NJ TRANSIT REQUEST FOR PROPOSALS (RFP) NO. 19-048

CONSTRUCTION MANAGEMENT SERVICES FOR THE HOBOKEN SIGNAL AND YARD POWER REPAIRS

May 2020

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I. GENERAL PROJECT INFORMATION

A. Request for Proposals

The New Jersey Transit Corporation (NJ TRANSIT) is issuing this Request for Proposals (RFP) to engage a Consultant to perform construction management services for the Hoboken Signal and Yard Power Repairs (Project).

This RFP is to provide construction management services related to the construction phase of the Project. During construction, the Consultant shall provide a team for oversight of all construction related activities associated with the Project.

NJ TRANSIT will be constructing a new signal power and yard power distribution pole line within the confines of the Hoboken train yard. This Project will provide for the replacement of signal and power lines damaged during Super Storm Sandy and elevate the newly proposed lines above the reach of future floodwater intrusion into Hoboken Train Yard.

NJ TRANSIT reserves the right to reject any and all Proposal(s) in accordance with applicable law. Contract award is subject to the availability of funds and the Proposer's agreement to NJ TRANSIT's standard terms and conditions. NJ TRANSIT will not reimburse Proposers for expenses incurred in responding to this RFP.

NJ TRANSIT reserves the right to delete or modify any task from the Scope of Services at any time during the course of the Contract. NJ TRANSIT also reserves the right to approve all Subconsultants.

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 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 for Consultants as set forth in Section 30 of **Exhibit 1**.

In addition, 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. General Definitions

Addendum (plural Addenda): Written interpretations, clarifications, and revisions to the Request for Proposal (RFP), including its Attachments and Exhibits, issued by NJ TRANSIT before the Proposal due date.

Agreement: NJ TRANSIT's Professional Services Agreement (Exhibit 1).

Business Day: Any weekday excluding Saturdays, Sundays, State legal Holidays and State mandated closings, unless otherwise indicated.

Business Registration: A Business Registration Certificate issued by the Department of the Treasury or such other form of verification that a Consultant or Subconsultant is registered with the Department of Treasury.

Calendar Day: Each and every day shown on the calendar.

Consultant: The entity awarded the Contract under this RFP.

Contract The written agreement executed by the Contracting Officer of NJ TRANSIT and the Consultant constituting the total agreement between the parties covering the performance of the work. The Contract, including incorporated attachments, represents the entire and integrated agreement between the parties and supersedes all prior negotiations, representations or agreements either written or oral.

Contracting Officer: NJ TRANSIT's Chief of Procurement & Support Services acting, directly or through the Chief of Procurement & Support Services authorized representative(s), within the scope of duties assigned to him or her.

Construction Contractor: The individual, firm, partnership, corporation, joint venture, or any combination thereof, who, as an independent contractor, has entered into a Contract with NJ TRANSIT, as a party or parties of the second part and who is referred to throughout the Contract documents by singular number and non-specific gender.

Cost Proposal: Proposer's initial cost submission in response to the RFP.

Days: Shall mean calendar days unless otherwise indicated.

Holiday(s): Specific day(s) on which NJ TRANSIT is not open for business.

May: Denotes that which is permissible or recommended, not mandatory.

Must: Denotes that which is a mandatory requirement.

Notice of Award: Written notification to Proposer selected for award of the Contract.

Project: The specific services that are the subject of this Request for Proposals.

Proposal: The Proposal, or offer, submitted by the Proposer in response to the RFP.

Proposer: The entity submitting a Proposal in response to this RFP.

Shall: Denotes that which is a mandatory requirement.

Should: Denotes that which is permissible or recommended, not mandatory.

Subconsultant: Any entity, having a relationship with the Consultant, whereby the Consultant uses the products and/or services of that entity to fulfill some of its obligations under the Contract.

Subcontractor: Any individual, partnership, firm or corporation who undertakes for the Construction Contractor, with the prior approval of the Project Manager, the partial or total manufacture or installation, or both, of one or more items of work under the terms of the Contract, or who performs other services for the Construction Contractor as required to fulfill the terms of this Contract, by virtue of an agreement with the Construction Contractor.

Technical Proposal: The specific technical requirements of the Project, submitted by the Proposer in response to the RFP.

C. Anticipated Consultant Selection Schedule

Issue RFP May 28, 2020 Pre-Proposal Conference June 12, 2020

Requests for June 19, 2020

Information/Questions Due

Proposal Due Date July 9, 2020

Oral Presentations Week of July 27, 2020 (Tentative)

Cost Proposals Due Week of August 10, 2020 (Tentative)

Begin Negotiations Week of August 17, 2020 (Tentative)

Selection of Firm September 2020 (Tentative)

Board Approval November 2020 (Tentative)

Contract Award December 2020/January 2021 (Tentative)

D. 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.

NJ TRANSIT will not hold an in-person meeting for the pre-proposal conference. The pre-proposal conference will be held utilizing a telephone and video conference via Microsoft Teams, which is scheduled for 11:00 a.m., local time, on Friday, June 12, 2020, for the purpose of answering questions, providing directives, and providing clarification. Proposers will be required to download Microsoft Teams https://teams.microsoft.com/, prior to the pre-proposal conference, in order to access the web conference and view the presentation.

All Proposers who plan on attending the pre-proposal conference, must RSVP. Upon confirmation of your firm's RSVP, NJ TRANSIT will forward an invitation to view or listen to the presentation. For access information, please contact Maggie Sotolongo at no later than June 8, 2020.

All interested firms are urged to participate. Attendance at the preproposal conference is highly recommended. Recipients of this RFP that do not attend may be at a disadvantage when submitting a Proposal.

E. Request for Information and Addenda

The Proposer shall examine carefully the RFP and conditions affecting the work. 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 RFP shall be submitted in writing to NJ TRANSIT.

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

- 1. Be received in writing no later than 3:00 pm on June 19, 2020.
- 2. Reference RFP name and number, section and page number.
- 3. Requests for information must be emailed in a Word format to Maggie Sotolongo at msotolongo@njtranist.com.

The Proposer shall also carefully review NJ TRANSIT's Professional Services Agreement (**Exhibit 1**). The Proposer must identify and submit any questions, requests for clarifications, exceptions or proposed modifications to the Professional Services Agreement, with suggested changes to the Agreement and the reasons(s) therefor, during the Request for Information period. Failure to request changes to the Professional Services Agreement waives any right to modify the Professional Services Agreement after Proposals are received.

Any response that NJ TRANSIT may choose to make will be by a written Addendum to the RFP and sent to all prospective Proposers of the RFP package. NJ TRANSIT will not be bound by any informal explanation, clarification, or interpretation, oral or written, by whomever made, that is not incorporated into an Addendum.

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

NJ TRANSIT reserves the right to amend the RFP 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 Proposers. 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 proposers 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.

F. Contract Duration

The anticipated duration of the Contract, subject to continuing satisfactory performance and availability of funds, is approximately 1607 calendar days.

The duration of the construction activities is anticipated to be as follows:

All the construction activities listed above will require outages of the yard at various times for construction. There will be other construction activities for this project that can be done without any outages and are considered to be concurrent in the same time frames as the above activities so that the overall contract time for construction activities is a total of 50 months plus an additional 3 months for Contract closeout.

G. Disadvantaged Business Enterprise (DBE) Goal Assignment

As an aid in meeting the commitment of its Disadvantaged Business Enterprise (DBE) Program, NJ TRANSIT has assigned a Race Neutral project on the gross sum amount of the Proposal 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 United States Department of Transportation (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.

H. DBE Program Compliance Requirements

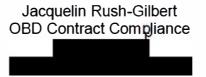
The Proposer shall refer to NJ TRANSIT's "DBE Requirements for Race Neutral Federal Procurement Activities" attached to this RFP as **Exhibit 3**, for instructions, guidance, and explanations for DBE program obligations for Contracts and Subcontracts.

For this Contract, the Proposer shall identify all DBE and non-DBE Subcontractors/ Subconsultants, and suppliers proposed to participate in and those solicited for this Contract, and shall complete and submit the mandatory DBE Forms A, A1, A2, and B. The Proposer must also submit NJ Unified Certification Program (NJUCP) certificate or letter for all potential DBE subcontractors. Additionally, the Proposer shall submit any applicable supplemental forms (AA, AA1, AA2, BB, and D). All DBE forms and NJUCP certificates or letters shall be submitted by the Proposer with its Cost Proposal or within five (5) Calendar Days after the Cost Proposal due date. Proposers shall review carefully and complete the forms entirely, with no blank fields.

Notwithstanding the date of submission of the mandatory DBE forms, all negotiations between a Proposer and any potential DBE Subcontractor, Subconsultant, or supplier shall be completed prior to the Cost Proposal due date. All DBE forms are included in the RFP package, specifically in **Exhibit 3.**

Failure to submit any and all mandatory DBE documentation <u>within five (5) Calendar Days</u> <u>after the Cost Proposal due date</u> shall result in a rejection of a Proposer as non-responsible.

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



The Proposer can refer to https://njucp.dbesystems.com, 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 Disadvantaged Business Enterprises. This listing is intended as an aid in identifying DBE firms to potential Proposers and is not meant to be an all-inclusive listing of DBE firms available for subcontracting. The Proposer may identify other firms, however, all DBE firms must be properly certified prior to award of the Contract. At the time of Cost Proposal submission,

only DBE firms certified in the New Jersey Unified Certified Program (NJUCP) shall satisfy DBE participation.

I. Equal Employment Opportunity Requirements

The Consultant 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) and N.J.A.C. 17:27. A Proposer is further required to comply with all other Equal Employment Opportunity requirements as described herein as well as any other applicable Federal or State statutes or regulations. (See Exhibit 4) Pursuant to N.J.S.A. 10:2-1 et seq., the Consultant agrees that:

- 1. In the hiring of persons for the performance of work under this Contract 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 Contract, 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;
- 2. 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 Contract 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 Contract, on account of race, creed, color, national origin, ancestry, marital status, gender identity or expression, affectional or sexual orientation or sex;
- 3. There may be deducted from the amount payable to the Consultant by the contracting public agency, under this Contract, 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 Contract; and
- 4. This Contract may be canceled or terminated by the contracting public agency and all money due or to become due hereunder may be forfeited, for the violation of this section of the Contract occurring after notice to the Consultant from the contracting public agency of any prior violation of this section of the Contract.

J. Joint Venture

A Proposer consisting of more than one (1) 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. The enclosed Statement of Joint Venture (Exhibit 5) shall be executed by the joint venturers and submitted with its proposal.

K. Ownership Disclosure

Pursuant to N.J.S.A. 52:25-24.2, in the event the Proposer is a corporation, partnership or limited liability company, it must complete and submit a current, Ownership Disclosure Form prior to the Proposal due date, or accompanying the Proposal. The Ownership Disclosure Form must set forth the names and addresses of all stockholders in a corporation who own ten percent (10%) or more of its stock, or of all the individual partners in the partnership who own a ten percent (10%) or greater interest, or of all the members in the limited liability company who own a ten percent (10%) or greater interest. If one or more stockholders, partners, or members is itself a corporation, partnership, or limited liability company, the stockholders holding ten percent (10%) of more of that corporation's stock, or the individual partners owning ten percent (10%) or greater interest in that partnership, or the members owning ten percent (10%) of greater interest in the limited liability company, shall also be listed. (See Exhibit 6)

To comply with this requirement, a Proposer 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 ten percent (10%) or greater beneficial interest in the publicly traded entity as of the last annual filing with the Securities and Exchange Commission, and, if there is any person that holds a ten percent (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 ten percent (10%) or greater beneficial interest.

Failure to submit the form prior to or with the Proposal will result in the rejection of the Proposal.

L. Source Disclosure Requirements – N.J.S.A. 52:34-13.2

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 NJ TRANSIT's President & CEO.

All Proposers 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 the attached Source Disclosure Certification Form **(Exhibit 7)** with its Proposal. If the information is not submitted with the Proposal, it shall be submitted within five (5) Calendar Days of NJ TRANSIT's request.

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 of the United States

If, during the term of the Contract, the Consultant 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 Consultant shall be deemed to be in breach of its Contract, which Contract shall be subject to termination for cause pursuant to Article 14 of the Agreement, attached as **Exhibit 7** unless previously approved by the Contracting Officer and the President & CEO.

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 the Proposal submission, 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 or enter into a Contract with NJ TRANSIT. As required by such law, the Proposer must complete, and submit with its Proposal, the certification (Exhibit 8) to attest under penalty of perjury, that neither the person nor entity not any of its parents, subsidiaries or affiliates is identified on the Department of the Treasury's Chapter 25 list as a person or entity engaging in investment activities in Iran. Failure to complete and submit this certification will render the Proposal non-responsive.

N. Contractor's Certification of Eligibility

The Proposer shall certify on the Contractor's Certification of Eligibility (**Exhibit 9**) that it is not included on the State of New Jersey, Department of the 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 Proposer shall also certify that it has no exclusions with the System for Award Management (S.A.M) on www.SAM.gov. If the Proposer is included on such report, the Proposer may not be eligible for award of Contract.

O. Business Registration Certificate

Pursuant to N.J.S.A. 52:32-44, NJ TRANSIT is prohibited from entering into a Contract with an entity unless the Proposer, and each Subcontractor/Subconsultant that is required by law to be named in a Proposal has a valid Business Registration Certificate on file with the Division of Revenue and Enterprise Services within the Department of the Treasury.

Prior to Contract award or authorization, the Proposer shall provide the Contracting Agency

with its proof of Business Registration and that of any named Subcontractor(s)/Subconsultant(s).

Subconsultants named in a Proposal shall provide proof of Business Registration to the Proposer, who in turn, shall provide it to the Contracting Agency prior to the time a Contract, purchase order, or other contracting document is awarded or authorized.

During the course of Contract performance:

- (1) The Consultant shall not enter into a Contract with a Subconsultant unless the Subconsultant first provides the Consultant with a valid proof of Business Registration.
- (2) The Consultant shall maintain and submit to the Contracting Agency a list of Subconsultants and their addresses that may be updated from time to time.
- (3) The Consultant and any Subconsultant providing goods or performing services under the Contract, and each of their affiliates, shall 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, (N.J.S.A. 54:32B-1 et seq.) on all sales of tangible personal property delivered into the State. Any questions in this regard can be directed to the Division of Taxation at (609)292-6400. Form NJ-REG can be filed online at http://www.state.nj.us/treasury/revenue/busregcert.shtml.

Pursuant to N.J.S.A. 54:49-4.1, a business organization that fails to provide a copy of a Business Registration as required, or that provides false business registration information, shall be liable for a penalty of \$25 for each day of violation, not to exceed \$50,000, for each proof of Business Registration not properly provided under a Contract with a contracting agency.

Accordingly, the Proposer should submit with its Technical Proposal the Business Registration Certificates for all team members, but prior to date of Contract award.

P. Equal Pay Act

Pursuant to N.J.S.A. 34:11-56.14(a), any employer, regardless of the location of the employer, who enters into a contract with a public body to perform qualifying services to the public body shall provide a report to the Commissioner of the New Jersey Department of Labor and Workforce Development, in a form promulgated by the Commissioner, of information regarding the compensation and hours worked by employees categorized by gender, race, ethnicity and job category.

Information regarding the Diane B. Allen Equal Pay Act and its requirements may be obtained from the New Jersey Department of Labor and Workforce Development (LWD) web site at: https://nj.gov/labor/equalpay/equalpay.html

LWD forms may be obtained from the online web site at:

Q. Technical Evaluation Committee

A Project Technical Evaluation Committee (TEC) comprised of NJ TRANSIT staff will be responsible for reviewing written Proposals and oral presentations and recommending a Proposer for award of this Contract. The TEC will analyze the submitted Technical Proposals, which must include project manpower estimates, for the respective tasks outlined in the Scope of Services. In order to adequately evaluate the capability of Proposers, the Proposal must address all tasks outlined in the Scope of Services. The Proposer should include the level of detail it determines necessary to assist the TEC in its review and evaluation of its Proposal.

R. Modification or Withdrawal

Proposal modifications submitted will be considered if received in hard copy by NJ TRANSIT at the specified location before the time set for receipt of Proposals. The modification shall be duly executed by the Proposer 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.

Modifications of Proposals already submitted will be considered if received in hard copy by NJ TRANSIT at the specified location before the time set for receipt of Proposals. The modification shall be submitted in a sealed envelope, clearly marked as a modification with RFP name and number, date of opening and name of firm, and duly executed by the Proposer or its authorized representative. Modifications received after the time specified for receipt of Proposals will not be considered.

Proposers shall assume that its failure to comply with these requirements may result in the modification being opened prematurely, or not opened at all.

S. Disqualification of Proposers/Proposals

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.

T. 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 Proposer's Technical and Cost Proposals, and other related Contract documents 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.

NJ TRANSIT/the State of New Jersey reserves the right to make the determination as to what is proprietary or confidential and will advise the winning Proposer accordingly. NJ TRANSIT/the State of New Jersey 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 NJ TRANSIT/the State of New Jersey does not concur, the proposer shall be solely responsible for defending its designation.

II. PROJECT BACKGROUND AND DESCRIPTION

A. Construction Project Background

This RFP is to provide construction management services related to the construction phase of the Hoboken Signal and Yard Power Repairs Project. Signal t. During construction, the Consultant will provide a team for oversight of all construction related activities associated with the project.

While the construction specifications may be subject to change, the Consultant selected by NJ TRANSIT should be aware of the following anticipated obligations of the Construction Contractor.

NJ TRANSIT will be constructing a new signal power and yard power distribution pole line within the confines of the Hoboken train yard. This project will provide for the replacement of signal and power lines damaged during Super Storm Sandy and elevate the newly proposed lines above the reach of future floodwater intrusion into Hoboken train yard.

The Hoboken Signal and Yard Power Repairs Project incorporates the Signal Power Distribution System Repairs and the Yard Powers Repair project. The systems for these two major components of the Hoboken Yard infrastructure are now run underground within a manhole and conduit duct bank system to pad mounted transformers and wayside power equipment located at grade in the yard.

During Super Storm Sandy, the Hoboken Terminal and Yard were inundated with storm surge waters that damaged underground cables, pad mounted transformers and wayside power equipment throughout the Yard or virtually every piece of equipment that was installed at grade or underground. The signal power segment of this project will provide resilient aerial distribution of 15kV power feeders from the new Henderson Substation (currently under construction), and to a resilient (elevated) Days Yard Wayside Power Substation, which will be constructed on an elevated structural steel platform as part of this project.

The Hoboken Yard Power portion of the project also includes replacement of the Days Yard Wayside Power System, including manholes, duct banks, wayside power cabinets and control stations which have not been designed to be resilient and are to be considered sacrificial.

The Hoboken Signal and Yard Power feeders will be distributed throughout the yard, primarily on the north side of the yard, on shared use steel monopole structures that are designed to accommodate the installation of the feeders included in this project as well as additional spare positions for future feeders.

The majority of the proposed steel monopoles are located on the north side of the yard; however, some poles are also strategically placed where required on the south side of the yard to provide power to the signal control point (also referred to as signal house, signal bungalow, or signal cabinet).

This project will construct 32 square steel monopoles ranging in size from 20"x20" and 44"x44" and ranging in height between 61' and 91'. The steel monopoles will be supported on micro pile foundations that consist primarily of four micro piles installed to bedrock (estimated to vary across the site from 60' to 90' below grade).

There is one (1) type of foundation (TP3) that consists of additional piles beyond the four (4) which are also installed to bedrock. These will used for the installation of four (4) poles of which only one (1) pole will be installed under this Contract. The standard types of foundations for this project includes reinforcing bars that are anchored into the bedrock, and pile caps that vary in size from 6'x6' to 10'-6"x10'-6".

A total of 30 pile foundations and pile caps will be installed and a total of 32 steel poles will be installed as part of this Contract; two (2) pile foundations and pile caps have already been installed under a different Contract. The project will also modify one existing twelve-sided un-used catenary light pole to extend the overall height by 5' to accommodate the installation of 120V secondary signal power feeders.

All the foundation work (piles and pile caps), pole installation and duct bank will be done on the weekends with minimal exceptions. Other work that will be inspected and managed under the construction contract includes the following:

- 1. Test pits
- 2. Electrical conduit installation on the terminal roof to depot substation
- 3. Installation of a steel structure rack for conduit support on the terminal roof

- 4. Installation of a steel platform structure on the terminal roof for transformers and switch gear
- 5. Installation of a steel platform structure in the yard at duct bank terminations for transformers and switch gear.

The work on the terminal roof may be done during the week during regular work hours.

The construction work will be performed by a combination of the Construction Contractor and NJ TRANSIT Force Account. The planned division of work is defined as follows:

The Construction Contractor will be responsible for the following:

- Steel Monopole foundations
- Steel Monopoles
- Existing catenary light pole modifications
- Manholes and duct banks
- Platforms for installation of transformer and switch gear
- Train shed roof termination structure
- Installation of conduit on the catenary trusses
- Test pits for pile installation
- Electrical conduits and steel rack structure on terminal roof
- Days Yard Wayside Power Substation Equipment, Wayside Power Outlets and Control Stations

NJ TRANSIT Force Account Departments will be responsible for furnishing and installing all electrical equipment, wiring, and related electrical hardware.

Many of the steel monopole locations are located between or in close proximity to the tracks. Consequently the Construction Contractor will need to develop a complete and thorough Site Specific Work Plan (SSWP) that is acceptable to the NJ TRANSIT Rail Operations Department.

The SSWP will need to reflect exactly how the Contractor proposes to proceed with the work including, but not limited to, shoring the excavations, equipment to be used, time needed to perform the work, how the work will be sequenced and the overall schedule for the work procedure.

The steel monopole work will only be performed during twelve (12) hour work windows on Saturdays and Sundays, except when there is a football game at MetLife Stadium. On those weekends, only work on Saturdays will be allowed. Other events that NJ TRANSIT will provide train service to/from will result in only an 8-hour work window on the day of the event.

The Contractor's shoring plan and SSWP must ensure that the out of service tracks adjacent to the work area will be placed back in service at the conclusion of the twelve (12) hour work windows on Saturdays and Sundays. The work that will be performed on the

catenary trusses must also be carefully planned and supported by an SSWP so that they can be coordinated with NJ TRANSIT such that the work can be performed while minimizing the affect to passenger train service.

In accordance with the requirements from NJ TRANSIT's Rail Operations Department, the steel monopoles are required to be delivered to the site in their final installation lengths. The Contractor will also need to develop a detailed SSWP for the delivery, handling and installation of the steel monopoles.

B. Construction Management Objectives

NJ TRANSIT anticipates fulfilling the following Project objectives by engaging the Consultant to oversee the Project as follows:

- 1. Completion of the Project within prescribed schedule and budget.
- 2. Constructability and staging review to minimize change orders, claims exposure and impacts to construction.
- 3. On-time performance by each Construction Contractor and Construction Subcontractor through critical path method (CPM) scheduling, schedule monitoring and analysis.
- 4. Ensuring the final construction product is a proper functioning, safe project, which reflects the work elements as described in the plans and specifications.
- 5. Documenting and maintaining accurate account of detailed records for all Project activities listed in this RFP and as directed by NJ TRANSIT.
- 6. Strict compliance and enforcement of all Contract requirements, rules, standards and requirements of NJ TRANSIT Rail Operations Departments.
- 7. Completing the Project with zero safety incidents by maintaining safe construction conditions with zero tolerance to safety deviation on site.
- 8. Minimizing impact to NJ TRANSIT customers who rely on the efficient operation of NJ TRANSIT rail and facilities.
- 9. Strict enforcement with all applicable Federal, State and local codes, statutes, regulations, and ordinances governing all project work.
- Maintaining safe construction conditions and good construction quality control.
- 11. Minimizing impact to rail operations.
- 12. Maintaining access to private property at all times during construction.
- 13. Smooth coordination with NJ TRANSIT Force Account Departments and the Contractor as necessary to facilitate construction schedule adherence for on-time completion.

C. Responsibilities Overview

The Consultant's core responsibilities for this Contract include, but are not limited to the following:

1. Construction management services during construction for compliance with the Contract documents, Federal, State, and local codes, rules and regulations.

