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Diane Gutierrez-Scaccetti, Commissioner
Kevin S. Corbett, Executive Director

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

August 27, 2018

To Whom It May Concern:

The New Jersey Transit Corporation (NJ TRANSIT) is issuing this Request for Proposal (RFP) to obtain proposals from qualified Consulting firms to Construction Management Services for the Raritan River Bridge Replacement Project.

NJ TRANSIT is requesting proposals from firms with the intention of awarding a contract with the organization(s) whose qualifications and proposal is in the best interest and offers the best value to NJ TRANSIT. Background information, project description, instructions for the proposers and evaluation criteria are included in the enclosed material.

NJ TRANSIT reserves the right to reject any and all proposal(s). Contract award is subject to Consultant agreement to NJ TRANSIT terms and conditions set forth in this RFP.

A Preproposal Conference has been scheduled for Tuesday, September 11, 2018 at 10:00 a.m., at NJ TRANSIT Headquarters in the 9th Floor Conference Room located at One Penn Plaza East, Newark, New Jersey for the purpose of answering questions and providing directives and clarification. All interested firms are urged to attend. **Space for the Pre-Proposal Conference is limited. Interested Parties are not required to RSVP; however, it is requested that only two (2) representatives from each firm attend the Pre-Proposal Conference.**

A Technical Evaluation Committee (TEC) comprised of NJ TRANSIT staff has been appointed to review the proposals and recommend the Consultant based on the evaluation criteria described herein. Upon completion of the TEC's technical evaluation of the proposals, oral presentations will be requested from those firms whose technical proposal falls within the competitive range.

Your Technical Proposal should consist of one (1) original and six (6) copies of the Technical Proposal, sealed and labeled as such plus one (1) electronic copy on a CD/DVD in "PDF" format must be submitted on or before **Wednesday, October 10, 2018 at 3:00 p.m.** and addressed as follows:

**NJ TRANSIT
Procurement Department, 6th Floor
One Penn Plaza East
Newark, New Jersey 07105
Attn: Bid Desk
Re: RFP NO. 18-015**

Construction Management Services for the Raritan River Bridge Replacement Project.

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

All requests for information and questions concerning this project must be submitted in writing and directed to the undersigned. **Questions must be in writing and received by NJ TRANSIT no later than 4:00 p.m., Tuesday, September 18, 2018. Requests for information must be emailed in a non-scanned electronic format to Taishida Chapman at tchapman@njtransit.com.**

This project is subject to the provisions of the Division of Revenue Business Registration Certification Act (N.J.S.A. 52:32-44). Consultants or Subconsultant's shall not engage in the performance of any work, unless the Consultant or Subconsultant is registered with the Department of Treasury Division of Revenue.

The successful proposer will be required to comply with the requirements of P.L. 1975, c.127 (N.J.S.A. 10:5-31) and N.J.A.C. 17:27 regarding Equal Employment Opportunity Laws and Regulations. Disadvantaged Business Enterprises, in accordance with the Department of Transportation (DOT) Regulations 49 C.F.R., Part 26, shall have the maximum opportunity to participate in the performance of this contract. A twenty-five percent (25%) Race-Conscious DBE goal has been set to this project.

This project is also subject to the Diane B. Allen Equal Pay Act (P.L. 2018, c. 9) concerning the reporting of compensation and hours worked by employees categorized by gender, race, ethnicity, and job category.

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

NJ TRANSIT reserves the right to cancel the award of any contract before execution if NJ TRANSIT deems such cancellation to be in its best interest. In no event will NJ TRANSIT have any liability for the cancellation of such award. The Consultant assumes sole risk and responsibility for expenses prior to execution of contract.

This letter should not be interpreted as an award of a contract nor as a commitment to reimburse for any cost incurred in the preparation of a proposal. We look forward to receiving and reviewing your proposal.

Sincerely,



Taishida S. Chapman
Managing Contract Specialist
Procurement Department

**NJ TRANSIT
REQUEST FOR PROPOSALS (RFP) NO. 18-015**

**CONSTRUCTION MANAGEMENT SERVICES FOR THE
RARITAN RIVER BRIDGE REPLACEMENT PROJECT**

AUGUST 2018

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ATTACHMENTS

- A. Proposal Evaluation Criteria
- B. Cost Proposal Forms
- C. Draft Summary Schedule
- D. Non-Disclosure Agreement

EXHIBITS

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

I. GENERAL PROJECT INFORMATION

A. Request for Proposal – General Information

The New Jersey TRANSIT Corporation (NJ TRANSIT) is issuing this Request for Proposals (RFP) to engage a Consultant to perform construction management (CM) services for the Raritan River Bridge Replacement Project (the “Project”).

The Project is being implemented under Federal Transit Administration (FTA) Resilience Projects in response to Superstorm Sandy as shown in the Federal Register: Volume 79, No. 214 dated November 5, 2014.

NJ TRANSIT has retained Hardesty & Hanover/Gannett Fleming Joint Venture Engineering (H&H/GF JV) to perform the design for the project. H&H/GF JV is preparing Design-Bid-Build Construction Documents. As of the date of the advertisement of this RFP, the design is at the 30% level. The design may be further advanced prior to NJ TRANSIT’s engagement of these Construction Management Services. The H&H/GF JV team consists of the following firms:

Name of Firm	Description of Services
Hardesty & Hanover / Gannett Fleming Joint Venture	Prime Consultant: Design, Engineering and Construction Assistance Services for the Replacement of Raritan River Drawbridge
Haley & Aldrich	Geotechnical Engineering and Foundations Design
Griffin Engineering, LLC	Construction Engineering, Constructability Services, Peer Review
Naik Consulting Group, PC	Survey & Mapping services: Survey, Utility, Structural, Civil, Topo, Utility, ROW Survey
Envision Consultants, Ltd.	Project Controls services including Document Control, Configuration Management, Project Cost and Change Control, Risk Assessment and Value Engineering.
JCMS	Cost Estimating & Scheduling
SJH Engineering	Civil & Structural Engineering Support
Radin Consulting, Inc.	NEPA Support
A. Esteban & Co., Inc.	Digital Printing and Reproduction services
Jersey Boring & Drilling Co., Inc.	Subsurface Investigation, Geotechnical Drilling, Monitor Well Installation, Borings
GEOD Corporation	Survey - Photogrammetry, Subsurface Utility Survey
Aqua Survey, Inc.	Geophysical Survey

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

All Proposers are notified that NJ TRANSIT reserves the right to delete or modify any task from the scope of services/work at any time during the course of the Contract. The Consultant selected to perform these CM services shall be required to notify NJ TRANSIT of any Subconsultants it intends to use, and NJ TRANSIT may, in its sole discretion, authorize the Subconsultant to perform CM services in support of the work contemplated by this RFP.

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.

All Proposers are advised that communications with NJ TRANSIT that in any way relate to this project shall be conducted with or through the assigned Contracting Officer from NJ TRANSIT's Division of Procurement, as set forth in Subsection D below. All other contacts are strictly prohibited and considered improper. Proposers are advised that violation of this prohibition may result in the removal of the Proposer from consideration for this contract and possible suspension/debarment.

B. Anticipated Construction Management Firm/Team Selection Schedule

Issue RFP	August 27, 2018
Pre-Proposal Conference	September 11, 2018
Drawing Review	September 12-14, 2018
Requests for Information/Questions Due	September 18, 2018
Proposal Due Date	October 10, 2018
Oral Presentations	Week of October 29, 2018
Cost Proposals Due	Week of November 12, 2018
Begin Negotiations	Week of November 19, 2018
Board Approval	January 2019
Notice to Proceed	February 2019

C. Pre-Proposal Conference

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

In order to discuss the project and to address questions, NJ TRANSIT will hold a Pre-Proposal Conference on **Tuesday, September 11, 2018 at 10:00 a.m.** at NJ TRANSIT Headquarters located at One Penn Plaza East, Newark, New Jersey. The location is across the street from Newark Penn Station and easily accessible to Newark Liberty International Airport by AirTrain service connecting to Newark Penn Station. To obtain driving directions please go to the NJ TRANSIT website at www.njtransit.com.

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

Space for the Pre-Proposal Conference is limited. Interested Parties are not required to RSVP; however, it is requested that only two (2) representatives from each firm attend the Pre-Proposal Conference.

D. Request for Information and Addenda

The Proposer shall examine carefully the Proposal package 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.

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) therefor, during the Request for Information period.

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

NJ TRANSIT
Procurement Department
One Penn Plaza East, 6th Floor
Newark, New Jersey 07105-2246
Re: RFP No. 18-015
Attn: Taishida Chapman
E-Mail: tchapman@njtransit.com

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

- a. Be received in writing no later than **Tuesday, September 18, 2018 at 4:00 p.m.**
- b. Reference RFP name and number, section and page number
- c. Requests for information must be emailed in a non-scanned electronic format to Taishida Chapman at tchapman@njtransit.com.

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

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

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

E. Drawing Review

NJ TRANSIT will not be releasing the drawings for the Raritan River Bridge Replacement Construction Projects at this time. However, a Proposer may view the documents, in-person only at NJ TRANSIT Headquarters, by scheduling an appointment with Taishida Chapman at tchapman@njtransit.com at least one (1) calendar days prior to the requested date and time. The only available dates and times are listed below.

Date	Time
September 12, 2018	10:00 am – 11:30 am or 2:00pm – 3:30pm
September 13, 2018	10:00 am – 11:30 am or 2:00pm – 3:30pm
September 14, 2018	10:00 am – 11:30 am or 2:00pm – 3:30pm

F. Contract Duration

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

<u>Contract:</u>	<u>Duration:</u>
Pre-Construction Services	18 months
Construction Management and Close-out Services	78 Months
Total	96 Months

G. Joint Venture

A firm 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 (Exhibit 5).

H. Equal Employment Opportunity Requirements

The Proposer will be required to comply with State Equal Employment Opportunity requirements contained in N.J.S.A. 10:5-31 et seq. (P.L. 1975, c.127). 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. (Exhibit 4)

I. 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 **twenty-five percent (25%) Race-Conscious DBE** goal 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 USDOT. Contractors/Consultants 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.

DBE Program Compliance Requirements

The Proposer/Consultant shall refer to NJ TRANSIT's "DBE Requirements for Race Conscious 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 their proposal or within five (5) calendar days of the proposal due date. Bidders are requested to 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 proposal due date. All DBE forms are included in the Contract package, specifically in **Exhibit 3**.

Failure to submit any and all mandatory DBE documentation **within five (5) calendar days after the proposal due date** shall result in a rejection of a Proposal as non-responsible.

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

Jacquelin Rush Gilbert
Senior Contract Compliance Specialist
973-491-8061
jrushgilbert@njtransit.com

The Construction Management Firm/Team 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. This listing is intended as an aid in identifying DBE firms to potential bidders/proposers and is not meant to be an all-inclusive listing of DBE firms available for subcontracting. The Construction Management Firm/Team may identify other firms, however, all DBE firms must be properly certified prior to award of the contract. At the time of proposal submission, only DBE firms certified in the New Jersey Unified Certified Program (NJUCP) will satisfy the assigned DBE goal on this contract/RFP.

J. Division of Revenue and Enterprise Services

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

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

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

K. Equal Pay Act

Please be advised that P.L. 2018, c. 9, also known as the Diane B. Allen Equal Pay Act, was signed into law by Governor Phil Murphy on April 24, 2018, with an effective date of July 1, 2018. It requires that a contractor entering into a contract to perform “qualifying services” or “public work” for the State, or any agency or instrumentality of the State, shall provide the Commissioner of Labor and Workforce Development a report regarding the compensation and hours worked by employees categorized by gender, race, ethnicity, and job category. N.J.S.A. 34:11-56.14. For more information and report templates see <https://nj.gov/labor/equalpay/equalpay.html>.

L. Field Visits

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

M. Technical Evaluation Committee

A Technical Evaluation Committee (TEC) comprised of NJ TRANSIT staff will be responsible for reviewing and evaluating the technical proposals and participating in Oral Presentations, and recommending the Construction Management Firm/Team for award of the Contract.

N. Modification or Withdrawal

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

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

Proposals may be withdrawn at any time prior to the time specified for the opening of Proposals by filing a written withdrawal with NJ TRANSIT, duly executed by the firm or its authorized representative. The withdrawal of a Proposal does not prejudice the right of the firm to file a new Proposal. Withdrawals received after the time specified for the opening of Proposals will not be considered nor may any Proposal be withdrawn after that time.

Unless a Proposal is withdrawn as specified above, NJ TRANSIT will consider all Proposals firm offers until such time as NJ TRANSIT executes a contract with the successful Proposer, which should not be more than six (6) months from the date of Proposal receipt, but may be longer.

O. Disqualification of Firms

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

P. Disclosure of Investment Activities in Iran

Pursuant to N.J.S.A. 52:32-55, a Proposer that, at the time of Proposal due date, is identified on a list created pursuant to such law by the New Jersey Department of the Treasury as a person or entity engaging in investment activities in Iran as described in such law, shall be ineligible to, and shall not, propose on or enter in to a contract with NJ TRANSIT. As required by such law, the Proposer must complete and submit with its Proposal the certification with its Proposal to attest under penalty of perjury, that neither person or entity nor any of its parents, subsidiaries or affiliates is identified on the Department of Treasury's Chapter 25 list as a person or entity engaging in investment activities in Iran. Failure to complete the certification (Exhibit 8) will render the proposal non-responsive.

Q. 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 a current, Ownership Disclosure Form prior to the receipt of the Proposal 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%) or 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%) or greater interest in the limited liability company, shall also be listed.

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 will result in the rejection of the Proposal.

R. 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 Treasury, Consolidated Debarment Report or on the State of New Jersey, Department of Labor and Workforce Development, Division of Wage and Hour Compliance, Prevailing Wage Debarment List.

The Construction Management Firm/Team must have no exclusions on the consolidated U.S. Government, System for Award Management (S.A.M) database. If the Proposer is included on such report, the Proposer may not be eligible for award of Contract.

S. Source Disclosure Requirements

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

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

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

Accordingly, the Proposer should submit 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) business days of NJ TRANSIT's request.

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

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

Breach of Contract for Shift of Services Outside the United States

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

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

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 Proposals, the prevailing proposal and other related contract documents for the above contract on the Sandy Transparency website.

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

U. Certification For Contracts, Grants, Loans and Cooperative Agreements (Byrd Anti-Lobbying Certification)

The Proposer shall certify that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 USA 1352. (See Exhibit 14). Failure to submit the certification will render the Proposal non-responsive.

II. PROJECT BACKGROUND AND DESCRIPTION

A. Project Background

NJ TRANSIT will be replacing the existing Raritan River Swing Bridge (also referred to as "the existing bridge") with a new Raritan River Lift bridge (also referred to as "the new bridge") to be built off line of the existing bridge. When completed, the Raritan River Lift Bridge will provide for renewed rail service on the North Jersey Coast Line Railroad with improved operating speeds.

The Project involves the construction of a new multiple span two-track bridge structure with two (2) truss spans as flanking spans to a new lift span main bridge over the navigable channel. The construction will include all foundations, steel girders, steel trusses, deck plates, lift towers and lift bridge span and all ancillary approach work such as retaining walls, structural fill, track work, signal system, catenary system and bridge power systems necessary to provide for a complete Project. Additionally, railroad infrastructure modifications and improvements will involve force account coordination with NJ TRANSIT and the Consolidated Rail Corporation (Conrail). The existing bridge will remain in service until the new bridge is completed.

More specifically, the work required to construct the Raritan River Lift Bridge will include but is not limited to, site work, environmental remediation, ground improvement, railroad infrastructure construction, steel girder, steel truss and steel towers and a steel lift span, mechanical and electrical systems, and all the required foundation and pier construction necessary to complete construction. Additionally, the construction components for the anticipated site work includes, but is not limited to, placement of backfill, retaining walls, abutment structures, wing walls, bridge structures and foundations, utility relocations, drainage improvements, utility installations, site lighting, and associated work elements.

Railroad infrastructure construction included within this Project consists of the installations of running and siding tracks, catenary and electrification components, signal installations and communication components. Connections and interfaces with the NJ TRANSIT North Jersey Coast Line rail line, and power feeds to railroad infrastructure are also required.

Construction Management services are being requested during the design phase in order to minimize construction issues relating to the design, bid, and build project delivery during construction.

This RFP includes CM services for preconstruction services, and CM services relating to the construction phase of the new Raritan River Lift Bridge, including associated third party utility and railroad force account activities.

During construction, the CM team will provide a management team for oversight of all construction related activities associated with the Project.

The Construction Management team will also provide testing and commissioning support.

B. Construction Management Objectives

NJ TRANSIT anticipates fulfilling the following project objectives by engaging the CM Consultant to oversee the performance of 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 Contractor through critical path method (CPM) scheduling, schedule monitoring and analysis.
4. Ensure the final product is a proper functioning, safe Project, which reflects the work elements as described in the plans and specifications.
5. Document and maintain accurate account of detailed records for all Project activities.

6. Strict compliance and enforcement of all contract requirements, rules, standards and requirements of NJ TRANSIT and Conrail Rail Operations Departments.
7. Complete 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.
10. Maintenance of 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 Railroad Force Account Departments and the Contractor as necessary to facilitate construction schedule adherence for on-time completion.

