |     |    |
| 4. If your answer to Question 3 is "YES", are there any parties owning a <b>10% or greater</b> interest in the corporation, partnership, or limited liability company referenced in Question 3? |     |    |

**IF ANY OF THE ANSWERS TO QUESTIONS 2 - 4 ARE "YES", PLEASE PROVIDE THE REQUESTED INFORMATION IN PART 2 BELOW.**

**PART 2**

**PLEASE PROVIDE FURTHER INFORMATION RELATED TO QUESTIONS 2 – 4 ANSWERED AS "YES".**

If you answered "YES" for questions 2, 3, or 4, you must disclose identifying information related to the individuals, corporations, partnerships, and/or limited liability companies owning a 10% or greater interest in the Vendor/Bidder. Further, if one or more of these entities is itself a corporation, partnership, or limited liability company, you must also disclose all parties that own a 10% or greater interest in that corporation, partnership, or limited liability company. This information is required by statute.

**INDIVIDUALS**

NAME _____	DATE OF BIRTH _____
ADDRESS 1 _____	
ADDRESS 2 _____	
CITY _____	STATE _____ ZIP _____

NAME _____	DATE OF BIRTH _____
ADDRESS 1 _____	
ADDRESS 2 _____	
CITY _____	STATE _____ ZIP _____

NAME _____	DATE OF BIRTH _____
ADDRESS 1 _____	
ADDRESS 2 _____	
CITY _____	STATE _____ ZIP _____

**Attach Additional Sheets If Necessary.**

**PART 2 continued**

**PARTNERSHIPS/CORPORATIONS/LIMITED LIABILITY COMPANIES**

ENTITY NAME			
PARTNER NAME			
ADDRESS 1			
ADDRESS 2			
CITY	STATE	ZIP	

ENTITY NAME			
PARTNER NAME			
ADDRESS 1			
ADDRESS 2			
CITY	STATE	ZIP	

ENTITY NAME			
PARTNER NAME			
ADDRESS 1			
ADDRESS 2			
CITY	STATE	ZIP	

ENTITY NAME			
PARTNER NAME			
ADDRESS 1			
ADDRESS 2			
CITY	STATE	ZIP	

***Attach Additional Sheets If Necessary.***

In the alternative, to comply with the ownership disclosure requirement, a Vendor/Bidder with any direct or indirect parent entity which is publicly traded may submit the name and address of each publicly traded entity and the name and address of each person that holds a 10% or greater beneficial interest in the publicly traded entity as of the last annual filing with the federal Securities and Exchange Commission or the foreign equivalent, and, if there is any person that holds a 10% or greater beneficial interest, also shall submit links to the websites containing the last annual filings with the federal Securities and Exchange Commission or the foreign equivalent and the relevant page numbers of the filings that contain the information on each person that holds a 10 percent or greater beneficial interest. N.J.S.A. 52:25-24.2.

**CERTIFICATION**

I, the undersigned, certify that I am authorized to execute this certification on behalf of the Vendor/Bidder, that the foregoing information and any attachments hereto, to the best of my knowledge are true and complete. I acknowledge that the State of New Jersey is relying on the information contained herein, and that the Vendor/Bidder is under a continuing obligation from the date of this certification through the completion of any contract(s) with the State to notify the State in writing of any changes to the information contained herein; that I am aware that it is a criminal offense to make a false statement or misrepresentation in this certification. If I do so, I will be subject to criminal prosecution under the law, and it will constitute a material breach of my agreement(s) with the State, permitting the State to declare any contract(s) resulting from this certification void and unenforceable.

\_\_\_\_\_  
Signature (Do not enter vendor ID as a signature)

\_\_\_\_\_  
Date

\_\_\_\_\_  
Print Name and Title

\_\_\_\_\_  
FEIN/SSN

## EXHIBIT 7

## N.J.S.A 52:34-13.2 CERTIFICATION

### SOURCE DISCLOSURE CERTIFICATION FORM

Consultant:\_\_\_\_\_ Contract Number:\_\_\_\_\_

I hereby certify and say:

I have personal knowledge of the facts set forth herein and am authorized to make this Certification on behalf of the Consultant.