- 2. Special inspection of mini pile foundation systems.
- 3. Regular inspections of all civil/structural piles, pile caps and steel pole erection, duct banks, conduit installation on catenary structures and Terminal buildings, utility, electrical, mechanical and associated work as specified in the Contract documents.
- 4. CPM schedule monitoring including all Construction Contractor work.
- 5. Creation of the CPM master schedule to include all the Construction Contractor's CPM and utility services tasks.
- 6. Document control, storage and maintenance.
- 7. Utility work construction coordination with NJ TRANSIT as needed.
- 8. Analysis and processing of Construction Contractor invoices.
- 9. Change order administration.
- 10. Assistance to the design consultant in preparation of the project's final as-built drawings.
- 11. After completion of the installation of the monopole foundations, and poles provide support in connection with demolition of any unused existing facilities no longer required.
- 12. Project closeout.
- 13. Any ancillary matters and activities arising out of the foregoing responsibilities

The Consultant's responsibilities shall also 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 Construction Contractor work elements will be performed and completed in compliance with construction contract documents, codes, permits and other regulations.

The Consultant shall only employ experienced individuals, including field inspectors, who are qualified and highly proficient in the areas they will be managing.

III. SCOPE OF SERVICES – GENERAL

- A. The Consultant shall furnish all services as required by NJ TRANSIT in accordance with the requirements listed in this RFP to be included as part of the Contract. NJ TRANSIT may terminate the Contract in whole or in part at any time if the Consultant has materially failed to comply with the terms of the agreement, or as otherwise specified in any Contract documents.
- B. The Consultant shall 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 Consultant's organization shall be led by a Construction Manager, who shall coordinate all efforts and shall serve as a focal point for contact between all parties affected in implementing this project. In addition, the Consultant's Construction 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 that an extension of time is required to meet new or modified project demands, NJ TRANSIT reserves the right to extend the

Consultant's Contract for a period agreeable to the Consultant and NJ TRANSIT. Additionally, NJ TRANSIT reserves the right to cancel the project or reduce the Scope of Services for the Consultant at any time.

- C. The Consultant shall attend and assist at all meetings required to inform and coordinate work with NJ TRANSIT staff, relevant agencies and/or the Contractor(s) performing construction work.
- D. The Consultant will provide a work plan with timelines and milestones for the management of these services as stated in the Responsibilities Overview Section II.D, to NJ TRANSIT's Construction Manager. In addition, the Consultant shall keep NJ TRANSIT routinely informed of its progress during the construction of the project, in written format, as required, during the course of the work.
- E. The Consultant shall maintain and make available, as requested, all documents, records and other evidence pertaining to service and costs 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 produced by the Consultant in accordance with this Contract shall become the sole property of NJ TRANSIT; the work includes, but is not limited to: records, reports, computations, calculations, worksheets, cost estimates, correspondence, computer tapes/discs/programs/data, and all other products resulting from the Consultant's work performed under this Contract.

IV. SCOPE OF SERVICES - CONSTRUCTION MANAGEMENT SERVICES

A. Project Organization

1. Project Management

NJ TRANSIT's Project Manager is responsible for overseeing the Project. The Consultant will provide a Construction Manager that will be the point of contact for this project. The Consultant's Construction Manager will provide construction support and oversight of the Construction Contractor(s). NJ TRANSIT has contracted with STV Incorporated as a design consultant to provide design and technical support to the Consultant and NJ TRANSIT for this Project. NJ TRANSIT's Project Manager will be responsible for providing project management guidance to address matters pertaining to Contract interpretation and negotiation issues, dispute resolution, invoice payment approval, change order review and process, construction schedule acceptance, supervision of the Consultant, and overall management of NJ TRANSIT staff. NJ TRANSIT's Construction Manager will be the main point of contact for the Consultant's Construction Manager to communicate with NJ TRANSIT.

2. Consultant Construction Manager

The Consultant's Construction Manager shall keep NJ TRANSIT informed at all times in a timely fashion of the progress of the project including its financial status.

The Consultant's Construction Manager shall be responsible for monitoring, planning, and the construction process and for proactively anticipating problems and issues affecting the project schedule and budget, and addressing them before they reach a critical level. The Consultant's Construction Manager shall maintain a continuous dialogue with the NJ TRANSIT Project Manager and Construction Manager in all matters affecting the schedule and budget of the project.

The Consultant's Construction Manager shall be responsible for providing experienced and integrated office and technical field support personnel, including Resident Engineer(s) and inspectors, for monitoring and inspecting the work performed by the Contractor and monitoring NJ TRANSIT's Force Account services.

The Consultant's Construction Manager shall be responsible for supplying all support personnel, including individuals with senior level skills, especially in the construction of mini-pile foundations constructed to rock, installation of mono pole structures complete, duct banks, electrical equipment platforms and conduit on catenary structures and the terminal roof to assist the Consultant's Construction Manager 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.

The Consultant's Construction Manager is required to evaluate the Construction Contractor's requests for change orders and the design consultant's responses to the Construction 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 Construction Contractor's cost proposals for additional work; and process the corresponding paper work to incorporate the change orders into the Contract by NJ TRANSIT's Contracting Officer.

B. Construction Management Organization – Staffing Requirements

The construction Project is currently scheduled for a duration of four (4) years and two (2) months (total 50 months) or approximately 1517 calendar days. The majority of the construction will be accomplished on weekend outages. There will be an additional three (3) months project close-out for a total of approximately 1607 calendar days.

The Hoboken Signal and Yard Power Repairs Project will consist of the following seven (7) parts:

- 1. Signal power,
- 2. Yard power,
- 3. Wayside power
- 4. NJ TRANSIT Force Account work,
- 5. Testing,
- 6. Commissioning,
- 7. Project close-out.

The Consultant will be responsible for overseeing the Construction Contractor's work. All NJ TRANSIT Force Account work and testing and commissioning will be done by NJ TRANSIT.

The Consultant shall ensure that its team shall be headed by a Construction Manager and a full-time Resident Engineer(s). The Construction Manager and Resident Engineer shall have the responsibility for the coordination of all construction activities for the entire Project. The Construction Manager and/or the Resident Engineer(s) shall have a minimum of ten (10) years' experience in the construction of pile foundation systems especially mini-piles driven to rock, installation of the steel monopoles for power lines and related experience working in an active rail yard. The Consultant's staff shall include a minimum of the following members:

- 1. As required, full-time inspectors for each discipline on each shift: civil/structural, pile and mini-pile foundation systems, shoring systems, duct banks, conduit installation on structures and electrical equipment platforms. The work experience of these inspectors should be in a rail yard environment. Although the inspectors are expected to work full-time when their services are required, the services within each discipline may not be required for the duration of the project. In the event inspection services are no longer needed, NJ TRANSIT in its sole discretion will advise the Consultant accordingly.
- 2. A part-time scheduler/estimator to participate in monthly schedule review meetings and review and approval of the Contractor's baseline schedule and monthly schedule updates and review of Contractor change orders.
- 3. Clerical and field support staff, as necessary and as approved by NJ TRANSIT.
- 4. A dedicated document control specialist.
- 5. A part-time on call survey team to verify the Contractor's civil, foundation, duct bank and catenary work prior to acceptance.

The Consultant shall ensure that the staff members named in its Proposal are made available for this Project. . Should replacements be required due to unavoidable circumstances, the Consultant shall make such request in writing with resumes of replacement staff to NJ TRANSIT as soon as possible. Such replacements shall not be implemented without prior written approval of NJ TRANSIT.

All of the Consultant's personnel, who will be working within NJ TRANSIT railroad property are required to attend NJ TRANSIT safety orientation classes, which will be provided by NJ TRANSIT at no cost to the Consultant. The Consultant's personnel are required to travel to off-site training facilities for administration of this class. Upon completion of the safety orientation classes, each trained employee shall be issued a safety sticker to be placed on the employee's hardhat and photo identification badge. The employee must display the sticker/badge when working on the railroad property. Any additional costs for training are the responsibility of the Consultant.

NJ TRANSIT reserves the right to require the Consultant to scale back staffing during any moratorium period where the Construction Contractor is not performing any field work.

Upon resumption of the work by the Contractor, the Consultant is expected to provide staffing as required for the Project or as directed by NJ TRANSIT.

C. Additional Construction Management Responsibilities

The Consultant shall be responsible for all aspects of construction management, including, but not limited to, full responsibility for monitoring, inspection, acceptance and approval of all Contract work performed; integration and coordination of NJ TRANSIT Force Account efforts with that of the Contractor(s); and monitoring of individual project schedules and reporting such as daily inspection reports, testing reports, monthly reports and any other activities that generate a report to the NJ TRANSIT staff. The Consultant shall review the Contractor's monthly CPM schedule on behalf of NJ TRANSIT. NJ TRANSIT estimates that the duration of the construction project will be approximately four (4) years and five (5) months. The Consultant will be required to provide the following services for each Contract activity:

Contract Activity	Description of Consultant's Service	Duration
Micropile Construction	Review SSWP for construction and perform construction inspection, monitor schedule, budget and approve invoices	14 months
Pile Cap Construction	Review SSWP for construction and perform construction inspection, monitor schedule, budget and approve invoices	22 months
Steel Monopole Installation Construction	Review SSWP for construction and perform construction inspection, monitor schedule, budget and approve invoices	8 months
Duct Bank Construction Days Yard Wayside Power Substation Equipment, Wayside Power Outlets and Control Stations	Review SSWP for construction and perform construction inspection, monitor schedule, budget and approve invoices	6 months
Total Contract Time		50 months
Contract Closeout	Perform collation of all project documentation into final format and deliver to NJ TRANSIT	3 months

The schedule of the above activities is based on yard outage requirements. The construction phasing plan will be as follows: pile installation, then four to five (4 to 5) months after the start of the pile installation, the pile cap construction starts. The pole installation starts at the completion of the pile cap installation and the duct bank installation starts at the end of the pole installation. All other construction activities that do not require yard outages, will run concurrent, with the above activities that require outages and be constructed during normal weekdays.

NJ TRANSIT Force Account may perform portions of the railroad construction work as required. During these instances, the Consultant must create the CPM schedules and maintain the master construction schedule, to include the construction work performed by NJ TRANSIT Force Account . The Consultant shall also provide coordination and integration of all NJ TRANSIT Force Account work into the Contractor's CPM schedule. The Consultant's coordinating and monitoring are an essential task to ensure timely completion of the services.

The Consultant shall perform a thorough evaluation and recommend acceptance/rejection of the Contractor's initial schedule submissions, as well as its monthly schedule update submissions, until substantial completion of the respective construction contract or as directed by NJ TRANSIT. The Contractor's CPM construction schedule will be created in Primavera, with detailed tasks and sub-tasks as necessary for the respective Contract to be completed in a timely fashion. The following are key scheduling related concerns of NJ TRANSIT that will require the Consultant's attention:

- a. Review and approval of baseline schedule.
- b. Monitor baseline durations and milestones.
- Clarity of respective detailed construction tasks and sub-tasks will be clear and logical construction sequences, in order for an on time, on budget, staged, and quality/reliable product.
- d. Timely recommendations to NJ TRANSIT regarding the schedule submission, as well as responses to the Construction Contractor, regarding its schedule submission.
- e. Thorough evaluation of the Contractor's progress payments such that the payments reflect the actual work accomplished for the period.
- f. Coordination and integration of all NJ TRANSIT Force Account work into the baseline and updated Contractor's CPM schedule and monthly updates.
- g. Creation and monthly updates of all the NJ TRANSIT Force Account schedules by the Consultant.
- h. Maintenance of the master construction schedule by the Consultant.
- i. Performing the schedule analysis and suggesting a recovery plan to bring the project back on schedule in case of a project delay.
- j. Providing for record an as-built schedule at the final close-out.

The Consultant shall maintain, at the job site, a record copy of all project communication in the form of correspondence, meeting minutes, technical conversation summaries, telephone logs, visitors' log, etc.

The Consultant shall maintain at the job site, a current record copy of all project documents, drawings, shop drawing, samples, permits, etc.

The Consultant shall maintain a direct line of communication with the design consultant, as it pertains to the project's technical evaluation issues and resolutions. However, the Consultant will not direct or take direction from the design consultant and will rely upon NJ

TRANSIT's Project Manager to communicate with the design consultant to address technical issues regarding the design and control documents. The Consultant shall be the only one who will communicate with the Construction Contractor to transmit the design consultant's information regarding Contracts, technical issues or resolutions.

The Consultant shall transmit, to NJ TRANSIT's Project Manager or his or her designee, in a form suitable to NJ TRANSIT, all communications regarding progress reports, status reports and all other submissions,

The Consultant will be responsible for contract administration responsibilities to include the preparation of Change Orders documentation (initial Change Order evaluation and cost estimating, schedule impact analysis), as well as the review and recommendation of such work, claims avoidance tasks, coordination and permanence of shop drawings reviews, prompt responses to Requests-for-Information (RFIs) and, the timely and safe completion of the project within schedule.

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 and as the Project proceeds, there may be refinement and adjustment of the Scope of Services. Proposers are invited to suggest refinements and improvements to the Scope of Services in their Proposals.

The Consultant will receive, review and, when required, compare Contractor's DBE reports to contractual goals and report to NJ TRANSIT on compliance.

The Consultant shall monitor the performance of all its subconsultants and report data on DBE participation to NJ TRANSIT's Office of Business Development (OBD). The Consultant shall supply the required forms to its DBE subconsultants. The Consultant's subconsultants shall report their DBE status on the forms and submit it with the monthly invoice to the Consultant Manager. This form will be reviewed by OBD to determine contract compliance with respect to the DBE goal established for this Contract.

D. Construction Services

The Consultant shall begin mobilizing within thirty (30) calendar days of NJ TRANSIT's issuance of the Notice to Proceed (NTP). The Consultant is also expected to provide a detailed organizational and management plan covering specific personnel needs for the duration of the project within thirty (30) calendar days of NJ TRANSIT's issuance of the NTP.

E. Management Procedures and Document Control

The Consultant will develop and submit for review a project-specific Construction Management Plan (CMP), detailing methodologies for all standard construction management procedures. Such methodologies shall include, but not be limited to, project description, roles and responsibilities, organization chart and 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 construction management personnel which shall include monitoring and enforcement of the Construction Contractor's' safety program.

In addition to routine reporting, the Consultant shall provide at least one document control specialist. The document control specialist will act as the Consultant's representative and will be granted access to NJ TRANSIT's Electronic Content Management System (ECMS). The document control specialist will be able to communicate and share data, drawings and reports via ECMS rapidly and efficiently. This system will allow the Consultant and NJ TRANSIT to utilize ECMS as the project's file cabinet and for archiving all project documents and correspondence/e-mail. The documents entered into said system by the document control specialist shall be in compliance with NJ TRANSIT's procedures and requirements. The Consultant and its document control specialist will be required to sign a Non-Disclosure Agreement (NDA) with NJ TRANSIT due to their access to personal information contained within NJ TRANSIT's system/server.

1. Project Document Control System

The Consultant 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. NJ TRANSIT's objective is to establish a paperless project to the extent as practicable.

Access to NJ TRANSIT's document control procedures will be granted at the sole discretion of NJ TRANSIT, to the Consultant, upon completion of training and documentation by NJ TRANSIT.

The document control specialist shall maintain and process files in a manner that complies with NJ TRANSIT's document controls procedures in order to provide:

- The creation and maintenance of authentic, reliable, and usable records;
- Proper utilization of NJ TRANSIT's document control system to assure the trustworthiness and authenticity of data.

The Consultant shall manage all project hardcopy and electronic documents, including, but not limited to the following:

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

The Consultant will also be responsible for the following tasks:

- Scanning as a pdf-A and indexing of all Project related documents in NJ TRANSIT's document control system
- Posting of scanned documents for retrieval
- Emailing notification to document recipients
- Maintaining and processing documents provided by the Consultant's Construction Manager
- Filing of original hardcopy (if applicable)

Upon request by NJ TRANSIT, the Consultant shall provide its document control specialist, at a designated NJ TRANSIT office, to assist in the processing of documents uploaded into ECMS. The Consultant's document control specialist will upload documents, at a minimum, on a weekly basis to ensure that the project files on ECMS are current and adhere to NJ TRANSIT standards. If necessary, in the event of a situation that prevents the Consultant's document control specialist, from accessing the ECMS, as a result of technical difficulties, deemed unavoidable, NJ TRANSIT will provide a contingency plan to the Consultant that will enable continued processing of project files.

Upon completion of the project or at such time as directed by NJ TRANSIT, the Consultant shall provide all finalized documents complied, as part of its Scope of Services, 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 ECMS.

Deliverables:

- Identification of document control support staff subject to NJ TRANSIT review
- Monthly project records submission report
- Transference of project records at project closeout
- Work will be ongoing until project closeout

F. Construction Management Administration

The Consultant will provide resident engineering services for Project. Below is a list of the major construction items to be performed by the Construction Contractor and/or Subcontractor. The list is not all-inclusive and may be revised by NJ TRANSIT.

- Layout and install micropile foundations to rock
- Install pile caps for micropoile
- Install duct banks
- Inspect steel monopole at shop prior to shipment
- Deliver and install steel monopoles
- Install conduit on catenary truss
- Install electrical conduit and steel racks on the terminal roof
- Install steel electrical platforms for transformers and switch gear

TASK C1 - GENERAL ADMINISTRATION

a. Mobilization at Construction Site

The Consultant shall provide and equip all field personnel with cell phones or other modes of communication of a type and frequency as required or directed by NJ TRANSIT.

b. Work Coordination

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

The Consultant shall ensure that the approved SSWPs are adhered to by the Construction Contractor at all times. During periods of track occupancy and/or fouling, the Consultant shall convene weekly meetings with the Construction Contractor and NJ TRANSIT to review, modify, or accept Construction Contractor's plans for such track occupancies and fouling two weeks in advance.

NJ TRANSIT Force Account Assistance

The Consultant shall meet with NJ TRANSIT to identify construction management needs for the successful controlling of the project schedule, SSWP, and budgets. The Consultant will ensure integration of any and all NJ TRANSIT Force Account work into the respective Contractor's construction schedule as necessary.

d. Document Control

The Consultant shall develop and maintain in a system acceptable to NJ TRANSIT, a construction filing system for tracking all project correspondence, Requests-for-Information, reports, test results, shop drawings, and all other project related documents compatible and easily assimilated into NJ TRANSIT's Enterprise Content Management System (ECMS). All such data shall be maintained on-site and made available to NJ TRANSIT at all times.

The Consultant will keep on site a daily updated set of marked up construction drawings, indicating as-built conditions. These drawings will be kept up to date by redlining all changes, additions or deletions to the construction contract, including subsurface conditions. The as-built conditions should be checked regularly (at a minimum weekly) with the Construction Contractor's marked-up drawings and should they differ, the Consultant shall contact the Construction Contractor for clarification of the variance and, if necessary, a reconciliation meeting shall take place to agree on the true as built conditions. The Consultant shall notify NJ TRANSIT's Project Manager of the variance in the construction drawings and the recommended course of action.

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

The Consultant will be required to maintain documents keeping track of costs associated and expended from the funding source. The NJ TRANSIT Project Manager will provide direction in this regard.

e. Project Meetings

Prior to the start of the Construction Contract work, the Consultant shall conduct a preconstruction meeting with the Construction Contractor, NJ TRANSIT, the design consultant, the local municipalities, public utilities and any other project entities, that NJ TRANSIT deems necessary. During the duration of this Contract, the Consultant shall schedule progress meetings 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 Consultant and forwarded to NJ TRANSIT for review and approval within three (3) business days of the conclusion of such meetings. Upon approval of the minutes, the Consultant will distribute the minutes to all project participants, or as directed by NJ TRANSIT.

The Consultant 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 Consultant shall also keep a meeting log that will be incorporated into all monthly reports.

f. Community Relations

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

q. Cost Control

The Consultant 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 Consultant shall also maintain cost account records with respect to portions of the Project work to be performed under Change Orders by unit cost and/or a time and material basis.

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

h. Labor Relations Assistance

The Consultant shall ensure that all project work performed by the Contractor complies with State and Federal labor laws. The Consultant shall ensure that prevailing wages are paid by the Construction Contractor. The Construction Contractor shall submit its certified payrolls with its invoice.

The Consultant shall review all reports submitted by the Contractor to ensure full compliance with NJ TRANSIT's Affirmative Action Program regarding Disadvantaged Business Enterprises.

i. Record Keeping

The Consultant shall maintain on-site current record copies of all Contracts, drawings, specifications, samples, catalogue cuts, test results, etc. and all other pertinent project documentation. All such records shall be immediately available to NJ TRANSIT at all times.

The Consultant'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, the number and work classification of personnel utilized by the Contractor and NJ TRANSIT Force Account units, construction equipment in use, material deliveries, weather conditions, material shortages, tests, labor disputes, general observations, NJ TRANSIT Force Account flag protection units and, any unusual circumstances occurring during the work period.

j. Project Progress Reports

The Consultant shall provide two (2) copies of project progress reports on a monthly basis, or more frequently as required, which shall address, actual vs. planned progress, progress payments, decision and/or resolution logs, Contract modification summaries, etc. The Consultant 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 Consultant shall provide digital photographs on a monthly basis as part of the monthly project report. Such photographs shall be kept on-site, with a date imprint at all times. The Consultant Construction Manager will 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 Work. The Consultant shall maintain photographic records detailing the status of all construction work in progress for each Contract and program element. Such records (minimum of two (2) prints) shall be submitted as part of the monthly reports described above.

Deliverables for Tasks C1(a) through (j):

- Document Control Logs
- Meeting minutes as required
- Meeting log
- Inquiry & complaint log

- Cost Account records
- Outline of filing system
- Submittal of as-built drawings
- Daily job diaries
- Daily inspection reports
- Project monthly progress reports
- Project photographs

TASK C2 - INSPECTION & TESTING

- a. The Consultant shall conduct daily on-site inspections of all work performed by the Construction Contractor to determine that such Work is being performed in conformance with the respective contract construction plans, project schedule, specifications, codes, permits and other applicable regulations. The Consultant's inspectors will keep daily records of the construction work on the inspector's daily record of project work in progress in addition to keeping bound daily diaries. All completed project work shall be approved by the Consultant prior to final approval/acceptance of such Work by NJ TRANSIT.
- b. The Consultant shall coordinate with NJ TRANSIT's Licensed Site Remediation Professional (LSRP) for any environmental aspects or provisions of this Contract. The LSRP will be solely responsible for any environmental testing or inspections. The LSRP's remediation scope will be with the most recent regulations of the NJ Department of Environmental Protection, US Environmental Protection Agency (EPA), Occupational Safety and Health Administration (OSHA), and any Federal, State, or local agency governing this project, which will not be the responsibility of the Consultant Construction Manager.
- C. The Consultant shall identify any non-compliant project work and notify the respective Contractor within a twenty-four (24) hour period. The Consultant shall evaluate the non-conforming project work and determine if it justifies a stop work notice. Prior to a stop work notice being issued to the Construction Contractor, the Consultant shall inform NJ TRANSIT's Project Manager and Construction Manager, of the non-conforming work and confer on the recommended actions to be taken. The Consultant will enforce the stop work notice on the respective Construction Contractor by not allowing any progress work associated with the non-compliant work to continue until the Construction Contractor has either corrected the work to conform to the project specifications, or has justified the reasons for the noncompliance to the complete satisfaction of NJ TRANSIT. The Consultant will not allow progressive work to continue until NJ TRANSIT has issued a directive to do so. The Consultant shall keep an updated log regarding non-compliant Work on site; this log shall conform to the procedures outlined in this RFP. The Construction Contractor will be advised as part of the non-compliance report issued by the Consultant that any lost time incurred due to the Construction Contractor correcting any non-compliance work will not be allowed as the basis for a time extension claim.

- d. The Consultant 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 Consultant prior to placement, installation and/or final acceptance of such project work by NJ TRANSIT.
- e. The Consultant shall maintain one set of as-built construction prints. These drawings shall be kept up to date by redlining all changes, additions or deletions to the construction contract, including subsurface conditions.