C. Responsibilities Overview

1. The CM's core responsibilities for this Contract include, but are not limited to the following:
 - a. Provide constructability and staging reviews at the completion and submittal of the 90% and 100% Design documents from the Design Consultant including Plans, Specifications, and Estimate as prepared by Design Consultant.
 - b. Value Engineering for Construction Contract GC.02 at the completion and submittal of the 90% design documents.
 - c. Construction Management services during construction for compliance with the contract documents, federal, state, and local codes, rules and regulations.
 - d. Special inspection of caisson and pile foundation systems.
 - e. Regular inspections of all civil/structural, building, track, signal, catenary, utility, electrical, mechanical and associated work as specified in the contract documents.
 - f. CPM Schedule monitoring including all Construction Contractor and Force Account work.
 - g. Creation of the CPM master schedule to include all the Construction Contractor's CPM and Force Account and utility services tasks.
 - h. Document Control, storage and maintenance.
 - i. Force Account and utility work construction Coordination with NJ TRANSIT and Conrail, as needed.
 - j. Analysis and processing of Construction Contractor invoices.
 - k. Change Order administration.
 - l. Systems commissioning, testing, start-up, training, and revenue service.
 - m. Assistance to the Design Consultant in preparation of the project's final as-built drawings.

- n. After completion of the new bridge, provide support in connection with demolition of old bridge.
 - o. Project closeout.
- 2. The Construction Manager'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 Work elements will be performed and completed in compliance with Contract plans, specifications, codes, permits and other regulations.
- 3. The Construction Management firm/team shall only employ experienced individuals, including field inspectors, who are qualified and highly proficient in the areas they will be managing.

III. SCOPE OF SERVICES – GENERAL

- A. The CM Firm/Team shall furnish all services as required by NJ TRANSIT in accordance with the Contract. NJ TRANSIT may terminate the agreement in whole or in part at any time if the CM Firm/Team has materially failed to comply with the terms of the agreement, or as otherwise specified in any Contract Documents.
- B. The CM Firm/Team will provide an organizational structure that will address each task identified in this project, control the budget, the schedule and product quality, and expedite the successful completion of the Project. The CM Firm/Team's organization will be led by the Construction Manager, who will coordinate all efforts and will serve as a focal point for contact between all parties affected in implementing this Project. In addition, the CM Firm/Team'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 staff that an extension of time is required to meet new or modified project demands, NJ TRANSIT reserves the right to extend any CM Firm/Team assigned to its projects for a period agreeable to both firms. Likewise, NJ TRANSIT reserves the right to cancel the project or reduce the scope of effort for the CM Firm/Team at any time.
- C. The CM Firm/Team will perform services for NJ TRANSIT, and attend and assist at all meetings required to inform and coordinate work with NJ TRANSIT staff, relevant agencies and/or the contractor performing construction work.

- D. The CM Firm/Team will provide a work plan with timelines and milestones for the management of these services as stated in the Responsibilities Overview to NJ TRANSIT's Project Manager. In addition, the CM Firm/Team shall keep NJ TRANSIT's Construction Manager routinely informed of its progress during the construction of the Project, in written format, as required, during the course of the Work.
- E. The CM Firm/Team 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 product produced by the CM Firm/Team in accordance with this contract shall become the sole property of NJ TRANSIT. Work product includes, but is not limited to: records, reports, computations, calculations, work sheets, cost estimates, correspondence, computer tapes/discs/programs/data, and all other products resulting from the CM Firm/Team's work performed under this contract.

IV. SCOPE OF SERVICES - CONSTRUCTION MANAGEMENT SERVICES

A. Project Organization

- 1. Project Management
 - a. NJ TRANSIT's Project Manager for the Raritan River Bridge Replacement Project shall be the singular person responsible for the Project. The successful Proposer will provide a Construction Manager (described more fully below) that will be the point person for the CM services contemplated by the RFP. The successful Proposer's Construction Manager will provide construction support to and oversight of the construction contractor, while the Design Consultant (Hardesty & Hanover/ Gannett Fleming Joint Venture) will provide technical support to the CM and NJ TRANSIT on this Project. NJ TRANSIT's Project Manager may request assistance from the CM services firm, but 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 CM team, and overall management of NJ TRANSIT staff and Force Account activities. The successful Proposer's Construction Manager will be the single point of contact for the Consultant. NJ TRANSIT's Construction Manager will be the main point of contact for the successful Proposer's Construction Manager to communicate with NJ TRANSIT.

2. Construction Manager (Provided by the Consultant)

- a. The 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 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 address them before they reach a critical level. The Construction Manager shall maintain a continuous dialogue with the NJ TRANSIT Project Manager in all matters affecting the schedule and budget of the project.
- b. The 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 Construction Contractor and Force Account services.
- c. The Construction Manager shall be responsible for supplying all support personnel, including individuals with senior level skills, especially in the construction of vertical lift bridges, caisson foundations and pile foundations, to assist the 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.
- d. The Construction Manager is required to evaluate the Construction Contractor's requests for change orders and Design Consultant's responses to 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 processing of the corresponding paper work to incorporate the change orders into the contract by NJ TRANSIT Contracting Officer.

B. Construction Management Organization - Staffing

1. Staffing Requirements

Refer to the Contract Duration; see Section 1, Paragraph F entitled "Contract Duration", of this RFP to understand the scheduling and personnel needs for the CM staff for this contract.

- a. The Raritan River Bridge Replacement Project will be divided in two (2) phases. Phase 1 will consist of Preconstruction Services for constructability reviews and bid support. Phase 2 will consist of contract construction management services of the Raritan River Bridge Lift Bridge Replacement. In general, the Construction Work consists of the civil, structural, track, catenary, signal work and power system construction.
- b. The successful Proposer shall ensure that the CM team shall be headed by a Construction Manager and full-time Resident Engineer(s) who 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 moveable bridges, specifically vertical lift bridges in a marine environment, complete with caisson and pile foundation systems. In addition to the Resident Engineer(s), at a minimum, the Construction Management staff shall include the following:
 - i. As required, full-time Inspectors for each discipline on each shift: civil/structural (major bridge construction specifically moveable bridges), caisson and pile foundation systems, track, signal & Electric Traction work catenary installation and bridge power systems. The work experience of these inspectors should be in a marine 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's construction manager may in his or her sole discretion advise the CM firm accordingly.
 - ii. A part-time Scheduler/Estimator to participate in the monthly schedule review meetings and review and approval of the Construction Contractor's Baseline Schedule and monthly schedule updates.
 - iii. Clerical and field support staff, as necessary and as approved by NJ TRANSIT.
 - iv. A project accountant for the management of force account reimbursement to third parties.
 - v. A dedicated Document Control Specialist.
 - vi. A part-time (on call) survey team to verify the Construction Contractor's civil, foundation and track work prior to acceptance.

- c. The Construction Management firm shall ensure that its on-site Resident Engineer(s) and Technical Field Staff named in the Proposal shall be made available as proposed for the Raritan River Bridge Replacement Project. Should replacements be required due to unavoidable circumstances, the Construction Manager shall make such request in writing with resumes of replacement staff to NJ TRANSIT's Construction Manager. Such replacements shall not be implemented without prior written approval of NJ TRANSIT.
- d. Prior to commencement of Construction Work on Railroad property, Construction Management personnel working on the site shall attend both Conrail and NJ TRANSIT safety orientation classes, which will be provided by the Railroads at no cost to the Consultant. Construction Management 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 CM Team.
- e. NJ TRANSIT reserves right to require the Consultant to scale back staffing during any moratorium period where the Construction Contractor is not performing any fieldwork. Upon resumption of the work by the Construction Contractor, the Construction Manager is expected to provide staffing as required for the Project or as directed by NJ TRANSIT.

C. Additional Construction Management Responsibilities

1. General

- a. The Construction Manager shall be responsible for all aspects of CM, including, but not limited to, full responsibility for monitoring, inspection, acceptance and approval of all contract performed work; integration and coordination of force account efforts with that of the Construction Contractors; 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 Construction Manager shall review the Contractor's monthly CPM schedule for acceptance by NJ TRANSIT. NJ TRANSIT estimates that the Preconstruction Services will last about one and a half (1.5) years. Construction management support will be required as follows:

Contract Activity	Description of CM Firm's Services	Duration
Preconstruction Design Assistance	Design Review at the 90% and 100% review and a value engineering study at 90%	18 months
Construction	Support in connection with the construction contractor's complete construction of new Raritan River Lift Bridge constructed off line of the existing bridge as a replacement for the existing swing bridge including all approach spans and transitions into the existing track structure on either approach to the bridge.	57 months
Testing & Commissioning	Support of Testing & Commissioning of bridge	3 months
Demolition Existing Bridge	Support in connection with demolition of existing bridge	12 months
Contract closeout	Contract closeout	6 months

- b. Conrail and NJ TRANSIT force account personnel may perform portions of the Railroad construction work as required. If this occurs, CM services shall include monitoring of this construction work, reviewing all associated payment documentation and making a recommendation on acceptability, providing assistance on planning, budget expenditure analysis, job control and technical assistance for particular specialty items, creating all Force Account CPM schedules, and maintenance of the Master Construction Schedule. The Construction Manager shall also provide coordination and integration of all such Force Account Work into the Construction Contractor's CPM schedule. The Construction Managers' scheduling, coordinating, monitoring and approving the Force Account expenditures are an essential task to ensure timely completion of the services.
- c. The Construction Manager shall perform a thorough evaluation and recommend acceptance/rejection of the Construction 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 Construction Contractor's CPM Construction Schedule will be specified as Primavera based 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 Construction Management attention:
 - i. Review and approval of Baseline Schedule.
 - ii. Monitor Baseline durations and milestones.

- iii. Clarity of respective detailed construction tasks and sub-tasks will be clear and logical construction sequences, in order for an on time, on budget, safe, and quality/reliable product.
 - iv. Timely recommendations to NJ TRANSIT regarding the schedule submission, as well as responses to the respective Construction Contractor regarding their schedule submission.
 - v. Thorough evaluation of Construction Contractor(s) progress payments such that the payments reflect the actual work accomplished for the period.
 - vi. Coordination and integration of all Force Account Work into the baseline and updated Construction Contractor's CPM schedule and monthly updates.
 - vii. Creation and monthly updates of all the Force Account schedules by the Construction Manager.
 - viii. Maintenance of the Master Construction schedule by the Construction Manager.
 - ix. Performing the schedule analysis and suggesting a recovery plan to bring the project back on schedule in case of a project delay.
 - x. Providing for record an as-built schedule at the final close out.
- d. The Construction Manager shall maintain, at the site office, a record copy in both electronic and hardcopy format of all project communication in the form of correspondence, meeting minutes, technical conversation summaries, telephone logs, visitors' log, etc.
- e. The Construction Manager shall maintain at the site office a current record copy in both electronic and hardcopy format of all project documents, drawings, shop drawing, samples, permits, etc.
- f. The Construction Manager shall maintain a direct line of communication with the Project's Design Consultant (Hardesty & Hanover/Gannett Fleming Joint Venture) as it pertains to the Project's technical evaluation issues and resolutions. However, the Construction Manager 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 Construction Manager shall be the only one who will communicate with the Construction Contractor to transmit Design Consultant information regarding Contracts technical issues or resolutions.
- g. All Construction Management communications regarding Progress Reports, status reports, and all other submissions, will be transmitted to NJ TRANSIT's Project Manager or his or her designee in a form suitable to NJ TRANSIT.

- h. Contract administration responsibilities 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 (RFI's) and, the timely and safe completion of the Project within schedule.
- i. 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 Work. **Proposers are invited to suggest refinements and improvements to the Scope of Services in their Proposals.**
- j. The Construction Manager will receive, review when required and compare Contractor's DBE reports to contractual goals and report to NJ TRANSIT on compliance.
- k. The Construction Manager shall monitor the performance of DBE subconsultants on the Construction Management Team and collect and report data on DBE participation to the NJ TRANSIT's Office of Business Development (OBD). The Construction Manager shall supply the required forms to the DBE subconsultants. DBE subconsultants on the Construction Management Team shall report their DBE status on the forms and submit it with the monthly invoice to the Construction Manager. This form will be reviewed by OBD to determine Contract compliance with respect to the DBE goal established for this Contract.

2. PRE-CONSTRUCTION SERVICES

The Construction Manager is expected to begin mobilizing within thirty (30) calendar days of NJ TRANSIT's issuance of the Notice to Proceed (NTP). The Construction Manager 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. The Construction Management firm's mobilization for pre-construction should consider that the entire Construction Management team is not to be mobilized. Rather, staff should be available only as needed for Tasks P1-P3 below.

During pre-construction, the Construction Manager shall be responsible for and shall perform the following pre-construction tasks:

TASK P1 - CONSTRUCTIBILITY REVIEW

- a. The Construction Manager shall review and become knowledgeable with the plans, specifications, cost estimates and schedules. The purpose of this review is to advise NJ TRANSIT of any items within the plans that have not been clearly defined and could lead to potential Change Orders or disputes.
- b. The Construction Manager shall also advise NJ TRANSIT of any constructability or bid-ability problems with the proposed construction specifications and methods for staging the Work. Such advice shall include making recommendations pertaining to the estimated duration required to complete the various contracts, as a whole and the major elements of each contract in particular. The Construction Management team shall make recommendations to reduce construction claims and costs over the life of the construction process.
 - 1) Constructability reviews at 90% and 100% Design, after finalization of design documents by Design Consultant
 - 2) Development of division of work
 - 3) Contract packaging
 - 4) Program cost verification at 90% and 100% Design, after finalization of design documents by Design Consultant
 - 5) Program schedule verification at 90% and 100% Design, after finalization of design documents by Design Consultant
 - 6) Value engineering report for 90% Design, after finalization of design documents by Design Consultant

Deliverables: The Construction Manager shall provide six (6) copies of a memorandum that provides comments and resolutions to potential problems on Contract documents including but not limited to design plans, specifications, cost estimate and schedules.

Schedule: This report shall be submitted within twenty-one (21) business days from the task request issued by NJ TRANSIT.

TASK P2 - PRE-AWARD ASSISTANCE

The Construction Manager shall participate in NJ TRANSIT's Bid process for all contracts associated with this Project, which shall include but not be limited to the following tasks: attendance at all Pre-Bid meetings and site inspections, responsibility assessments of prospective contractors, and preparation and distribution of all meeting minutes, as requested.

Deliverables: The CM Team shall provide recommendations and/or comments on all issues raised during the bid process, bid review and Construction Contractor submittals within a day of the request issued by NJ TRANSIT.

TASK P3 - MANAGEMENT PROCEDURES AND DOCUMENT CONTROL

- a. The Construction Manager 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 respective Contractor(s)' safety program.
- b. In addition to routine reporting, the Construction Manager shall provide at least one dedicated staff person to act as the "Document Control Specialist" (DCS). The DCS will act as the consultant's representative and will be granted access to NJ TRANSIT's Electronic Content Management System (ECMS). The DCS for the Construction Manager will be able to communicate and share data, drawings and reports via ECMS rapidly and efficiently. This system will allow the Construction Manager 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 DCS shall be in compliance with NJ TRANSIT Capital Planning & Programs' (CP&P) Document Control Procedures and requirements outlined below. Because the DCS will have access to NJ TRANSIT's system/server, all Contractor and Subcontractor personnel will be required to sign a Non-Disclosure Agreement (NDA) with NJ TRANSIT.
- c. Project Document Control System

The Construction Manager 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 ECMS by the Construction Manager's DCS is granted at the discretion of NJ TRANSIT after completion of training and documentation by NJ TRANSIT's CP&P Records Management staff. The CM Firm and individuals accessing NJ TRANSIT's ECMS shall execute a Nondisclosure Agreement, a sample of which is included herein as Attachment D, upon execution of the Contract.

The DCS shall maintain and process files in a manner that complies with NJ TRANSIT's CP&P Document Controls Procedures in order to provide:

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

The Construction Manager's DCS shall manage all Project hardcopy and electronic documents, including, but not limited to the following:

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

The DCS will also be responsible for the following tasks:

- Scanning as a PDF-A and indexing
- Posting of scanned documents for retrieval
- Emailing notification to document recipients
- Maintaining and processing documents provided by the Construction Manager
- Filing of original hardcopy (if applicable)

Upon request by NJ TRANSIT, the Construction Manager shall provide DCS personnel at a designated NJ TRANSIT Office to assist in the processing of documents uploaded into ECMS. The Construction Manager DCS uploads shall occur, 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 Construction Manager DCS from accessing the ECMS as a result of technical difficulties deemed unavoidable, NJ TRANSIT will provide a contingency plan to the Construction Manager that will enable continued processing of Project Files.

Upon completion of the project or at such time as directed by NJ TRANSIT, the Construction Manager shall provide all finalized documents compiled, as part of its Scope of Work, 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

Schedule: Ongoing.

3. CONSTRUCTION MANAGEMENT ADMINISTRATION

The Construction Manager will provide Resident Engineering services for the construction of the new bridge and demolition of the old bridge. A summary of the major construction work elements for the work are shown below:

RARITAN RIVER BRIDGE REPLACEMENT
• Install temporary Work Platform both Approaches
• Install Drilled Shaft and Pile Foundations
• Install retaining walls and embankment
• Offsite and In Plant Inspection Services Prior to Material Shipment
• Install Abutments and wing walls
• Install Pier Caps
• Install Steel Girders
• Install Truss Spans
• Install lift Towers and Lift span
• Install Deck Plates and Miscellaneous steel
• Install final Paint coat on all steel
• Install Ballast
• Install Mechanical and Electrical Systems and Lighting
• Install Communication and Security Systems
• Install Fender System
• Commissioning and Safety Certification
• Demolish Existing Bridge
FORCE ACCOUNT WORK
• Install Track work including special work
• Install Signal System
• Install Catenary System
• Install power System
• Test Electrical Systems

TASK C1 - CONSTRUCTION MANAGEMENT ADMINISTRATION

a. Mobilization at Construction Site

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

The Construction Manager shall ensure that the approved Site Specific Work Plans (SSWP) are adhered to by the Construction Contractor(s) at all times. During periods of track occupancy and/or fouling, the Construction Manager shall convene weekly meetings with the Construction Contractor(s) and appropriate representatives of NJ TRANSIT and Conrail to review, modify, or accept Construction Contractor's plans for such track occupancies and fouling two weeks in advance.

c. Force Account Assistance

The Construction Manager shall meet with NJ TRANSIT's Construction Manager/Designee and Force Account managers to identify construction management needs for the successful controlling of the project schedule, work plans, and budgets. The same shall be done with respect to Conrail rights-of-way, as necessary. The Construction Manager shall also be prepared to monitor Force Account work and provide daily reports detailing time and materials utilized. The Construction Manager will ensure integration of all Force Account work into the respective Contractor(s) construction schedule.

d. Document Control

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

The Construction Manager 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 Contractor's "marked-up drawings" and should they differ, the Construction Manager shall contact the respective 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 Construction Manager 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 Construction Manager with the Contractor's certifications as to the accuracy of the information.