The Consultant submits this Certification as part of its proposal in response to the referenced solicitation issued by NJ TRANSIT, in accordance with the requirements of N.J.S.A. 52:34-13.2.

The following is a list of every location where services will be performed by the consultant and all subconsultants.

<u>Consultant or Subconsultant</u>	<u>Description of Services</u>	<u>Performance Location[s] by Country</u>
------------------------------------	--------------------------------	---

Any changes to the information set forth in this Certification during the term of any contract awarded under the referenced solicitation or extension thereof will be immediately reported by the Consultant to the Director of Contracts, NJ TRANSIT Corporation, One Penn Plaza East, Newark, NJ 07105.

I understand that, after award of a contract to the Consultant, it is determined that the Consultant has shifted services declared above to be provided within the United States to sources outside the United States prior to a written determination by the Contracting Officer, that the services can not be performed in the United States, the Consultant shall be deemed in breach of contract, which contract will be subject to termination for cause pursuant to Article 15 of the Professional Services Agreement.

I further understand that this Certification is submitted on behalf of the Consultant in order to induce NJ TRANSIT to accept a proposal, with knowledge that NJ TRANSIT is relying upon the truth of the statements contained herein.

I certify that, to the best of my knowledge and belief, the foregoing statements by me are true. I am aware that if any of the statements are willfully false, I am subject to punishment.

Consultant:\_\_\_\_\_  
[Name of Organization or Entity]

By:\_\_\_\_\_ Title:\_\_\_\_\_

Print Name:\_\_\_\_\_ Date:\_\_\_\_\_

## EXHIBIT 8



---

---

PUBLIC LAW 2005  
CHAPTER 271

Vendor Certification and  
Political Contribution  
Disclosure Form

Contract Reference: \_\_\_\_\_ Vendor: \_\_\_\_\_

---

---

At least ten (10) days prior to entering into the above-referenced contract, the Vendor must complete this Certification and Disclosure Form, in accordance with the directions below and submit it to the State contact for such contract.

**Please note that the disclosure requirements under Public Law 2005, Chapter 271 are separate and different from the disclosure requirements under Public Law 2005, Chapter 51 (formerly Executive Order 134). Although no vendor will be precluded from entering into a contract by any information submitted on this form, a vendor's failure to fully, accurately and truthfully complete this form and submit it to the appropriate State agency may result in the imposition of fines by the New Jersey Election Law Enforcement Commission.**

### **Disclosure**

Following is the required Vendor disclosure of all Reportable Contributions made in the twelve (12) months prior to and including the date of signing of this Certification and Disclosure to: (i) any State, county, or municipal committee of a political party, legislative leadership committee, candidate committee of a candidate for, or holder of, a State elective office, or (ii) any entity that is also defined as a "continuing political committee" under N.J.S.A. 19:44A-3(n) and N.J.A.C. 19:25-1.

The Vendor is required to disclose Reportable Contributions by: the Vendor itself; all persons or other business entities owning or controlling more than 10% of the profits of the Vendor or more than 10% of the stock of the Vendor, if the Vendor is a corporation for profit; a spouse or child living with a natural person that is a Vendor; all of the principals, partners, officers or directors of the Vendor and all of their spouses; any subsidiaries directly or indirectly controlled by the Vendor; and any political organization organized under section 527 of the Internal Revenue Code that is directly or indirectly controlled by the Vendor, other than a candidate committee, election fund, or political party committee.

"Reportable Contributions" are those contributions that are required to be reported by the recipient under the "New Jersey Campaign Contributions and Expenditures Reporting Act," P.L. 1973, c.83 (C.19:44A-1 et seq.), and implementing regulations set forth at N.J.A.C. 19:25-10.1 et seq. As of January 1, 2005, contributions in excess of \$300 during a reporting period are deemed "reportable."