Deliverables for Tasks C2(a) through (e):

- Redline Prints (As-Builts)
- Inspector's Daily Record of Work progress
- Inspector's Daily Diaries
- Inspection reports as required
- NPC Log
- f. The Consultant shall be responsible for overseeing all field tests as may be required of the Construction Contractor to ensure material and equipment compliance with the specifications and to evaluate and approve the quality and workmanship of all project work, within seven (7) calendar days after its installation. The Construction Contractor will be required to retain an NJ TRANSIT-approved independent laboratory/testing agency certified in the areas within which it will be performing such services. NJ TRANSIT will review the testing agencies submitted by the Construction Contractor for approval. The Construction Contractor will be required to submit all testing reports to the Consultant's Construction Manager for review, which he or she in turn, shall submit to NJ TRANSIT. The laboratory/ testing agency will provide the Consultant's Construction Manager with a written report detailing all test data, results and recommended action which, in turn, the Consultant's Construction Manager shall provide to NJ TRANSIT.
- g. The Consultant 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.

Deliverables for Tasks C2(f) and (g):

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

The Consultant shall ensure that the Construction Contractor's handling of any contaminated material is conducted in strict compliance with all Federal, State and local regulations. Upon discovery of any contaminated material, the Consultant shall immediately notify NJ TRANSIT.

Deliverables:

- Recommendation memos as appropriate
- Monitoring of hazardous and contaminated materials

TASK C3 - SCHEDULE CONTROL

- a. The Consultant shall have the responsibility of the review of all construction CPM schedules submitted by the Construction Contractor, within fourteen (14) calendar days of the Consultant's receipt of the Construction Contractor's submission.
 - Review and analysis shall be conducted by skilled, experienced personnel using the latest version of Primavera software. The Consultant's review shall verify that the schedule submitted is in conformance with the associated construction contract requirements and further, that construction work sequences are consistent with the contract milestones/completion dates and NJ TRANSIT Force Account Work schedules as necessary to coordinate with contractor work activities. The Consultant shall reject all Construction Contractor submissions that do not meet these requirements and make note of said submission in the submission log. After the Consultant's initial review, the Consultant shall submit the Construction Contractor CPM schedule/monthly updates to NJ TRANSIT's Project Manager with the Consultant's recommended action. The Consultant shall log all submissions sent out for review and the submission receipt after review. The Consultant shall provide to the Construction Contractor comments or approval within twenty-five (25) calendar days after the Consultant's receipt of the submission.
- b. The Construction Contractor CPM schedules shall be updated on a monthly basis, or more frequently as required, to reflect changes and progress in construction. The Consultant shall either review and approve or recommend rejection of such schedules and recommend actions that need to be undertaken for the construction contract appearing to be behind schedule.
- c. The Consultant's Construction Manager will plan the schedule meetings so that there will always be a scheduled 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 Construction 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 Consultant as part of its payment application.

Deliverables:

- Construction Contractor's CPM reviews
- Project construction schedule and updates
- Impact analyses and extension of time reviews, as necessary

TASK C4 - STAGING AND SITE SPECIFIC WORK PLANS (SSWP)

- a. Within thirty (30) calendar days from NJ TRANSIT issuing the Notice to Proceed for the construction contract, the Construction Contractor will prepare construction staging plans for the work to ensure flow control and sequencing of various work elements. The staging plan will be submitted to the Consultant and NJ TRANSIT for review and approval.
- b. The Consultant shall have ten (10) calendar days from receipt of construction staging plans to review all construction, installation, or other SSWPs developed and prepared by the Construction Contractor. Each SSWP shall indicate the methods proposed for each respective construction work elements. The Consultant will verify that the submitted SSWPs are consistent with NJ TRANSIT requirements for construction work plans and that they correspond to the staging plans included in the construction bid documents. The Consultant shall reject all Construction Contractor submissions that do not meet these requirements and make note of said submission in the submission log. After the initial Consultant review, the Consultant will submit the work plan to NJ TRANSIT's Project Manager for review and approval. The Consultant will ensure that the Construction Contractor receives comments or approval within thirty (30) calendar days after submission and notify NJ TRANSIT's Project Manager if this period has elapsed. NJ TRANSIT shall approve such plans prior to the project work commencing in the field.

Deliverables:

- Review construction staging plans
- SSWP reviews and comments

TASK C5 - SHOP DRAWINGS AND MATERIAL REVIEW/HANDLING

- a. The Consultant shall follow detailed procedures established during the preconstruction phase for expediting the processing and review of shop drawings and materials. The Consultant shall maintain a shop drawing and material submittal log and shall coordinate the processing and review of all such data with the design consultant. The Consultant should assume that the design consultant will complete its review of all submissions within twenty-one (21) calendar days of receipt of the same from the Consultant.
- b. Upon receipt of the Construction Contractor's construction shop drawing and material submissions, the Consultant shall have three (3) calendar days to review all submissions for Contract conformance prior to forwarding to the design consultant and/or the respective utility. If a Construction Contractor's submission is not in conformance with the Contract, the Consultant shall reject the submission and log its rejection and resubmission. The Consultant shall log each submission sent to the design consultant and inform NJ TRANSIT's Project Manager when the design consultant's review has taken in excess of twenty-one (21) calendar days. The Consultant shall forward to the Construction Contractor its submission with the

- design consultant's approval or comments of rejection, within five (5) calendar days after receipt from the design consultant.
- c. The Consultant shall take such actions as may be required to prevent installation of any material or equipment not approved or certified. The Consultant shall promptly notify the Construction Contractor of any and all work or items that fail to conform to the Contract plans or specifications. As directed by NJ TRANSIT, the Consultant will provide facility / plant inspections of Construction Contractor supplied materials to be used on the project.
- d. Requests for Information (RFI):

A Request for Information (RFI) may be initiated by NJ TRANSIT, Construction Contractor, Consultant, supplier, manufacturer and any party relevant to the project. A supplier, manufacturer or any party relevant to the project submits the RFI through the Construction Contractor. The Construction Contractor will submit the RFI to the Consultant. The Consultant will forward the RFI to the design consultant and NJ TRANSIT. A Construction Contractor-initiated RFI may question inconsistencies or request clarification of the Contract documents. The Consultant will generate the RFI form, assign it a number and a response date and forward it to the responding party. RFI's will be logged and tracked by the Consultant and returned within fourteen (14) calendar days.

Deliverables:

- Construction Contractor shop drawing submittal log
- RFI review/response log

TASK C6 – PROJECT CHANGE MANAGEMENT (CHANGE ORDERS)

- a. The Consultant shall follow the detailed Change Order procedures established in the pre-construction phase for expediting the review and negotiations of all Contract Change Orders. The Consultant shall maintain a Change Order log and coordinate the review and negotiations of all Change Order's with NJ TRANSIT's Project Manager and Contracting Officer. The Consultant shall be responsible for reviewing that any Change Order is consistent with the procedures established in the preconstruction phase and consistent with any applicable Federal or State law and NJ TRANSIT policies and procedures.
- b. When a Change Order issue has been brought to the attention of the Consultant and at the sole direction of NJ TRANSIT's Project Manager, the Consultant shall issue a Notice of Proposed Change (NPC) to the Construction Contractor and shall prepare an independent cost estimate. Upon receipt of the Construction Contractor's NPC cost proposal, the Consultant will have five (5) calendar days to review the submission for entitlement, perform a cost/price analysis, and submit to NJ TRANSIT's Project Manager its recommended action for such contract modification.

c. The Consultant shall coordinate and participate in the negotiation meetings of all Change Orders. The Consultant shall not negotiate any Change Orders 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 Change Order project work.

Deliverables:

- NPC's and Change Order status log
- Materials developed in paragraph a. above (i.e. estimates, quotes, take-offs, schedule back-up, etc.)

TASK C7 - QUALITY ASSURANCE AND QUALITY CONTROL

The Consultant 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 Consultant shall also designate a member of its 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
- Nonconformance reports
- Material certificates
- Test results

TASK C8 - PROJECT SAFETY

- a. Prior to commencement of construction on railroad property, all personnel working on the site shall attend the NJ TRANSIT safety orientation classes, which will be provided by NJ TRANSIT at no cost to the Consultant. The training is provided online. Each trained employee shall be issued a safety sticker to be placed on the employee's hardhat and photo identification badge. The employee must display the sticker and badge when working on NJ TRANSIT's railroad property. Any additional costs for training are the responsibility of the Consultant.
- b. The Consultant shall designate a safety officer who shall have full authority to act on behalf of the Consultant at all times to ensure that all construction is being performed in accordance with standard industry practices and with State and Federal laws regulating job safety. The safety officer shall review and approve the Construction Contractor's SSWPs. Any questionable work practices by the Construction Contractor, shall be noted by the Consultant and promptly brought to the attention of the Construction Contractor prior to the commencement of such work in the field.
- c. Given the nature of this project's construction site (active rail yard serving multiple rail carriers), site safety is critical to protect construction personnel, NJ TRANSIT personnel and NJ TRANSIT property. To maximize project safety, the Consultant

shall review the contractor safety programs and make recommendations to NJ TRANSIT for changes, if any. The Consultant shall also conduct periodic safety meetings with NJ TRANSIT and the Construction 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 Construction Contractor be performing any aspect of the project work in an unsafe manner that could jeopardize human safety, the Consultant shall issue the Construction Contractor a stop work order 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. The elimination of an unsafe practice shall be determined by the Consultant and NJ TRANSIT. In no event, shall NJ TRANSIT be responsible for costs associated with the Consultant's measures to eliminate the unsafe practice and/or remedy the stop work order. The Construction Contractor will be advised by the Consultant as part of the notification of the unsafe work practice or stop work order that any time lost incurred by the contractor to correct the unsafe work practice and/or the stop work order will not be allowed as the basis for a time extension claim.
- e. The Consultant, along with NJ TRANSIT, shall develop procedures with the Construction Contractor so that visitors to the site are first directed to the construction management office.

Deliverables:

- Stop work order if applicable
- Accident reports
- Safety checklist
- Minutes of periodic safety meetings
- Visitors log
- Nonconformance report

TASK C9 - PROJECT CLOSEOUT

- a. The Consultant shall determine when the construction is substantially complete and obtain the concurrence of NJ TRANSIT's Project Manager prior to his/her preparation of a punch list of work remaining to be finished in support of the construction contract. In coordination with NJ TRANSIT, the Consultant 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 punch list attached, and the certificate approved by the Consultant, the design consultant and the Construction Contractor. The certificate will then be given to NJ TRANSIT for approval. The Consultant will also submit any necessary documentation for the assessment of liquidated damages.
- b. The Consultant will coordinate the correction and completion of remaining work identified on the punch list. The Consultant will generate a monthly report on the status of punch list items.

- c. The Consultant shall determine final completion and provide written notice to NJ TRANSIT and the design consultant that punch list items have been resolved and the project work is ready for final inspection. After satisfactory final inspection and NJ TRANSIT concurrence, the Construction Contractor will be required to secure and transmit to the Contracting Officer the required guarantees, affidavits, releases, bonds, operating and maintenance manuals, waivers, etc. The Consultant shall certify in writing that all work has been completed in accordance with the Contract plans and specifications and, that final estimate of payment to the contractor is correct.
- d. The Consultant should anticipate approximately a three (3) month contract closeout period.

Deliverables:

- Certificate of substantial completion
- Punch list and subsequent updates
- Monthly punch list status report
- Construction Contractor's certificate of completion
- Affidavit of payment
- Record drawings
- Provide final as-built drawings

V. PROPOSAL REQUIREMENTS

A. General

A Secure File Transfer Site (SFTS) tool via Microsoft OneDrive is being utilized to provide a secure method for facilitating file transfers from outside parties. Proposers shall upload the Technical Proposals and Consultant Certifications, **separately**, to the provided Microsoft OneDrive link no later than 3:00 p.m., July 9, 2020. Proposers are requested to begin <u>each</u> file name with abbreviated RFP Number, name of firm and include content description or Attachment Number, if applicable. (For example, RFP No. 19-048 – Firm ABC – Technical Proposal). While detailed file names are requested, please also avoid lengthy file names and abbreviate when possible.

NJ TRANSIT requires that all prospective Proposers advise NJ TRANSIT of their intent to either submit or not submit a proposal by emailing the Intent to Propose Form, included as **Attachment C**, and submitting the acknowledgement on or before July 1, 2020, at 5:00 p.m. and must be emailed to msotolongo@njtransit.com. This form is required in order to submit a Proposal but does not bind a prospective proposer in any way. Failure to timely submit the notice of intent may result in NJ TRANSIT rejecting any proposal later submitted.

Once the Intent to Propose Form has been received from the Proposer, the Proposer will receive an email with a link to Microsoft OneDrive. Upon clicking the link, the Proposer will be asked to confirm and enter the email address the link was sent to or perform a code verification request, which will be sent to the Proposer's email address. Proposers are required to provide and use the email address(es) of the person(s) who will need access to the site. Once instructions have been received, it is recommended that Proposers review the instructions and upload a test file to ensure there are no issues or questions with uploading.

This RFP is the property of NJ TRANSIT. It is to be used solely by those organizations and individuals to whom copies have been sent and solely for the purpose of preparing Proposals for the services described in the RFP. No distribution of this RFP may be made without prior written approval of NJ TRANSIT.

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

A1. Open Public Records Act

As part of its Proposal, a Proposer may designate any data or material it asserts are exempt from public disclosure under the Open Public Records Act (OPRA), N.J.S.A. 47:1A-1 et seq., N.J.A.C. 16:72-1.11, and/or the common law, provided it explains the basis for any such assertions. When the Proposal contains a negotiation component, the Proposal will not be subject to public disclosure until a notice of intent to award is announced. The Proposer must provide a detailed statement clearly identifying those sections of the Proposal that it claims are exempt from production, and the legal and factual basis that support said exemption(s) as a matter of law. Assertions that the entire Proposal, and/or prices contained therein, are exempt from public disclosure under OPRA, the common law, or the U.S. Copyright Act are overbroad and will not be honored by NJ TRANSIT.

In the event that a public request is made for materials that the Proposer has identified as confidential, NJ TRANSIT shall have the final authority to determine whether the materials are exempt from public disclosure under OPRA and shall take action as required by applicable law. Furthermore, in the event of any challenge to Proposer's assertion of confidentiality with which NJ TRANSIT does not concur, the Proposer shall be solely responsible for defending its designation, but in doing so, all costs and expenses associated therewith shall be the responsibility of the Proposer. In which case, the Proposer shall defend, indemnify, protect and save harmless NJ TRANSIT from and against all suits, actions, claims, demands or damages of whatsoever kind arising as a result of the Proposer's designation, including court costs, counsel fees, settlements, judgments or otherwise.

A2. Proposed Additional Terms

A Proposer may submit additional terms as part of its Proposal and Proposals including proposed terms and conditions may be accepted, but proposed terms or conditions that conflict with those contained in the RFP or that diminish NJ TRANSIT'S rights under any Contract resulting from the RFP, may render a Proposal non-responsive. It is incumbent upon the Proposer to identify and remove its conflicting proposed terms and conditions prior to Proposal submission. Where additional terms are submitted, they may be accepted, rejected, or negotiated, in whole or in part, at NJ TRANSIT'S sole discretion where the terms do not conflict with material terms of the RFP or do not diminish NJ TRANSIT'S rights under the Contract resulting from the RFP.

In the event that a Proposer intends to propose terms and conditions that conflict with the RFP, those proposed terms and conditions shall only be considered if submitted and agreed to pursuant to the "Request for Information and Addenda" set forth in this RFP.

After award of the Contract, if a conflict arises between a Proposer's additional terms included in the Proposal and a term or condition of the RFP, the term or condition of the RFP will prevail.

B. Technical Proposal Format

Technical Proposals shall include the necessary information to establish the Proposer's expertise, qualifications, and relevant experience 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. Proposers 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 Technical Proposal and include any introductory or explanatory remarks. The firm should 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 organizational structure of the project team and the number of personnel required for the project. The firm 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.

Where describing relevant experience, note the Proposer's role in the context of the overall project, and the role of any key individuals proposed for this Project, in the context of the Proposer's overall responsibility. The Technical Proposal shall contain the Proposer's certification that a full-time office will be maintained during the Contract period, and that the Consultant can be reached through this office during regular working hours.

The Technical Proposal shall also identify other offices, their proximity in miles to the sites where work will be performed and the type and amount of Work to be performed at these locations.

Section 3 - Qualifications of Individuals

This section shall contain resumes of the Consultant's Construction Manager Resident Engineer(s), inspectors, scheduler/estimator and support personnel and other key managerial and technical personnel assigned to the project. Resumes shall cite formal education, professional licenses and certifications, entire work history, and training in industry skills. Specific design and constructions skills and any other relevant experiences should be highlighted, such as experience in the construction of micropile foundations to rock, installation of steel monopoles for electrical distribution with necessary hardware, duct banks, sheeting and shoring. The number of man-hours each will devote to individual project tasksand any other relevant experience should be highlighted.

In describing related experience, the Proposer shall demonstrate the ability to manage construction of a project of similar scope and magnitude to the Project. For all technical field personnel, a minimum of ten (10) years related work experience is required as well as experience working in or around an active rail yard environment.

The Consultant and/or the Resident Engineer(s) shall have a minimum of ten (10) years' experience in the construction of and electrical distribution pole line, complete mini pile foundation systems to rock, duct banks, sheeting and shoring, preferably in a rail yard environment.

This section must contain a certification that the listed key personnel are presently employed by the firm, 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 within the last five years, and the contact person should have had direct involvement with the firm and the project.

A minimum of three (3) client references must be provided for each firm on the consulting team for completed assignments similar in scope to the NJ TRANSIT project to be undertaken.

A minimum of two (2) client references must be provided for each key project staff member.

In addition, each firm having performed services for NJ TRANSIT, as a prime Consultant or Subconsultant, 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.

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 and Key project staff member's role/responsibility.

Section 5 -Technical Section

This section shall contain the Consultant's strategy for accomplishing the Project. The Consultant's strategy shall address all tasks described in this RFP and shall include a description of how the Consultant's time schedule for project completion will at least meet or better the time frames provided. The work experience must show experience in the management and construction of electrical distribution pole lines, micropile foundation systems to rock, duct banks, sheeting and shoring of similar size, scope and cost, preferably in a rail yard environment.

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

Suggested improvements on the work plan as described in this RFP 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 services. Include a clear description of the following:

- The management structure and assigned personnel),
- Detail of how staff assignments will vary over the Project time frame

 Explanation of the relationship of the Consultant Construction Manager to senior management of the Consultant 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:

- Team organization chart showing the reporting and contractual relationships of all firms included in the proposal.
- Matrix of man-hours by firm showing, by task, the total man-hours for the entire team and separately for each firm included in the team. The percentage of manhours allocated to DBE firms should also be shown.
- Matrix of man-hours by individuals showing, for each project staff member, the number of man-hours proposed for each task.

Section 7- Quality Assurance Plan

This section shall describe the Proposer'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 this Contract, the firm shall submit for approval to NJ TRANSIT, its detailed QA/QC Program for all of the services to be provided under this RFP.

Section 8 - Conflict of Interest

An organizational conflict of interest occurs where a Proposer is unable, or potentially unable, to render impartial assistance or advice due to activities, relationships, contracts, or circumstances which may impair the Proposer's objectivity; or a Proposer has an unfair competitive advantage. If the Proposer or any employee, agent or Subcontractor of the Proposer may have or may give the appearance of a possible conflict of interest, the Proposer shall include in its Proposal a statement indicating the nature of the conflict.

This section shall also provide a description of how the Proposer avoids or addresses potential conflicts of interest. If the Proposer does not have such conflicts, then that shall be stated in this section with sufficient detail in support of such statement. NJ TRANSIT will determine whether the Proposer or any employee, agent or subcontractor has a conflict or potential conflict of interest on a case-by-case basis. NJ TRANSIT reserves the right to disqualify the Proposer if, in its sole discretion, any interest disclosed from any source could create, or give the appearance of, a conflict of interest. NJ TRANSIT's determination regarding any question(s) of conflict of interest shall be final.

The Proposer or any employee, agent or Subconsultant of the Proposer shall also identify any projects, past or present, it has performed for NJ TRANSIT relating to the Mason and Building 9 Substations Project, including the dates of the project, the contract number, the project supervisor and a brief description of the scope of work.

To the extent that this RFP involves a potential for follow-up work, for example, construction or construction management of a project, the Proposer, its subsidiaries and affiliates, joint ventures involving the Proposer, and any employee, agent or Subcontractor may be precluded from participating in any follow-up work so as to avoid a conflict of interest or potential bias such as an unfair competitive advantage. (See Federal Acquisition Regulation Subpart 9.507 (FAR 9.507)

Consultant Certifications

All Proposers shall include one (1) original copy of the certifications and affidavits required under this solicitation.

Proposers **must** submit the following with the Technical Proposal:

- Exhibit 2 Acknowledgment of Receipt of Addenda
- **Exhibit 5** Statement of Joint Venture (if applicable)
- Exhibit 6 Ownership Disclosure Form
- Exhibit 8 Disclosure of Investment Activities in Iran
- Exhibit 9 Contractor's Certification of Eligibility
- Exhibit 10 Non-Collusion Affidavit
- Exhibit 11 Affidavit of Compliance (Code of Vendor Ethics)
- **Exhibit 12** Certification of Contracts, Grants & Loans Cooperative Agreements (Byrd Anti-Lobbying Certification).

Proposers **should** submit the following with the Technical Proposal but **must** submit within the indicated time frame:

- Exhibit 7 Source Disclosure Certificate Form (within five (5) Business Days of request)
- Business Registration Certificate (must be submitted before award of contract)

Proposers from whom a Cost Proposal is requested, **should** also submit the following with the Cost Proposal but **must** submit within the indicated time frame:

 Exhibit 3 - NJ TRANSIT Corporation's DBE Requirements for Procurement and Professional Services (within five (5) Calendar Days after the Cost Proposal due date).

C. Oral Presentation Format

Oral Presentations shall be requested from at least three (3) most highly qualified Proposers, however, NJ TRANSIT may select fewer Proposers if fewer Proposers responded to the solicitation or meet the qualifications for the project.

If requested, oral presentations shall be made before the Technical Evaluation Committee (TEC) and shall consist of an introduction of the Proposer'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 Proposer intends to utilize for this Project. The Proposer should also explain similar projects.

The oral presentation period will be scheduled for a maximum of one (1) hour for each Proposer. Each Proposer will be granted up to thirty (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 regard to the written Proposal, oral presentation and other project issues as deemed relevant by the TEC.

Members of the Proposer's consultant team who will play the key and significant roles in managing the Project shall attend and participate in the oral presentation. 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.

The TEC will:

- Review technical proposals
- Complete technical evaluations and score proposals
- Participate in Oral Presentations

Proposal Evaluation

Each individual on the TEC will review and evaluate the 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 RFP.

The Technical Proposal evaluations will be used by NJ TRANSIT to determine the competitive range. Reference checks will be performed for each Proposer deemed within the competitive range. Although the reference checks will not be scored per se, they will be used to validate information contained in the Technical Proposals.

Oral Presentations

Oral Presentations will provide an opportunity for the Proposers to clarify or elaborate on their Technical Proposals. The TEC will conduct the Oral Presentations. 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 Proposals and revise the rating and ranking of such Proposals at any time prior to selection.

Cost Proposals

After evaluating the Technical Proposals, NJ TRANSIT will request a Cost Proposal from the most highly qualified Proposer.. Cost Proposals shall reflect and include the necessary level of effort required to advance the project through completion. 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) will be used as the guideline in determining the reasonableness of the Proposer's costs.

The Proposer must provide a detailed Cost Proposal within seven (7) Calendar Days of the receipt of the written or verbal notification from NJ TRANSIT. If a Proposer cannot provide its Cost Proposal within seven (7) Calendar Days of request, NJ TRANSIT reserves the right to begin negotiations with the next most highly qualified 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 and by salary rate. Direct expenses shall be itemized separately by category for each Phase, Task and Subtask. Direct expenses to the Proposer are in addition to the compensation for payroll additives, salaries and profit, and include actual expenditures made by the Proposer's technical employees and professional consultants for such expenses as:

- Travel, sustenance and lodging NJ TRANSIT shall reimburse the Proposer in accordance with the NJ TRANSIT Travel Policy. Please refer to Exhibit 14: Travel, Subsistence and Lodging Reimbursement Guidelines.
- 2. Reproduction expenses.
- 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 Proposer's Cost Proposal and include overhead, profit, etc. Overhead and profit assumptions shall be shown as per **Attachment B**. 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). Escalation of direct labor rates is subject to a 3% yearly maximum to be applied on the contract anniversary date. 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.