Since the Raritan River Bridge Replacement Project is funded through the FTA, the Construction Manager will be required to maintain documents keeping track of cost 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 any Contract, the Construction Manager shall conduct a Pre-Construction meeting with personnel representing the Construction Contractor, NJ TRANSIT, the Project Design Consultant, the local municipalities, Conrail, Public Utilities and any other Project entities where such attendance is deemed important. During the duration of this Contract, the Construction Manager 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 Construction Manager and forwarded to NJ TRANSIT's Project Manager for review and approval within three (3) business days of the conclusion of such meetings. Upon approval of the minutes, the Construction Manager will distribute the minutes to all Project participants, or as directed by NJ TRANSIT.

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

f. Community Relations

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

g. Cost Control

The Construction Manager shall measure all Contract pay items of Work, review Contractor invoices and recommend payment for the same, within five (5) calendar days after receipt. The Construction Manager 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 Construction Manager shall exercise efforts to minimize all claims for additional time, costs and other contractual liability issues. The Construction Manager shall also assist NJ TRANSIT in the review of all Construction Contractor claims, assemble pertinent documentation and provide recommendations for the resolution of all contractual liability claims.

h. Labor Relations Assistance

The Construction Manager shall ensure that all Project Work being performed by the Construction Contractor(s) is in compliance with State and Federal labor laws. The Construction Manager shall ensure that prevailing wages are being paid by the Construction Contractor through the review of certified payrolls, which shall be submitted with the corresponding Construction Contractor's invoices.

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

i. Record Keeping

The Construction Manager 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 Construction Manager'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 Force Account units, construction equipment in use, material deliveries, weather conditions, material shortages, tests, labor disputes, general observations, Force Account flag protection units and, any unusual circumstances occurring during the work period.

j. Project Progress Reports

The Construction Manager shall provide two (2) copies of project progress reports on a monthly basis, or more frequently as required, which shall address, as a minimum, actual vs. planned progress, progress payments, decision and/or resolution logs, Contract modification summaries, etc. The Construction Manager shall maintain cost account records with respect to portions of the Work performed by Change Orders on a time and material basis and/or unit cost when required.

The Construction Manager shall provide digital photographs on a monthly basis as part of the monthly project report. Such photographs shall be taken with a digital camera, which shall be kept on-site, with a date imprint at all times. The 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 Construction Manager 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 Task C1: [For all Project components]

- 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 progress reports
- Project photographs

TASK C2 – INSPECTION & TESTING

- a. The Construction Manager shall conduct 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 Construction Manager'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 Construction Manager prior to final approval/acceptance of such Work by NJ TRANSIT.
- b. The Construction Manager 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.
- c. The Construction Manager shall identify any non-compliant Project Work and notify the respective Construction Contractor within a twenty-four (24) hour period. The Construction Manager 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 any Contractor, the Construction Manager shall inform NJ TRANSIT's Project Manager of the non-conforming Work and confer on the recommended actions to be taken. The Construction Manager will enforce the Stop Work notice on the respective Contractor by not allowing any progress Work associated with the non-compliant Work to continue until the Contractor either has corrected the Work to conform to the Project specifications, or has justified the reasons for the non-compliance to the complete satisfaction of NJ TRANSIT. The Construction Manager will not allow progressive Work to continue until NJ TRANSIT has issued a directive to do so. The Construction Manager shall keep an updated log regarding non-compliant Work on site; this log shall conform to the procedures outlined in Section III., C.2: TASK P3 - Management Procedures and Document Control. The Construction Contractor will be advised as part of the non-compliance report issued by the CM that any lost time incurred due to the Contractor correcting any non-compliance work will not be allowed as the basis for a time extension claim.

- d. The Construction Manager shall conduct on and off site (if necessary) inspection and testing of all material and equipment to be incorporated and/or installed as part of the Project. All such items shall be approved by the Construction Manager prior to placement, installation and/or final acceptance of such Project Work by NJ TRANSIT. The items listed in subsection (1) below are typical of the items to be inspected both on and off-site or at the manufacturer's facility for the Bridge Lift Span and Truss Spans.

1. Typical Items That Would Be Subject to Inspection on Lift Bridge Projects On-site and Off-site:

a. Mechanical Items

- Wire Rope – Counter weight/operating rope test to destruction
- Sheave fabrication
 - Shaft installation/shrink fit
 - Groove Checks
- Reducer tests
 - Spin tests
 - Load tests
 - Contact checks
 - Oil checks
 - Auxiliary – clutch engagement (if utilized)
- Shop Assembly-final assembly/alignment of drive system
- Field assembly- final commissioning and testing

b. Electrical Items

- Motor tests
 - Main and Auxiliary
 - Motor factory tests for power input; efficiency; output torque (loads up to 150% rated torque); full load heat run
 - Drive and motor testing at facility that has a four-quadrant dynamometer at 0%, 25%, 50%, 75%, 100% and 150% driving and retarding torque at both full and reduced speed; confirm motor/drive coordination and programming
 - Lock Motors – similar to main/auxiliary less heat run

- Bridge control & power system – Shop tests of simulated operations – fully interconnected (typ. excludes main motors, lock motor, brakes)
- Final field commissioning and testing

c. Structural

- Shop assembly – demonstration of final alignment
- Field assembly – demonstration of final alignment

d. Mechanical

- Wire rope – group diameter checks
- Sheave fabrication
 - Welding Non-Destructive Testing (NDT)
- Drum Checks
 - Measure grooves / diameters for helical drums
 - NDT
- Spherical roller bearings
 - Fit / tolerance checks
 - Outer race / fabrication checks
- Lock Assemblies
 - Tolerance and fit up
- Rope take ups at lift girder – steel billet fit up
- Lift Girder – NDT
- Machinery supports
 - NDT
 - Tolerance checks
 - Surface finish checks

e. Electrical

- MCC – inspection at manufacturer facility prior to shipment to control system vendor
- Electrical Field Installation – daily observation / inspection

f. Structural

- Baseline fabrication inspection and NDT
 - Weld testing
 - Material certifications
 - Material testing
- Bolt testing – Pre-installation verification and installation testing
- Verification of Contact at milled connections of truss member abutting ends (shop and field)
- Field installation – daily inspection and verification

- e. The Construction Manager will maintain one set of As-Built construction prints. These drawings will be kept up to date by redlining all changes, additions or deletions to the Construction Contract, including subsurface conditions.

Deliverables:

- Redline Prints (As-Built)
- Inspector's Daily Record of Work progress
- Inspector's Daily Diaries
- Inspection reports as required
- NPC Log

The Construction Manager 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. As part of the Construction Contractor's contract, the Construction Contractor shall retain an NJ TRANSIT approved independent laboratory/testing agency certified in the areas within which they shall be performing such services, with a written report detailing all test data, results and recommended action. NJ TRANSIT will review the testing agencies submitted by the Construction Contractor for approval. The Construction Contractor shall submit all testing reports to the Construction Manager for review. The Construction Contractor shall submit all testing reports to the Construction Manager for review.

The Construction Manager 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.

Within six (6) months prior to the end of the General Construction Contract with the Construction Contractor, the Construction Manager will submit to NJ TRANSIT a comprehensive testing and commissioning program to be used by the Construction Contractor for interim and final acceptance testing of all the building and yard systems. All Work associated with testing and commissioning is to be included within Task C2.

Deliverables:

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

The Construction Manager 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 Construction Manager shall immediately notify NJ TRANSIT.

Deliverables:

Recommendation memos as appropriate

TASK C3 - SCHEDULE CONTROL

- a. The Construction Manager will also have the responsibility of the review of all construction CPM schedules submitted by the Construction Contractor, within fourteen (14) calendar days of the Construction Manager'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 Construction Manager's review will 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. The Construction Manager shall reject all Construction Contractor submissions that do not meet these requirements and make note of said submission in the submission log. After the Construction Manager's initial review, the Construction Manager shall submit the Construction Contractor CPM schedule/monthly updates to NJ TRANSIT's Project Manager with the Construction Manager's recommended action; the Construction Manager shall log all submissions sent out for review and the submission receipt after review. The Construction Manager will provide to the Construction Contractor comments or approval within twenty-five (25) calendar days after the Construction Manager's receipt of the submission from NJ TRANSIT's Project Manager.

- 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 Construction Manager 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 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 Construction Contractor shall submit the monthly Narrative Report and the revised DPS to the Construction Manager as part of its Payment Application.

Deliverables:

- Contractor’s CPM Reviews
- Project Construction Schedule and updates
- Impact Analyses and Extension of Time Reviews, as necessary

TASK C4 - STAGING AND SITE SPECIFIC WORK PLANS

- a. Within thirty (30) calendar days from NJ TRANSIT issuing the Notice to Proceed with respect to the Construction Contract(s), the Construction Contractor(s) will prepare Construction Staging Plans for the work to ensure flow control and sequencing of various Work elements; such plans shall be coordinated through the Construction Manager with NJ TRANSIT Rail Operations. These staging plans shall be submitted to the Construction Manager for review and approval.
- b. The Construction Manager shall have ten (10) calendar days from receipt, to review all construction, installation or other Site Specific Work Plans (SSWPs) developed and prepared by the Construction Contractor. Each SSWP shall indicate the methods proposed in their respective Work elements. The Construction Manager 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 Construction Manager 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 Construction Manager review, the Construction Manager will submit the Work Plan to NJ TRANSIT’s Project Manager for review and approval. The Construction Manager will ensure that the Contractor receive 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:

- Construction staging plans
- SSWP reviews and comments.

TASK C5 - SHOP DRAWINGS AND MATERIAL REVIEW/HANDLING

- a. The Construction Manager shall follow detailed procedures established during the Pre-Construction Phase (Section III, C.2., Task P3) for expediting the processing and review of shop drawings and materials. The Construction Management Team shall maintain a shop drawing and material submittal log and shall coordinate the processing and review of all such data with Hardesty & Hanover/Gannett Fleming, the Project Design Consultant. The Construction Manager 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 Construction Manager.
- b. Upon receipt of the Construction Contractor's construction shop drawing and material submissions, the Construction Manager shall have three (3) calendar days to review all submissions for Construction Contract conformance prior to forwarding to the Design Consultant and/or the respective utility. If a Contractor's submission is not in conformance with the Construction Contract, the Construction Manager shall reject the submission and log its rejection, and resubmission. The Construction Manager shall log each submission sent to the Design Consultant (DC) and inform NJ TRANSIT's Project Manager when the Design Consultant's review has taken in excess of twenty-one (21) calendar days. The Construction Manager shall forward to the Construction Contractor their submission with the Design Consultant's approval or comments of rejection, within five (5) calendar days after receipt from the Design Consultant.
- c. The Construction Manager shall take such actions as may be required to prevent installation of any material or equipment not approved or certified. The Construction Manager shall promptly notify the Contractor of any and all Work or items that fail to conform to the Contract plans or specifications. As directed by NJ TRANSIT, the Construction Manager will provide facility / plant inspections of 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, Construction Manager, supplier, manufacturer and any party relevant to the Project. The normal flow of RFI's is from the Construction Contractor, through the Construction Manager, to the Design Consultant. A Construction Contractor-initiated RFI may question inconsistencies or request clarification of the Construction Contract documents. The Construction Manager 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 Construction Management Team and returned within fourteen (14) calendar days.

Deliverables:

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

TASK C6 – PROJECT CHANGE MANAGEMENT (CHANGE ORDERS)

- a. The Construction Manager shall follow the detailed Change Order Procedures established in the Pre-Construction Phase (Section III, C.2., Task P3) for expediting the review and negotiations of all Contract Change Orders Requests (COR). The Construction Manager will maintain a COR log and coordinate the review and negotiations of all COR's with NJ TRANSIT's Project Manager and Contracting Officer.
- b. When a COR issue has been brought to the attention of the Construction Manager, and at the sole direction of NJ TRANSIT's Project Manager, the Construction Manager will issue a Notice of Proposed Change (NPC) to the respective Contractor and prepare the corresponding cost estimate. Upon receipt of the Construction Contractor NPC cost estimate, the Construction Manager 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 Construction Manager will coordinate and participate in the negotiation meetings of all Change Orders. The Construction Manager 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 Construction Contractor to proceed with the Change Order Project Work.

Deliverables:

- Change Order File containing COR's,

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

TASK C7 - QUALITY ASSURANCE AND QUALITY CONTROL

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

Deliverable:

- Written QA/QC program
- Nonconformance Reports
- Material Certificates
- Test Results

TASK C8 - PROJECT SAFETY

- a. Prior to commencement of Construction Work on Railroad property, Construction Management personnel working on the site shall attend both Conrail and NJ TRANSIT safety orientation classes, which will be provided by the Railroads at no cost to the Consultant. Construction Management personnel are required to travel to off-site training facilities for administration of this class. 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 CM Team.
- b. The Construction Manager shall designate a Safety Officer who shall have full authority to act on behalf of the Construction Manager at all times to ensure that all Construction Work is being performed in accordance with Standard Industry Practices and with State and Federal laws regulating job safety. The Safety Officer shall review and approve all Contractor SSWPs. Questionable work practices planned to be used by the Construction Contractor(s) shall be noted by the Construction Manager and promptly brought to the attention of the Construction Contractor prior to the commencement of such Project Work in the field.

- c. Given the nature of this Project's construction site (over a river emptying directly into the Atlantic Ocean with an active shipping channel), site safety is critical to protect construction personnel, NJ TRANSIT personnel and NJ TRANSIT property. To maximize Project Safety, the Construction Manager will review the Construction Contractor Safety Programs and make recommendations to NJ TRANSIT for changes, if any. The Construction Manager will also conduct periodic meetings with NJ TRANSIT and Construction Contractor 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 Construction Manager 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 Construction Contractor has implemented corrective measures to eliminate the unsafe practice. The elimination of an unsafe practice shall be determined by the Construction Manager and NJ TRANSIT. In no event shall NJ TRANSIT be responsible for costs associated with CM's measures to eliminate the unsafe practice and/or remedy the Stop Work Order. The Construction Contractor will be advised by the CM as part of the notification of the unsafe work practice or stop work order that any time lost incurred by the Construction 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 Construction Manager will develop procedures with the Construction Contractor so that visitors to the site are first directed to the Construction Management Office, and, if appropriate, NJ TRANSIT can be notified.

Deliverables:

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

TASK C9 - PROJECT CLOSEOUT

- a. The Construction Manager shall determine when the construction contract(s) 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(s). In coordination with NJ TRANSIT, the Construction Manager 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 Construction Manager, the Design Consultant and the Construction Contractor. The Certificate will then be given to NJ TRANSIT for approval. The Construction Manager will also submit any necessary documentation for the assessment of Liquidated Damages.
- b. The Construction Manager will coordinate the correction and completion of remaining Work identified on the punch list. The Construction Manager will generate a monthly report on the status of punch list items.
- c. The Construction Manager shall determine final completion and provide written notice to NJ TRANSIT and the Project 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, secure and transmit to the Contracting Officer the required guarantees, affidavits, releases, bonds, Operating and Maintenance (O&M) Manuals, waivers, etc. The Construction Manager 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 Construction Contractor is correct.
- d. The Construction Manager shall advise NJ TRANSIT's Project Manager in writing when all Building Systems (HVAC, Lighting, etc.) and Communications Systems have been tested, approved and ready to place into service. This activity should be conducted in accordance with the testing and commissioning program submitted by the Construction Manager to meet the requirements of Task C2. The Construction Manager shall also assist in the preparation of plans for initial start-up of operations and shall provide support to NJ TRANSIT before and after initiating operation.

- e. The Construction Manager will coordinate with NJ TRANSIT's Project Manager to schedule any training necessary for NJ TRANSIT personnel on all applicable equipment and systems, which is a contractual obligation of each Construction Contractor, for each piece of equipment installed. The Construction Manager shall submit within five (5) calendars days of receipt of the specific training manuals and session outline, a recommendation of action to NJ TRANSIT's Project Manager. Under no circumstances shall the Construction Manager allow training of any NJ TRANSIT personnel without the prior approval by NJ TRANSIT's Project Manager.
- f. The Construction Manager should anticipate approximately a six (6) month contract closeout period.

Deliverables:

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

TASK C10 - AS DIRECTED

- a. The Construction Manager shall include an As Directed Task in the Cost Proposal, which shall have 1600 person-hours allotted for technical professional staff.
- b. The Construction Management firm will be given a \$300,000.00 allowance for miscellaneous surveying, testing and monitoring throughout the life of the Project and where there is no provision for such testing in the Construction Contract. This allowance is only to be spent upon prior approval of NJ TRANSIT's Project Manager or his/her Designee.
- c. The Construction Management firm shall have at its immediate disposal a land surveying team to perform surveying activities as necessary and upon request of the Construction Manager. An allowance of \$300,000.00 shall be included in the direct expenses of the Cost Proposal, and this allowance shall not be used without the prior approval of NJ TRANSIT's Project Manager.