PUBLIC LAW 2005  
CHAPTER 271

Vendor: \_\_\_\_\_

Name and Address of Committee to Which Contribution Was Made	Date of Contribution	Amount of Contribution	Contributor's Name
Indicate " <u>none</u> " if no Reportable Contributions were made. Attach Additional Pages As Needed			

#1

**Certification:**

I certify as an officer or authorized representative of the Vendor that, to the best of my knowledge and belief, the foregoing statements by me are true. I am aware that if any of the statements are willfully false, I am subject to punishment.

#2

Name of Vendor: \_\_\_\_\_

Signed: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

## EXHIBIT 9

## DISCLOSURE OF INVESTMENT ACTIVITIES IN IRAN

RFP No.: \_\_\_\_\_ Bidder: \_\_\_\_\_

### PART 1: CERTIFICATION

BIDDERS MUST COMPLETE PART 1 BY CHECKING EITHER BOX.

FAILURE TO CHECK ONE OF THE BOXES WILL RENDER THE PROPOSAL  
NON-RESPONSIVE.

Pursuant to Public Law 2012, c. 25, any person or entity that submits a bid or proposal or otherwise proposes to enter into or renew a contract must complete the certification below to attest, under penalty of perjury, that neither the person or entity, nor any of its parents, subsidiaries, or affiliates, is identified on the State of New Jersey, Department of Treasury's Chapter 25 list as a person or entity engaging in investment activities in Iran. The Chapter 25 list is found at the following Website:

<http://www.state.nj.us/treasury/purchase/pdf/Chapter25List.pdf>.

Bidders must review this list prior to completing the below certification. Failure to complete the certification will render a bidder's proposal non-responsive. If the Director finds a person or entity to be in violation of law, s/he shall take action as may be appropriate and provided by law, rule or contract, including but not limited to, imposing sanctions, seeking compliance, recovering damages, declaring the party in default and seeking debarment or suspension of the party

1. PLEASE CHECK THE APPROPRIATE BOX:

☐ I certify, pursuant to Public Law 2012, c. 25, that neither the bidder listed above nor any of the bidder's parents, subsidiaries, or affiliates is listed on the N.J. Department of the Treasury's list of entities determined to be engaged in prohibited activities in Iran pursuant to P.L. 2012, c. 25 ("Chapter 25 List"). I further certify that I am the person listed above, or I am an officer or representative of the entity listed above and am authorized to make this certification on its behalf. I will skip Part 2 and sign and complete the Certification below.

2. OR

☐ I am unable to certify as above because the bidder and/or one or more of its parents, subsidiaries, or affiliates is listed on the Department's Chapter 25 list. I will provide a detailed, accurate and precise description of the activities in Part 2 below and sign and complete the Certification below. Failure to provide such will result in the proposal being rendered as nonresponsive and appropriate penalties, fines and/or sanctions will be assessed as provided by law.

**PART 2: PLEASE PROVIDE FURTHER INFORMATION RELATED TO INVESTMENT ACTIVITIES IN IRAN**

You must provide a detailed, accurate and precise description of the activities of the bidding person/entity, or one of its parents, subsidiaries or affiliates, engaging in the investment activities in Iran outlined above by completing the boxes below.

PLEASE PROVIDE THOROUGH ANSWERS TO EACH QUESTION.  
IF YOU NEED TO MAKE ADDITIONAL ENTRIES, PLEASE COPY AND COMPLETE THIS SHEET AND SUBMIT IT WITH YOUR BID.