The Proposer must submit the following Cost Proposal forms: A summary of the Cost Proposal for the Consultant and each Subconsultant included in the Proposal is required, showing fees for Tasks C1 through C9, as set forth in Attachment B-1 Cost and Fee Recap - - Team Summary (By Consultant and Each Subconsultant). A team summary, arranged by task, for the entire Proposal is also required as shown in Attachment B-2 Cost and Fee Tasks Recap -Team Summary. The same summary, arranged by task, is also required from the Consultant, as shown in Attachment B-3 Cost and Fee Tasks Recap – By Firm (For Each Consultant and Subconsultant) Samples of the required Cost Proposal forms are attached as follows:

- Attachment B-1: Cost and Fee Recap Team Summary (By Consultant and Each Subconsultant)
- Attachment B-2: Cost and Fee Tasks Recap Team Summary
- Attachment B-3: Cost and Fee Tasks Recap By Firm
- Attachment B-4: Personnel Team Detail
- Attachment B-5: Staffing Schedule by 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 task. Expenditures greater than the identified amount and incurred by the Proposer 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 Proposer 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 Subconsultant on the Proposer's 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 (3) years) State, Federal or independent certified accounting firm audit. Each firm is also required to submit its 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 Proposer 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.

Proposal Review and Negotiation

NJ TRANSIT reserves the right to:

- Reject all Proposals submitted if in the best interest of NJ TRANSIT.
- Accept any Proposal as submitted without negotiations.
- Reject a Proposal that fails to a meet mandatory requirement of the RFP.

NJ TRANSIT will enter into negotiations with the highest technically qualified Proposer to reach an agreement on scope of services and fees. During the course of negotiations, NJ TRANSIT may require revisions to, correction of, or other changes to any Proposal submitted as a condition to it being given any further consideration. If in the opinion of NJ TRANSIT, a satisfactory Proposal cannot be negotiated with a selected Proposer, NJ TRANSIT will formally end negotiations and initiate negotiations with the next most technically qualified Proposer.

This negotiation procedure will be followed until a satisfactory Proposal is negotiated. NJ TRANSIT considers all elements of the Proposer's Proposal subject to negotiation.

Approval and Award

Once negotiations have been completed, a recommendation to its Board of Directors for award of the Contract to the Proposer whose Proposal is determined to the most advantageous to NJ TRANSIT, price and other factors considered. Upon approval of the recommendation for award of a contract, NJ TRANSIT will enter into a contract found in Exhibit 1.

Within ten (10) Calendar 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. However, if Executive Orders 103, 104 and 107, or any subsequent directives on COVID 19, are in effect at time of contract award, NJ TRANSIT will accept an email of the signed Contract, along with the other required documents.

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

Definitions

- 1. "File or Submit" means date of receipt by NJ TRANSIT's Contracting Officer.
- 2. "Federal Law or Regulation" means any valid requirement imposed by Federal statute or regulation governing contracts awarded pursuant to the grant agreement. This includes the requirements as stated in FTA Circular 4220.1F
- 3. "Contracting Officer" means the Chief of Procurement and Support Services or his designee as indicated in the solicitation document.
- 4. "Interested Party" means an actual or prospective bidder, an offeror or party whose direct economic interest would be affected by the award or failure to award the Contract at issue.

Parties **Parties**

Only an Interested Party may file a protest.

Types of Protests/Time Limits

- 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 Bid opening date.
- Protests based upon rejection of a Bid shall be filed no later than five (5) business days after the Protestor receives notification of rejection from NJ TRANSIT.
- 3. Protests based upon the award of a Contract shall be filed no later than five

- (5) business days after the receipt of NJ TRANSIT's Notice of Intent to Award.
- 4. All protests must be filed in writing. Oral protests will not be accepted.

Where to File

Protests must be filed directly with NJ TRANSIT'S Contracting Officer, or designee, at the address of One Penn Plaza East, Sixth Floor, Newark, New Jersey 07105, and identifying the IFB or RFP number.

The Protest

The protest must contain the following information:

- A. The name, address, and telephone number of the protestor.
- B. Identity of the IFB or RFP (by number and description).
- C. A statement of the specific grounds for protest and any supporting documentation. Additional materials in support of the protest will only be considered if filed within the time limits set in Section C.
- An indication of the ruling or relief desired from NJ TRANSIT.

Confidentiality of 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 protestor 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.

Protest Procedures: Challenges to a Specification

- a. An Interested Party finding cause to challenge a specification contained within the IFB/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 Bidders/Proposers and must be submitted at least fourteen (14) Calendar Days prior to the Bid or 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 bid or proposal submission

- c. A protest of a specification of any advertised IFB or RFP shall contain the following:
 - i. The IFB/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 bid or 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.

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

<u>Protest Procedures: Challenges to Rejection of a Proposal/Bid or Contract</u> Award

- a. An Interested Party finding cause to challenge the rejection of a proposal, bid 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/IFB 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 inperson hearing and the reason(s) for the request. The opportunity for an inperson 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.
 - 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 inperson presentation, when granted.
 - ii. NJ TRANSIT's decision will address only the issues raised originally by the protestor.

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. 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.
- NJ TRANSIT'S Contracting Officer, or designee, may also consider relevant information requested and received from other parties deemed appropriate by NJ TRANSIT.

Procurement Process Status

Upon timely receipt of a protest, NJ TRANSIT will delay the opening of proposals or bids until after resolution of the protest for protests filed prior to the proposal or bid opening date, or withhold award until after resolution of the protest for protests filed after proposal or bid opening. However, NJ TRANSIT may open proposals, bids 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.

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 alleges a violation of a Federal law or regulation. Any protest to the FTA must be filed in accordance with FTA Circular 4220.1F.

ATTACHMENTS

ATTACHMENT A Technical Proposal Evaluation Criteria

ATTACHMENT A

PROPOSAL EVALUATION CRITERIA

(LISTED IN DESCENDING ORDER OF IMPORTANCE)

Qualifications of Firm(s): Has the Proposer successfully managed similar construction projects before for other organizations or NJ TRANSIT? Has the Proposer's team successfully completed a similar construction management task related to signal and yard power improvements in an active rail environment, of similar size, scope and cost? Does the firm have adequate resources and demonstrated technical expertise to sustain the contract and be responsive to NJTRANSIT?

- Qualifications of the Proposed Project Manager: Does the proposed Construction Manager have the appropriate background, skills, experience (supported by references) to successfully advance this Construction Project? Has the Project Manager demonstrated a sufficient number of years of relevant experience with similar projects? Has the Consultant adequately dedicated the Construction Manager's time to successfully advance the project?
- 3. Qualifications of Key Individuals: Do the proposed key staff members have the appropriate background, skills, experience to successfully advance the project? Does the Construction Manager have at least ten (10) years of relevant experience working on similar Projects? What is the time availability of these individuals? Are key staff members readily available without significant travel?
- **4.** <u>Technical Proposal</u>: 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 through, clearly organized and well written?
- **5.** <u>Person-power/Hours Allocation</u>: 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?
- **6. Budget/Project Management**: Does the management / control structure convincingly show that the team can deliver projects on time, in budget and with high quality? Has the firm established a reasonable internal structure for processing a task assignment, including billing and progress reporting?

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 the reference hire the firm again?
- 4. Would they recommend the firm to perform this type of analysis?
- 5. Was the reference satisfied with the quality of the deliverables and work effort?
- 6. Did the firm maintain the availability of the individuals offered in the proposal?
- 7. Did the firm satisfactorily comply with all contract provisions including: quality assurance, bonding, insurance and indemnification provisions?
- 8. Were there any significant problems with the work and how were the problems resolved?
- 9. Was the firm responsive and easy to work with?
- 10. Did the firm meet schedules?
- 11. Did the firm adhere to budgets?
- 12. Did the firm anticipate needs and keep the reference informed in a timely way about budget, schedule and problems?
- 13. Was the project manager effective in managing the work, representing the team and technically proficient?
- 14. Did the firm perform well in meetings and presentations?
- 15. If the firm was a prime contractor, did it manage its subcontractors well?

ATTACHMENT B Cost Proposal Forms

NEW JERSEY TRANSIT CORPORATION REQUEST FOR PROPOSAL NO. 19-048

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					W.		N .

NEW JERSEY TRANSIT CORPORATION REQUEST FOR PROPOSAL NO. 19-048

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				,		1		
Task 5								
Task 6								
Task 7								
TEAM TOTALS						2		

NEW JERSEY TRANSIT CORPORATION REQUEST FOR PROPOSAL NO. 19-048 ATTACHMENT B-3

COST AND FEE TASKS RECAP BY PROPOSER.

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								
FIRM TOTAL								

NEW JERSEY TRANSIT CORPORATION REQUEST FOR PROPOSAL NO. 19-048 ATTACHMENT B-4 PERSONNEL TEAM DETAIL

TASK:	CONSULTANT/SUBCONSULTANT:	

	STAFF							
STAFF PERSON/	PROJECT TITLE	ESTIMATED	HOURLY	TOTAL				
CLASSIFICATION	OR DISCIPLINE	HOURS	RATE	SALARY				
	2							
	>							
TOTAL ESTIM	IATED HOURS							
TOTAL SALARY (BARE C	OST)							
OVERHEAD @ XXX.XX%	OF BARE COST							
SUBTOTAL SALARY	+ OVERHEAD							
FIXED FEE @ XX % O	F BARE COST + OVERHEA	AD						
DIRECT EXPENSES ITEM	IIZED		_					
			\$					
			\$					
			\$					
TOTAL DIRECT EXPENSE	ES		\$					
TOTAL THIS TASK								

NEW JERSEY TRANSIT CORPORATION REQUEST FOR PROPOSAL NO. 19-048

ATTACHMENT B-5 STAFFING SCHEDULE BY PROPOSER.

CONSULTANT/SUBCONSULTANT	
	_

STAFF PERSON or CLASSIFICATION	PROJECT TITLE OR DISCIPLINE	HOURLY RATE	TASK 1 HRS	TASK 2 HRS	TASK 3 HRS	TASK 4 HRS	TASK 5 HRS	TASK 6 HRS	TOTAL HOURS	TOTAL DIRECT LABOR COST	INDIRECT LABOR COST (OVERHEAD) @XXX.XX%	TOTAL LABOR COST
											(6/2/2/2/2/2/0	
	<u>.</u>											
TOTAL												

ATTACHMENT C Intent to Propose Form

Intent to Propose Form

Please respond via email using the form below to indicate your organization's intent to propose for

NJ TRANSIT Request for Proposal 19-048 Construction Management Services for the Hoboken Signal and Yard Power Repairs Project

All proposers must complete this page and email to:

Ms. Maggie Sotolongo NJ TRANSIT Procurement Officer Email:

Name of Proposer	:
We confirm the recaction [check only	ceipt of your request for proposal and will take the following one box]:
We intend to su	ıbmit a proposal
We decline to s	ubmit a proposal (Please provide a reason)
Name of Firm:	
Contact Person	
Email Address:	973-491-7588
Alternate Person: _	
Email Address:	
Telephone #:	

Intent to Propose Forms must be received by the date specified in the RFP.

EXHIBITS

EXHIBIT 1

AGREEMENT (CONTRACT) NO. ______ BETWEEN NEW JERSEY TRANSIT CORPORATION AND

FOR PROFESSIONAL SERVICES

Th	is Agreement (Contract) made as of		20,	between
the New Jersey Tr	ansit Corporation (hereinafter "NJ T	RANSIT"), a public instrumentality	of the	State of
New Jersey and		having its principal plac	e of bu	ısiness at
		(hereinafter the "Consulta	ant").	
	WITNESS	SETH:		
WH	HEREAS, the Board of Directors of N	NJ TRANSIT, at its meeting of		
authorized the NJ 7	FRANSIT President and CEO (Execu	utive Director) or his designee, to e	nter int	o this
Agreement (Contra	ct) with the Consultant for			; and
WH	HEREAS, the said Consultant, for	and in consideration of the paym	ents he	ereinafter
specified and agre	ed to be made by NJ TRANSIT, I	nereby covenants and agrees to	comme	ence and
complete the work	as follows:			
NC	W, THEREFORE, in consideration	n of the mutual covenants and co	onditior	ns herein
contained, the parti	es hereto covenant and agree with e	each other as follows:		
1.	CONSULTANT SERVICES:	The Consultant, at the direction of	of NJ T	RANSIT,
shall provide to N	J TRANSIT services in conforman	ce with the description of service	s, deli	verables,
standards of perfor	mance, and acceptance criteria und	ler this Agreement set forth in Exh	ibit 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. 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 set forth in **Exhibit A** (Scope of

Services). Escalation of direct labor rates is subject to a 3% yearly maximum to be applied on the contract anniversary date.

Maximum provisional indirect cost rates (e.g. fringes, overhead, General & Administrative (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:

Consultant and each Subconsultant	Contract Year XX	Contract Year XX	Contract Year XX

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 as set forth in (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 (3) 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 by the Consultant 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 as set forth 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. <u>LIMITATION OF FUNDS</u>:

A.) The Consultant estimates that performance of this Agreement will not cost NJ TRANSIT more than the estimated amount as set forth in **Exhibit B** (Cost Information). The Consultant agrees to make every effort to perform the work as set forth in **Exhibit A** (Scope of Services) and all obligations under this Agreement within the estimated amount as set forth 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 set forth 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. The Purchase Order is for invoicing purposes only and its attached Terms and Conditions are not part of this 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 set forth in **Exhibit A** (Scope of Services), beyond the total allotted amount as set forth 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:
- 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 as set forth 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 as set forth 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 as set forth 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. <u>MODIFICATION OF AGREEMENT</u>:

A.) The Scope of Services set forth in **Exhibit A** 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 Scope of Services 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 or she 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 38, 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 as set forth 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. <u>STATUS REPORTS</u>: 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 (1) 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.
- that the Consultant must provide and deliver to NJ TRANSIT, as set forth 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. In the event of failure by the Consultant to remit the overpayment amount within the time period set forth above, NJ TRANSIT reserves its right to pursue recovery of said amount pursuant to the terms of this agreement and any means available at law.

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, protect 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 directors, officers, employees, servants and agents ("Indemnified Parties") from and against all suits, actions, claims demands or damages of whatsoever kind or nature arising out of or related to the performance of this Agreement including, but not limited to, expenditures for and costs of investigations, hiring of expert 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 will, 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 will 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.

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 \$10,000,000 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 \$10,000,000 each occurrence, \$10,000,000 personal and advertising injury, \$10,000,000 general aggregate and \$10,000,000 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 \$5,000,000 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 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 \$5,000,000 per occurrence.

In the event the Consultant, its assignees or its Subconsultants, if any, is considered a railroad, Employers Liability coverage shall be extended to cover the Federal Employers Liability Act with a limit of not less than \$10,000,000 each accident, illness or occurrence.

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 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 \$5,000,000 per occurrence. This policy shall name NJ TRANSIT and the indemnified parties as additional insured at no cost to NJ TRANSIT.

The Consultant, its assignees or its Subconsultants, if any, (or whoever is performing environmental removal or remediation work) must procure and maintain through the term of the Agreement Environmental Impairment Liability Insurance, including lead abatement if required, and removal operations in an amount of \$5,000,000 per occurrence and \$5,000,000 aggregate.

In the event the Consultant, its assignees or its Subconsultants, if any, will be transporting and/or disposing of any hazardous material or waste off the jobsite under this Agreement shall be required to carry Hazardous Waste Haulers Insurance (MCS90) in an amount of \$5,000,000 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 must 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.

If the Consultant, its assignees or any Subconsultant is required to perform work on

property or facilities owned by a third party, the Consultant, its assignees or any Subconsultant will be

required to satisfy the insurance requirements set forth by the third-party property owner.

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 US Department of

Transportation (USDOT), the Federal Transit Administration (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

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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 Request for Proposal and for five (5) 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) and N.J.A.C. 17:44-2.2, the Consultant shall retain 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 the State Comptroller upon request.

The periods of access and examination described above, for Records which relate to: (1) appeals under Article 38, 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 the State Comptroller, USDOT, FTA or any of their authorized representatives, shall continue until such appeals, litigation, claims, or exceptions have been disposed of.

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.

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.

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 will 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 as set forth 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: Pursuant to N.J.S.A. 52:32-44, NJ TRANSIT ("Contracting Agency") is prohibited from entering into a contract with an entity unless the Proposer/Consultant and each Subcontractor/Subconsultant that is required by law to be named in a Proposal has a valid Business Registration Certificate on file with the Division of Revenue and Enterprise Services within the Department of the Treasury. Prior to Contract award or authorization, the Consultant shall provide the Contracting Agency with its proof of Business Registration and that of any named Subcontractor(s)/Subconsultant(s).

Subcontractors/Subconsultants named in a Proposal shall provide proof of Business Registration to the Proposer, who in turn, shall provide it to the Contracting Agency prior to the time a contract, purchase order, or other contracting document is awarded or authorized.

During the course of Contract performance:

- (1) The Consultant shall not enter into a contract with a Subcontractor/Subconsultant unless the Subcontractor/Subconsultant first provides the Consultant with a valid proof of Business Registration.
- (2) The Consultant shall maintain and submit to the Contracting Agency a list of Subcontractors/Subconsultants and their addresses that may be updated from time to time.
- (3) The Consultant and any Subcontractor/Subconsultant providing goods or performing services under the Contract, and each of their affiliates, shall 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, (N.J.S.A. 54:32B-1 et seq.) on all sales of tangible personal property delivered into the State. Any questions in this regard can be directed to the Division of Taxation at (609)292-6400. Form NJ-REG can be filed online at http://www.state.nj.us/treasury/revenue/busregcert.shtml.

Before final payment is made under the Contract, the Consultant shall submit to the Contracting Agency a complete and accurate list of all Subcontractors/Subconsultants used and their addresses.

Pursuant to N.J.S.A. 54:49-4.1, a business organization that fails to provide a copy of a Business Registration as required, or that provides false Business Registration information, shall be liable for a penalty of \$25 for each day of violation, not to exceed \$50,000, for each proof of Business Registration not properly provided under a contract with a contracting agency.

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 President and CEO (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 will determine whether sufficient justification has been provided by the Consultant to form the basis of his/her certification that the services cannot be performed in the United States and whether to seek the approval of the President and CEO (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. <u>USE OF BRAND NAME PRODUCTS IN DESIGN</u>: 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.) NJ TRANSIT shall own any patent or copyright to, and the right to patent or copyright, any plan, drawing, design, specification, report, software, study, survey, data, compositions of matter, manufactures, apparatus, appliances, processes of manufacture or types of construction or materials, regardless of medium (hereafter "Material") prepared by or for the Consultant, any Subconsultant, or by their respective consultants, agents, officers or employees in connection with performance of the Scope of Services under this Agreement as set forth in **Exhibit A**. Consultant deems all Material produced pursuant to this Agreement as work-made-for-hire under the Federal Copyright Law, United States Copyright Act, 17 U.S.C. § 101, and, to the extent not so deemed, the copyright thereto is hereby assigned to the NJ TRANSIT. Upon completion of the services or the earlier termination of this Agreement, the Consultant shall deliver to NJ TRANSIT all such Material, including such documentation, certifications, and executed forms, assignments and agreements as may be necessary to enable the NJ TRANSIT to fully own, patent or copyright such Material.

2.) If the Material or portions of the Material may be patented or copyrighted by others or are subject to other protection from use or disclosure, then the Consultant must grant or secure for NJ TRANSIT, a royalty-free perpetual license to use the Material for any purpose, without additional compensation. NJ TRANSIT shall have the right to use or permit the use of Materials, and also any oral information received by NJ TRANSIT in connection with performance of the Scope of Services as set forth in **Exhibit A** and any ideas or methods represented by such Materials, for any purposes and at any time without additional compensation.

3.) Subject to the provisions set forth in this section, the Consultant shall defend and indemnify NJ TRANSIT against and save them harmless from all loss and expense incurred in the defense, settlement or satisfaction of any claims in the nature of infringement of any tangible or intangible property right including contract, patent, copyright, trademark or trade secret infringement or unfair competition arising out of or in connection with the use, in accordance with preceding paragraphs 1 and 2 of this Section, of such Materials or portions thereof which are patentable or which may be, or are, copyrighted or trademarked, or otherwise protected by law. If requested by the NJ TRANSIT and if notified promptly in writing of any claim as to which the Consultant shall indemnify NJ TRANSIT, the Consultant shall conduct all negotiations with respect to, and defend, such claim without expense to NJ TRANSIT or such affiliate or subsidiary. If NJ TRANSIT be enjoined from using the product of the Services or any portion thereof as to which the Consultant is to indemnify NJ TRANSIT against such claims, NJ TRANSIT may, at its option and without thereby limiting any other right it may have hereunder or at law or in equity, require the Consultant to provide at its own expense, equivalent substitutes for such product or affected portion thereof not subject to such injunction and not infringing any patent, copyright, trademark trade secret or other protection from use or disclosure, and if the Consultant shall fail to do so, the Consultant shall, at its expense, refund the cost of the offending product or portion thereof to NJ TRANSIT or take such steps as may be necessary to ensure compliance by NJ TRANSIT with such injunction, to the satisfaction of NJ TRANSIT.

- 4.) 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.
- 5.) 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. <u>PUBLICATION AND PUBLICITY</u>: 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, N.J.S.A. 10:5-31 et seq. and N.J.A.C. 17:27 et seq. 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)

During the performance of this Contract, the Consultant 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 Consultant 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 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 apprentice-ship. 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).

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.

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 original, 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. <u>EQUAL OPPORTUNITY FOR INDIVIDUALS WITH DISABILITIES</u>: 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. <u>DISADVANTAGED BUSINESS ENTERPRISES</u>: As an aid in meeting the commitment of its Disadvantaged Business Enterprise Program, NJ TRANSIT has assigned a 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. Contractors shall comply with the DBE Program requirements in the award and administration of NJ TRANSIT contracts. Failure by the Contractor 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 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 as set forth in **Exhibit D**

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. Consultant, its subsidiaries and affiliates, joint ventures involving the Consultant, and its employees, agents or Subcontractors may be precluded from participating in any follow-up work based on the services provided under this Agreement. See FAR Subpart 9.507.
- 27. <u>CONSULTANT'S EMPLOYEES</u>: All personnel employed on this project and their daily rates shall first 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 by the Consultant.

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. <u>INTERESTS OF MEMBERS OF OR DELEGATES TO CONGRESS</u>: 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:

A.) General

- 1.) NJ TRANSIT considers the maintenance of public trust and confidence critical to its proper functioning. Consultants of NJ TRANSIT must avoid all situations where proprietary or financial interest, or the opportunity for financial gain, could lead to the favored treatment of any organization or individual. Consultants must also avoid circumstances and conduct which may not constitute actual wrongdoing, or conflict of interest, but might nevertheless constitute the appearance of questionable behavior to the general public, thus compromising the integrity of NJ TRANSIT.
- 2.) This policy is based upon the principles established in the New Jersey Conflicts of Interest Law (N.J.S.A. 52:13D-12 et seq.) and the regulations promulgated by the New Jersey State Ethics Commission thereunder, as well as the Plain Language Guide to Ethical Business Conduct for Companies Transacting Business with the State of New Jersey, promulgated by the New Jersey Department of the Treasury.
- 3.) This Code of Ethics for Consultants shall be deemed to be a substantial and integral part of every NJ TRANSIT Invitation for Bid (IFB), Request for Proposal (RFP) and contract.
- 4.) This policy is intended to augment, not to replace, existing law, regulations, administrative orders and the current Uniform Ethics Code.