V. PROPOSAL REQUIREMENTS

A. General

The Proposal package shall consist of one (1) original and six (6) copies of the Technical Proposal plus (one) electronic copy on CD or USB in PDF format. The Technical Proposals shall be prepared on 8½" x 11" paper. A limited number of 11" x 17" fold-out sheets for exhibits are acceptable. All pages must be sequentially numbered.

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

Proposals must be delivered to NJ TRANSIT on or before **Wednesday, October 10, 2018 at 3:00 p.m.** and once submitted become the property of NJ TRANSIT.

All proposals shall be submitted in hard copy to:

**NJ TRANSIT
One Penn Plaza East, 6th Floor
Newark, NJ 07105
Attn: Bid Desk
Re: RFP No. 18-015
Construction Management Services for the Raritan River Bridge
Replacement Project**

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

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

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

Proposals shall follow the format outlined below. Should the Proposal contain data that the Proposer does not want disclosed for any purpose other than evaluation of the Proposal; such data may be so restricted, provided the Proposer identifies the appropriate pages of the Proposal and places a label on those pages.

After the Contract award, all information submitted by Proposers in response to a solicitation is considered public information, notwithstanding any disclaimers to the contrary submitted by a Proposer, except as may be exempted from public disclosure by New Jersey Open Public Records Act, N.J.S.A. 47:1A-1 et seq., (OPRA) and common law.

Any proprietary and/or confidential information in your Proposal will be redacted by NJ TRANSIT. A Proposer may designate specific information as not subject to disclosure pursuant to the exceptions to OPRA found at N.J.S.A. 47:1A-1.1, when the Proposer has a good faith legal and or factual basis for such assertion. NJ TRANSIT reserves the right to make the determination as to what is proprietary or confidential, and will advise the Proposer accordingly. The location in the Proposal of any such designation should be clearly stated in a cover letter. NJ TRANSIT will not honor any attempt by a 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 Proposer's assertion of confidentiality with which NJ TRANSIT does not concur, the Proposer shall be solely responsible for defending its designation.

Your proposal can be released to the public during the protest period established herein or pursuant the New Jersey Open Public Records Act, N.J.S.A. 47:1A-1 et seq., (OPRA) or the common law right to know.

Technical Proposals shall follow the format outlined below.

Section 1 - Cover Letter

The cover letter should summarize key points of the Proposal and include any introductory or explanatory remarks. The 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)

- a. This section shall contain pertinent information about the project organizational structure of the 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.
- b. Where describing relevant experience, note the Proposer's role in the context of the client's overall Project, study, program, etc., and the role of any key individuals proposed here, in the context of the Proposer's overall responsibility, if applicable, the Technical Proposal shall contain the Proposer's certification that a full-time office will be maintained during the Proposer's Contract period, and that the Construction Manager can be reached through this office during regular working hours.

- c. 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

- a. This section shall contain resumes of the Construction Manager, Resident Engineer(s), Inspectors, Scheduler 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 construction skills and any other relevant experiences should be highlighted, such as experience in the construction of moveable bridges and specifically in the construction of vertical lift bridges, caisson and/or pile foundations. The number of man-hours each will devote to individual Project Tasks must be shown. Specific design and construction skills / strengths and any other relevant experience should be highlighted.
- b. In describing related experience, the Proposer shall demonstrate the ability to manage construction of a project of similar scope and magnitude to the Raritan River Bridge Replacement Project. For all technical field personnel, a minimum of ten (10) years related work experience is required.
- c. The Construction Manager and/or the Resident Engineer(s) shall have a minimum of ten (10) years' experience in the construction of moveable bridges, specifically vertical lift bridges in a marine environment, complete with caisson and pile foundation systems.
- d. 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 recent (within the last five (5) 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 and magnitude 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, including but not limited to: quality assurance, budget adherence, insurance and indemnification responsibility provisions.

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

Section 5 -Technical Section

This section shall contain the Construction Management Firm/Team's work plan for accomplishing the Project. The work plan shall address all tasks described in this RFP and shall include a description of how the Construction Management Firm/Team's time schedule for project completion will at least meet or exceed the time frames provided. This section most importantly shall contain each key individual's past work experience that demonstrates their ability of a project of similar scope and magnitude. The work experience must show experience in the management and construction of moveable bridge projects, preferably lift bridges with caisson and pile foundation systems, of similar size, scope and cost.

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

Suggested improvements on the work plan as described in this 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 work program. The Proposer should include a clear description of how the management structure and assigned personnel fit into the work program (previously described), how staff assignments will vary over the Project time frame and an explanation of the relationship of the on-site Construction Manager to the top management of the Construction Management Firm/Team, and the extent of his/her authority and responsibility. All other Project positions and relationships comprising the Project's organizational structure will be presented. The following information shall be included in this section:

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

Section 7- Quality Assurance Plan

This section shall describe the firm'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

If the Construction Management Firm/Team or any employee, agent or Subcontractor of the Construction Management Firm/Team may have, or may give the appearance of a possible conflict of interest, the Construction Management Firm/Team shall include in its proposal a statement indicating the nature of the conflict.

Also, provide a description of how the firm avoids or addresses potential conflicts of interest. If the Construction Management Firm/Team does not have such

conflicts, then that shall be stated in this section. NJ TRANSIT will determine whether the Construction Management Firm/Team 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 Construction Management Firm/Team 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 Construction Management Firm/Team or any employee, agent or Subcontractor of the Construction Management Firm/Team shall also identify any projects, past or present, it has performed for NJ TRANSIT relating to the Raritan River Bridge Replacement Project including the dates of the project, the contract number, the project supervisor, and a brief description of the scope of work.

THE CONSTRUCTION MANAGEMENT FIRM/TEAM IS REQUIRED TO PROVIDE ONE (1) ORIGINAL COPY OF THE FOLLOWING SECTIONS 9 IN A SEPARATE SEALED ENVELOPE.

Section 9 - Consultant Certifications

This section shall include the original signed copies of the certifications and affidavits required under this solicitation for the Consultant and Subconsultants.

Prime Consultants and all Subconsultants must submit the following:

- Source Disclosure Certification (Exhibit 7)
- Disclosure of Investments Activities in Iran (Exhibit 8)
- Contractor's Certification of Eligibility (Exhibit 9)
- Non-Collusion Affidavit (Exhibit 10)
- Affidavit of Compliance – Code of Vendor Ethics (Exhibit 11)
- Certification of Contracts, Grants & Loans Cooperative Agreements (Exhibit 12)
- NJ Business Registration Certificate (The Certificates must be submitted no later than the date of contract award)

Prime Consultants only must submit the following:

- Acknowledgment of Receipt of Addenda (Exhibit 2)
- Statement of Joint Venture (if applicable) (Exhibit 5)
- Ownership Disclosure Form (Exhibit 6)

C. Oral Presentation Format

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

The Oral Presentation period will be scheduled for a maximum of one (1) hour for each Proposer. Each firm 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 regards to the written proposal, oral presentation and other project issues as deemed relevant by the TEC.

Members of proposed Consultant Team, who will play key and significant roles in managing the project, shall attend and participating 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.

Duties of the TEC will include:

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

Proposal Evaluation

Each individual on the TEC will review and evaluate the written technical proposals based on the quality and substance of the submitted proposal. Written technical proposals will be evaluated against the technical evaluation criteria enumerated in Attachment A of this section.

Written technical proposal evaluations will be used by NJ TRANSIT to determine the competitive range. Reference checks will be performed for each Consultant firm/team deemed within the competitive range and the results furnished to the TEC. 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 be requested from at least three (3) qualified firms within the “competitive range”, except NJ TRANSIT may select fewer professional firms if fewer such firms responded to the solicitation or meet the qualifications for the project.

Oral Presentations will provide an opportunity for the firms/teams to clarify or elaborate on its written technical proposal. 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

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

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

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

1. Travel, sustenance and lodging - NJ TRANSIT shall reimburse the Construction Management Firm/Team in accordance with the NJ TRANSIT Travel Policy. Please refer to Exhibit 13: Travel, Subsistence and Lodging Reimbursement Guidelines.
2. Reproduction expenses
3. Subcontracts less than \$10,000.00.
4. Expense of the premium portion for overtime work requiring higher than regular rates, when authorized in writing by NJ TRANSIT.

The person hours and direct expenses shall be summarized by task and by firm in the Construction Management Firm/Team's cost proposal and include overhead, profit, etc. Overhead and profit assumptions are to be shown as per Attachment 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). Technical employees include engineers, designers, job captains, draftsmen, specification writers and the like, in consultation, research, inspection, design, drawing production, specification development and other similar services pertaining to the project.

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

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

- Attachment B-1: Cost and Fee Recap – Team Summary
- 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 Phase, Task and Subtask. Expenditures greater than the identified amount and incurred by the Construction Management Firm/Team during the course of the execution of the Contract shall not be reimbursed unless previously approved by NJ TRANSIT prior to the performance of the work.

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

Each firm on the Construction Management Firm/Team must submit a listing of the items charged to the project overhead rate and the corresponding percentages. Overhead rates are not restricted, but must be documented by a recent (within the past three (3) years) State, Federal or independent certified accounting firm audit. Each firm is also required to submit their overhead projections in schedule format for the duration of the project.

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

DBE Forms & Affidavits

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

Negotiation

NJ TRANSIT reserves the right to:

- Reject all Proposals submitted
- Accept any Proposal as submitted without negotiations
- Require revisions to, correction of, or other changes to any Proposal submitted as a condition to it being given any further consideration

- Reject, without entertaining revisions, a proposal with major substantive deficiencies

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

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

Approval and Award

Once negotiations have been completed, a recommendation for the award of the contract will be made to NJ TRANSIT's Board of Directors. 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.

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

E. Protest Procedure

1. Purpose: This section describes the policies and procedures governing the receipt and resolution of bid protests in connection with an RFP.
2. Definitions: Definitions Applicable to this Section, entitled "Protest Procedure"
 - a. "File" and "Submit" mean date of receipt by NJ TRANSIT's Contracting Officer;

- b. "Federal Law or Regulation" means any valid requirement imposed by Federal statute or regulation governing contracts awarded pursuant to a grant agreement between NJ TRANSIT and the FTA. This includes the requirements as stated in FTA Circular 4220.1F;
- c. "Interested Party" means a party that is an actual or prospective bidder or offeror whose direct economic interest would be affected by the award or failure to award the third party contract at issue.

3. General Procedure

- a. Parties: Only an Interested Party may file a protest.
- b. Types of Protest/Time Limits:
 - i. Protests based upon a challenge to the specifications or alleged improprieties in NJ TRANSIT's procurement process must be filed no later than fourteen (14) calendar days prior to the Proposal submission date.
 - ii. Protests based upon the rejection of a Proposal shall be filed no later than five (5) business days after the protestor receives notification of rejection from NJ TRANSIT.
 - iii. Protests based upon the award of a contract shall be filed no later than five (5) business days after receipt of NJ TRANSIT's Notice of Intent to Award.
- c. All protests must be filed in writing. Oral protests will not be accepted.
- d. Where to File: Protests must be filed directly with NJ TRANSIT's Contracting Officer at the address of One Penn Plaza East, Sixth Floor, Newark, New Jersey 07105, and identifying the RFP number.
- e. A written protest must contain the following information:
 - i. The name, address and telephone number of the protestor;
 - ii. Identity of the RFP (by number and description);
 - iii. A statement of the specific grounds for protest and any supporting documentation. Any additional supporting materials will be considered only if filed within the time limits designated herein;
 - iv. Request for the ruling or relief sought from NJ TRANSIT.

- 4. Confidentiality of the Protest: Materials submitted by a protestor will not be withheld from any interested party, except to the extent that the withholding of information is permitted or required by law or regulation. If the protestor believes the protest and any supporting documentation contains proprietary material that should be withheld, the protest shall submit a statement advising of this fact affixed to the front page of the protest documents and the alleged proprietary information must be so identified wherever it appears. In the event that a public request is made for materials that the protestor has identified as confidential, NJ TRANSIT shall have the sole discretion and final authority to determine whether the materials are exempt from public disclosure and shall take action as required by applicable law.

5. Protest Procedures: Challenges to a Specification
 - a. An Interested Party finding cause to challenge a specification contained within the RFP may submit a written protest to NJ TRANSIT's Contracting Officer setting forth in detail the grounds for such protest;
 - b. A written protest may be submitted by an Interested Party only after NJ TRANSIT has formally responded to any questions raised by prospective proposers and must be submitted at least fourteen (14) calendar days prior to the Proposal submission date to permit a review of the merits of the protest and to take appropriate action, as may be necessary, prior to the scheduled deadline for proposal submission
 - c. A protest of a specification of any advertised RFP shall contain the following:
 - i. The RFP number and description; and
 - ii. The specification(s) at issue and the specific grounds for challenging the cited specification(s), including all arguments, materials, or other documentation in support of the protestor's position.
 - d. NJ TRANSIT's Contracting Officer may disregard a protest not containing all of the items set forth in (c) above
 - e. NJ TRANSIT's Contracting Officer may, upon timely receipt of a protest of a specification, issue a final written decision on the protest prior to the proposal submission date. Where a decision is issued, such determination shall be a final agency decision. NJ TRANSIT's Contracting Officer has the sole discretion to determine if an in-person presentation by the protestor is necessary to reach an informed decision on the protest.
 - f. NJ TRANSIT's Contracting Officer may resolve a protest of a specification by amending the RFP and extending the deadline for proposal submission, by canceling the procurement, or by any other appropriate means.
6. Protest Procedures: Challenges to Rejection of a Proposal or Contract Award
 - a. An Interested Party finding cause to challenge the rejection of a proposal or award of the Contract for this RFP may submit a written protest to NJ TRANSIT's Contracting Officer setting forth in detail the grounds for such protest.
 - b. All written protests must conform to the time requirements as set forth above. Failure to timely submit a protest may result in the disregard of a protest.
 - c. A protest under this section shall contain the following information:
 - i. The RFP number and description;

- ii. The specific grounds for the protest including all arguments, materials, or other documentation in support of the protestor's position; and
- iii. A statement as to whether the protestor requests an opportunity for an in-person hearing and the reason(s) for the request. The opportunity for an in-person presentation is at the sole discretion of the NJ TRANSIT Contracting Officer and subject to the terms set forth below.
- d. Failure by a protestor to include all required information may result in a dismissal of the protest.
- e. Protests accepted by NJ TRANSIT shall be resolved in writing on the basis of NJ TRANSIT's review of the record, including, but not limited to, the written protest, the terms, conditions and requirements of the RFP, pertinent administrative rules, statutes, and case law, and any associated documentation NJ TRANSIT deems appropriate. In cases where no in-person hearing is held, the written record shall, in and of itself, constitute a hearing. The determination by NJ TRANSIT shall be a final agency decision.
 - i. NJ TRANSIT has the sole discretion to determine if an in-person presentation by the protestor is necessary to reach an informed decision on the matter(s) of the protest. In-person presentations are for the benefit of NJ TRANSIT. NJ TRANSIT also has the discretion to limit attendance at an in-person presentation, when granted.
 - ii. NJ TRANSIT's decision will address only the issues raised originally by the protestor.

7. Request for Additional Information:

- a. NJ TRANSIT's Contracting Officer, or designee, is entitled to request, receive, and review copies of any and all records and documents deemed appropriate and relevant to the issues and arguments set forth in the protest. Upon receipt of a request by NJ TRANSIT's Contracting Officer, or designee, the protestor shall promptly provide the requested records and documents free of charge within the time frame specified by NJ TRANSIT.
- b. If a protestor fails to comply with the provisions of this section, such failure may constitute a reasonable basis for NJ TRANSIT to resolve the protest against the protestor submitting the protest. Failure of a protestor to comply expeditiously with a request for information as specified by NJ TRANSIT's Contracting Officer, or designee, may also result in determination of the protest without consideration of the additional information

8. Status of the Procurement: Upon timely receipt of a protest, NJ TRANSIT will delay the opening of proposal until after resolution of a protest for those protests filed prior to the proposal submission date, or withhold award until after resolution of a protest for those protests filed after the proposal submission date. However, NJ TRANSIT may open proposals or award a contract whenever NJ TRANSIT, at its sole discretion, determines that:
 - a. The items or work to be procured are urgently required; or
 - b. Delivery or performance will be unduly delayed by failure to make the award promptly; or
 - c. Failure to make prompt award will otherwise cause undue harm to NJ TRANSIT or the Federal Government
9. Federal Transit Administration (FTA) Involvement: Where procurements are funded by the FTA, the protestor may protest to the FTA only where the protest alleges that NJ TRANSIT failed to have or to adhere to its protest procedures, failed to review a complaint or protest, or violated a Federal law or regulation. Any protest to the FTA must be filed in accordance with the requirements set forth in FTA Circular 4220.1F.

ATTACHMENTS

ATTACHMENT A
Proposal Evaluation
Criteria

ATTACHMENT A

PROPOSAL EVALUATION CRITERIA

(LISTED IN DESCENDING ORDER OF IMPORTANCE)

Proposal Evaluation Criteria

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

Reference Evaluation Criteria (sample reference check questions).