Name _____	Relationship to Bidder/Offeror _____
Description of Activities _____ _____	
Duration of Engagement _____	Anticipated Cessation Date _____
Bidder/Offeror Contact Name _____	Contact Phone Number _____

Certification: I, being duly sworn upon my oath, hereby represent and state that the foregoing \_\_\_\_\_ information \_\_\_\_\_ a

Name _____	Relationship to Bidder/Offeror _____
Description of Activities _____ _____	
Duration of Engagement _____	Anticipated Cessation Date _____
Bidder/Offeror Contact Name _____	Contact Phone Number _____

and any attachments thereto to the best of my knowledge are true and complete. I attest that I am authorized to execute this certification on behalf of the above-referenced person or entity. I acknowledge that the State of New Jersey is relying on the information contained herein and thereby acknowledge that I am under a continuing obligation from the date of this certification through the completion of any contracts with the State to notify the State in writing of any changes to the answers of information contained herein. I acknowledge that I am aware that it is a criminal offense to make a false statement or misrepresentation in this certification, and if I do so, I recognize that I am subject to criminal prosecution under the law and that it will also constitute a material breach of my agreement(s) with the State of New Jersey and that the State at its option may declare any contract(s) resulting from this certification void and unenforceable.

Full Name (Print): \_\_\_\_\_ Signature: \_\_\_\_\_

Title: \_\_\_\_\_ Date: \_\_\_\_\_

## EXHIBIT 10

## CONTRACTOR'S CERTIFICATION OF ELIGIBILITY

The\_\_\_\_\_ (Insert Name of Company) hereby certifies that it is not listed on the State of New Jersey, Department of Labor and Workforce Development, Division of Wages and Hour Compliance, Prevailing Wage Debarment List or on the State of New Jersey, Department of Treasury, Consolidated Debarment Report.

\_\_\_\_\_(Insert Name of Company) is currently registered and active with no exclusion on the consolidated U.S. Government, Systems for Award Management (SAM) database.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Type or Print Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

## EXHIBIT 11



## NON-COLLUSION AFFIDAVIT

STATE OF NEW JERSEY

COUNTY OF \_\_\_\_\_

I, \_\_\_\_\_ of the City of \_\_\_\_\_  
in the County of \_\_\_\_\_ and the State of \_\_\_\_\_  
of full age, being duly sworn according to law on my oath depose and say that:

I am \_\_\_\_\_ of the firm  
Of \_\_\_\_\_ the bidder making the Proposal  
for the above named project, and that I executed the said Proposal with full authority so to do; that said  
bidder has not, directly or indirectly, entered into any agreement, participated in any collusion, or  
otherwise taken any action in restraint of free, competitive bidding in connection with the above named  
project; and that all statements contained in said Proposal and in this affidavit are true and correct, and  
made with full knowledge that the State of New Jersey relies upon the truth of the statements contained in  
said Proposal and in the statements contained in this affidavit in awarding the contract for the said  
project.

I further warrant that no person or selling agency has been employed or retained to solicit or  
secure such contract upon agreement or understanding for a commission, percentage, brokerage or  
contingent fee, except bona fide employees or bona fide established commercial or selling agencies  
maintained by \_\_\_\_\_

**(Name of Contractor).**

\_\_\_\_\_  
(Also type or print name of affiant under signature)

Subscribed and sworn to before me this

\_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

\_\_\_\_\_  
Notary Public of

My commission expires \_\_\_\_\_ 20\_\_\_\_

## EXHIBIT 12

## **AFFIDAVIT OF COMPLIANCE**

I, \_\_\_\_\_ (*name of individual*), executing this document on behalf of the undersigned company, partnership, corporation, or entity hereinafter referred to as "Contractor", presently seeking to do business with NJ TRANSIT by way of a Request for Proposals ("RFP") or Invitation for Bids ("IFB"), hereby warrant and affirm to NJ TRANSIT as follows:

1. I warrant and affirm that Contractor has received a copy of NJ TRANSIT's Code of Vendor Ethics and that I have read and studied this document and distributed this document to all of Contractor's personnel involved in seeking to do business with NJ TRANSIT and required said personnel to fully read this document. In addition, I further warrant and affirm that Contractor has received from NJ TRANSIT a document entitled "Important Notice to All Contractors and Consultants" and that I have read and studied this document, including the page setting forth various New Jersey statutory provisions, and that Contractor has distributed this document to all of Contractor's personnel involved in seeking to do business with NJ TRANSIT and required said personnel to fully read this document.