B.) NJ TRANSIT Code of Ethics for Consultants

- 1.) Gifts, Gratuities and Favors:
- a.) A Consultant shall not, either directly or indirectly, pay, offer to pay, or agree to pay any amount of money, fee, commission, compensation, gift, gratuity or other thing of value of any kind to any NJ TRANSIT Board Member or employee or to any member of their immediate family, or to any partnership, firm or corporation with which any such Board Member or employee is employed or associated, or in which (s)he has an interest within the meaning of N.J.S.A. 52:13D-13(g).

b.) A Consultant shall not give or offer any NJ TRANSIT Board Member,

employee or their immediate family any amount of money, gift, loan or other thing of value regardless of

whether it might be reasonably inferred that such amount of money, gift, loan, service or other thing of value

was given or offered for the purpose of influencing the Board Member or employee in the discharge of his

or her official duties. In addition, Board Members, employees and their immediate family are not permitted

to accept breakfasts, lunches, dinners, alcoholic beverages, tickets to entertainment and/or sporting events,

wagers or other items or consideration. A Consultant may not "wine and dine" NJ TRANSIT Board

Members, employees or their immediate family.

c.) NJ TRANSIT Board Members and employees may not accept any food or

beverages from any Consultant with the exception of coffee, tea, soda, Danish, chips, pretzels, donuts or

similar snacks, which may be provided to all attendees at a conference, seminar or business meeting. If

food other than the above is provided (e.g., sandwich, pizza or a meal), the Board member or employee

must pay the cost for the meal.

d.) Any questions as to what is or is not acceptable or what constitutes proper

conduct for an NJ TRANSIT Board Member or employee, and any solicitation of gifts, consideration or items

of value by or on behalf of a NJ TRANSIT Board Member or employee, should be referred to:

Chief Ethics Officer NJ TRANSIT One Penn Plaza East, 8th Floor Newark, NJ 07105-2246 (973) 491-8820

2.) Solicitation by NJ TRANSIT Board Member or employee:

A Consultant shall immediately report in writing the solicitation of any fee,

commission, compensation, gift, gratuity or other thing of value by a NJ TRANSIT Board Member or

employee, to NJ TRANSIT's Chief Ethics Officer, the New Jersey Attorney General and the State Ethics

Commission.

3.) Business, commercial or entrepreneurial relationship:

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Whether or not pursuant to employment, contract or other agreement, expressed or implied, a Consultant shall not, directly or indirectly, undertake any private business, commercial or entrepreneurial relationship with, or sell any interest in such Consultant to any NJ TRANSIT Board Member 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 (s)he is employed or associated or in which (s)he has an interest within the meaning of N.J.S.A. 52:13D-13g. Any relationships subject to this provision shall be reported in writing forthwith to NJ TRANSIT's Chief Ethics Officer.

4.) General Standards:

a.) A Consultant shall not influence, or attempt to influence or cause to be influenced, any NJ TRANSIT Board Member or employee in his/her official capacity in any manner which might tend to impair the objectivity or independence of judgment of any Board Member or employee.

b.) A Consultant shall not request, influence, or attempt to request, influence or cause to be requested or influenced, any NJ TRANSIT Board Member or employee to use, or attempt to use, his/her official position in any manner to secure unwarranted privilege or advantage for the Consultant or any other person.

5.) Protected/Confidential Information:

a.) A Consultant may not profit, directly or indirectly, from the use of any secret or confidential NJ TRANSIT information, knowledge or data that has been illicitly disclosed.

b.) Consultants and their employees may not use any secret or confidential NJ TRANSIT information, knowledge or data for any purposes other than complying with their contractual obligations to NJ TRANSIT.

6.) Intellectual Property:

A Consultant may not use NJ TRANSIT branding, logo or any promotional or marketing materials without prior written approval from the NJ TRANSIT Communications Department.

7.) Employment Offers:

a) Current State Employees/Future Employment: If a Consultant offers a job to a NJ TRANSIT employee, with whom they have direct and substantial contact, such offer or solicitation must be immediately disclosed to management and the Chief Ethics Officer. Please also note that NJ TRANSIT employees must secure prior approval for secondary employment. Depending on the consultant relationship with the employee, the consultant employment offer may be disapproved, and the NJ TRANSIT employee could be screened from taking any official action with respect to the particular consultant contracts, applications, or matters in the future.

b) Former State Employees: After leaving NJ TRANSIT, employees are under a lifetime ban against the use or provision of information not generally available to the public acquired during their employment. Additionally, former employees are prohibited from representing or assisting a Consultant concerning a particular contract or other matter if they were substantially and/or directly involved in that particular contract or other matter while employed by NJ TRANSIT.

8. Failure to Comply:

A Consultant's failure to comply with this policy may result in termination of the contract or debarment pursuant to N.J.A.C. 16:72-5.2. Additionally, violations of certain provisions of the Conflict of Interest Law are subject to a fine not to exceed \$1,000, or imprisonment not to exceed six months, or both.

C. CROSS-REFERENCES

New Jersey Uniform Ethics Code, available online at

https://www.state.nj.us/ethics/docs/ethics/uniformcode.pdf

New Jersey Conflicts of Interest Law and regulations adopted thereunder (N.J.A.C. 19:61-1.1 et seq.), available online at https://www.state.nj.us/ethics/statutes/rules/

Plain Language Guide to Ethical Business Conduct for Companies Transacting Business with the State of New Jersey, available online at https://nj.gov/ethics/docs/ethics/plainlanguage.pdf

31. <u>POLITICAL ACTIVITY PROHIBITED</u>: 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.

C.271): The Consultant 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 Consultant receives contracts in excess of \$50,000 from a public entity in a calendar year. It is the Consultant'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.

- 33. 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.
- 34. 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.

35. 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.

36. EQUAL PAY ACT: Pursuant to N.J.S.A. 34:11-56.14(a), any employer, regardless of the location of the employer, who enters into a contract with a public body to perform qualifying services to the public body shall provide a report to the Commissioner of the New Jersey Department of Labor and Workforce Development, in a form promulgated by the Commissioner, of information regarding the compensation and hours worked by employees categorized by gender, race, ethnicity and job category.

Information regarding the Diane B. Allen Equal Pay Act and its requirements may be obtained from the New Jersey Department of Labor and Workforce Development (LWD) web site at: https://nj.gov/labor/equalpay/equalpay.html

LWD forms may be obtained from the online web site at:

37. <u>SOVEREIGN IMMUNITY:</u> NJ TRANSIT in entering into this Contract does not waive its sovereign immunity except as provided in the New Jersey Contractual Liability Act, N.J.S.A. 59:13-1 <u>et seq</u>. The terms and conditions of the Contract are not intended to, and shall not be deemed to,

expand the waiver of sovereign immunity as set forth in the Act.

38. DISPUTES: Disputes regarding whether a party has failed to make payments will first be submitted for resolution between the parties. If the parties are unable to reach an agreement, the dispute 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 of the Contracting Officer's authorized representative 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 a final decision of a dispute hereunder by the Contracting Officer after a timely appeal, the Consultant shall proceed diligently with performance of the Contract in accordance with the decision of the authorized representative of the Contracting Officer.

29. <u>LIMITATIONS OF LIABILITY:</u> In no event, whether under the provisions of this Contract, as a result of breach of contract, tort (including negligence) or otherwise, shall NJ TRANSIT, the State, or USDOT, be liable to the Consultant for special, consequential, incidental or penal damages including, but not limited to, loss of profit or revenues, loss of rental value for Contractor owned equipment, damages to associated equipment, additional risk, cost of capital or interest of any nature (whether characterized as damages for the retention of money, an increase in the cost of performance, a penalty, or otherwise).

40. NO THIRD PARTY BENEFICIARIES: It is specifically agreed between the parties

executing this Contract that it is not intended by any of the provisions of any part of the Contract to create

the public or any member thereof a third party beneficiary hereunder, or to authorize anyone not a party to

the Contract to maintain a suit for personal injuries or property damage pursuant to the terms or provisions

of the Contract.

It is the further intent of NJ TRANSIT and the Consultant in executing this Contract that no

individual, firm, corporation or any combination thereof, which supplies materials, labor, services or

equipment to the Consultant for the performance of the Scope of Services becomes thereby a third party

beneficiary of this Contract. NJ TRANSIT and the Consultant understand that such individual, firm,

corporation or combination thereof, has no right to bring an action in the courts of this State against the

State or NJ TRANSIT, by virtue of this lack of standing and also by virtue of the provisions of the New

Jersey Contractual Liability Act, N.J.S.A. 59:13-1 et seq.

41. PERSONAL LIABILITY OF PUBLIC OFFICIALS: In carrying out the provisions of

the Contract, or in exercising power or authority granted to them by or within the scope of the Contract,

there shall be no liability upon any NJ TRANSIT employee, either personally or as officials of the State, it

being understood that in all such matters they act solely as agents and representatives of the State.

42. 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

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Federal Brooks Professional Services Agreement

Rev. November 2019

Trenton, New Jersey 08625 www.state.nj.us/njbgs

- **43.** <u>SUCCESSORS</u>: This Agreement shall bind the heirs, representatives, successors, and assignees of the Consultant.
- 44. GOVERNING LAW: The Agreement shall be governed by and interpreted pursuant to the laws of the State of New Jersey.
- 45. QUALITY ASSURANCE PLAN: The Consultant shall perform all work consistent with the professional skill and care provided by practitioners of the same discipline under similar circumstances and conditions. 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.
- 46. 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.

47. 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.

48. 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>U.S.C.</u> § 3801 <u>et seq.</u> 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>U.S.C.</u> § 5307, the Government reserves the right to impose on the Consultant the penalties of 18 <u>U.S.C.</u> § 1001 and 49 <u>U.S.C.</u> § 5307(n) (1), to the extent the Federal Government deems appropriate.
- 49. 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 sub-recipient, 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, sub-agreement, or third party contract, the Federal Government continues to have no obligations or liabilities to any party, including the sub-recipient and third party contractor.
- 50. 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>U.S.C.</u> § 5323(h)(3) by refraining from using any Federal assistance awarded by FTA to support procurements using exclusionary or discriminatory specifications.

51. CLEAN WATER AND CLEAN AIR ACTS:

- 51.1 The Consultant agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 <u>U.S.C.</u> § 1251 <u>et seq.</u>:
- 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>U.S.C.</u> § 7606. The Consultant 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>U.S.C.</u> § 300h <u>et seq.</u>
- 51.2 The Consultant agrees to comply with all applicable, standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 <u>U.S.C.</u> § 7401 <u>et seq.</u> The Consultant 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.
- 51.3 The Consultant 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.
- **52. 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>U.S.C.</u> § 6321 <u>et seq.</u>).
- 53. <u>CIVIL RIGHTS</u>: 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>U.S.C.</u> § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 <u>U.S.C.</u> § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 <u>U.S.C.</u> § 12132, and Federal transit law at 49 <u>U.S.C.</u> § 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>U.S.C.</u> § 2000e, and Federal transit laws at 49 <u>U.S.C.</u> § 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 <u>et seq.</u>, (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>U.S.C.</u> § 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>U.S.C.</u> § 623 and Federal transit law at 49 <u>U.S.C.</u> § 5332 and N.J.S.A. 10:5-12(a), 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>U.S.C.</u> § 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.
- 54. <u>CONTRACT WORK HOURS AND SAFETY STANDARDS</u>: 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 five (5) 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.

55. <u>CERTIFICATIONS REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY, AND VOLUNTARY EXCLUSION – LOWER TIER COVERED TRANSACTION</u>

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 the 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.

- **56.** <u>LIMITATIONS ON LOBBYING</u>: The Consultant and its Subconsultants shall comply with 31 <u>U.S.C.</u> § 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.

57. 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.

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 sub-recipients 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.

- 59. <u>SEISMIC SAFETY</u>: 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.
- 60. <u>SETTING OFF TAX ARREARS AGAINST SUMS OWED</u>: 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, or under contract for construction projects of 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.

- 61. 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.
- ADA ACCESS: Facilities to be used in public transportation service must comply with the Americans with Disabilities Act, 42 <u>U.S.C.</u> § 12101 et seq.; DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 C.F.R. Part 37; and Joint Access Board/DOT regulations, "Americans with Disabilities (ADA) Accessibility Specifications for Transportation Vehicles," 36 C.F.R. Part 1192 and 49 C.F.R. Part 38. Notably, DOT incorporated by reference into Appendix A of its regulations at 49 C.F.R. Part 37 the Access Board's "Americans with Disabilities Act Accessibility Guidelines" (ADAAG), revised July 2004, which include accessibility guidelines for buildings and facilities. DOT also added specific provisions to Appendix A of 49 C.F.R. Part 37 modifying the ADAAG with the result that buildings and facilities must comply with both the ADAAG and the DOT amendments. Additional provisions to be considered:

Transition: In the event that a new Contract has not been awarded prior to the

expiration date of this Contract, including any extensions exercised, and the Contracting Officer elects to

exercise this Contract transition, the Contractor shall continue the Contract under the same terms,

conditions, and pricing until a new Contract can be completely operational. At no time shall this transition

period extend more than 365 Calendar Days beyond the expiration date of this Contract, including any

extensions exercised.

64. Extension: If in the opinion of the Contracting Officer, it is in the best interest

of NJ TRANSIT to extend the Contract, the Contractor shall be so notified of the Contracting Officer's

intent at least thirty (30) Calendar Days prior to the expiration date of the existing Contract. The

Contractor shall have fifteen (15) Calendar Days to respond to the Contractor Officer's request to extend

the term and period of performance of the Contract. If the Contractor agrees to the extension, all terms

and conditions including pricing of the original Contract shall apply unless more favorable terms for NJ

TRANSIT have been negotiated.

65. ATTACHMENTS/EXHIBITS: All of the following Appendices, Attachments, and

Exhibits, are annexed hereto and made a part of this agreement:

Exhibit A: Scope of Services

Exhibit B: Cost Information

Exhibit C: NJ TRANSIT Travel and Business Reimbursement Guidelines

Exhibit D: DBE Requirements and Forms

Exhibit E: Consultant Certifications

Exhibit F: Addenda

F

IN WITNESS WHEREOF, the par	ties 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	By: Contracting Officer or Duly Authorized Designee
WITNESS:	CONSULTANT
By: Title	By: Title
The aforemention	ed Agreement has been reviewed and approved as to form only.
	GURBIR S. GREWAL ATTORNEY GENERAL OF NEW JERSEY
	By: Deputy Attorney General

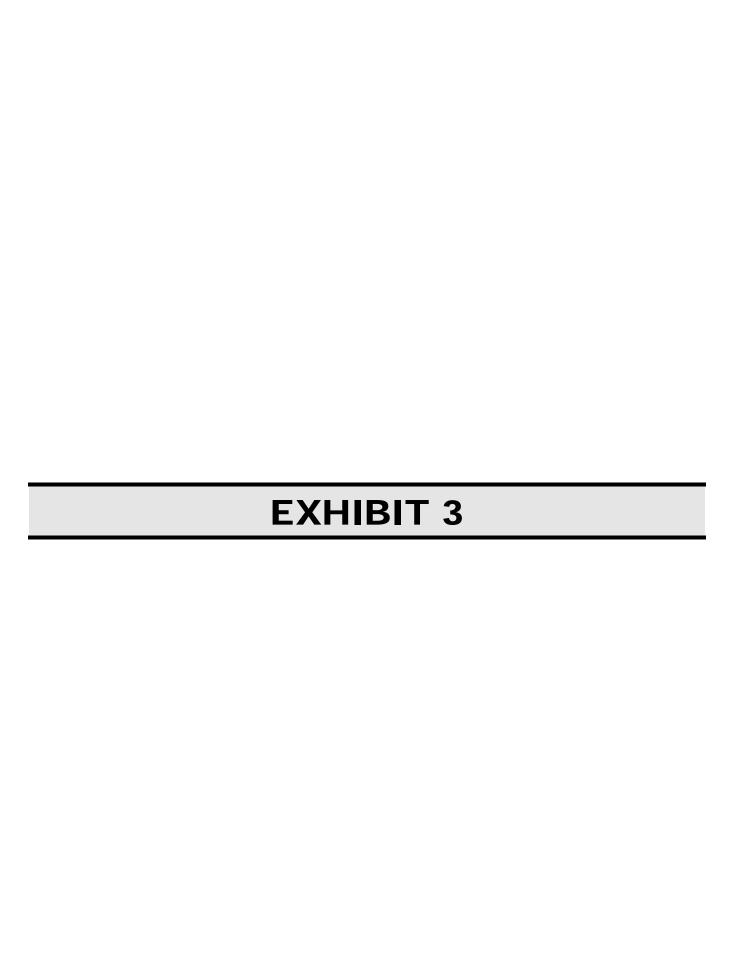
EXHIBIT 2

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		<u>Date</u>				
		-					
		_					
		_					
		_					
		_					
		_					
Ву:							
	Signature of Company Official						
	Official's Title						
	Company Name						



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



NJ TRANSIT'S DISADVANTAGED BUSINESS ENTERPRISE (DBE) PROGRAM POLICY STATEMENT

TO ALL NJ TRANSIT EMPLOYEES AND THE CONTRACTING COMMUNITY:

The NEW JERSEY TRANSIT CORPORATION (NJ TRANSIT) administers its Disadvantaged Business Enterprise (DBE) program in accordance with the U.S. Department of Transportation (USDOT) regulation 49 CFR Part 26, and hereby reaffirms and formalizes its commitment to the DBE Program and its objective: to create a "level playing field" in NJ TRANSIT's procurement activities.

As a major provider of public transportation with thousands of employees who have extensive daily contact with the public, NJ TRANSIT recognizes its responsibility to the diverse communities that it serves. It is the policy and commitment of NJ TRANSIT not to discriminate based on race, color, national origin, or sex in the award and performance of any NJ TRANSIT contract, or in the administration of its DBE program. It is also the policy of NJ TRANSIT to ensure that DBE's have a fair opportunity to be informed about, compete for, and participate in USDOT-assisted contracts.

In keeping with this commitment and this agency's obligations under 49 CFR Part 26, NJ TRANSIT will make every effort to achieve the following objectives:

- Ensure that only firms that fully meet eligibility standards of 49 CFR Part 26 are permitted to participate as DBE's on NJ TRANSIT contracts.
- Remove barriers that may prevent some DBE's from being able to participate on NJ TRANSIT contracts; and.
- Support the development of DBE firms, so they can compete successfully in the marketplace outside of the DBE Program.

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

Leotis Sanders, NJ TRANSIT's Chief Civil Rights & Diversity Officer, is the corporation's DBE Liaison Officer (DBELO) to the Federal Transit Administration (FTA), and is responsible for implementing all aspects of NJ TRANSIT's DBE program while ensuring appropriate DBE participation in NJ TRANSIT's procurement activities.

NJ TRANSIT's Board of Directors is committed to the DBE Program as are all Assistant Executive Directors, General Managers, Chiefs, and their staffs. NJ TRANSIT's employees and all DBE and non-DBE business community members that participate in USDOT-assisted contracts, share in the responsibility for making NJ TRANSIT's DBE program a success. This policy is disseminated to all tiers of our organization, and to the DBE and non-DBE business communities that participate in our USDOT-assisted contracts.

Date: August 7, 2018

Kevin S. Corbett Executive Director

NEW JERSEY TRANSIT CORPORATION DBE REQUIREMENTS FOR FEDERAL PROCUREMENT ACTIVITIES

IFB/RFP#:	 	
Race Neutral		

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NEW JERSEY TRANSIT CORPORATION DBE REQUIREMENTS FOR FEDERAL PROCUREMENT ACTIVITIES

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 Disadvantaged Business Enterprise) (DBE) Program requirements, which is administered by the Office of Business Development (OBD) Office. Clarification of the DBE specifications along with assistance in completing the forms can be obtained by calling an OBD representative. 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 https://njucp.dbesystem.com. 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 Bidder/Proposer, Prime Contractor/Consultant, or subcontractor/subconsultant shall not discriminate on the basis of race, color, national origin, or sex in the award or 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. The Bidder/Proposer, Prime Contractor/Consultant, or subcontractor/subconsultant shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination 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 PROGRAM - RACE NEUTRAL PROJECT

- 1.3.1 NJ TRANSIT requires bidders utilizing DBE subcontractors/vendors/suppliers to comply with all aspects of NJ TRANSIT's DBE program in the use of DBEs. This is a Race Neutral project.
 - NJ TRANSIT will track and report the extent of your Race-Neutral 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.

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. <u>Firms must be certified under the NJUCP at the time of contract award in order to obtain DBE credit toward the goal.</u> Firms pending certification will not count toward meeting the contract 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.

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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 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 five (5) calendar days after the bid opening or proposal/cost due date. Notwithstanding the date of submission of the mandatory DBE forms, all negotiations between a Bidder and any potential DBE subcontractor, subconsultant, or supplier shall be completed prior to the bid opening or proposal/cost due date. Bidders/Proposers shall identify all DBE and non-DBE subcontractors, subconsultants, and suppliers proposed to participate in and those solicited for this Contract, and shall complete and submit the mandatory DBE Forms A, A1, A2, and B. The two lowest Bidders or two highest ranked Proposers shall also print and submit the DBE firm's current DBE Certification Profile from the NJUCP DBE Business Directory at njucp.dbesystem.com. Additionally, the two lowest Bidders or two highest ranked Proposers shall submit all applicable supplemental forms (AA, AA1, AA2, BB, DBE Certification Profile and D). All required DBE forms and Certification Profiles shall be submitted with the Bid or within five (5) calendar days of the bid opening or final cost due date. However, Bidders are strongly encouraged to submit all mandatory documents with the Bid to prevent delay of the Contract award.
- 1.6.2 Bidders are requested to review carefully and complete the forms entirely, with no blank fields.
 Failure to satisfactorily complete or submit all required documentation and/or demonstrate documented evidence of good faith effort within five (5) calendar days after the bid opening or proposal/cost due date shall result in rejection of a Bid as non-responsible.
- 1.6.3 If the two lowest Bidders/highest ranked Proposers submit the DBE forms, but fail to meet the DBE

goal, the OCR/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 satisfactory good faith efforts were not made to include DBE participation on the contract, NJT shall consider awarding the contract to the next lowest bidder or highest ranked proposer who offers a reasonable price, meets the DBE goal and other bid requirements or requirements of 49 CFR Part 26 and/or satisfactorily demonstrates documented evidence of good faith effort.

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 **guality**, **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 <u>not reject</u> 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 identifying 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, 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) <u>Form A1 Bidder/Proposer Solicitation and Contractor Information:</u> Lists all DBE and Non-DBE sub contractor/subconsultants, including suppliers, solicited for, **and** participating on this contract.
- (c) <u>Form A2- Non-DBE Sub Utilization</u>: 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 1st Tier DBE intends to perform including scope of work, subcontract dollar value, etc.
- (e) <u>DBE Good Faith Effort Form (if applicable):</u> Identifies any DBE subcontractor invited to quote, but declined to do so for any reason.
- (f) <u>Trucking Commitment Agreement (if applicable)</u>: Identifies all trucking firms (DBE and Non-DBE) participating on this contract, at any tier.
- (g) <u>NJ UCP DBE Certification Profile & NAICS Code Verification:</u> Confirms the DBE status, name, address, contact information, business description 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) <u>Form E1- DBE Prime's Monthly Payment Report (For DBE Prime Only):</u> 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 FORMS (REQUIRED IF APPLICABLE)

- (a) <u>Form AA Second Tier DBE Utilization</u>: Lists all Second Tier DBE firms scheduled to participate on the DBE sub-Prime's contract.
- (b) <u>Form AA1 Second Tier Bidder/Proposer Solicitation and Contractor Information:</u> Lists all Second Tier DBE firms participating on this contract as indicated on Form AA and Form AA2.
- (c) <u>Form AA2- Second Tier Non-DBE Sub Utilization:</u> 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 2nd Tier DBE intends to perform including scope of work, subcontract dollar value, etc.
- (e) NJ UCP DBE Certification Profile & NAICS Code Verification: Confirms the DBE status, name, address, contact information, business description 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 <u>with its own</u> 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 <u>fee/commission only</u>, *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; <u>one-word descriptions are not acceptable</u>. (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:

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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 <u>not</u> 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 <u>non-DBE</u> percentage of work is <u>not counted</u> 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; <u>one-word descriptions are not acceptable.</u>
 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 Profile 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. DBE status and profile can be verified and printed through https://njucp.dbesystem.com and NAICS codes descriptions can be verified through 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 7th 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 7th 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. <u>This form must be completed and submitted</u> by the DBE only to the OBD by the 7th 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) <u>Form AA – Second Tier DBE Utilization:</u> 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 Profile & NAICS Code Vérification :

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 <u>not</u> be given for any work to be performed without the appropriate NAICS code. DBE status and profile can be verified and printed through https://njucp.dbesystem.com and NAICS codes descriptions can be verified through 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 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 DBEs subcontractor/subconsultant is a DBE.
- (a) Work that a DBE subcontracts to a <u>non-DBE firm does not count</u> 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

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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 <u>owns and operates at least one</u> 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 that leases trucks equipped with drivers from a non-DBE is entitled to credit for the total value of transportation services provided by non-DBE leased trucks equipped with drivers not to exceed the value of transportation services on the contract provided by DBE-owned trucks or leased trucks with DBE employee drivers.