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

ATTACHMENT B
Cost Proposal Forms

NEW JERSEY TRANSIT CORPORATION
REQUEST FOR PROPOSAL NO. ____

ATTACHMENT B-1

COST AND FEE FIRM RECAP – TEAM SUMMARY

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

NEW JERSEY TRANSIT CORPORATION
REQUEST FOR PROPOSAL NO. ____

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

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

NEW JERSEY TRANSIT CORPORATION
REQUEST FOR PROPOSAL NO. ____
ATTACHMENT B-3
COST AND FEE TASKS RECAP BY FIRM
FIRM _____

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

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

TASK: _____

FIRM: _____

STAFF				
STAFF PERSON/ CLASSIFICATION	PROJECT TITLE OR DISCIPLINE	ESTIMATED HOURS	HOURLY RATE	TOTAL SALARY
	Project Manager			
	Construction Manager			
	Resident Engineer			
	Office Engineer			
	Estimator/Scheduler			
	Civil/Structural Inspector			
	Electrical Inspector			
	Systems Inspector			
	Historic Preservationist			
TOTAL ESTIMATED HOURS				

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

NEW JERSEY TRANSIT CORPORATION
REQUEST FOR PROPOSAL NO. ____

ATTACHMENT B-5
STAFFING SCHEDULE BY FIRM

FIRM _____

[illegible]

ATTACHMENT C
Draft Summary
Schedule

ATTACHMENT D
Non-Disclosure Agreement

NONDISCLOSURE AGREEMENT

This Nondisclosure Agreement is dated as of _____, 2018 and sets forth the understanding by _____ and _____ between _____ (***Name of Consultant***) ("Consultant"), and the New Jersey Transit Corporation ("NJ TRANSIT"), an instrumentality of the State of New Jersey, regarding the restrictions that are to be placed on the use, dissemination, and disclosure of certain proprietary and confidential information furnished by NJ TRANSIT, or received, accessed, or obtained by Consultant, in connection with services rendered by Consultant in connection with Request for Proposal ("RFP") No. _____, for _____ Services (collectively, the "Services").

1. ***Definition of "Proprietary Information."*** Proprietary Information is all information furnished by NJ TRANSIT to the consultant, or received, accessed, or obtained by Consultant, whether electronic or hard copy, in connection with the Services, specifically and solely with respect to Consultant's work on the Project Document Control System ("PDCS") and NJ TRANSIT's Electronic Content Management System ("ECMS"), as required for the Services, as further described in Section IV(C)(3), Task C1(d) of the RFP. The term Proprietary Information includes all information furnished by NJ TRANSIT to Consultant, or received, accessed, or obtained by Consultant, in connection with the PDCS and/or ECMS, without regard to whether the information obtained relates to the Services.
2. ***Confidentiality.*** The Consultant agrees to maintain in confidence all Proprietary Information as may be disclosed or made available to it by NJ TRANSIT. Except in accordance with the terms of this Agreement, the Consultant may neither use nor disclose any Proprietary Information without NJ TRANSIT's prior written permission. The Proprietary Information may be disclosed to employees, or agents within, or associated with, the organization of the Consultant who are involved in the Services, but only on a limited, need-to-know basis. In addition, the Consultant will exercise due diligence to maintain that Proprietary Information in confidence. In this Agreement, "due diligence" means at least the same precautions and standard of care which the Consultant uses to safeguard its own proprietary information.
3. ***No Obligation As to Certain Information.*** This Agreement is made with the understanding, however, that there is no obligation imposed regarding information that (a) now or later becomes generally known or available through no act or omission on the part of the Consultant; (b) is already known to the Consultant at the time it was first disclosed to it under this Agreement (as shown by the Consultant's files and records prior to disclosure); (c) is furnished by NJ TRANSIT to third parties with written permission to disclose provided by NJ TRANSIT; (d) is received by the Consultant from a third party under no obligation of confidence; (e) is independently created by the Consultant without reference to or reliance upon the Proprietary Information provided by NJ TRANSIT; or (f) was disclosed by the Consultant in response to a valid order by a court or other governmental body, such disclosure was otherwise required by law, or such disclosure was necessary to establish the rights of either party under

this Agreement (provided that the Consultant provided NJ TRANSIT with a reasonable opportunity to seek protective legal treatment for such information).

4. **Term.** This Agreement shall commence as of the date first set forth above and shall continue until terminated by NJ TRANSIT or until the information is released for dissemination to the general public. Notwithstanding the foregoing, the confidentiality obligations set forth in Section 2 herein shall survive termination, unless an exception, as described in Section 3, applies.
5. **Return of Proprietary Information.** All Proprietary Information furnished under this Agreement is and will remain the property of NJ TRANSIT and will be either returned to it by the Consultant promptly upon request, together with any copies of the Proprietary Information, or destroyed, as certified by the Consultant.
6. **Right to Injunctive Relief.** The parties recognize that any actual or threatened disclosure of Proprietary Information in violation of this Agreement may cause NJ TRANSIT irreparable harm for which monetary damages would be an insufficient remedy, and that NJ TRANSIT will be entitled to seek injunctive relief or a decree of specific performance upon a proper showing of such a violation, without the necessity of demonstrating actual monetary damage and without any requirement to post any bond or other security therefor.
7. **Miscellaneous.** This Agreement is binding upon the Consultant's officers, directors, employees, agents, subsidiaries, parent companies, successors-in-interest and other corporate affiliates. It may not be assigned by the Consultant. If any term of this Agreement is held to be illegal or unenforceable, such holding will not affect the validity of the remaining provisions of this Agreement. This Agreement contains the entire understanding of the parties regarding its subject matter, and it supersedes all prior agreements or understandings between the parties on such subject(s). This Agreement will be construed in accordance with the laws of the State of New Jersey, without regard to choice of law provisions. The parties acknowledge that this Agreement may not be modified except in writing and duly signed by the parties.
8. **Authority.** Each individual signing this Agreement warrants that he/she is authorized to and by his/her signature does intend to bind the corporation, limited liability company or other entity for which he/she purports to act.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized representatives as of the date first written above.

New Jersey Transit

(Consultant)

Signature

Signature

Printed Name

Printed Name

Title

Title

Date

Date

EXHIBITS

EXHIBIT 1

AGREEMENT NO. _____
BETWEEN
NEW JERSEY TRANSIT CORPORATION
AND
FOR PROFESSIONAL SERVICES

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

WITNESSETH:

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

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

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

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

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

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

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

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

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

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

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

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

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

Direct labor rates, hours and costs, indirect labor rates and costs and direct expenses invoiced by the Consultant and paid by NJ TRANSIT are subject to audit and downward adjustment by NJ TRANSIT, in its sole discretion. Any determination of an overpayment by NJ TRANSIT as a result of an

audit shall be final and conclusive of the amounts to be refunded. All overpayments shall be reimbursed to NJ TRANSIT within thirty (30) calendar days of notification. Alternatively, NJ TRANSIT may deduct the overpayment amount from payments owed to the Consultant under this or any other agreement with NJ TRANSIT. No upward adjustments shall be allowed.

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

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

3. LIMITATION OF FUNDS:

A.) The Consultant estimates that performance of this Agreement will not cost NJ TRANSIT more than the estimated amount specified in Exhibit B (Cost Information). The Consultant agrees to make every effort to perform the work specified in Exhibit A (Scope of Services) and all obligations under this Agreement within the estimated amount specified in Exhibit B (Cost Information). The Purchase Order is for invoicing purposes only and its attached Terms and Conditions are not part of this Agreement.

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

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

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

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

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

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

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

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

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

I.) If NJ TRANSIT does not allot sufficient funds to allow completion of the work, the Consultant will be entitled to the actual costs incurred plus a percentage of the fixed fee specified in Exhibit B (Cost Information) not to exceed the percentage of completion of the work contemplated by this Agreement.

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

NJ TRANSIT by its Contracting Officer or his/her designee upon the execution of the Agreement by NJ TRANSIT. The Consultant shall complete the Scope of Services by

5. MODIFICATION OF AGREEMENT:

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

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

B.) Notwithstanding Paragraph A. above, the Contracting Officer may at any time, by written order, make changes within the general scope of this Agreement to the work to be performed by the Consultant. If any such change causes an increase or decrease in the estimated cost of, or the time required for, the performance of any part of the work under this Agreement, whether or not changed by the order, the Contracting Officer may make such adjustments as are appropriate and equitable and shall modify the Agreement in writing accordingly. Any claim by the Consultant for adjustment under this clause must be asserted within thirty (30) calendar days from the date of receipt by the Consultant of the notification of change; provided however, that the Contracting Officer, if he decides that the facts justify such action, may receive and act upon such claim asserted at any time prior to final payment under this Agreement.

Failure to agree to any adjustment shall be a dispute within the meaning of Article 35, DISPUTES. However, nothing in this clause shall excuse the Consultant from proceeding with the Agreement as changed.

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

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

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

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

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

and seven (7) copies, and one copy in an electronic format acceptable to NJ TRANSIT shall be submitted by the Consultant upon completion of the project.

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

8. ACCEPTANCE OF THE CONSULTANT'S WORK: All services and deliverables that the Consultant must provide and deliver to NJ TRANSIT, as specified in Exhibit A (Scope of Services), shall be provided and delivered to the designated NJ TRANSIT Project Manager. The Project Manager will examine and inspect the deliverables and shall have the right in his/her reasonable judgment to refuse to accept any services or deliverables if they do not meet the requirements of the Scope of Services. Such inspection does not relieve the Consultant of its liability regarding any deficiencies in the performance of the Scope of Services or deliverables, whether obvious or not. If any deliverables are not accepted, NJ TRANSIT may terminate this Agreement, in whole or in part, in accordance with Article 16, TERMINATION OF THE AGREEMENT FOR CAUSE.

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

10. ASSIGNMENT, SUBCONTRACT AND DISPOSITION APPROVAL: The Consultant shall not sell, transfer or otherwise dispose of this Agreement or its interest therein to any other parties without the prior written consent of NJ TRANSIT's Contracting Officer or his/her designee. The Consultant shall not, without the prior written approval of NJ TRANSIT's Contracting Officer or his/her

designee, assign or subcontract any of the Scope of Services under this Agreement. Neither shall any assignee or Subconsultant, without the prior written approval of NJ TRANSIT, further assign or subcontract any of the work to be performed pursuant to this Agreement.

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

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

11. INDEMNIFICATION: The Consultant shall defend, indemnify, 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 relating 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.

12. INSURANCE: The Consultant agrees to carry and shall require its assignees and Subconsultants, if any, to carry professional liability insurance of the type necessary to protect the Consultant from professional liability arising out of the negligent acts, errors or omissions of the Consultant in connection with the performance of the Consultant's services pursuant to this Agreement. Said insurance

shall be in an amount not less than \$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 \$1,000,000 combined single limit for bodily injury and property damage. With respect to said insurance, NJ TRANSIT and the Indemnified Parties shall be named as an additional insured at no additional cost to NJ TRANSIT.

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

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

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

All policies 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.

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 the Consultant including but not limited to disclosure forms, payment requests, change orders, invoices, certified payrolls, manifests, etc. related to products, transactions or services provided under this Agreement including the performance of its Subconsultants from the Advertisement of this Request for Proposal (RFP) and for five (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), the Consultant shall maintain all documentation related to products, transactions or services under this contract for a period of five (5) years from the date of final

payment. Such records shall be made available to the New Jersey Office of the State Comptroller upon request.

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

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

15. TERMINATION OF THE AGREEMENT FOR CONVENIENCE: NJ TRANSIT may terminate the Consultant's services in whole or in part for any reason at any time before completion. In that event, the Consultant will be given written notice by the Contracting Officer of such termination specifying the effective date thereof. Compensation will be paid to the Consultant pursuant to the terms of Article 2, COMPENSATION for the work actually performed prior to such date. All documents begun or completed by the Consultant pursuant to this Agreement shall become the property of NJ TRANSIT. After receipt of such written notice, the Consultant shall not incur any new obligations without the prior written approval of the Contracting Officer and shall cancel as many outstanding obligations so related as possible. NJ TRANSIT will evaluate each obligation deemed non-cancellable by the Consultant in order to determine

its eligibility for inclusion in compensable costs. No damages of any nature shall be claimed against NJ TRANSIT in the event it exercises this right of termination.

16. TERMINATION OF THE AGREEMENT FOR CAUSE: NJ TRANSIT may terminate this Agreement in whole or in part at any time if the Consultant has materially failed to comply with terms of the Agreement. In the event of such failure, NJ TRANSIT 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 identified in Exhibit A (Scope of Services) pursuant to the terms of this Agreement for work actually performed, completed and approved by NJ TRANSIT prior to the date of termination.

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

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

If, after notice of termination of this Agreement under the provisions of this Article, it is determined for any reason that the Consultant was not in default under the provisions of this Article, or that the default was excusable under the provisions of this Article, the rights and obligations of the parties shall

be the same as if the notice of termination had been issued pursuant to Article 15, TERMINATION FOR CONVENIENCE.

17. BUSINESS REGISTRATION NOTICE: In accordance with N.J.S.A. 52:32-44, all New Jersey and out of State business organizations must obtain a Business Registration Certificate (BRC) from the Department of the Treasury, Division of Revenue. It is requested that proof of valid business registration be submitted by a proposer with its proposal. If not submitted with the proposal, the Business Registration Certificate (BRC) must be submitted prior to award of an Agreement. The certificate must be valid at time of award. The Business Registration Certificate (BRC) form (Form NJ-REG) can be found online at <http://www.state.nj.us/treasury/revenue/gettingregistered.shtml>.

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

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

18. SOURCE DISCLOSURE:

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

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

performed.

If any of the services cannot be performed within the United States, the Consultant shall certify with specificity the reasons why the services cannot be so performed. NJ TRANSIT's Contracting Officer will shall 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 Executive Director.

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

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

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

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

20. PATENT RIGHTS AND RIGHTS IN DATA:

A.) Rights in Data

1.) The term "subject data" as used herein means recorded information, whether or not copyrighted, that is delivered or specified to be delivered under this Agreement. The term includes graphic or pictorial delineations in media such as drawings or photographs; text in specifications or related performance or design-type documents; machine forms such as punched cards; magnetic tape, or computer memory printouts; and information retained in computer memory. Examples include, but are not limited to, computer software, engineering drawings and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog item identifications, and related information. The term does not include financial reports, cost analyses, and similar information incidental to contract administration.

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

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

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

b.) To authorize others so to do.

4.) The Consultant shall indemnify and save and hold harmless NJ TRANSIT, its officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from any willful or intentional violation by the Consultant of

proprietary rights, copyrights, or rights of privacy, arising out of the publication, translation, reproduction, delivery, performance, use, or disposition of any data furnished under this Agreement.

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

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

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

B.) Patent Rights

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

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

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

22. EQUAL EMPLOYMENT OPPORTUNITY:

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

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

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

The Consultant or Subconsultant, where applicable, will not discriminate against any employee or applicant for employment because of age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex. Except with respect to affectional or sexual orientation and gender identity or expression, the contractor will ensure that equal employment opportunity is afforded to such applicants in recruitment and employment, and that employees are treated during employment, without regard to their age, race, creed, color, national origin, ancestry, marital status, affection-al or sexual orientation, gender identity or expression, disability, nationality or sex. Such equal employment opportunity shall include, but not be limited to the following: employment, up-grading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including 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. 17:27-1.1 et seq.

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

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

under this Agreement, a penalty of \$50.00 for each person for each calendar day during which such person is discriminated against or intimidated in violation of the provisions of the Agreement; and

- d. This Agreement may be canceled or terminated by the contracting public agency and all money due or to become due hereunder may be forfeited, for any violation of this Article of the Agreement occurring after notice to the Consultant from the contracting public agency of any prior violation of this Article of the Consultant.

23. EQUAL OPPORTUNITY FOR INDIVIDUALS WITH DISABILITIES: The Consultant and NJ TRANSIT agree that the provisions of Title II of the Americans With Disabilities Act of 1990 (the "Act") (42 U.S.C. 12101 et seq.), which prohibit discrimination on the basis of disability by public entities in all services, programs, and activities provided or made available by public entities, and the rules and regulations promulgated thereto, are made a part of this Agreement. In providing any aid, benefit, or service on behalf of NJ TRANSIT pursuant to this Agreement, the Consultant agrees that the performance shall be in strict compliance with the Act. In the event that the Consultant, its agents, servants, employees, or Subconsultants violate or are alleged to have violated the Act during the performance of this Agreement, the Consultant shall defend NJ TRANSIT and the State of New Jersey in any action or administrative proceeding commenced pursuant to this Act. The Consultant shall indemnify, protect, and save harmless NJ TRANSIT and the State, their agents, servants, and employees from and against any and all suits, claims, losses, demands, or damages of whatever kind or nature arising out of or claimed to arise out of the alleged violation. The Consultant shall, at its own expense, appear, defend, and pay any and all charges for legal services and any and all costs and other expenses arising from such action or administrative proceeding or incurred in connection therewith. In any and all complaints brought pursuant to the owner's grievance procedure, the Consultant agrees to abide by any decision of the owner which is rendered pursuant to such said grievance procedure. If any action or administrative proceeding results in an award of damages against NJ TRANSIT or the State or if NJ TRANSIT or the State incur any expense to cure a violation of the Act which has been brought pursuant to its grievance procedure, the Consultant shall satisfy and discharge the same at its own expense.

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

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

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

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

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

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

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

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

25. COMPLIANCE WITH FEDERAL, STATE AND LOCAL LAW:

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

(b) Incorporation of FTA Terms

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

(c) Changes to Federal Requirements

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

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

27. CONSULTANT'S EMPLOYEES: All personnel employed on this project and their daily rates shall 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. INTERESTS OF MEMBERS OF OR DELEGATES TO CONGRESS: No member of or delegate to the Congress of the United States shall be admitted to any share or part of this Agreement or to any benefit arising therefrom.

30. NJ TRANSIT CODE OF ETHICS FOR CONSULTANTS:

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

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

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

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

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

The Consultant shall not offer any NJ TRANSIT officer or employee any gift, favor, service or other thing of value under circumstances from which it might be reasonably inferred that such gift, service or other thing of value was given or offered for the purpose of influencing the recipient in the discharge of his or her official duties. In addition, employees or officers of NJ TRANSIT will not be permitted to accept

breakfasts, lunches, dinners, alcoholic beverages, tickets to entertainment and/or sporting events, or any other item which could be construed as having more than nominal value.