2. Contractor warrants and affirms that it has issued written instructions to all of Contractor's personnel involved in seeking to do business with NJ TRANSIT instructing and requiring same to strictly adhere to the Contractor's responsibilities as set forth in NJ TRANSIT's Code of Vendor Ethics and in the "Important Notice to All Contractors and Consultants".

3. Contractor warrants and affirms that during the bidding or proposal process for the contract with NJ TRANSIT, no gratuities or other inducements have been offered or given or will be offered or given in any form including gifts, gratuities, benefits, inducements, meals (other than *de minimis* valued snacks such as coffee, tea, soda, pretzels, cookies, or similar non-meal items), entertainment, or any other thing of value or favors of any kind to any member of NJ TRANSIT's Board of Directors, officer or employee of NJ TRANSIT.

4. The Contractor warrants and affirms that during the RFP or IFB process for the contract with NJ TRANSIT, Contractor has not and will not make any offers of employment to any member of the NJ TRANSIT Board of Directors, officer or employee directly involved with this contract or solicit or interview therefor, directly or indirectly, without first seeking and obtaining written approval from NJ TRANSIT's Ethics Liaison Officer.

5. The Contractor warrants and affirms that during the RFP or IFB process for the contract with NJ TRANSIT it has and shall promptly report in writing to NJ TRANSIT every instance that comes to the Contractor's attention and knowledge regarding any member of NJ TRANSIT's Board of Directors, officer or employee of NJ TRANSIT who has solicited or asked Contractor to provide gifts, gratuities, benefits, inducements, meals (other than *de minimis* valued snacks such as coffee, tea, soda, pretzels, cookies, or similar non-meal items), entertainment or any other thing of value or favors of any kind or has made any solicitation or request, directly or indirectly, for employment with or through the Contractor.

6. The Contractor acknowledges and accepts that for breach or violation of the foregoing warranties and affirmations, NJ TRANSIT shall have the discretion and legal right to disqualify Contractor from bidding or proposing for a contract between the Contractor and NJ TRANSIT.

---

(Print Name of Contractor)

---

(Signature of Authorized Principal or Officer)

---

(Print Name and Title of Signator)

**IMPORTANT NOTICE**  
**TO**  
**ALL CONTRACTORS AND CONSULTANTS**

NJ TRANSIT is an instrumentality of the State of New Jersey and its employees and officers, including members of the NJ TRANSIT Board of Directors, are public servants. NJ TRANSIT, its employees and officers are governed by a number of civil and criminal laws which control how NJ TRANSIT and its personnel do business with contractors and consultants. These provisions include the Conflicts of Interest Law, N.J.S.A. 52:13D-12 and contain unequivocal and stringent restrictions relating to gifts and gratuities.

Be advised that the law prohibits the receipt of gifts and gratuities by any NJ TRANSIT employee or officer from any person, company or entity doing business - or wanting to do business - with NJ TRANSIT. Concomitantly, NJ TRANSIT's own Code of Ethics and Code of Ethics for Vendors, prohibits NJ TRANSIT employees from accepting gifts and prohibits you, the contractors and consultants, from offering any gifts to any NJ TRANSIT employee.

The term "gift" is broadly and widely defined. It includes all things and objects, tangible or intangible, including services, gratuities, meals, entertainment, tickets to events, access to membership clubs, travel costs, and lodging. Simply put, a "gift" is anything of value.

Do not, under any circumstance, tempt or put an NJ TRANSIT employee in the awkward position of having to refuse a gift or return a gift, no matter how well intentioned or innocuous the gift may be in your eyes.

The bright line rule for you and your staff in doing business with NJ TRANSIT is simple: Offer nothing and give nothing to any NJ TRANSIT employee or officer. It is your responsibility to circulate this Notice in your company and educate accordingly all personnel who do business with NJ TRANSIT.