- (b) The DBE may lease trucks without drivers from a non-DBE truck leasing company. If the DBE leases trucks from a non-DBE truck leasing company and uses its own employees as drivers, it is entitled to credit for the total value of these hauling services
- 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 <u>regular dealer</u> 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 <u>regular dealer</u> 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 DBE Requirements for RN Federal Procurement Activities

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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)

In addition to post-award terminations, the provisions of this section apply to pre-award deletions of or substitutions for DBE firms put forward by bidders, and offerors in negotiated procurements.

- 4.1 The Bidder/Proposer/Prime shall not terminate a DBE sub listed in response to Article 1.6 (or an approved substitute DBE firm) for convenience, or any other reason without NJT/OBD's prior written consent. This includes, but is not limited to, instances in which a Bidder/Proposer/Prime seeks to perform work originally designated for a DBE sub with its own forces or those of an affiliate, a non-DBE firm, or with another DBE firm. See Article 4.3.
 - (A) The Bidder/Proposer/ Prime shall utilize the specific DBEs listed to perform the work and supply the materials for which each is listed unless you obtain OBD's written consent as provided in this paragraph (4.1); and
 - (B) That, unless (OBD's) consent is provided under this paragraph (4.1), the Bidder/Proposer/Prime shall not be entitled to any payment for work or material unless it is performed or supplied by the listed DBE.
 - (C) Before transmitting to you OBD its request to terminate and/or substitute a DBE sub, the Bidder/Proposer/Prime must give notice in writing to the DBE sub, with a copy to OBD, of its intent to request to terminate and/or substitute, and the reason for the request.
 - (D) The prime contractor must give the DBE five (5) days to respond to the prime contractor's notice and advise OBD and the Prime of the reasons, if any, why it objects to the proposed termination of its subcontract and why OBD should not approve the Prime's action.
 - (E) When a DBE subcontractor is terminated as provided in paragraph Article 4.1, or fails to complete its work on the contract for any reason, the Bidder/Proposer/Prime is required to make good faith efforts to find another DBE subcontractor to substitute for the original DBE. 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 DBE that was terminated, to the extent needed to meet the contract goal established for the procurement. The good faith efforts shall be documented by the Bidder/Proposer/Prime and

submitted within seven (7) days of NJT's request, which may be extended for an additional seven (7) days if necessary at the request of the contractor, and OBD shall provide a written determination to the contractor stating whether or not good faith efforts have been demonstrated.

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 <u>prior to</u> 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 <u>prior to</u> replacement or removal of the DBE subcontractor/subconsultant can be made, <u>regardless of the reason for the replacement or removal.</u>
- 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.

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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 DBE Requirements for RN Federal Procurement Activities

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- 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 <u>prior review and approval</u> 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.

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- 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, <u>prior to the issuance of each progress payment by NJT</u>, 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 <u>received</u> 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, <u>prior to the issuance of a progress payment</u> 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

<u>A Good Faith Effort-the</u> 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.

<u>Certification</u> - 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.

<u>Disadvantaged Business Enterprise or DBE</u> - 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 \$23.98M 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.

<u>DBE Sub-Prime</u> - means any 1st 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).

<u>DBE Ineligibility</u> – 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.

<u>DBE Trucking Firm</u> – 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.

<u>First Tier DBE</u> - refers to any DBE listed on the Bidder/Proposer/Prime's Form A and having a direct contract with the Prime.

<u>Joint Venture</u>—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.

<u>Prime</u> - means any contractor or consultant, including a DBE contractor/consultant, who enters into a direct contractual relationship with NJT.

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Race-conscious Measure or Program - is one that is focused specifically on assisting only DBEs, including womenowned 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.

<u>Transit Vehicle Manufacturer (TVM)</u> - 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>U.S. DOT</u> – 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.

Updtd p.3, 1.48; p.4, 1.6.1; pg.7, 2.3(g); p.8, 2.4, 2.4(e); p.9, 2.5(g); pg.10(g);2.3; p.11, 2.6(e) on 11.22.19 lmc Updtd Table of Contents – removed RN from Title; Changed to RN Project from Goal Updtd 1.6.1 remvd certif/replac with Cert Profile 10.25.19

Updated 3.53(a)(b); (4.1(a-e) & \$23.98m LMC 8/1/18

Updated 1.6.1 JGold 7/10/17

Rev 9/15/10

REQUIRED FORMS

ENCLOSED FOR COMPLETION (MANDATORY):

> Form A; A1; A2; B; D & Trucking Commitment Schedule

TO BE OBTAINED AND SUBMITTED (MANDATORY):

> Copy of NJUCP DBE and NAICS Code Certification

Consult DBE Program Requirements for further guidance.

Bidders Checklist (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.

Reguired 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)
☐ Copy of NJUCP DBE and NAICS Code Certification
Supplemental Forms (if applicable)
<u>oupplemental i ornis (ii applicable)</u>
Form AA - Second Tier DBE Utilization
_
□ Form AA - Second Tier DBE Utilization □ Form AA1 - Second Tier Bidder/Proposer Solicitation and
Form AA - Second Tier DBE Utilization Form AA1 - Second Tier Bidder/Proposer Solicitation and Contractor Information
□ Form AA - Second Tier DBE Utilization □ Form AA1 - Second Tier Bidder/Proposer Solicitation and Contractor Information □ Form AA2 - Second Tier Non-DBE Sub Utilization

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



The New Jersey Unified Certification Program (NJUCP) DBE

Directory is getting an Upgrade!

As of July 1, 2017 the NJUCP DBE Directory can be found

at https://njucp.dbesystem.com

Please update your bookmarks

The certifying partners of the New Jersey Unified Certification Program (NJUCP), New Jersey Transit (NJT), the New Jersey Department of Transportation (NJDOT), and The Port Authority of New York and New Jersey (PANYNJ), are pleased to announce that we are improving service for our user community. A new web-based platform has been developed that will allow improved functionality, new communication tools, and real time updates to information.

The new address for the NJUCP directory of certified DBE firms will be https://njucp.dbesystem.com. The change to this address will take effect on July 1, 2017. Please be sure to update your DBE directory bookmark and inform others who use this directory in your organization.

Attention certified DBE firms: Please review the data shown in the directory for your firm and advise your certifying agency if any changes or updates are needed. An account has been created for all DBEs in the system. If you are certified with PANYNJ or also certified with the New York State Contract System (NYSCS) or the New York State Unified Certification Program (NYSUCP), you can log into your account in the system with the same usemame and password you use to access your account with those entities. If this is your first time logging into this system and/or you don't know your usemame and password click on "Log-in" to use the Account Lookup to find your information and log into your account. All certified DBEs in the NJUCP have accounts in the system. Contact customer support via any of the system links if you have any questions while attempting to access your account.

The NJUCP is committed to improving the service and support we provide to our DBEs and the greater contracting community. This new web site and underlying platform is provided by B2Gnow, which currently provides support for Port Authority's Diversity Management Program, NYSCS, and NYSUCP, as well as many other certifying entities and agencies across the country. You may already be familiar with the look and versatile search capability of the system. If it is brand new to you, support links are provided, as mentioned above.

Stay tuned for further announcements on improvements to this system and NJUCP services.

First Tier DBE UTILIZATION - FORM A

Project Name:	NJT Contract No:	NJT Contract No:			
Assigned DBE Goal %:NJT Procurement Specialist: _	Contract Value (\$):				
First Tier DBE must perform at least 51% of its subcontract value goal.	if subcontracting to a Second -Tier DBE or Non-DBE. Do no	ot count Non-DBE portion	toward the		
Name, Address and Telephone # of DBE Subcontractor/Subconsultant	Provide <u>Detailed</u> Scope of Work to be Performed (Identify all suppliers)	Dollar Value of Subcontract/Sub- consultant 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 undersigned understands that removal/replacement of the DBE(s) listed is Development and receiving <u>WRITTEN APPROVAL</u> from the Office of Busines to be determined by NJ TRANSIT.	NOT PERMISSIBLE for any reason (pre or post-award), without subm	itting a written request to the	Office of Business		
Company Name:	Authorized Signature:				
Company Address:	Print Name:	_			
	Title:				
Federal Tax ID #:	Prime Contractor's DBE Liaison Officer:				
Company Tel #:	Date Signed:				
To Add Subs Use Additional Forms		NJT Fed Form A rev June	2010		

BIDDER SOLICITATION & CONTRACTOR INFORMATION - FORM A1

Project Title:		Date:
Prime Contractor/Consultant:	NJT Contract #:	Telephone #:

Complete the information below for Bidder/Proposer/Prime(s) working on this project. Use Page 2 for all subcontractors/subconsultants

	Bidder/Proposer/Prime	Bidder/Proposer/Prime	Bidder/Proposer/Prime
Company's Full Name			
Address			
City and State			
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:			

BIDDER SOLICITATION & CONTRACTOR INFORMATION - FORM A1

Project Title:		Date:
Prime Contractor/Consultant:	NJT Contract #:	Telephone #:

COMPLETE THE INFORMATION BELOW FOR "ALL" FIRMS INCLUDING SUPPLIERS SOLICITED; INCLUDING THOSE THAT WILL WORK ON THIS PROJECT.

	Subcontractor/Subconsultent	Subcontractor/Subconsultant	Subcontractor/Subconsultant
Company's Full Name			
Address			
City and State			
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:			
	Page 2 o	<u> </u>	

Page 2 of 2

NON-DBE SUBCONTRACTOR UTILIZATION - FORM A2

Directions: To be completed by any Bidder/Proposer/Prime for "all" subs including suppliers participating on this contract.

Bidder/Proposer Prime Name:		_ Project Title:				
Date:		Prime Contract Value:				
			Dollar Amount of	Percentage		

Name, Address and Telephone # of all Subcontractor/Subconsultants	FEIN#	Provide Detailed Scope of Work to be Performed	Dollar Amount of Subcontractor/Sub- consultant Work (\$) Awarded	Percentage of Subcontract or Work (%)
	·			
	· ·		\$	%
			\$	%
				i
	·		\$	%
	·			
			\$	%
ust provide a detailed scope of work; one-word d	escriptions are not acceptable.		1	9/
		TOTALS		9
		TOTALS	\$	

INTENT TO PERFORM AS A 1ST 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.

<u>DIRECTIONS</u>: 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:
D 4b 1 DDE (4	A Pro1 N
Intend to perform subcontract work in connection with the above—n or No)	
Intend to subcontract any portion of its scope of work to a DBE(s)? If yes, DBE Sub-Primes must complete and submit Form AA.	Circle one. (Yes or No) At what percent?%
Intend to subcontract any portion of its scope of work to a Non-DBI If yes, must complete and submit Form AA2.	E(s)? Circle one. (Yes or No) At what percent?%
The undersigned will perform the following described work on description of the type of work you will perform on your subcontinuous Bidder (optional)).	· · · ———
Dollar Value of DBE Subcontract: \$	
Total Quantity/Units (if applicable): Per Uni	t Cost (if applicable): \$
The undersigned based the above scope of work and subcontract val contractor named above. Circle one. (Yes or No)	lue on detailed project specs received from the Bidder
The Prime Contractor <u>projected</u> the following commencement and c	ompletion date for such work as follows:
DBE Contract Start Date: DBE Contract Completio	on Date
The undersigned DBE will enter into a formal agreement of conditioned upon execution of a contract with NJ TRANSIT. A certification, compliance and monitoring process set forth by N of my subcontract with my own workforce for the reference	As a DBE subcontractor, I will cooperate with the NJ TRANSIT. I attest that I will perform at least
Signature of 1 st Tier DBE Date Ti	tle

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 <u>all DBE subcontractors</u> 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. The Subrecipient will make a fair and reasonable judgment as to whether the bidder made an adequate Good Faith Effort, which will be reviewed by NJ TRANSIT.

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 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.
 - o 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 <u>entirely</u>.

Bidders/proposers/primes are to provide the required forms and instruction sheet, including the Supplemental section to their 1st Tier DBE subs. DBE sub-primes must provide required forms under Supplemental section to their 2nd 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

IF	B/RFP Number:	
Pı	roject Title:	
Bi	dder/Proposer/Prime Name:	
Αd	ddress:	
 Pł	none: Email:	· -
Da	ate Signed:	
ty _l in:	pes of efforts may be relevant in appropriate stance. Please provide documentation for AL	4
	Selected portions of work to be performed by DI economically feasible units to facilitate DBE part	BEs and, where appropriate, broke down contracts into ticipation.
	Provided interested DBE with adequate information contract.	ation about plans, specifications, and requirements of the
::)	Negotiated in good faith with interested DBE, no based on a thorough investigation of their capab	ot rejecting DBEs as unqualified without sound reasons bilities.
	Made efforts to assist interested DBE in obtaini Transit or Bidder.	ng bonding, lines of credit, or insurance required by NJ
J	Made efforts to assist interested DBEs in obtain assistance or services.	ing necessary equipment, supplies, materials, or related
]	Advertised subcontracting opportunities in appro	opriate media.
		ority contractors' groups, local state and federal minority ions that provide assistance identifying subcontractors.
]	Provided written notice to DBEs in sufficient time documentation with Page 2.)	e to allow the DBE to respond. (Provide copy of
-;	Followed up initial solicitation of interest by contaup with Page 2.)	acting DBE to determine interest. (Provide proof of follow

Describe any other efforts not covered above that may indicate Good Faith Efforts to obtain DBE participation on this project and provide documentation.

DBE GOOD FAITH EFFORT- FORM D

IFB/RFP Number:	W. C.	Project Title					
If the dollar value Bidder/Proposer/Prind DBE participation. Of will be required to su	me is required to copies of correspond	complete the fondence, return	ollowing receipts,	questions t telephone le	o describe ogs, or oth	efforts er docu	to obtain
I,	Name	 			Title		
					TIUE		
of		Bidder/Propos	er/Prime				
Certify that on		•		helow name	d DRE to ob	ntain a	
Certify that on	Date	, i com	acieu ine	Delow Harrie		Jiaiii a	
Bid/Proposal for work	items to be performe	ed on the Projec	t named a	above.			
DBE:							
		Firm Name					
Type of work requeste	d to be performed:	·					
Method of Contact:	Phone F	ax Ma	nil	Email			
Date Contacted:							
To the best of my know prepare a bid for the form No response	_	aid DBE was un	available	for work on t	this project	and was	unable to
Not interested: Indi	cate Reason(s)						
Unacceptable Sub	Bid: Indicate Reaso	n(s)					
Please note: Unless to and finding a DBE is n	_			nable, incurr	ing additioi	nal costs	s in using
Signature of Bio	dder/Proposer/Prime	<u>·</u>	Date				
The above statement (Below is to be signe			of why	l did not su	ıbmit a bid	on this	s project.
Signature of DBE Firm	Date	 ,	Name of	DBE Firm			
Print Name		-	Address				
Print Title			Telephon	e #: ()			

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 <u>all DBE/Non-DBE</u> 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.
 - o 2nd 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 <u>owned</u> 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

DBE TRUCKING FIRM COMMITMENT AGREEMENT

The DBE trucking firm will perform the following described work on the project: (Specific work details should include:

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.

Type of material to be handled, qua	ntities to be haulea	i, dollar amoui	nt per unit, loca	tion the material (will be transported).
Dollar Value of DBE Subcontract: \$		_			
Total Quantity/Units (if applicable:		_ Per Unit Cos	t (if applicable)	: \$	-
Total Number of fully operational Number of fully operational (Provide o copy of lease agreement(s) for Total Number of fully operational (Provide a copy of lease agreement(s) for the company of the copy of lease agreement(s) for the copy of lease agreement (s) for the copy of lease agreement(s) for the copy of lease agreement (s) for the copy of	al trucks to be lea r eoch trucking firm). al trucks to be lea r eoch trucking firm. *	sed from a D sed from a n	BE? on-DBE? ontracting is differ	·	it relates to trucking).
Specify ALL Vehicle Information	on Page 1 and 2,			ment, I=insurance	Card, R=Registration,
			-	= Lease Agreemer	
1 st Tier DBE Trucking	Firm				
# Of Trucks Owned	đ				
VIN #	MAKE	YEAR	MODEL	(Indicate Yes/No/NA) HAZ WASTE DOC	*(Indicate T/F/I/R/A/L) OWNERSHIP DOCS

MANDATORY FORM

Non-DBE Trucking	Firm				
# Of Trucks Leased From non-D	BE Trucking Firm				
VIN#	MAKE	YEAR	MODEL	(Indicate Yes/No/NA) HAZ WASTE DOC	(Indicate T/F/ I/R/A/L) OWNERSHIP DOCS
,					
				-	
				1	
				- 1	
]		-			
				1	
	1				
DBE Trucking Firm	n				· · · · · · · · · · · · · · · · · · ·
# Of Trucks Leased From DBE	Trucking Firm				
				1. 4. 4	
VIN#	MAKE	YEAR	MODEL	(Indicate Yes/No/NA) HAZ WASTE DOC	(Indicate T/F/I/R/A/L) OWNERSHIP DOCS
VIN#		YEAR	MODEL	Yes/No/NA)	
VIN#		YEAR	MODEL	Yes/No/NA)	
VIN#		YEAR	MODEL	Yes/No/NA)	
VIN#		YEAR	MODEL	Yes/No/NA)	
VIN#		YEAR	MODEL	Yes/No/NA)	
VIN#		YEAR	MODEL	Yes/No/NA)	
VIN#		YEAR		Yes/No/NA)	
VIN#		YEAR		Yes/No/NA)	
VIN#		YEAR		Yes/No/NA)	
VIN#		YEAR		Yes/No/NA)	
I hereby certify that the inform writing within 10 days, if anyth	make			Yes/No/NA) HAZ WASTE DOC	OWNERSHIP DOCS
I hereby certify that the inform	ation present abo	ove is correc	t. I agree to i	Yes/No/NA) HAZ WASTE DOC	OWNERSHIP DOCS

Mandatory I	Form Submit Mo	nthly	DD/	IME CONTRAC	TOP Monthly D	DE Doumont	Report - Form E		Fed Form E	(Page 1 of 2)	
Name of Pro	oject:					-———		ct #:			
Prime Origin	ial Contract Value	ə:									
Change Orde	ers (Overall Inc/D	Dec.):							·		
Total Contra	ct Amount to Dat	te:							·		
Total Payme	ents Received from	m NJT Dat	.e:								
Name DBE Subco	of Per	ork Task rformed	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)
			· ·		1				1		
				,							
		tal(s)→	 \$ 	\$	 \$ 		\$	Total(s)	\$		
	nents/invoices and tractor Informati		d/received more t	than one payment	t/invoice between t	he 1 st and 31 st	of THIS Month.			- 40000000	
	Name:					Project	Director Name:				
Address:						Project	Director Signature:				
Telephone #	# :		Date:			Federal	I TIN #:		_		
Prime's Pas	st Due Invoice Ir	nformation	լ։ List any invoir	ce more than 40	days past due fr	om the date	submitted to NJT at	t the time yo	u complete this fo	orm.	
Invoice #	Invoice Date	Invoice	Amount (\$)	Number of Day	ys Past Due	Comments:					

This form is not to be altered in any way.

For assistance completing this form, call 973-491-7977,7539,8061,8614,7530,8941

Fed Form E rev Sept 2010 Updated 3.30.18

Form E - Prime Contractor's DBE Payment Certification

1.	Have all DBE subcontra	actors with executed subo	contracts been paid amo	ounts due from pre	evious progress pa	lyments?
	If yes, skip the next se	ection and go to numbe	r 3.			
	If no, please complete f	fields in box below: (Use	additional paper, if need	led)		
	DBE SubContractor Name	Amount Withheld From Invoice (\$)	Total of Invoice Amount (\$)	Invoice Number	Invoice Date	Specific Reason for Withholding
2.	Have you notified the D	BE subcontractor(s) that	you are withholding pay	ment and the reas	son(s) why?	,
	If no, lack of prior writte	mit a copy of written no	(s) that you are withhold	ing payment viola	tes the prompt pay	rtification. Interment clause guidelines. Please contact the DBE
3. No		ertify that all of the above	•	urate information.		
PRO	JECT DIRECTOR NAME	E (PRINT) PROJ	ECT DIRECTOR (SIGN	ATURE)	/ DAT	<u>/</u> E
Additio	onal Reasons/Comments	for Withholding Payment	t			
[OO NOT WRITE BELOW. DO NOT WRITE BELOW. DO NOT WRITE BELOW. DO NOT BELOW	DEPARTMENTAL USE ON	LY.	THIS FC	Office o	E 7TH OF EACH MONTH Please forward to: NJ TRANSIT of Business Development Penn Plaza East, 6 th FI wark, New Jersey 07105-2246

This form is not to be altered in any way.

For assistance completing this form, call 973-491-7977,7539,8061,8614,7530,8941

Fed Form E rev Sept 2010 Updated 3.30.18

DBE PRIME CONTRACTOR'S MONTHLY PAYMENTS FROM NJ TRANSIT INFORMATION ON CONTRACT

DATE CONTRACT EXECUTE	D:	co	NTRACT NUMBER:	REPORT FOR	R THE MONTH OF:	YEAR_	
ORIGINAL CONTRACT AMO	UNT:			FED TAX ID #:	:		
CHANGE ORDERS (OVERAI	LL INC/DEC.)	:		PURCHASE O	RDER #:		
TOTAL CONTRACT AMOUN	T TO DATE:			NAME OF PRO	OJECT:		
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
TOTALS:							
PRIME INVOICE 3	0 DAYS PAS	ST DUE FRO	OM NJT:		NJ TR	ANSIT	<u> </u>
Invoice Date Refere	ence #	No. Days	Past Due Amount	Project Mana	ager (Name):		
				Telephone #	:	_	
				FOR	M IS DUE ON THE 7 TH OF I	EACH MONTH.	
					PLEASE FORWARD	TO:	
PRIME CONTRACTOR INFORMAT					NJ TRANSIT		
Firm Name:					Office of Business Deve	•	
Compliance Officer (Name):					One Penn Plaza East –		
Date: Telephone	: #:				Newark, New Jersey 071	105-2246	

THIS FORM IS NOT TO BE ALTERED OR CHANGED IN ANY WAY.

Fed - Form E-1 rev12/9/08 Updtd 3.30.18

Name of DB	E Firm:				Report f	or the Month of:				
DBE's FEIN	#:				Contrac	t Number:		_		
DBE Addres	ss:				Contrac	t Name:				
DBE Teleph	one #:				DBE Co	ntract Start Date: _		_		
Prime Cont	ractor's Informa	ation:								
Name of Pri	me:		Ad	dress:				Telephone #:		
DBE PAYMEN	T INFO: Itemize pa	ayments/invoices and d	ates if received/s	submitted more t	than one payme	ent/invoice between	the 1 st and 31 st	of <u>THIS</u> Month.		
Work Task Performed	I Subcontra	oct Order	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 Paymer Y or N
				1			-		1	
TOTALS -	\$	\$.	TOTALS→	\$	TOTALS->	\$	TOTALS→	\$		
Is retainage	held on your sul	bcontract? Yes or No (d	circle one) If yes	, how much? \$_		Did your final p	ayment include	e retainage? Yes or	No (circl	e one)
Past Due Ir	nvoice(s) Inform	nation: List any invoic	e more than 40	days past due	from date sul	<u>bmitted</u> to prime a	t the time you	complete this form	n.	
Invoice #	Invoice Date	Invoice Amount (\$)	Number of Da	ays Past Due	Comments: us	e additional paper i	f necessary			
Note: CFO or	equivalent Sr. Man	ager must complete and si	gn off on this form	1.						
Name:		Signature:		Titl	e:	Date	e:			
THIS FORM IS	S DUE ON THE 7 TH	OF EACH MONTH IMMEDIA	TELY FOLLOWING	B DBE's SUBCONT	RACT START DA	TE, EVEN IF PAYMENT	NOT RECEIVED			
	this form to: , Office of Busines	ss Development, One Per	nn Plaza East, 6 th	FI, Newark, New	Jersey 07105-22	246				
Do not alter	this form in any	way.	If you need assista	nce completing this	form please call 9	73-491-7977,7539,8061	,8614,7530,8941.	Rev Fed Form Updated 3.30		ept 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 NJUCP DBE and NAICS Code Certification

Consult DBE Program Requirements for further guidance.