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

1. Any offer or agreement by a vendor to pay or to make payment of, either directly or indirectly, any fee, com-mission, compensation, gift, gratuity, or other thing of value of any kind to any State office or employee or special State officer or employee as defined by N.J.S.A. 52:13D-13b and e, in the Department of the Treasury or any other agency with which such vendor transacts or offers or proposes to transact business, or to any member of the immediate family, as defined by N.J.S.A. 52:13D-13i, of any such officer or employee, or any partnership, firm, or corporation with which they are employed or associated, or in which such officer or employee has an interest within the meaning of N.J.S.A. 52:13D-13g;

2. Failure by a vendor to report to the Attorney General and to the Executive Commission on Ethical Standards State Ethics Commission in writing forthwith the solicitation of any fee, commission, compensation, gift, gratuity, or other thing of value by any State officer or employee or special State officer or employee;

3. The undertaking, directly or indirectly, of any private business, commercial or entrepreneurial relationship with, whether or not pursuant to employment, contract or other agreement, express or implied, or sale, directly or indirectly of any interest in such vendor to, any State officer or employee or special State officer or employee or special State officer or employee having any duties or responsibilities in connection with the purchase, acquisition, or sale of any property or services by or to any State agency or any instrumentality thereof, or with any person, firm or entity with which he is employed or associated or in which he has an interest within the meaning of N.J.S.A. 52:13D-13g. Any relationship subject to this provision shall be reported in writing forthwith to the executive Commission on Ethical Standards State Ethics Commission, which may grant a waiver of this restriction upon application of the

State officer or employee or special State officer or employee upon a finding that the present or proposed relationship does not present the potential, actuality, or appearance of a conflict of interest;

4. Influence or attempt to influence or cause to be influenced, any State officer or employee or special State officer or employee in his or her official capacity in any manner which might tend to impair the objectivity or independence of judgment of said officer or employee; or

5. Cause or influence or attempt to cause or influence, any State officer or employee or special State officer or employee to use, or attempt to use, his or her official position to secure unwarranted privileges or advantages for the vendor or any other person.

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

32. CERTIFICATION AND POLITICAL CONTRIBUTION DISCLOSURE (P.L. 2005, 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. NON SOLICITATION: 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. SOVEREIGN IMMUNITY: 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 et seq. 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.

37. DISPUTES: Disputes regarding whether a party has failed to make payments may be submitted to a process of alternative dispute resolution. Disputes arising in the performance of this Agreement which are not resolved by agreement of the parties will be decided in writing by the authorized representative of the Contracting Officer. This decision shall be final and conclusive unless within ten (10) calendar days from the date of receipt of its copy, the Consultant mails or otherwise furnishes a written

appeal to the Contracting Officer. In connection with any such appeal, the Consultant shall be afforded an opportunity to be heard and to offer evidence in support of its position. Pending final decision of a dispute hereunder, the Consultant shall proceed diligently with performance of the Contract in accordance with the decision of the authorized representative of the Contracting Officer.

38. LIMITATIONS OF LIABILITY: 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).

39. 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.

40. 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.

41. 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 Division of Revenue and Enterprise Services 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
Division of Revenue and Enterprise Services
PB Box 308
Trenton, New Jersey 08625-0308
www.state.nj.us/njbgs

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

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

44. QUALITY ASSURANCE PLAN: The Consultant shall perform all work according to the highest standards of professional care. The Consultant shall establish and maintain a Quality Assurance Plan, subject to NJ TRANSIT's approval, setting forth the Consultant's policy for quality assurance and procedures for implementing that policy. Such plan must apply to all persons engaged in work under this Agreement, include regular and written procedures for performance of all Project activities, and provide sufficient information to senior managers to enable effective supervision of the Project. The procedures shall provide for sufficient documentation to allow review and audit by NJ TRANSIT, and NJ TRANSIT may, in its discretion, review the Consultant's implementation of the procedures.

45. 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.

46. 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.

7. FALSE OR FRAUDULENT STATEMENTS AND CLAIMS:

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

B.) The Consultant also acknowledges that if it makes a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government in connection with an urbanized area formula project financed with Federal Assistance authorized by 49 U.S.C. § 5307, the Government reserves the right to impose on the Consultant the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n) (1), to the extent the Federal Government deems appropriate.

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

third party contract, the Federal Government continues to have no obligations or liabilities to any party, including the subrecipient and third party contractor.

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

50. CLEAN WATER AND CLEAN AIR ACTS:

50.1 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.S.C. § 1251 et seq.:

(a) With the notification of violating facilities provisions of Executive Order No. 11738; "Administration of the Clean Air Act and the Federal Water Pollution Control Act with Respect to Federal Contracts, Grants, or Loans", 42 U.S.C. S 7606. The 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.S.C. § 300h et seq.

50.2 The Consultant agrees to comply with all applicable, standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq. The 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.

50.3 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.

51. ENERGY CONSERVATION: The Consultant shall comply with mandatory standards and policies relating to energy efficiency contained in applicable State of New Jersey Energy

Conservation Plans issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. 6321 et seq.).

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

(a) Compliance with Regulations

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

(b) Nondiscrimination

In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, and N.J.S.A. 10:3-1, the Consultant agrees that it will not discriminate against any employee or applicant for employment because of race, color, religion, national origin, sex, age, or disability. In addition, the Consultant agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

(c) Equal Employment Opportunity

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

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

In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Consultant agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R.

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

(2) Age

In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § § 623 and Federal transit law at 49 U.S.C. § 5332 and N.J.S.A. 10:3-1, the Consultant agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Consultant agrees to comply with any implementing requirements FTA may issue.

(3) Disabilities

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

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

(e) Information and Reports

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

(f) Sanctions for Noncompliance

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

- (1) Withholding of payments to the Consultant under the Contract until the Consultant complies; and/or
- (2) Cancellation, termination or suspension of the Contract, in whole or in part.

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

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

B.) Violation; Liability for Unpaid Wages; Liquidated Damages: In the event of any violation of the clause set forth in subparagraph (b)(1) of 29 C.F.R. Section 5.5, the Consultant and any Subconsultant responsible therefore shall be liable for the unpaid wages. In addition, such Consultant and

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

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

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

E.) Subcontracts: The Consultant or Subconsultant shall insert in any subcontracts the clauses set forth in Paragraphs A through E of this Section and also a clause requiring the

Subconsultants to include these clauses in any lower tier subcontracts. The prime Consultant shall be responsible for compliance by any Subconsultant or lower tier Subconsultant with the clauses set forth in Paragraphs A through E of this Section.

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

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

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

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

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

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

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

A participant in a covered transaction may rely upon a certification of a participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the

covered transaction, unless it knows that the certification is erroneous. Each participant shall check the U.S. Government System for Award Management (SAM) database.

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

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

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

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

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

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

A.) No appropriated funds may be expended by the recipient of a Federal contract, grant, loan or cooperative agreement to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress or an employee of

a Member of Congress in connection with any of the following covered Federal actions: the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any Federal contract, grant, loan or cooperative agreement.

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

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

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

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

F.) The prohibition on the use of appropriated funds does not apply in the case of any reasonable payment to an officer or employee of a Consultant or Subconsultant or to a person, other than an officer or employee of a Consultant or Subconsultant, if the payment is for professional or technical services rendered directly in the preparation, submission or negotiation of any bid, proposal or application for a Federal contract, grant, loan or cooperative agreement.

56. 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.

57. FLY AMERICA REQUIREMENTS: The Consultant agrees to comply with 49 U.S.C. 40118 (the "Fly America" Act) in accordance with the General Services Administration's regulations at 41 C.F.R. Part 301-10, which provide that recipients and subrecipients of Federal funds and their Consultants 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.

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

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

Whenever any taxpayer under contract to provide goods or services to the State of New Jersey or its agencies or instrumentalities, and including the legislative and judicial branches of State government, is entitled to payment for the goods or services or on that construction project and at the same time the taxpayer is indebted for any State tax, the Director of the Division of Taxation shall seek to set off so much of that payment as may be necessary to satisfy the indebtedness. The Director, in consultation with the Director of the Division of Budget and Accounting in the Department of the Treasury, shall establish procedures and methods to effect a set-off. The Director shall give notice of the set-off to the taxpayer, the provider of goods or services or the Contractor or Subcontractor of construction projects and provide an opportunity for a hearing within thirty (30) calendar days of such notice under the procedures for protests established under N.J.S.A. 54:49-18, but no request for conference, protest, or subsequent appeal to the Tax Court from any protest under this Article shall stay the collection of the indebtedness. No payment shall be made to the taxpayer, the provider of goods or services or the Contractor or Subcontractor of construction projects pending resolution of the indebtedness. Interest that may be payable by the State pursuant to N.J.S.A. 52:32-32 et seq. to the taxpayer, the provider of goods and services or the Contractor or Subcontractor of construction projects shall be stayed.

60. DISCLOSURE OF INVESTMENT ACTIVITIES IN IRAN: Pursuant to N.J.S.A. 52:32-55, 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.

61. EQUAL PAY ACT: Please be advised that P.L. 2018, c. 9, also known as the Diane B. Allen Equal Pay Act, was signed into law by Governor Phil Murphy on April 24, 2018, with an effective date of July 1, 2018. It requires that a contractor entering into a contract to perform "qualifying services" or "public work" for the State, or any agency or instrumentality of the State, shall provide the Commissioner of Labor and Workforce Development a report regarding the compensation and hours worked by employees categorized by gender, race, ethnicity, and job category. N.J.S.A. 34:11-56.14. For more information and report templates see <https://nj.gov/labor/equalpay/equalpay.html>. <https://nj.gov/labor/equalpay/equalpay.html>.

62. ADA ACCESS: Facilities to be used in public transportation service must comply with the Americans with Disabilities Act, 42 U.S.C. § 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:

63. 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 Appendices, Attachments and Exhibits, as listed below, are incorporated into this Contract:

- Exhibit A – Scope of Services
- Exhibit B – Cost Information
- Exhibit C – NJ TRANSIT Travel and Business Reimbursement Guidelines
- Exhibit D – DBE Requirements and Forms
- Consultant Certifications
- Addenda

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

WITNESS:

NEW JERSEY TRANSIT CORPORATION

By: _____
Title
Designee

By: _____
Contracting Officer or Duly Authorized

WITNESS:

CONSULTANT

By: _____
Title

By: _____
Title

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

**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

Date

By:

Signature of Company Official

Official's Title

Company Name

EXHIBIT 3

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

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NEW JERSEY TRANSIT CORPORATION

**DBE REQUIREMENTS FOR
RACE-NEUTRAL GOAL PROGRAM
FEDERAL PROCUREMENT ACTIVITIES**

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

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

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

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

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

1.3 DBE GOAL FOR THIS PROJECT

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

1.4 GUIDANCE TO BIDDER/PROPOSERS/PRIMES

- 1.4.1 Failure by a Bidder/Proposer/Prime to comply with any of the requirements contained herein shall result in breach of contract and it shall be subject to the appropriate penalties, remedies, or liquidated damage(s). **Refer to articles 5.6-5.7**
- 1.4.2 All required forms, including the supplemental section (see articles 2.3-2.4) must be submitted in accordance with the requirements. **Firms must be certified under the NJUCP at the time of contract award in order to obtain DBE credit toward the goal.** 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.

- 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 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 cost proposal 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 must also submit NJ Unified Certification Program (NJUCP) certificate or letter for all potential DBE subcontractors. Additionally, the two lowest Bidders or two highest ranked Proposers shall submit any applicable supplemental forms (AA, AA1, AA2, BB, and D). All DBE forms and NJUCP certificates or letters shall be submitted with the Bid or within five (5) calendar days of the bid opening 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 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 DBE Requirements for Federal Procurement Activities

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

2.2 A GOOD FAITH EFFORT

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

assigned DBE goal.

- (a) The Bidder/Proposer/Prime shall solicit through all reasonable and available means (e.g. attendance at pre-bid meetings, advertising and/or written notices) the interest of all certified DBEs who have the capacity to perform the work of the contract.
 - (1) The Bidder/Proposer/Prime must solicit this interest within sufficient time to allow the DBE to respond to the solicitation.
 - (2) The Bidder/Proposer/Prime must take appropriate steps to follow up on initial solicitations in order to determine with certainty if the DBE firms are interested.
- (b) The Bidder/Proposer/Prime shall select portions of the work to be performed by DBEs in order to increase the likelihood that the DBE goals will be achieved. This includes, where appropriate, breaking out contract work items into economically feasible units to facilitate DBE participation, even when the Prime might otherwise prefer to perform these work items with its own forces.
- (c) The Bidder/Proposer/Prime shall provide interested DBEs with adequate information about the plans, specifications, and requirements of the contract in a timely manner to assist them in responding to a solicitation.
- (d) The Bidder/Proposer/Prime shall negotiate with a DBE(s) with the intent to enter into a contract. It is the Bidder/Proposer's responsibility to make a portion of the work available to DBE subcontractors/subconsultants and suppliers and to select those portions of the work or material needs consistent with the available DBE Primes and suppliers, so as to facilitate DBE participation.
 - (1) **Evidence of such negotiation includes:** the names, addresses, and telephone numbers of DBEs that were considered; a description of the information provided regarding the plans and specifications for the work selected for subcontracting; and evidence as to why additional agreements could not be reached for DBEs to perform the work.
- (e) The Bidder/Proposer/Prime shall make efforts to assist interested DBEs in obtaining bonding, lines of credit, or insurance as required by NJT or the Prime contractor.
- (f) The Bidder/Proposer/Prime shall make efforts to assist interested DBEs in obtaining necessary equipment, supplies, materials, or related assistance or services.
- (g) The Bidder/Proposer/Prime shall effectively use the services of available minority/women community organizations; minority/women Prime contractors groups; local, State and Federal minority/women business assistance offices; and other organizations as allowed on a case-by-case basis to provide assistance in the recruitment and placement of DBEs.

2.3 REQUIRED FORMS

- (a) **Form A - First Tier DBE Utilization:** Lists all First Tier DBE firms scheduled to participate on this contract.
- (b) **Form A1 - Bidder/Proposer Solicitation and Contractor Information:** Lists all DBE and Non-DBE sub contractor/subconsultants, including suppliers, solicited for, and participating on this contract.
- (c) **Form A2- Non-DBE Sub Utilization:** Lists all DBE and Non-DBE subcontractors/ subconsultants, including suppliers, participating on this contract.

- (d) **Form B - Intent to Perform as a DBE Sub:** Identifies the work the 1st Tier DBE intends to perform including scope of work, subcontract dollar value, etc.
- (e) **DBE Good Faith Effort Form (if applicable):** Identifies any DBE subcontractor invited to quote, but declined to do so for any reason.
- (f) **Trucking Commitment Agreement (if applicable):** Identifies all trucking firms (DBE and Non-DBE) participating on this contract, at any tier.
- (g) **NJ UCP DBE Certification & NAICS Code Verification:** Confirms the DBE status and NAICS code(s) of each First Tier DBE subcontractor/subconsultant.
- (h) ***Form E - Contractor's Monthly DBE Payment Report & Payment Certification Voucher (Post-Award):** Records monthly payments issued to each DBE subcontractor/subconsultant/supplier and monthly payments issued by NJ TRANSIT to the Prime. Certifies that DBE subs have been paid for previous month's invoices.
- (i) **Form E2 – DBE's Monthly Payment Report (Post-Award):** Records monthly invoices submitted by the DBE, payments owed to the DBE on past due invoices and payments received from the prime by each DBE subcontractor/subconsultant.
- (j) **Form E1- DBE Prime's Monthly Payment Report (For DBE Prime Only):** Records monthly payments issued to each DBE Prime by NJ TRANSIT to.

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

2.4 SUPPLEMENTAL REQUIRED FORMS (IF APPLICABLE)

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

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

- (a) **Form A - First Tier DBE Utilization:**
Form A is a formal agreement between the Bidder/Proposer and the DBE(s). Replacement/removal of DBE subcontractors/subconsultants/supplier identified on Form A is prohibited after the bid or proposal is

submitted to NJT. **Refer to article 4.3.** A DBE Bidder/Proposer, which lists itself on Form A, is committed to performing the work indicated with its own personnel.

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

(1) A first Tier DBE is required to perform at least 51% of its subcontract value with its own forces. Bidders/Proposers/Primes will not receive any credit for DBEs performing less than 51% and therefore must not be listed on this form.

(2) **For DBE suppliers**, identify all manufacturers, regular dealers, and brokers. If a DBE supplier is a **manufacturer**, indicate the full value of its subcontract. If a DBE supplier is a **regular dealer**, show its total contract value multiplied by 60% (Ex. \$100K x 60%= \$60K). If a DBE supplier is **neither a manufacturer nor a dealer**, indicate the fee/commission only, not the cost of materials or supplies. See **article 3.0** for direction on determining credit toward the goal.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(f) Trucking Commitment Agreement: (If Applicable)

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

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

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

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

All DBEs listed on Form A must be certified at the time of contract award. It is the Bidder/ Proposer's responsibility to ensure that DBEs are certified and that their NAICS code(s) match the scope of work to be performed on this contract. Credit will not be given for any work to be performed without the appropriate NAICS code. Status can be verified through <https://njucp.dbesystem.com> and 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. **This form must be completed and submitted 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) Form AA – Second Tier DBE Utilization:** The Second Tier DBE must perform 100% of its subcontract with its own forces. A formal request to waive this requirement may be granted, solely at the discretion of the OBD; however, approval is required.