**52:13D-24. Solicitation, receipt or agreement to receive, thing of value for service related to official duties; exceptions**

a. No State officer or employee, special State officer or employee, or member of the Legislature shall solicit, receive or agree to receive, whether directly or indirectly, any compensation, reward, employment, gift, honorarium, out-of-State travel or subsistence expense or other thing of value from any source other than the State of New Jersey, for any service, advice, assistance, appearance, speech or other matter related to the officer, employee, or member's official duties, except as authorized in this section.

b. A State officer or employee, special State officer or employee, or member of the Legislature may, in connection with any service, advice, assistance, appearance, speech or other matter related to the officer, employee, or member's official duties, solicit, receive or agree to receive, whether directly or indirectly, from sources other than the State, the following:

(1) reasonable fees for published books on matters within the officer, employee, or member's official duties;

(2) reimbursement or payment of actual and reasonable expenditures for travel or subsistence and allowable entertainment expenses associated with attending an event in New Jersey if expenditures for travel or subsistence and entertainment expenses are not paid for by the State of New Jersey;

(3) reimbursement or payment of actual and reasonable expenditures for travel or subsistence outside New Jersey, not to exceed \$500.00 per trip, if expenditures for travel or subsistence and entertainment expenses are not paid for by the State of New Jersey. The \$500 per trip limitation shall not apply if the reimbursement or payment is made by (a) a nonprofit organization of which the officer, employee, or member is, at the time of reimbursement or payment, an active member as a result of the payment of a fee or charge for membership to the organization by the State or the Legislature in the case of a member of the Legislature; or (b) a nonprofit organization that does not contract with the State to provide goods, materials, equipment, or services.

Members of the Legislature shall obtain the approval of the presiding officer of the member's House before accepting any reimbursement or payment of expenditures for travel or subsistence outside New Jersey.

As used in this subsection, "reasonable expenditures for travel or subsistence" means commercial travel rates directly to and from an event and food and lodging expenses which are moderate and neither elaborate nor excessive; and "allowable entertainment expenses" means the costs for a guest speaker, incidental music and other ancillary entertainment at any meal at an event, provided they are moderate and not elaborate or excessive, but does not include the costs of personal recreation, such as being a spectator at or engaging in a sporting or athletic activity which may occur as part of that event.

c. This section shall not apply to the solicitation or acceptance of contributions to the campaign of an announced candidate for elective public office, except that campaign contributions may not be accepted if they are known to be given in lieu of a payment prohibited pursuant to this section.

d. (1) Notwithstanding any other provision of law, a designated State officer as defined in paragraph (2) of this subsection shall not solicit, receive or agree to receive, whether directly or indirectly, any compensation, salary, honorarium, fee, or other form of income from any source, other than the compensation paid or reimbursed to him or her by the State for the performance of official duties, for any service, advice, assistance, appearance, speech or other matter, except for investment income from stocks, mutual funds, bonds, bank accounts, notes, a beneficial interest in a trust, financial compensation received as a result of prior employment or contractual relationships, and income from the disposition or rental of real property, or any other similar financial instrument and except for reimbursement for travel as authorized in subsections (2) and (3) of paragraph b. of this section. To receive such income, a designated State officer shall first seek review and approval by the Executive Commission on Ethical Standards to ensure that the receipt of such income does not violate the "New Jersey Conflicts of Interest Law," P.L.1971, c. 182 (C.52:13D-12 et seq.) or any applicable code of ethics, and does not undermine the full and diligent performance of the designated State officer's duties.

(2) For the purposes of this subsection, "designated State officer" shall include: the Governor, the Adjutant General, the Secretary of Agriculture, the Attorney General, the Commissioner of Banking and Insurance, the Secretary and Chief Executive Officer of the Commerce and Economic Growth Commission, the Commissioner of Community Affairs, the Commissioner of Corrections, the Commissioner of Education, the Commissioner of Environmental Protection, the Commissioner of Health and Senior Services, the Commissioner of Human Services, the Commissioner of Labor, the Commissioner of Personnel, the President of the State Board of Public Utilities, the Secretary of State, the Superintendent of State Police, the Commissioner of Transportation, the State Treasurer, the head of any other department in the Executive Branch, and the following members of the staff of the Office of the Governor: Chief of Staff, Chief of Management and Operations, Chief of Policy and Communications, Chief Counsel to the Governor, Director of Communications, Policy Counselor to the Governor, and any deputy or principal administrative assistant to any of the aforementioned members of the staff of the Office of the Governor listed in this subsection.

e. A violation of this section shall not constitute a crime or offense under the laws of this State.