SECOND TIER DBE UTILIZATION-FORM AA

·	SECOND HER DDE CHEMIATION-PORMAX	
Project Name:	NJT Cont	ract No:
DBE Sub-Prime (First Tier) Subcontractor Contract Value (\$):	
I plan to subcontract% of my subcontract to following:	Second Tier DBE subcontractor(s)/subconsultant(s) lis	sted on the chart below to perform/supply the
Second T	ier DBE subs must perform 100% of their scope of wor	
Name, Address and Telephone # of Second Tier DHE Subcontractor/Subconsultant	Provide <u>Detailed</u> Scope of Work to be Performed	Dollar Value of Percentage of Subcontractor/Subcontractor Consultant Work (\$) Work (%) Awarded
		%
		%
		%
Any First-Fler IBE firm listed on the Form A must identify any DBF firm it will use to perform its scope of work.	TOTALS	\$ 24
The undersigned understands its approval to perform on the The DBE Sub-Prime must receive written approval from the Scope of work identified on the Form AA and/or AA2 before of any information contained herein shall result in breach of c	Office of Business Development for any changes to its DBE : making any changes. It attests that the identified firms will	and/or Non-DBE subcontractors, their dollar values or perform all work. Failure to adhere to, or falsification
DBE Sub-Prime Firm:	Authorized Signature:	
Company Address:	Print Name:	
	Title:	
Federal Tax ID #:	Sub-Prime's DBE Liaison Officer:	
Company Tel #:	Date Signed:	

NJT Fed Form AA rev Sept 2010

MANDATORY FORM: COMPLETE ENTIRELY

BIDDER SOLICITATION & CONTRACTOR INFORMATION - FORM AA1

NJT Contract No:	Project Title:
DBE Sub-Prime:	Telephone #:
Date:	

Complete	e the information below for <u>Second Tier</u> o	contractor(s) participating on the project.	
	Sub Prime	Subcontractor/Subconsultant	Subcontractor/Subconsultent
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			
G - \$1M to \$2M D - \$2M to \$6M			
E - \$5M and over indicate the letter that applies.			
Primary NAICS Goder:			
California and canar			

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 Telephorie # of all Second Tier-Subcontractor(s)/Subconsultant(s)	PEIN#	Provide <u>Detailed Scope of Work to be</u> Performed	Dollar Amount of Subcontractor/Subconsultant Work (\$) Awarded	Percentage of Subcontractor Work (%)
			,	
	•		\$	%
			\$	%
	·			
			\$	%
			\$	%
-				
Must provide a detailed spepe of work one-word descri	niems ner Greacenniere		\$	%
	T. Mark T. B.	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.

<u>DIRECTIONS</u>: 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 performance Venture? Circle one. (Yes or No)	m subcontract work in	a connection with the above-mentioned project as a Join
Will you subcontract any portion of you	r scope of work to a D	BE(s)? Circle one. (Yes or No)
Will you subcontract any portion of you	r scope of work to a N	on-DBE(s)? Circle one. (Yes or No)
<u> </u>	•	rk on the above-referenced project: (Provide a detailed ocontract. Attach a copy of quote approved and signed by
Dollar Value of DBE Subcontract: \$		II '4 Co. 4 ('S II' - II)
Total Quantity/Units (if applicable): _	Pe	r Unit Cost (if applicable): \$
The undersigned based the above scope Sub-Prime named above. Circle one. (Ye		act value on detailed project specs received from the DBE
The Prime Contractor <u>projected</u> the follo	owing commencement	and completion date for such work as follows:
DBE Contract Start Date:	DBE Contract Com	pletion Date
conditioned upon execution of a contr	ract with the Prime of compliance and monit	nent for the above work with the DBE Sub-Prime on the project. As a Second Tier DBE subcontractor, I coring process set forth by NJ TRANSIT. I attest that I ree 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 <u>all DBE/Non-DBE</u> 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.
 - o 2nd 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 <u>owned</u> by the DBE:

- Proof of ownership: title(s) or finance agreement(s) <u>ONLY</u>
- 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

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 perfor Type of material to be handled, quality					
,					·
Dollar Value of DBE Subcontract: \$_	_	-			
Total Quantity/Units (if applicable:		Per Unit Cost	(if applicable):	\$	
Total Number of fully operational Total Number of fully operational (Provide a copy of lease agreement(s) for Total Number of fully operational (Provide a copy of lease agreement(s) for Specify ALL Vehicle Information	al trucks to be leas reach trucking firm). al trucks to be leas reach trucking firm. *I	ed from a DI sed from a no Note that subcon if applicable	BE? on-DBE? ntracting is differe	 ent from leasing as i	t relates to trucking). Card, R=Registration,
			_	ient, i=insurance : Lease Agreemen	
1 st Tier DBE Trucking	Firm	<u>,</u>			_
# Of Trucks Owner	d		1	_	· · · · · · · · · · · · · · · · · · ·
VIN#	MAKE	YEAR	MODEL	(Indicate Yes/No/NA) HAZ WASTE DOC	*(Indicate T/F/I/R/A/L) OWNERSHIP DOCS
					-

MANDATORY FORM

Non-DBE Trucking F	irm				
# Of Trucks Leased From non-DB	E Trucking Firm				
VIN#	MAKE	YEAR	MODEL	(Indicate Yes/No/NA) HAZ WASTE DOC	(Indicate T/F/ I/R/A/L) OWNERSHIP DOCS
					7
			1		
				·	
					•
			,		
		9		1	
DBE Trucking Firm					
# Of Trucks Leased From DBE 1		······································			The second se
VIN#	MAKE	YEAR	MODEL	(Indicate Yes/No/NA) HAZ WASTE DOC	(Indicate T/F/I/R/A/L) OWNERSHIP DOCS
VIN#	MAKE	YEAR	MODEL	Yes/No/NA)	(Indicate T/F/I/R/A/L) OWNERSHIP DOCS
VIN#	MAKE	YEAR	MODEL	Yes/No/NA)	(Indicate T/F/I/R/A/L) OWNERSHIP DOCS
VIN#	MAKE	YEAR	MODEL	Yes/No/NA)	(Indicate T/F/I/R/A/L) OWNERSHIP DOCS
VIN#		YEAR	MODEL	Yes/No/NA)	OWNERSHIP DOCS
VIN#		YEAR	MODEL	Yes/No/NA)	OWNERSHIP DOCS
VIN#		YEAR	MODEL	Yes/No/NA)	OWNERSHIP DOCS
VIN#		YEAR	MODEL	Yes/No/NA)	OWNERSHIP DOCS
VIN#		YEAR	MODEL	Yes/No/NA)	OWNERSHIP DOCS
VIN#		YEAR	MODEL	Yes/No/NA)	OWNERSHIP DOCS
VIN#		YEAR	MODEL	Yes/No/NA)	OWNERSHIP DOCS
I hereby certify that the inform writing within 10 days, if anyth	ation present abo			Yes/No/NA) HAZ WASTE DOC	OWNERSHIP DOCS
I hereby certify that the inform	ation present abo	ove is correc	t. I agree to i	Yes/No/NA) HAZ WASTE DOC	OWNERSHIP DOCS

EXHIBIT 4

Exhibit 4a

STATE OF NEW JERSEY

EQUAL EMPLOYMENT OPPORTUNITY PROVISIONS FOR PROCUREMENT, PROFESSIONAL AND SERVICE CONTRACTS

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)

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 4b

FEDERAL MANDATORY EQUAL OPPORTUNITY LANGUAGE ON FEDERAL AID PROJECTS (AUTHORITY SUBJECT TO 41 CFR 60-1.4 IN COMPLIANCE WITH 2 CFR PART 200 AND 2 CFR PART 200 APPENDIX II)

By acceptance of this contract, the contractor also agrees to the following:

(b)Federally assisted construction contracts. (1) Except as otherwise provided, each administering agency shall require the inclusion of the following language as a condition of any grant, contract, loan, insurance, or guarantee involving federally assisted construction which is not exempt from the requirements of the equal opportunity clause:

The applicant hereby agrees that it will incorporate or cause to be incorporated into any contract for construction work, or modification thereof, as defined in the regulations of the Secretary of Labor at 41 CFR Chapter 60, which is paid for in whole or in part with funds obtained from the Federal Government or borrowed on the credit of the Federal Government pursuant to a grant, contract, loan, insurance, or guarantee, or undertaken pursuant to any Federal program involving such grant, contract, loan, insurance, or guarantee, the following equal opportunity clause:

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

(1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. 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. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

- **(2)**The contractor 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 race, color, religion, sex, sexual orientation, gender identity, or national origin.
- (3) The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee

who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.

- **(4)**The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- **(5)**The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- **(6)**The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- (7)In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- (8) The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

The applicant further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: Provided, That if the applicant so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.

The applicant agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

The applicant further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

(2)[Reserved]

EXHIBIT 5 STATEMENT OF JOINT VENTURE FOR PROFESSIONAL SERVICES

WE, THE UNDERSIGNED CERTIFY THAT:

- 1. THE CONSULTANT, UNDER WHOSE NAME WE HAVE AFFIXED OUR RESPECTIVE SIGNATURES, HAS DULY AUTHORIZED AND EMPOWERED US TO EXECUTE THIS <u>STATEMENT OF JOINT VENTURE</u> IN THE NAME OF AND ON BEHALF OF SUCH CONSULTANT FOR THE PURPOSES HEREIN FURTHER SET FORTH.
 - 2. THE FOLLOWING NAMED CONSULTANTS:

(a)			
(u)	() Individual	() Partnership	() Corporation
(b)	; ; ; ; ; ; ; ; ; ; ; ; ; ; ; ; ; ; ;	() Partnership	() Corporation
(c)	; () Individual	; () Partnership	() Corporation

HAVE ENTERED INTO A <u>JOINT VENTURE</u> FOR THE SPECIAL PURPOSE OF CARRYING ON THE WORK AND PROFESSIONAL SERVICES HEREINAFTER DESCRIBED.

- 3. UNDER THE PROVISIONS OF SUCH <u>JOINT VENTURE</u> 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 <u>JOINT VENTURE</u> AND LIABLE THEREFOR AND FOR ALL OBLIGATIONS INCURRED IN CONNECTION THEREWITH.
- 4. THIS <u>STATEMENT OF JOINT VENTURE</u> IS EXECUTED SO THAT THE NAMED CONSULTANTS MAY, UNDER SUCH <u>JOINT VENTURE</u>, 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 <u>JOINT VENTURE</u>, AND WHEN SO EXECUTED SHALL BIND THIS <u>JOINT VENTURE</u> 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 <u>JOINT</u>	VENTURERS,	WE BIND	THE	CONSULTANT	FOR	WHOM WE	RESP	ECTIVELY
EXECUTE T	HIS STATEME	NT OF JOINT	<u>VENTURE</u> I	N FIRI	M AGREEMEN	「WITH	NJ TRANSIT	THAT	EACH OF
THE REPRE	SENTATIONS	HEREIN SET F	ORTH IS T	RUE.					

6. THE WORK AND PROFESSIONA ENTERED INTO IS IDENTIFIED AS:	AL SERVI	CES FOR WHICH THIS JOINT VENTURE HAS BEEN
	(a)	(Name of Consultant)
	BY	(Also type or print name of signer)
	(b)	(Name of Consultant)
	BY	(Also type or print name of signer)
	(0)	
	· /	(Name of Consultant)
	BY	(Also type or print name of signer)

TO BE EXECUTED BY EACH JOINT VENTURER

AUTHORIZATION AND DESIGNATION OF RESPECTIVE ATTACHED TO ACT FOR AND ON BEHALF OF THE CONSU	AFFIANTS TO THE STATEMENT OF JOINT VENTURE HERETO ILTANTS NAMED IN PARAGRAPH 2 THEREOF:
(a) (Name of Consultant)	HEREBY CERTIFIES THAT
(Name of Representative)	HAS BEEN AND IS HEREBY EMPOWERED
TO SIGN THE STATEMENT OF JOINT VENTURE AT	TTACHED HERETO AS THE AUTHORIZED
REPRESENTATIVE OF	
	(Name of Consultant)
FOR THE SPECIAL PURPOSE THEREIN EXPRESS	ED.
ATTEST	
	• • • •
(b) (Name of Consultant)	HEREBY CERTIFIES THAT
(Name of Representative)	HAS BEEN AND IS HEREBY EMPOWERED
TO SIGN THE STATEMENT OF JOINT VENTURE AT	ITACHED HERETO AS THE AUTHORIZED
REPRESENTATIVE OF	(Name of Consultant)
FOR THE SPECIAL PURPOSE THEREIN EXPRESS	ED.
ATTEST	
• •	• • • •
(C) (Name of Consultant)	HEREBY CERTIFIES THAT
(Name of Representative)	HAS BEEN AND IS HEREBY EMPOWERED
TO SIGN THE STATEMENT OF JOINT VENTURE AT	ITACHED HERETO AS THE AUTHORIZED
REPRESENTATIVE OF	
	(Name of Consultant)
FOR THE SPECIAL PURPOSE THEREIN EXPRESS	ED.
ATTEST	



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}:

PLE	CON	PART 1 ETE THE QUESTIONS BELOW BY CHECKING EITHER THE "YES" OR THE "NO" BOX. ALL PART THAT THE STATE ARE REQUIRED TO COMPLETE THIS FORM PURSUANT TO N.J.S. LEASE NOTE THAT IF THE VENDOR/BIDDER IS A NON-PROFIT ENTITY, THIS FOR IS NOT	<u>.A.</u> 52:25-24.2	
1.	or greater	ny individuals, corporations, partnerships, or limited liability companies owning a 10% interest in the Vendor {Bidder}?	YES	NO
		F THE ANSWER TO QUESTION 1 IS "NO", PLEASE SIGN AND DATE THE FORM. E ANSWER TO QUESTION 1 IS "YES", PLEASE ANSWER QUESTIONS 2 – 4 BELOW.		
2.	Of those pointing individuals	arties owning a 10% or greater interest in the Vendor {Bidder}, are any of those parties?		
3.	-	arties owning a 10% or greater interest in the Vendor {Bidder}, are any of those parties ns, partnerships, or limited liability companies?		
4.	•	wer to Question 3 is "YES", are there any parties owning a 10% or greater interest in ation, partnership, or limited liability company referenced in Question 3?		
IF A	ANY OF THE	ANSWERS TO QUESTIONS 2 - 4 ARE "YES", PLEASE PROVDE THE REQUESTED INFORMA	TION IN PART	2 BELOW.
parti	nerships, an se entities is	d "YES" for questions 2, 3, or 4, you must disclose identifying information related to the id/or limited liability companies owning a 10% or greater interest in the Vendor {Bidder}. itself a corporation, partnership, or limited liability company, you must also disclose all partnership, or limited liability company. This information is reserved in that corporation, partnership, or limited liability company. This information is reserved.	Further, if one parties that ow	or more of on a 10% or
1 1	AME DDRESS 1			
A	DDRESS 2 TY	STATE ZIP		
AI AI	AME DDRESS 1 DDRESS 2 TY	STATE ZIP		
A	AME DDRESS 1			
	DDRESS 2 TY	STATE ZIP		
At	tach Additio	onal Sheets If Necessary.		

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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
CITI			
ENTITY NAME			
PARTNER NAME			
ADDRESS 1			
ADDRESS 2			
CITY		STATE	ZIP
Attach Additional S	heets If Necessary.		
which is publicly trade that holds a 10 percen and Exchange Commis also shall submit links foreign equivalent and	d may submit the name and address of t or greater beneficial interest in the pub sion or the foreign equivalent, and, if th to the websites containing the last ann	each publicly trade blicly traded entity a ere is any person th ual filings with the f	or {Bidder} with any direct or indirect parent entity dentity and the name and address of each person is of the last annual filing with the federal Securities at holds a 10 percent or greater beneficial interest, federal Securities and Exchange Commission or the information on each person that holds a 10 percent
information and any at Jersey is relying on the this certification throu information contained certification. If I do so	tify that I am authorized to execute the tachments hereto, to the best of my kninformation contained herein, and that gh the completion of any contract(s) herein; that I am aware that it is a crim, I will be subject to criminal prosecution.	owledge are true and the Vendor (Bidder with the State to main and offense to main and under the law	behalf of the Vendor {Bidder}, that the foregoing nd complete. I acknowledge that the State of New is under a continuing obligation from the date of notify the State in writing of any changes to the ake a false statement or misrepresentation in this v, and it will constitute a material breach of mying from this certification void and unenforceable.
Signature (Do not enter v	rendor ID as a signature)	Date	
Time Name and The			
FEIN/SSN			

NEW JERSEY TRANSIT SOURCE DISCLOSURE CERTIFICATION FORM

Consultant(Proposer):		Contract Number:					
The Consultant(Proposer) subr N.J.S.A. 52:34-13.2.	The Consultant(Proposer) submits this form in response to an RFP issued by NJ TRANSIT in accordance with the requirements of N.J.S.A. 52:34-13.2.						
		PART 1					
☐ All services will be perf	formed by the Consultant(Propo	oser) and the Subconsultants <u>in</u>	the United States. Skip part 2.				
		PART 2					
☐ Services will be perform	ned by the Consultant (Propose	er) and/or Subconsultants <u>outsi</u>	de of the United States. Complete Pa	art 2.			
Consultant (Proposer) and all S (Proposer) shall state, with spe	Where services will be performed outside the United States, please list every country where services will be performed by the Consultant (Proposer) and all Subconsultants. If any of the services cannot be performed within the United States, the Consultant (Proposer) shall state, with specificity, the reasons why the services cannot be performed in the United States. Attach additional sheets, if necessary. The Contracting Officer will review this justification and, if deemed sufficient, may seek approval of the Executive Director.						
Name of Consultant(Proposer)/ Subconsultant	Performance Location by Country	Description of Service(s) to be Performed Outside the United States	Reason Why the Service(s) Cannot be Performed in the U. S.				
Any changes to the information extension thereof will be immedent Penn Plaza East, Newark, NJ	diately reported by the Consulta	uring the term of any contract avant (Proposer) to the Director of	varded under the referenced solicitation Contracts, NJ TRANSIT Corporation,	on or , One			
a prior to a written determinate Consultant(Proposer) shall be	If during the term of the Contract, the Consultant (Proposer) shifts the location of any of the services outside the United States, without a prior to a written determination by the Contracting Officer, that the services cannot be performed in the United States, the Consultant(Proposer) shall be deemed in breach of Contract, and the Contract will be subject to termination for cause pursuant to Article 16 of the Professional Services Agreement.						
	<u>CE</u> I	RTIFICATION					
I, the undersigned, certify that I am authorized to execute this certification on behalf of the Consultant(Proposer), that the foregoing information and any attachments hereto, to the best of my knowledge are true and correct. I acknowledge that NJ TRANSIT is relying on the information contained herein, and that the Consultant(Proposer) is under a continuing obligation from the date of this certification through the completion of any contract(s) with NJ TRANSIT to notify NJ TRANSIT 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 NJ TRANSIT, permitting NJ TRANSIT to declare any contract(s) resulting from this certification to be void and unenforceable.							
Signature:		Date:					
Print Name:		Title:					
(Rev. February 2019)							



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

DISCLOSURE OF INVESTMENT ACTIVITIES IN IRAN FORM

BID SOLICITATION #:	VENDOR/BIDDER:			
FAILURE TO CHECK ONE O	PART 1 CERTIFICATION ST COMPLETE PART 1 BY CHECKING ONE OF THE BOXES OF THE BOXES WILL RENDER THE PROPOSAL NON-RESPONSIVE			
ursuant 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 nor entity, nor any of its parents, subsidiaries, or affiliates, identified on the Department of the Treasury's Chapter 25 list as a person or entity engaged in investment activities in Iran. The Chapter 25 list is bound on the Division's website at http://www.state.nj.us/treasury/purchase/pdf/Chapter25List.pdf . Vendors/Bidders must review this list prior to completing the below certification. Failure to complete the certification will render a Vendor's/Bidder's proposal non-responsive. If the Director of the Division of Purchase and Property finds a person or entity to be in violation of the law, s/he shall take action as may be appropriate and revided by law, rule or contract, including but not limited to, imposing sanctions, seeking compliance, recovering damages, declaring the party in efault and seeking debarment or suspension of the party.				
	CHECK THE APPROPRIATE BOX			
subsidiaries, or affiliates is listed on the N.J	7 2012, c. 25, that neither the Vendor/Bidder listed above nor any of its parents, i. Department of the Treasury's list of entities determined to be engaged in prohibited 5 ("Chapter 25 List"). Disregard Part 2 and complete and sign the Certification below.			
on the Department's Chapter 25 list. I will	ecause the Vendor/Bidder and/or one or more of its parents, subsidiaries, or affiliates is listed provide a detailed, accurate and precise description of the activities in Part 2 below and sign lure to provide such information will result in the proposal being rendered as nonresponsive tions will be assessed as provided by law.			
	D. D. D.			
PLEASE PROVIDE ADDITIONA	PART 2 LL INFORMATION RELATED TO INVESTMENT ACTIVITIES IN IRAN			
If you checked Box "B" above, provide a detailed subsidiaries or affiliates, engaged in the investment a	accurate and precise description of the activities of the Vendor/Bidder, or one of its parents, activities in Iran by completing the boxes below.			
ENTITY NAME: RELATIONSHIP TO VENDOR/BIDDER: DESCRIPTION OF ACTIVITIES: DURATION OF ENGAGEMENT: ANTICIPATED CESSATION DATE:				
VENDOR/BIDDER CONTACT NAME: _ VENDOR/BIDDER CONTACT PHONE No.: _ Attach Additional Sheets If Necessary.				
	<u>CERTIFICATION</u>			
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	Date			
int Name and Title				

DPP Rev. 6.19.17 Page 1 of 1

CONTRACTOR'S CERTIFICATION OF ELIGIBILTY

The	(Insert Name of Company) hereby certifies that
it and its Subcontractors are not listed on the State of N	lew Jersey, Department of Labor and Workforce
Development, Division of Wages and Hour Compliance	e, Prevailing Wage Debarment List or on the State
of New Jersey, Department of Treasury, Consolidated I	Debarment Report.
	(Insert Name of Company) and its
Subcontractors has/have no exclusion(s) on the conso	lidated U.S. Government, Systems for Award
Management (SAM) database located at www.SAM.go	v.
I, being duly authorized, certify that the information sup	plied above is complete and correct to the best of
my knowledge. I certify that all of the foregoing statement	ents made by me are true. I am aware that if any
of the foregoing statements made by me are willfully fall	lse, I am subject to punishment.
	Signature
	•
	Type or Print Name
	Title
	Title
	Date

NON-COLLUSION CERTIFICATION

I,	of the City of	
in the County of	of the City of and the State of	, of full age, certify
that:		
the Proposer making to Proposal with full auth agreement, participated competitive bidding in competitive bidding in competitive bidding in competitive bidding in Competitive Broposal and in NJ Transit Corp. relies	he Proposal for the above-named project hority so to do; that said Proposer has d in any collusion, or otherwise taken connection with the above-named project; this certification are true and correct; and a upon the truth of the statements contain this certification in awarding the Contract	ct, and that I executed the said onot, directly, entered into any any action in restraint of free, and that all statements contained d made with full knowledge that ined in said Proposal and in the
I further certify or secure such Contract brokerage or contingent	that no person or selling agency has been upon an agreement or understanding for fee, except bona fide employees or bona ined by	employed or retained to solicit a commission, percentage, a fide established commercial or
Signature		
Type or Print Name		

EXHIBIT 11a

CERTIFICATION OF COMPLIANCE NJ TRANSIT'S CODE OF ETHICS FOR VENDORS AND STATE OF NEW JERSEY ETHICS LAWS

l,	(name	of individual),	executing
this document on behalf of the undersigned company, partnership, corpo	ration, lin	nited liability p	artnership,
limited liability corporation, or entity hereinafter referred to as "Contractor"	, present	ly seeking to d	o business
with NJ TRANSIT by way of a Request for Proposals ("RFP"), hereby cer	tify to NJ	J TRANSIT as	follows:

- 1. I certify that Contractor has received a copy of NJ TRANSIT's Code of Ethics for Vendors and that I have read and studied this document and distributed this document to all of Contractor's personnel, including but not limited to Subcontractors, involved in seeking to do business with NJ TRANSIT and required said personnel to fully read this document. In addition, I further certify 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 certifies 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 certifies 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 certifies that during the RFP 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

Chief Ethics Liaison Officer.