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

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

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

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

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

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

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

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

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

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

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

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

All DBEs listed on Form AA must be certified at the time of contract award. It is the Bidder/Proposer/Prime's responsibility to ensure that DBEs are certified and that their NAICS code(s) match the scope of work to be performed on this contract. Credit will not be given for any work to be performed without the appropriate NAICS code. Status can be verified through <https://niucp.dbesystem.com> and 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 non-DBE firm does not count toward the DBE contract goal.
- (b) When a DBE performs as a participant in a **joint venture with a Non-DBE**, count the portion of the total dollar value of the contract equal to the distinct, clearly defined portion of the work of the contract that the DBE performs with its own forces toward DBE goals.
- (c) A DBE performs a *commercially useful function* when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing and supervising the work involved.

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

3.2 COUNTING DBE PARTICIPATION

- 3.2.1 When a DBE participates in a contract, only the value of the work actually performed by the DBE is counted toward DBE goals.
- (a) The entire amount of that portion of a contract that is performed by the DBE's own forces is counted. This includes the cost of supplies and materials obtained by the DBE for the work of the contract, as well as supplies purchased or equipment leased by the DBE (*except supplies and equipment the DBE*

subcontractor/subconsultant purchases or leases from the Prime contractor or its affiliate).

3.2.2 The entire amount of fees or commissions charged by a DBE firm for providing a bona fide service, such as professional, technical, consultant, or managerial services, or for providing bonds or insurance specifically required for the performance of a contract, is counted toward DBE goals, provided the fee is reasonable and not excessive as compared with fees customarily allowed for similar services by a DBE.

3.3 DBE PRIME CONTRACTOR GUIDANCE

3.3.1 If a **DBE Prime**, expenditures are counted toward DBE goals only if the DBE is performing a commercially useful function on that contract.

3.3.2 A DBE Prime must perform or be responsible at least 30% of the total cost of its contract with its own workforce.

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

3.4 DBE TRUCKING FIRMS GUIDANCE

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

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

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

3.5 LEASING TRUCKS

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

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

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

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

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

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

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

3.6 COUNTING MATERIALS AND SUPPLIES

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

- (a) If the materials or supplies are obtained from a **DBE manufacturer**, 100% of the cost of the materials or supplies are counted toward DBE goals.
- (1) For purposes of this paragraph 3.6.1(a), a manufacturer is a firm that operates or maintains a factory or establishment that produces, on the premises, the material, supplies, articles, or equipment required under the contract and of the general character described by the specifications.
- (b) If the materials or supplies are purchased from a **DBE regular dealer**, sixty percent (60%) of the cost of the materials or supplies is counted toward DBE goals.
- (1) For purposes of this paragraph 3.6.1(b), a regular dealer is a firm that owns, operates, maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business.
- (2) The firm must be an established, regular business that engages, as its principal business and under its own name, in the purchase and sale or lease of the products in question.
- (3) A person may be a regular dealer in such bulk items as petroleum products, steel, cement, gravel, stone, or asphalt without owning, operating, or maintaining a place of business as provided above if the person both owns and operates distribution equipment for the products. Any supplementing of regular dealers' own distribution equipment shall be by a long-term lease agreement and not on an ad hoc or contract-by-contract basis.
- (4) Packagers, brokers, manufacturers' representatives, or other persons who arrange or expedite transactions are not regular dealers within the meaning of this paragraph 3.6.1(b).
- (c) With respect to materials or supplies purchased from a **DBE, which is neither a manufacturer nor a regular dealer**, only the entire amount of fees or commissions charged for assistance in the procurement of the materials and supplies, or fees or transportation charges for the delivery of materials or supplies required on a job site, is counted toward DBE goals, provided the fees are determined to be reasonable and not excessive as compared with fees customarily allowed for similar service. **However, any portion of the cost of the materials and supplies themselves do not count toward DBE goals.**

4.0 TERMINATION OF DBE(s)

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

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

4.2 ADDITION OF DBE(s)

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4.2.1 Should the Bidder/Proposer/Prime wish to add a DBE not listed on Form A, a written request for the addition of a DBE(s) must be submitted by the Bidder/Proposer/Prime.

4.2.2 The Bidder/Proposer/Prime must receive written approval of the OBD **prior to** the addition of the DBE subcontractor/subconsultant in order for the addition to be credited toward the goal.

4.3 REPLACEMENT OR REMOVAL OF DBE(s)

4.3.1 When a Prime is considering replacing or removing a DBE due to performance issues, the OBD must be contacted as soon as possible.

4.3.2 Request for DBE replacement or removal may be made under the following conditions:

1) The DBE materially fails to successfully perform the contract tasks.

2) Under unusual situations referenced in article 4.3.8.

4.3.3 A written request for replacement or removal of a DBE(s) listed on Form A, must be submitted by the Bidder/Proposer/Prime to the OBD with complete justification for the request. The process to follow such requests is as follows:

(a) Written communications (over a period) from the Prime and/or NJT's PM/CM team to the DBE, notifying the DBE of its poor performance must be provided to the OBD.

(b) **The OBD will arrange a meeting with the DBE, the Prime, and a representative from Procurement and project management to discuss the specifics of the performance issue.**

(c) The DBE must provide a written plan identifying the efforts it will make to correct the deficiencies.

(d) The Prime must provide the DBE with a minimum of 30 calendar days from acceptance of its plan to improve its performance. Throughout the 30-day window, the Prime and/or NJT PM/CM team must provide written communication to the DBE of any additional/continued performance issues, with a copy to the OBD.

4.3.4 The Bidder/Proposer/Prime must receive written approval of the OBD **prior to** replacement or removal of the DBE subcontractor/subconsultant can be made, regardless of the reason for the replacement or removal.

4.3.5 If the OBD issues written approval for the removal of a DBE(s), NJT will require a Bidder/Proposer/Prime to continue to demonstrate a good faith effort to replace the removed DBE to the extent needed to meet the contract goal established by NJT for the procurement.

These good faith efforts shall be directed at finding another DBE to perform at least the same amount of work under the contract as the removed DBE.

4.3.6 Failure to obtain approval from the OBD **prior to** replacing or removing a DBE shall result in the Bidder/Proposer/Prime being found in breach of the contract and subject to the appropriate remedies, audits and penalties. **Articles 5.6-5.7**

4.3.7 If NJT finds that the Bidder/Proposer/Prime upon submission of its bid/proposal committed itself to the goal in good faith, the Bidder/Proposer/Prime may, in "unusual situations", be permitted to substitute a DBE subcontractor(s)/subconsultant(s).

4.3.8 The term "unusual situations", includes, but is not limited to, the following circumstances:

(a) Failure to qualify as a DBE, or maintain DBE certification status.

(b) Death or physical disability of a key individual.

- (c) Dissolution, if a corporation or partnership.
- (d) Bankruptcy of the subcontractor/subconsultant, subject to applicable bankruptcy law, and only in instances where the bankruptcy affects the subcontractor/subconsultant's ability to perform.
- (e) Inability to obtain, or loss of, a license necessary for the performance of the particular category of work.
- (f) Failure or inability to comply with a requirement of law applicable to Primes or, subcontractors/subconsultants.

4.4 WITHDRAWN DBE(s)

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

4.5 DECERTIFIED DBE(S)

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

5.0 AWARD OBLIGATIONS

- 5.1 The Prime must designate a **DBE Liaison Officer**. The liaison officer will be responsible to NJT regarding DBE subcontract matters.

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

5.2 POST AWARD DELIVERABLES

- 5.2.1 After the execution of a contract with NJT, **signed copies** of subcontractor/subconsultant agreements between the Prime and DBE subcontractors must be submitted to the OBD no later than 10 business days after the Prime's contract execution date. The agreement between the Prime and DBE subcontractor shall remain firm for the duration of the contract.
 - 5.2.2 The Prime shall provide a list of the anticipated job start date for all DBE subcontractors/subconsultants **no later than two days** after the initial pre-construction meeting.
 - 5.2.3 **Certification of DBE(s) Payments** – submit monthly with the Form E to the Manager of the OBD and with its monthly invoice submittal to NJT project manager of this project. **Refer to article 5.3.2**
 - (a) The Prime will certify, prior to the issuance of each progress payment by NJT, that all DBE subs have been paid any amounts due on past due invoices from previous or current progress payments.
 - 5.2.4 **Form E (Contractor's Monthly DBE Payment Report & DBE Payment Certification Voucher)** - submit monthly to the Manager of the OBD. **Refer to articles 2.5h and 5.3.2.**

Failure to submit this report on a monthly basis may result in breach of the contract and be subject to the appropriate remedies, penalties or liquidated damages as indicated in articles 5.6-5.7.
 - 5.2.5 **Form E1 (DBE Prime's Monthly Payment Report) (For DBE Prime Only)** - submit monthly to the Manager of the OBD.
 - 5.2.6 **Form E2 (DBE's Monthly Payment Report) – Refer to article 2.5j**
 - (a) Forms E/E1 and E2 will be reviewed monthly to determine compliance with the assigned DBE goal, the subcontractor prompt payment regulation, and the DBE Program.
 - (b) Attainment of goals will be monitored and based upon actual payments received by the DBE.

Failure to submit Form E/E1 may result in suspension of payments or such other remedies as provided in **article 5.6**. *If at any time, NJT has reason to believe that any person or firm has willfully and knowingly*
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provided incorrect information or made false statements, it shall refer the matter to the USDOT for inquiry.

5.3 PROMPT PAYMENT OF INVOICES TO SUBCONTRACTORS

- 5.3.1 The Prime must pay each subcontractor under this contract for satisfactory performance of its work **no later than ten (10) days** from the receipt of each payment the Prime receives from NJT for the subcontractor's work. Failure to comply with this requirement shall result in breach of the contract and shall be subject to the appropriate remedies as determined by OBD.
- 5.3.2 In accordance with 49 CFR 26.29, the Prime shall certify, prior to the issuance of a progress payment by NJT that all subcontractors have been paid any amounts due on past due invoices (greater than 30 days) from previous or current progress payments. **The Prime must submit the Certification of DBE(s) Payments with its monthly invoice submittals to NJT project manager, and with its Form E to the OBD.**
- 5.3.3 The Prime will not be reimbursed for work performed by subcontractors/subconsultants unless and until the Prime ensures that the subs are promptly paid for the work performed. Alternatively, the Prime shall certify that a valid basis exists under the terms of the subcontractor's/subconsultant's or supplier's contract to withhold payment from the subcontractor/subconsultant and therefore payment is withheld.
- 5.3.4 If the Prime withholds payment from the subcontractor/subconsultant, the Prime shall provide to the subcontractor/subconsultant or supplier written notice thereof. The notice shall detail the reason for withholding payment and state the amount of the payment withheld. If a performance/payment bond has been provided under this contract, the Prime shall send a copy of the notice to the surety providing the bond for the Prime. A copy of the notice shall also be submitted to NJT with the certification that payments are being withheld.
- 5.3.5 If withholding payment is due to the Prime's failure to promptly pay the DBE in accordance with the prompt payment of invoices and/or retainage clauses, the OBD may request proof of payment to DBE(s) for delinquent invoices and/or retainage in order to issue release of payment to Prime.
- 5.3.6 Failure to comply with the above shall result in breach of the contract and may be subject to the appropriate penalties. **See article 5.6**

5.4 SUBCONTRACTOR PAYMENT DISPUTE RESOLUTION

- 5.4.1 The Prime is required to notify the OBD of its intention to withhold payment from a DBE as soon as possible and in advance of taking action. Should the Prime provide notice and proceed to withhold payment from any subcontractor/subconsultant or supplier due to a performance issue or unapproved work performed, an OBD representative shall make an effort to resolve the dispute.
- (a) OBD's efforts shall be limited to meeting with the Prime and the subcontractor/ subconsultant, and reviewing the relevant facts with both parties.
- (b) OBD will not act as a decider of fact nor will OBD direct a settlement to the dispute.
- (c) Any OBD effort is solely intended to assist the parties in understanding their respective positions and to encourage a reasonable resolution of the dispute. The Prime is required to send written notification of the

above to the OBD immediately.

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

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

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

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

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

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

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

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

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

5.6 REMEDIES AND PENALTIES

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

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

- (e) NJT may withhold payment of specific invoices.

5.7 LIQUIDATED DAMAGES

- 5.7.1 Liquidated damages (LD) may be assessed when the Prime fails to meet the established DBE goal on the contract.
- 5.7.2 If the DBE goal is not met, and the Prime has not demonstrated a good faith effort to do so, NJT may elect to subtract from the Prime's payment, as liquidated damages and not a penalty, the following:
The amount equal to the difference (in dollars) between the total contract value multiplied by the assigned DBE goal percentage, (originally established or as subsequently modified) and the actual DBE participation percentage (total dollars paid to DBEs divided by total dollars paid to the Prime).
- 5.7.3 This may be withheld from a series of payments or from the Prime's final payment, depending on the size of the liquidated damage.
- 5.7.4 If the Prime's final payment is not sufficient to satisfy the LD in full, the balance shall be due and owing from the Prime and subject to repayment terms as determined by NJT. NJT shall waive liquidated damages where good cause is shown for the deficiency in DBE participation upon determination by the OBD.

APPENDIX I

GLOSSARY

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

Certification - means the process by which a business is determined to be a bona fide DBE. Any business applying for DBE certification must complete the appropriate NJ Unified Certification Program Application. Certification Applications are available at the OBD.

Disadvantaged Business Enterprise or DBE - means a small business concern:

Which is at least 51 percent owned by one or more socially and economically disadvantaged individuals, or in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more socially and economically disadvantaged individuals; and where one or more of the socially and economically disadvantaged owners controls management and daily business operations. A DBE shall not include a small business concern where that concern or a group of concerns controlled by the same socially and economically disadvantaged individual or individuals has annual average gross receipts in excess of **\$22,410,000** over the previous three fiscal years or is not otherwise eligible as a small business as defined by the Small Business Administration in 13 CFR Part 121.

DBE Goal - means numerically expressed objectives for DBE participation on federal contracts Prime contractors are required to make a good faith effort to achieve to the extent necessary to meet the assigned DBE goal.

DBE Sub-Prime - means any 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).

DBE Ineligibility – means a firm's DBE status changes or ceases due to change in ownership, management, or size, etc.

DBE Prime – means the successful Bidder is a DBE firm and has a direct contract with NJT.

DBE Trucking Firm – owns and operates at least one fully licensed, insured, and operational truck used on the contract. Is responsible for the management and supervision of the entire trucking operation for which it is responsible on a particular contract.

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

Joint Venture—means an association of a DBE firm and one or more other firms to carry out a single, for-profit business enterprise, for which parties combine their property, capital, efforts, skills and knowledge, and in which the DBE is responsible for a distinct, clearly defined portion of the work of the contract and whose share in the capital contribution, control, management, risks, and profits of the joint venture are commensurate with its ownership interest.

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

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

Race-neutral Measure or Program- is one that is focused specifically on assisting all small businesses equally, including DBEs. Such activities include bonding, insurance, and technical assistance. For the purposes of this part, race-DBE Requirements for Federal Procurement Activities

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neutral includes gender-neutrality.

Reasonable Bid Price - means a price that shall be considered reasonable if the Bidder/Proposer/Prime would have been awarded the contract had the firm submitted the only bid.

Regular Dealer - means a firm that owns, operates, or maintains an establishment in which the materials or supplies required for the performance of a contract are bought, kept in stock and regularly sold to the public in the usual course of business.

The firm must engage in, as its principal business, and in its own name, the purchase and sale of products in question. Bulk items such as steel, cement and petroleum products need not be stocked, if the dealer owns or operates distribution equipment.

Note: Brokers and packagers are not regarded as regular dealers.

Second Tier DBE - refers to any DBE listed on the DBE Sub-Prime's Form AA.

Subcontractor/ Subconsultant - means any contractor/consultant, including suppliers, who enters into a contract issued by a Prime contractor.

Transit Vehicle Manufacturer (TVM) - is a manufacturer of vehicles used by NJT for the primary program purpose of public mass transportation (e.g., buses, railcars, vans). The term does not apply to firms, which rehabilitate old vehicles, or to manufacturers of locomotives or ferryboats. The term refers to distributors of or dealers in transit vehicles with respect to the requirements of 49 CFR Section 26.49.

U.S. DOT – means the U.S. Department of Transportation, including the Office of the Secretary, the Federal Highway Administration (FHWA), the Federal Transit Administration (FTA), and the Federal Railroad Administration (FRA).

Withdrawn DBE – a DBE withdraws, or drops out of its contract, or fails to complete its work on the contract for any reason.

Bidders Checklist (for federal contracts)

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

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

Required Forms

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

Supplemental Forms (if applicable)

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

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.

MANDATORY FORM FOR BIDDER/PROPOSER/PRIME: COMPLETE ENTIRELY

FORM A (Fed)

First Tier DBE UTILIZATION - FORM A

Project Name: _____ NJT Contract No: _____

Assigned DBE Goal %: _____ NJT Procurement Specialist: _____ Contract Value (\$): _____

First Tier DBE must perform at least 51% of its subcontract value if subcontracting to a Second -Tier DBE or Non-DBE. Do not count Non-DBE portion toward the goal.

Name, Address and Telephone # of DBE Subcontractor/Subconsultant	Provide Detailed Scope of Work to be Performed (Identify all suppliers)	Dollar Value of Subcontract/Sub-consultant Work (\$)	Percentage of Subcontract Work (%)
			%
			%
			%
			%
			%
For DBE suppliers, show original subcontract value multiplied by 60% (\$2,000*60%=\$1200). For DBE portion of work, subtract Non-DBE portion of work from original subcontract value.	TOTALS	\$	%

The undersigned will enter into a formal agreement with the DBE(s) listed in this schedule conditioned upon execution of a contract with NJ TRANSIT for the above referenced project. The undersigned understands that removal/replacement of the DBE(s) listed is NOT PERMISSIBLE for any reason (pre or post-award), without submitting a written request to the Office of Business Development and receiving WRITTEN APPROVAL from the Office of Business Development. Failure to obtain written approval shall result in the breach of contract and subject to corrective action to be determined by NJ TRANSIT.