**52:13D-14. State officer or employee or member of legislature; acceptance of thing of value to influence public duties**

No State officer or employee, special State officer or employee, or member of the Legislature shall accept from any person, whether directly or indirectly and whether by himself or through his spouse or any member of his family or through any partner or associate, any gift, favor, service, employment or offer of employment or any other thing of value which he knows or has reason to believe is offered to him with intent to influence him in the performance of his public duties and responsibilities. This section shall not apply to the acceptance of contributions to the campaign of an announced candidate for elective public office.

## EXHIBIT 13

**NEW JERSEY TRANSIT CORPORATION**  
**CERTIFICATION FOR CONTRACTS, GRANTS, LOANS**  
**AND COOPERATIVE AGREEMENTS**

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) 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 any 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.

(2) 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 "Disclosure of Lobbying Activities," in accordance with its instructions.

(3) 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 Section 1352, Title 31, U.S. Code. 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.

\_\_\_\_\_  
Signature of Authorized Official

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Firm

\_\_\_\_\_  
Date



## EXHIBIT 14

**Per Diem (Major Cities)\*  
Effective October 1, 2015**

\* \$51 Standard Meal Rate applies to all destinations not specifically listed

Average Per Diem Rates are listed below

A full listing of domestic Per Diem Rates can be found online at [www.gsa.gov](http://www.gsa.gov)

Current foreign Per Diem Rates can be found at <http://aoprals.state.gov>

**NJ TRANSIT  
TRAVEL & BUSINESS REIMBURSEMENT GUIDELINES  
FOR CONTRACTORS AND VENDORS**

**GENERAL:**

All overnight travel must be authorized in writing by the Project Manager. Overnight lodging expenses for New York City are prohibited.

**These guidelines are subject to periodic review and adjustment by NJ TRANSIT.**

Meals: NJ TRANSIT has adopted the IRS-established "Major Cities" method for meal and incidental travel expenses within the continental United States.

The following table shows the average per diem rates for meals and incidental expenses while on travel. The M&IE rates differ by travel location. View the per diem rates for your destination to determine which M&IE rates apply.

<b>M&amp;IE Total</b>	<b>\$51.00</b>	<b>\$54.00</b>	<b>\$59.00</b>	<b>\$64.00</b>	<b>\$69.00</b>	<b>\$74.00</b>
Breakfast	\$11.00	\$12.00	\$13.00	\$15.00	\$16.00	\$17.00
Lunch	\$12.00	\$13.00	\$15.00	\$16.00	\$17.00	\$18.00
Dinner	\$23.00	\$24.00	\$26.00	\$28.00	\$31.00	\$34.00
Incidentals	\$5.00	\$5.00	\$5.00	\$5.00	\$5.00	\$5.00

"Incidentals" as defined by the IRS include "fees and tips given to porters, baggage carriers, bellhops, hotel maids, stewards and stewardesses and others on ships and hotel servants".

2. Conveyances: Travel expenses will be reimbursed subject to their reasonableness and subject to the following maximums (receipts required):
  1. Air-Fare: When authorized in writing and only at the prevailing coach rates. First class travel costs are not reimbursable.
  2. Rail or Bus: Only regular coach fares are reimbursable.
  3. Automobile: Mileage will be reimbursed at a rate of \$0.54 cents per mile. Mileage claims in excess of 30 miles one-way must be supported with documentation from a reputable online service (e.g. Map Quest). Gas, tolls and parking fees will be reimbursed only when validated by receipt.
3. Lodging: Reimbursed for single occupancy rates at reasonable, actual costs for the location. Lodging costs exceeding \$140.00 per night require prior approval of the Project Manager.