- 5. The Contractor certifies that during the RFP 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 or their immediate family member, who has either accepted, solicited or asked Contractor to provide any amount of money, gifts, loans, gratuities, benefits, inducements, food (with the exception of coffee, tea, soda, pretzels, donuts, or similar snacks, which may be provided to all attendees at a conference, seminar or business meeting), 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 certifications, 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 Signatory)	

EXHIBIT 11b 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.

NEW JERSEY TRANSIT CORPORATION

CERTIFICATION FOR CONTRACTS, GRANTS, LOANS AND COOPERATIVE AGREEMENTS (Byrd Anti-Lobbying Certification)

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.

0:	
Signature of Authorized Official	
Print Name	
Title	
Firm	
Date	
Date	

NJ TRANSIT TRAVEL & BUSINESS REIMBURSEMENT GUIDELINES FOR CONTRACTORS AND VENDORS

Per Diem (Major Cities)* Effective January 1, 2018

* \$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
Current foreign Per Diem Rates can be found at http://aoprals.state.gov

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.

M&IE Total	\$51.00	\$54.00	\$59.00	\$64.00	\$69.00	\$74.00
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 carries, bellhops, hotel maids, stewards and stewardesses and others on ships and hotel servants".

- 2. <u>Conveyances:</u> 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 \$0.545 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. <u>Lodging:</u> 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.

Philip D. Murphy, Governor Sheila Y. Oliver, Lieutenant Governor Diane Gutierrez-Scaccetti, Commissioner Kevin S. Corbett, President & CEO



June 17, 2020

Re: NJ TRANSIT Request for Proposal No. 19-048

Construction Management Services for the Hoboken Signal and Yard Power Repairs Project

Addendum No. 1

To Whom it May Concern:

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

- 1. The Attendance Sheet from the Pre-Proposal Conference held on June 12, 2020 is included as Attachment A.
- 2. Enclosed for Bidders information is a Pre-Proposal Data Sheet summarizing information discussed at the Pre-Proposal Conference is included as Attachment B.

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

Sincerely,

Maggie Sotolongo

Principal Contract Specialist

Procurement Department

Attachment A

Request for Proposal No. 19-048
Construction Management Services for the Hoboken Signal and Yard Power Repairs Project

RFP No. 19-048 (Pre-Proposal Conference) Attendance List Contract Liasion: Maggie Sotolongo

Company Name	Full Name	E-Mail Address	Telephone #	
A.G. Consulting Engineering, PC	Amit Guleria	2		
A.G. Consulting Engineering, PC	Zachary Tatum	The state of the s		
	Francis Miller			
AECOM		2		
AECOM	Phillip Girandola			
AECOM	Dilipkumar Patel			
APTIM	David Hecht			
Bison Rail Systems	Brian L. Clark			
	Robert Lancaster	2 <u></u> 2		
Bree Associates		Б		
	Nanette Cuadrado			
Bree Associates		E .		
Bree Associates	Chris Peduzzi	_		
Enovate Engineering	Sajid H. Sheikh			
		·	2 T	
Entech Engineering, PC	Sue Bayat		\ <u>-</u>	
Entech Engineering, PC	William Crosbie			
Envision Consultants, Ltd.	Ryan T. Spearing	.c		
Gannett Fleming, Inc.	Paul Pittari			
Garg Consulting Services, Inc.	Eugene Chuang			
	Angelica Augustyniak	N	<u> </u>	
Gedeon GRC Consulting				
Gedeon GRC Consulting	Ingrid M. Campbell			
Haydan Consultants	Dan Sawh			
Hill International, Inc.	David Thomas			
ImageIntegrated Strategic Resources, LLC				
InfoTran Engineers P.C.	Indira Varadarajan			
JCMS, Inc.	Umesh K. Jois		"	
JCMS, Inc.	Jayanta Dutta Kamal Shahid			
KS Engineers, P.C.	kamai Shanid			
		<u> </u>	Sa	
KS Engineers, P.C.	Joe Ferrara	<u>, </u>		
	Jodie Leothacue			
Leothacue Enterprises, Inc.		2		
Leothacue Enterprises, Inc.	David Nogar	com		
Malick & Scherer, PC	Yosry Bekhiet			
Marine Tiger Technologies	Jake C. Campbell			
Naik Group	Eli Charchar	-0		
Naik Group	Kevin O'Connor			
Naik Group	Virginia Squitieri			
Naik Group	Nicole Waterman			
Niti Systems Consultants	Jignesh Patel		19 4 2	
Principle IX Associates, LLC	Aaron Bethea		55	
Promatech, Inc.	Carrie Streahle		70	
Systra	Seymour Portes		4	
	Carlos Delgado	St.	74	
Systra		5		
Systra	Jacques Mayard			
Techno Enginners & Construction				
Managers	Parakash Donde			
Techno Enginners & Construction				
Managers	Wallace Caban			
The Carian Group	Aaloki Desai	3		
The Carian Group	Michael Lucian	2) .	
The Carian Group	David Arata	- E		

RFP No. 19-048 (Pre-Proposal Conference) Attendance List Contract Liasion: Maggie Sotolongo Company Name Full Name E-Mail Address Telephone # TY Lin International Brian Salfelder Ray Moran WSP USA WSP USA Dennis Martin SA Engineering, LLC Shafayat Jamil

NJ TRANSIT Ralph Duran Maggie Sotolongo Doug Flannery Dan Nigro Jason Wormeck Adonis Abreu Jansy Escobar

Attachment B

Request for Proposal No. 19-048
Construction Management Services for the Hoboken Signal and Yard Power Repairs Project

NJ TRANSIT RFP No. 19-048 Construction Management Services for Hoboken Signal and Yard Power Repairs

Pre-Proposal Conference Friday, June 12, 2020



Pre-Proposal Conference Agenda

- Introduction
- Proposal Process & Requirements
- DBE Goal Assignment and DBE Program
 Compliance Requirements
- Project Overview & Technical Requirements
- Question and Answer Session

Communications

 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 proposer from consideration for award of this contract.

Communications (continued)

- Proposers are also advised that any discussions held during 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.
- 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.



NJ TRANSIT RFP No. 19-048 Key Dates

Requests for Information/Questions Due	June 19, 2020
Intent to Propose Form Due	July 1, 2020
Proposal Due Date	July 9, 2020
Oral Presentations	Week of July 27, 2020 (Tentative)
Cost Proposals Due	Week of August 10, 2020 (Tentative)



Requests for Information & Questions

- To be given consideration, all such inquiries must adhere to the following:
 - Be received in writing no later than Friday, June 19, 2020 at 3:00 p.m.
 - Email must include RFP name and number in the subject line
 - Requests for information must be emailed in Word format and sent to Maggie Sotolongo
- The Proposer shall also carefully review NJ TRANSIT's Professional Services Agreement (Exhibit 1). The Proposer must identify and submit any questions, requests for clarifications, exceptions or proposed modifications to the Agreement, with suggested changes to the Agreement and the reasons(s) therefore, during the Request for Information period.

Addendum Acknowledgement

- 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 whomever made, that is not incorporated into an addendum.
- Copies of all such Addenda will be e-mailed to each proposer.
- Proposers are required to acknowledge receipt of all addenda by signing the "Acknowledgement of Receipt of Addenda" form. This form (Exhibit 2). Failure to acknowledge receipt of all Addenda may render the Proposal nonresponsive.

Technical Proposal Due Date

- The Technical Proposal shall be electronically sent on or before **3:00 pm, July 9, 2020**.
- A Secure File Transfer Site (SFTS) tool via Microsoft OneDrive is being utilized to provide a secure method for facilitating file transfers from outside parties. The Technical Proposals and Consultant Certifications shall be uploaded <u>separately</u> to the provided Microsoft OneDrive link no later than 3:00 p.m., July 9, 2020.
- Proposers are requested to begin <u>each</u> file name with RFP Number, name of firm and include content description or Attachment Number, if applicable. (For example, RFP No. 19-048 – Firm ABC – Technical Proposal).

Technical Proposal Due Date (continued)

 NJ TRANSIT requires that all prospective proposers advise NJ TRANSIT of their intent to either submit or not submit a proposal by e-mailing the Intent to Propose Form, on or before July 1, 2020. All forms must be emailed to This form is required in order to submit a Proposal but does not bind a prospective proposer in any way. Failure to timely submit the notice of intent may result in NJ TRANSIT rejecting any proposal later submitted.

Oral Presentations

 NJ TRANSIT will not hold any in-person meetings for the oral presentations. The oral presentations will be conducted utilizing a telephone and video conference via Microsoft Teams and instructions will be provided to the invitees. The oral presentation period will be scheduled for a maximum of one (1) hour for each Proposer.



Cost Proposal Submittal

 NJ TRANSIT will request a Cost Proposal from the highest technically qualified firm.

• Firms shall provide a detailed Cost Proposal within seven (7) calendar days of the receipt of the written or verbal notification from NJ TRANSIT regarding their selection.



NJ TRANSIT'S OFFICE OF BUSINESS DEVELOPMENT

Disadvantaged Business Enterprise
(DBE) Assigned Goal and DBE Program
Compliance Requirements



DBE Goal Assignment

As an aid in meeting the commitment of its Disadvantaged Business Enterprise (DBE) Program, NJ TRANSIT has assigned a **Race Neutral** project on the gross sum amount of the Proposal or Contract for DBE subcontracting participation.

 The Proposer can refer to https://njucp.dbesystem.com/ 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 Disadvantaged Business Enterprises.



DBE Program Compliance Requirements

- All DBE forms and certificates or letters shall be submitted by the Proposer with their Cost Proposal or within five (5) calendar days after the Cost Proposal due date. Proposers are requested to review carefully and complete the forms entirely, with no blank fields.
- Failure to submit any and all mandatory material DBE documentation within five (5) Calendar Days after
 the Cost Proposal due date shall result in a rejection of a Proposer as non-responsible.

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 goal.	if subcontracting to a Second -Tier DBE or Non-DBE. Do no	t count Non-DBE portion	toward the
Name, Address and Telephone # of DBE Subcontractor/Subconsultant	Provide <u>Detailed</u> Scope of Work to be Performed (Identify all suppliers)	Dollar Value of Subcontract/Sub- consultant 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 undersigned understands that removal/replacement of the DBE(s) listed is Development and receiving <u>WRITTEN APPROVAL</u> from the Office of Busines to be determined by NJ TRANSIT.	NOT PERMISSIBLE for any reason (pre or post-award), without submi	tting a written request to the	Office of Business
Company Name:	Authorized Signature:		
Company Address:	Print Name:		
	Title:		
Federal Tax ID #.	Prime Contractor's DBE Liaison Officer:		
Company Tel #:	Date Signed:		

To Add Subs Use Additional Forms NJT Fed Form A rev June 2010

MANDATORY FORM: COMPLETE ENTIRELY Form A1 (Fed)

BIDDER SOLICITATION & CONTRACTOR INFORMATION - FORM A1

Project Title:	_	Date:
Prime Contractor/Consultant:	NJT Contract #:	Telephone #:
Complete the information below for Bidder/Proposer/	Prime(s) <u>working</u> on this project <u>.</u> Use Page 2 fo	r all subcontractors/subconsultants

	Bidder/Proposer/Prime	Bidder/Proposer/Prime	Bidder/Proposer/Prime
Company's Full Name			
Address			
City and State			
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:			

BIDDER SOLICITATION & CONTRACTOR INFORMATION - FORM A1

Project Title:		Date:
Prime Contractor/Consultant:	_NJT Contract #:	Telephone #:

COMPLETE THE INFORMATION BELOW FOR "ALL" FIRMS INCLUDING SUPPLIERS SOLICITED; INCLUDING THOSE THAT WILL WORK ON THIS PROJECT.

	Subcontractor/Subconsultant	Subcontractor/Subconsultant	Subcontractor/Subconsulta nt	
Company's Full Name				
Address				
City and State				
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:				

Page 2 of 2

To Add <u>Subs</u> Use Additional Forms

NJT Fed Form A1 rev Jun 2010 rev 0715

NON-DBE SUBCONTRACTOR UTILIZATION - FORM A2

Directions: To be completed by any Bidder/Proposer/Prime for "all" subs including suppliers participating on this contract.

Bidder/Proposer Prime Name.		Project Title:		
Date: Prime Contract Value:				
Name, Address and Telephone # of all Subcontractor/Subconsultants	FEIN#	Provide <u>Detailed</u> Scope of Work to be Performed	Dollar Amount of Subcontractor/Sub- consultant Work (\$) Awarded	Percentage of Subcontract or Work (%)
			s	%
	_		s	%
				70
			\$	%
			s	%
			\$	%
Must provide a detailed scope of work; one-word desc	criptions are not acceptable.	TOTALS	s	%

INTENT TO PERFORM AS A 1ST 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 DRE Firm:
Project/Contract Name:	IFB:RFP Contract Number:
Does the undersi	igned DBE (Answer Accordingly):
Intend to perform subcontract work in connection or No)	with the above—mentioned project as a Joint Venture? Circle one. (Yes
Intend to subcontract any portion of its scope of wo lfyes, DBE Sub-Primes must complete and subm	
Intend to subcontract any portion of its scope of wo If yes, must complete and submit Form AA2.	ork to a Non-DBE(s)? Circle one. (Yes or No) At what percent?46
	scribed work on the above-referenced project: (<u>Provide a detailed</u> on your subcontract. Attack a copy of quote approved and signed by
Dollar Value of DBE Subcontract: \$	
Total Quantity/Units (if applicable):	Per Unit Cost (if applicable): \$
The undersigned based the above scope of work an contractor named above. Circle one. (Yes or No)	of subcontract value on detailed project apeca received from the Biddet
The Prime Contractor projected the following com-	mencement and completion date for such work as follows:
DBE Contract Start Date:DBE Co	entract Completion Date
conditioned upon execution of a contract with	oal agreement for the above work with the Prime Contractor NJ TRANSIT. As a DBE subcontractor, I will cooperate with the less set forth by NJ TRANSIT. I attest that I will perform at least for the referenced project.
•	. ,
Signature of 1" Tier DBE Da	nte Title
Print Name	Telephone #
Failure to adhere to these instructions or the falsific	CRITION OF ARTY INTOXIMATION ON 1219 TOXIM SHALL LESSUE IN DIFEREN OF CONFIRM I



Project Overview & Technical Requirements

Ralph DuranProject Manager



Questions?



Philip D. Murphy, Governor Sheila Y. Oliver, Lieutenant Governor Diane Gutierrez-Scaccetti, Commissioner Kevin S. Corbett, President & CEO



June 19, 2020

Re: NJ TRANSIT Request for Proposal No. 19-048

Construction Management Services for the Hoboken Signal and Yard Power Repairs Project

Addendum No. 2

To Whom it May Concern:

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

 Clarification: Under Section B. Technical Proposal Format, Section 8 – Conflict of Interest, please delete the following paragraph:

The Proposer or any employee, agent or Subconsultant of the Proposer shall also identify any projects, past or present, it has performed for NJ TRANSIT relating to the Mason and Building 9 Substations Project, including the dates of the project, the contract number, the project supervisor and a brief description of the scope of work.

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

Sincerely,

Maggie Sotolongo

Principal Contract Specialist Procurement Department

Philip D. Murphy, Governor Sheila Y. Oliver, Lieutenant Governor Diane Gutierrez-Scaccetti, Commissioner Kevin S. Corbett, President & CEO



June 26, 2020

Re: NJ TRANSIT Request for Proposal No. 19-048

Construction Management Services for the Hoboken Signal and Yard Power Repairs Project

Addendum No. 3

To Whom it May Concern:

The following constitutes Addendum No. 3 and must be acknowledged with each proposal. Proposers are advised of the following clarifications, additions and/or revisions to the above referenced Request for Proposal:

Responses to questions are attached.

This concludes Addendum No. 3. An authorized representative of your organization shall acknowledge receipt of this Addendum in the Exhibit provided with its proposal. Failure to acknowledge receipt of all Addenda may cause the rejection of the proposal as non-responsive.

Sincerely,

Maggie Sotolongo

Principal Contract Specialist

Procurement Department

1. Please confirm the structural steel frame supporting the new substation (Days Yard Substation to be built under this contract) is on piles. This question is in reference to: Section II.A.: Construction Project Background, Page #:13 (last sentence of top paragraph)

No. The Days Yard Substation structural steel framed platform is NOT on piles and is supported by spread footings.

2. Since project plans are not available for review, a brief discussion with google earth was conducted. Could a general schematic be provided to show in general the expected run of services and monopole alignment?

A schematic of the Hoboken yard is included in this Addendum.

3. At the pre-proposal conference, it was noted that the Contractor would only be allowed to work on weekends. Is that for work requiring track outages or all work? Can we anticipate that some work, in addition to the rooftop work, can be performed during regular weekday work hours when not within foul zones, or under flag protection?

The majority of the work will be required to be performed on weekends, but weekday work may be allowed where feasible and track/catenary outages are not required. Some work may be permitted within foul zones or under flag protection, but the Contractor is NOT guaranteed that these work conditions will be permitted. Some of the roof work will require catenary outages, and some of the roof work can be performed under supervision without catenary outages. The need for an outage is at the discretion of NJ TRANSIT.

4. What forms are required from subconsultants?

Subconsultants are only required to submit the appropriate DBE forms, when a Cost Proposal is requested and the Business Registration Certificate.

- 5. Please confirm that the DBE Forms & Affidavits are required only with the Cost Proposal (which is not required at this time), and not with the Technical Proposal submission.
 - H. DBE Program Compliance Requirements

The Proposer shall refer to NJ TRANSIT's "DBE Requirements for Race Neutral Federal Procurement Activities" attached to this RFP as Exhibit 3, for instructions, guidance, and explanations for DBE program obligations for Contracts and Subcontracts.

For this Contract, the Proposer shall identify all DBE and non-DBE Subcontractors/ Subconsultants, and suppliers proposed to participate

in and those solicited for this Contract, and shall complete and submit the mandatory DBE Forms A, A1, A2, and B. The Proposer must also submit NJ Unified Certification Program (NJUCP) certificate or letter for all potential DBE subcontractors. Additionally, the Proposer shall submit any applicable supplemental forms (AA, AA1, AA2, BB, and D). All DBE forms and NJUCP certificates or letters shall be submitted by the Proposer with its Cost Proposal or within five (5) Calendar Days after the Cost Proposal due date.

As stated in the RFP, all DBE forms and NJUCP certificates or letters shall be submitted by the Proposer with its **Cost Proposal** or within five (5) Calendar Days after the Cost Proposal due date.

6. Please confirm that whether Exhibit 7 has to be submitted with the Technical Proposal submission.

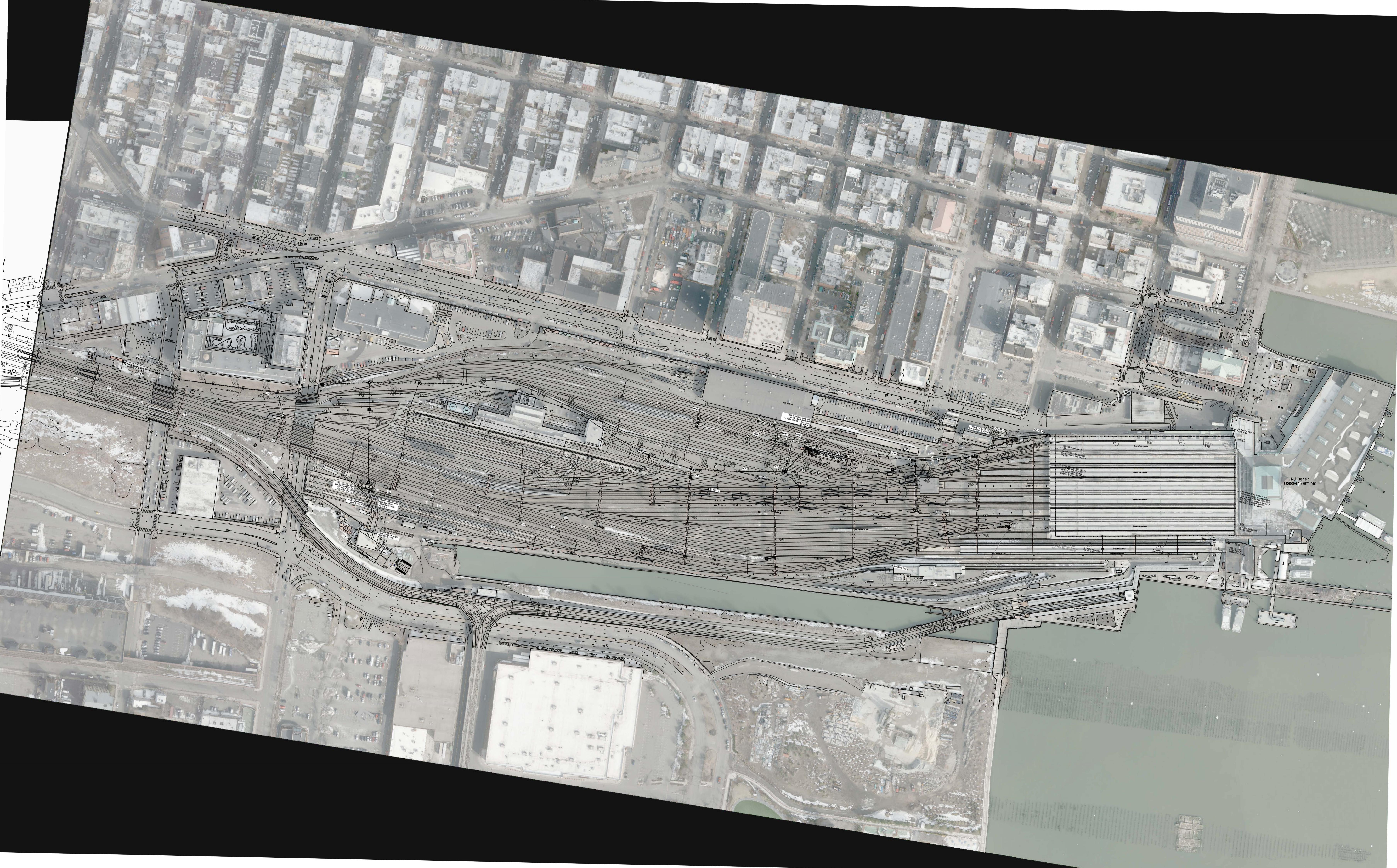
As stated in the RFP, the Proposer should submit the Source Disclosure Certification Form with its Technical Proposal. However, if the form is not submitted with the Technical Proposal, it shall be submitted within five (5) Calendar Days of NJ TRANSIT's request.

L. Source Disclosure Requirements – N.J.S.A. 52:34-13.2 (Page 8-9) and Page 41, Consultant Certifications

Accordingly, the Proposer should submit the attached Source Disclosure Certification Form(Exhibit 7) with its Proposal. If the information is not submitted with the Proposal, it shall be submitted within five (5) Calendar Days of NJ TRANSIT's request.

Proposers should submit the following with the Technical Proposal but must submit within the indicated time frame:

- Exhibit 7 Source Disclosure Certificate Form (within five (5) Business Days of request)
- Business Registration Certificate (must be submitted before award of contract)



Philip D. Murphy, Governor Sheila Y. Oliver, Lieutenant Governor Diane Gutierrez-Scaccetti, Commissioner Kevin S. Corbett, President & CEO



July 2, 2020

Re: NJ TRANSIT Request for Proposal No. 19-048 Construction Management Services for the Hoboken Signal and Yard Power **Repairs Project** Addendum No. 4

To Whom it May Concern:

The following constitutes Addendum No. 4 and must be acknowledged with each proposal. Proposers are advised of the following clarifications, additions and/or revisions to the above referenced Request for Proposal:

The proposal due date has been extended to 3:00 pm, Wednesday, July 29, 2020.

This concludes Addendum No. 4. An authorized representative of your organization shall acknowledge receipt of this Addendum in the Exhibit provided with its proposal. Failure to acknowledge receipt of all Addenda may cause the rejection of the proposal as non-responsive.

Sincerely,

Maggie Sotolongo

Principal Contract Specialist

Procurement Department