Company Name: _____ Authorized Signature: _____

Company Address: _____ Print Name: _____

Title: _____

Federal Tax ID #: _____ Prime Contractor's DBE Liaison Officer: _____

Company Tel #: _____ Date Signed: _____

BIDDER SOLICITATION & CONTRACTOR INFORMATION - FORM A1

Project Title: _____ Date: _____
 Prime Contractor/Consultant: _____ 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: _____ Telephone #: _____

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

	Subcontractor/Subconsultant	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:			

MANDATORY FORM FOR BIDDER/PROPOSER/PRIME: COMPLETE ENTIRELY

FORM A2 (Fed)

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 Detailed Scope of Work to be Performed	Dollar Amount of Subcontractor/Subconsultant Work (\$)	Percentage of Subcontract or Work (%)
			\$	%
			\$	%
			\$	%
			\$	%
			\$	%
Must provide a detailed scope of work; one-word descriptions are not acceptable.			\$	%
TOTALS			\$	%

To Add Subs Use Additional Forms

NJT Fed Form A2 effect 10.1.09 rev Sept 2010

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 DBE Firm: _____

Project/Contract Name: _____

IFB/RFP Contract Number: _____

Does the undersigned DBE (Answer Accordingly):

Intend to perform subcontract work in connection with the above-mentioned project as a Joint Venture? Circle one. (Yes or No)

Intend to subcontract any portion of its scope of work to a DBE(s)?

Circle one. (Yes or No)

If yes, DBE Sub-Primes must complete and submit Form AA.

At what percent? _____%

Intend to subcontract any portion of its scope of work to a Non-DBE(s)?

Circle one. (Yes or No)

If yes, must complete and submit Form AA2.

At what percent? _____%

The undersigned will perform the following described work on the above-referenced project: *(Provide a detailed description of the type of work you will perform on your subcontract. Attach a copy of quote approved and signed by Bidder (optional)).*

Dollar Value of DBE Subcontract: \$ _____

Total Quantity/Units (if applicable): _____ Per Unit Cost (if applicable): \$ _____

The undersigned based the above scope of work and subcontract value on detailed project specs received from the Bidder contractor named above. Circle one. (Yes or No)

The Prime Contractor projected the following commencement and completion date for such work as follows:

DBE Contract Start Date: _____ DBE Contract Completion Date _____

The undersigned DBE will enter into a formal agreement for the above work with the Prime Contractor conditioned upon execution of a contract with NJ TRANSIT. As a DBE subcontractor, I will cooperate with the certification, compliance and monitoring process set forth by NJ TRANSIT. I attest that I will perform at least 51% of my subcontract with my own workforce for the referenced project.

Signature of 1st Tier DBE

Date

Title

Print Name

Telephone #:

Failure to adhere to these instructions or the falsification of any information on this form shall result in breach of contract and subject to the appropriate penalties to be determined by NJ TRANSIT.

FORM D INSTRUCTION SHEET

PRE AND POST AWARD GOOD FAITH EFFORT (IF APPLICABLE)

**Required for all DBE subcontractors who decline to provide a quote.
Applies in pre and post-award.**

Important

Bidder/proposer/prime compliance with contract goals and good faith efforts are handled as a matter of responsibility. If the bidder/proposer/prime did not meet the goal, they must document that they made Good Faith Efforts to do so. This requirement is an important and serious one. 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.
 - In short, unless the price difference is excessive or unreasonable, incurring additional costs in using and finding a DBE is not sufficient reason to reject the DBE quote or not to meet the contract goal.

Instructions:

- On Page 1 of FORM D, indicate with a check mark the various types of detailed good faith efforts made and attach documentation of such efforts. Types of acceptable documentation are listed on Page 2.
- Document any other type of good faith efforts not listed on Page 1.
- Complete this form entirely.

Bidders/proposers/primes are to provide the required forms and instruction sheet, including the Supplemental section to their 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

IFB/RFP Number: _____

Project Title: _____

Bidder/Proposer/Prime Name: _____

Address: _____

Phone: _____

Email: _____

Date Signed: _____

The following is a list of the types of actions that may be considered good faith efforts. It is not intended to be a mandatory checklist, nor is it intended to be exclusive or exhaustive. Other factors or types of efforts may be relevant in appropriate cases, however please check all that apply in this instance. Please provide documentation for ALL instances selected.

- ☐ Selected portions of work to be performed by DBEs and, where appropriate, broke down contracts into economically feasible units to facilitate DBE participation.
- ☐ Provided interested DBE with adequate information about plans, specifications, and requirements of the contract.
- ☐ Negotiated in good faith with interested DBE, not rejecting DBEs as unqualified without sound reasons based on a thorough investigation of their capabilities.
- ☐ Made efforts to assist interested DBE in obtaining bonding, lines of credit, or insurance required by NJ Transit or Bidder.
- ☐ Made efforts to assist interested DBEs in obtaining necessary equipment, supplies, materials, or related assistance or services.
- ☐ Advertised subcontracting opportunities in appropriate media.
- ☐ Used the services of minority organizations, minority contractors' groups, local state and federal minority business assistance offices and other organizations that provide assistance identifying subcontractors.
- ☐ Provided written notice to DBEs in sufficient time to allow the DBE to respond. (Provide copy of documentation with Page 2.)
- ☐ Followed up initial solicitation of interest by contacting DBE to determine interest. (Provide proof of follow up with Page 2.)

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

DBE GOOD FAITH EFFORT- FORM D

IFB/RFP Number: _____ Project Title _____

If the dollar value of the goal for DBE participation in this project has not been met, the Bidder/Proposer/Prime is required to complete the following questions to describe efforts to obtain DBE participation. Copies of correspondence, return receipts, telephone logs, or other documentation will be required to support good faith efforts. Please provide information for each DBE.

I, _____
Name Titleof _____
Bidder/Proposer/Prime

Certify that on _____, I contacted the below named DBE to obtain a
Date
Bid/Proposal for work items to be performed on the Project named above.

DBE: _____
Firm NameType of work requested to be performed: _____

Method of Contact: Phone Fax Mail Email

Date Contacted: _____

To the best of my knowledge and belief, said DBE was unavailable for work on this project and was unable to prepare a bid for the following reason(s):

No response

Not interested: Indicate Reason(s) _____

Unacceptable Sub Bid: Indicate Reason(s) _____

Please note: Unless the price difference is excessive or unreasonable, incurring additional costs in using and finding a DBE is not a sufficient reason to reject DBE quote.

Signature of Bidder/Proposer/Prime_____
Date

The above statement is a true and accurate account of why I did not submit a bid on this project.
(Below is to be signed by DBE firm only)

Signature of DBE Firm

Date

Name of DBE Firm_____
Print Name_____
Address_____
Print Title_____
Telephone #: ()

Form E - Prime Contractor's DBE Payment Certification

1. Have all DBE subcontractors with executed subcontracts been paid amounts due from previous progress payments?

- ☐ If yes, skip the next section and go to number 3.
☐ If no, please complete fields in box below: (Use additional paper, if needed)

DBE SubContractor Name	Amount Withheld From Invoice (\$)	Total of Invoice Amount (\$)	Invoice Number	Invoice Date	Specific Reason for Withholding

2. Have you notified the DBE subcontractor(s) that you are withholding payment and the reason(s) why?

- ☐ If yes, provide a copy of written notification to the DBE subcontractor with this form, indicating the date of notification.
☐ If no, lack of prior written notification to the DBE(s) that you are withholding payment violates the prompt payment clause guidelines. Please contact the DBE immediately, and provide a copy of written notification to the subcontractor with this form.

3. By signing this form, I certify that all of the above represent true and accurate information.

Note: CFO or equivalent Sr. Manager must complete and sign off on this form.

PROJECT DIRECTOR NAME (PRINT) _____ PROJECT DIRECTOR (SIGNATURE) _____

_____/_____/_____
DATE

Additional Reasons/Comments for Withholding Payment: _____

DO NOT WRITE BELOW. DEPARTMENTAL USE ONLY.

- ☐ Approved
☐ Denied

THIS FORM IS DUE ON THE 7TH OF EACH MONTH Please forward to:
 Office of Civil Rights and Diversity Programs
 Business Development

NJ TRANSIT
 One Penn Plaza East, 6th Fl
 Newark, New Jersey 07105-2246

This form is not to be altered in any way.

For assistance completing this form, call 973-491-7539, 8058, 8768, 8575, 8069, 8941 Fed Form E rev Sept 2010

Name of DBE Firm: _____
 DBE's FEIN#: _____
 DBE Address: _____
 DBE Telephone #: _____

Report for the Month of: _____
 Contract Number: _____
 Contract Name: _____
 DBE Contract Start Date: _____

Prime Contractor's Information:

Name of Prime: _____

Address: _____

Telephone #:

MAKE PAYMENT INEO. Itemize payments/invoices and dates. If received/submitted more than one payment/invoice between the 1st and 31st of THIS Month.

Work Task Performed	Original Subcontract Amount \$	Change Order Amount (+/-)	Invoice # (s) Submitted in this month	Dollar Amount of Each Invoice Submitted in this Month	Date of Invoice(s) Submitted this Month	Total Payments Received by DBE in this Month * (\$)	Date Payment(s) Received in this Month	Total Payments Received by DBE To Date (\$)	Total % Work To Date	Final Payment? Y or N
TOTALS →	\$	\$	TOTALS →	\$	TOTALS →	\$	TOTALS →	\$	TOTALS →	TOTALS →

Is retainage held on your subcontract? Yes or No (circle one) If yes, how much? \$ _____. Did your final payment include retainage? Yes or No (circle one)

Back Due Invoice(s) Information: I list any invoice more than 40 days past due from date submitted to prime at the time you complete this form.

Invoice #	Invoice Date	Invoice Amount (\$)	Number of Days Past Due	Comments: use additional paper if necessary

Note: CFO or equivalent Sr. Manager must complete and sign off on this form.

Name: _____ Signature: _____ Title: _____ Date: _____

THIS FORM IS DUE ON THE 7TH OF EACH MONTH IMMEDIATELY FOLLOWING DBE's SUBCONTRACT START DATE. EVEN IF PAYMENT NOT RECEIVED.

Please mail this form to:
NJ TRANSIT Office of Business Development, One Penn Plaza East, 6th Fl, Newark, New Jersey 07105-2246

Do not alter this form in any way.

If you need assistance completing this form please call 973-491-7539, 8058, 8768, 8069, or 8941.

DBE TRUCKING COMMITMENT

AGREEMENT

The DBE Trucking Firm Commitment Agreement sheet attached must be signed and completed entirely. Make duplicate copies for additional subcontractors as needed.

Please read DBE Requirement Language for details.

- DBEs must provide information for all DBE/Non-DBE trucking firms it will lease from or subcontract to.
 - *Subcontracting to a Non-DBE trucker means that the Non-DBE will perform a portion of the DBE firm's subcontract.*
 - *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 owned by the DBE:

- Proof of ownership: title(s) or finance agreement(s) ONLY
- registration card(s)
- insurance card(s)
- hazardous waste license(s), if applicable
- apportioned cab card(s), if applicable

**Copies of the following items must be attached for ALL DBE/non-DBE trucks
leased by the DBE:**

- lease agreement(s)
- title(s)
- registration card(s)
- Insurance card(s)
- hazardous waste license(s), if applicable
- apportioned cab card(s), if applicable

MANDATORY FORM

DBE TRUCKING FIRM COMMITMENT AGREEMENT

This commitment is subject to the award and receipt of a signed contract from NJ TRANSIT for the subject project. Note that copies of all supporting documents must be attached.

The DBE trucking firm will perform the following described work on the project: (Specific work details should include: Type of material to be handled, quantities to be hauled, dollar amount per unit, location the material will be transported).

Dollar Value of DBE Subcontract: \$_____

Total Quantity/Units (if applicable): _____ **Per Unit Cost (if applicable):** \$ _____

Total Number of fully operational DBE-owned trucks to be used on contract? _____.

Total Number of fully operational trucks to be leased from a DBE? _____.

(Provide a copy of lease agreement(s) for each trucking firm).

Total Number of fully operational trucks to be leased from a non-DBE? _____

*(Provide a copy of lease agreement(s) for each trucking firm. *Note that subcontracting is different from leasing as it relates to trucking).*

Specify ALL Vehicle Information on Page 1 and 2, if applicable

[illegible]

Trucking Commitment Instruction & Agreement
Office of Business Development Sept 2010
NJT Federal Projects

MANDATORY FORM[illegible]

I hereby certify that the information present above is correct. I agree to inform the Office of Business Diversity in writing within 10 days, if anything changes.

1st Tier DBE Signature: _____

Date: _____

Print Name: _____

**Trucking Commitment Instruction & Agreement
Office of Business Development Sept 2010
NJT Federal Projects**

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.

MANDATORY FORM FOR First Tier DBE (IF APPLICABLE): COMPLETE ENTIRELY

SECOND TIER DBE UTILIZATION- FORM AA

Project Name: _____ NJT Contract No: _____

DBE Sub-Prime (First Tier) Subcontractor Contract Value (\$): _____

I plan to subcontract _____ % of my subcontract to Second Tier DBE subcontractor(s)/subconsultant(s) listed on the chart below to perform/supply the following:

Second Tier DBE subs must perform 100% of their scope of work.

Name, Address and Telephone # of Second Tier DBE Subcontractor/Subconsultant	Provide Detailed Scope of Work to be Performed	Dollar Value of Subcontractor/Subconsultant Work (\$)	Percentage of Subcontractor Work (%)
			%
			%
			%
Any First-Tier DBE firm listed on the Form A must identify any DBE firm it will use to perform its scope of work.	TOTALS	\$	%

The undersigned understands its approval to perform on the above contract is based upon its identified DBE team listed above and its Non-DBE team listed on the Form AA2. The DBE Sub-Prime must receive written approval from the Office of Business Development for any changes to its DBE and/or Non-DBE subcontractors, their dollar values or scope of work identified on the Form AA and/or AA2 before making any changes. It attests that the identified firms will perform all work. Failure to adhere to, or falsification of any information contained herein shall result in breach of contract and subject to corrective action to be determined by NJ TRANSIT.

DBE Sub-Prime Firm: _____ Authorized Signature: _____

Company Address: _____ Print Name: _____

_____ Title: _____

Federal Tax ID #: _____ Sub-Prime's DBE Liaison Officer: _____

Company Tel #: _____ Date Signed: _____

MANDATORY FORM: COMPLETE ENTIRELY

Form AA1 (Fed)

BIDDER SOLICITATION & CONTRACTOR INFORMATION - FORM AA1

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

Complete the information below for Second Tier contractor(s) participating on the project

	Subcontractor/Subconsultant	Subcontractor/Subconsultant	Subcontractor/Subconsultant
Company's Full Name			
Address			
City			
Zip			
County			
Phone			
Fax			
E-mail			
Owner			
Date Established			
Date Certified			
Ethnicity			
Gender			
Certification Status: DBE or Non-DBE			
Federal Tax ID # / SSN #			
Annual Gross Receipts: A - Less than \$500K B - \$500K to \$1M C - \$1M to \$2M D - \$2M to \$5M E - \$5M and over Indicate the letter that applies			
Primary NAICS Code:			

To Add Subs Use Additional Forms

MANDATORY FORM BY DBE SUB-PRIME: COMPLETE ENTIRELY

FORM AA2 (Fed)

NON-DBE SECOND TIER SUBCONTRACTOR UTILIZATION - FORM AA2

Directions: To be completed by any DBE Sub-Prime Contractor for "all" subs including suppliers participating on this contract.

NJ Transit Contract No: _____ Date: _____ DBE Sub-Prime Contract Value: \$ _____

DBE Sub-Prime Contractor Name: _____ Project Title: _____

Name, Address and Telephone # of all Second Tier Subcontractor(s)/Subconsultant(s)	FEIN #	Provide Detailed Scope of Work to be Performed	Dollar Amount of Subcontractor/Subconsultant Work (\$) Awarded	Percentage of Subcontractor Work (%)
			\$	%
			\$	%
			\$	%
			\$	%
			\$	%
TOTALS			\$	%
Must provide a detailed scope of work; one-word descriptions are not acceptable.				

To Add Subs Use Additional Forms

INTENT TO PERFORM AS A SECOND TIER DBE - FORM BB

The Bidder is prohibited from completing any portion of this form and directing the DBE to sign a blank form.
DIRECTIONS: DBE(s) listed on the Form AA must complete all information on this form and must complete Form AA2 for any Non-DBE subcontractor performing a portion of its subcontract.

Name of First Tier DBE/Sub-Prime: _____

Name of Second Tier DBE Firm: _____

Project/Contract Name: _____

IFB/RFP Contract Number: _____

Does the undersigned intend to perform subcontract work in connection with the above-mentioned project as a Joint Venture? Circle one. (Yes or No)

Will you subcontract any portion of your scope of work to a DBE(s)? Circle one. (Yes or No)

Will you subcontract any portion of your scope of work to a Non-DBE(s)? Circle one. (Yes or No)

The undersigned will perform the following described work on the above-referenced project: (Provide a detailed description of the type of work you will perform on your subcontract. Attach a copy of quote approved and signed by Bidder (optional)).

Dollar Value of DBE Subcontract: \$ _____

Total Quantity/Units (if applicable): _____ Per Unit Cost (if applicable): \$ _____

The undersigned based the above scope of work and subcontract value on detailed project specs received from the DBE Sub-Prime named above. Circle one. (Yes or No)

The Prime Contractor projected the following commencement and completion date for such work as follows:

DBE Contract Start Date: _____ DBE Contract Completion Date: _____

The undersigned DBE will enter into a formal agreement for the above work with the DBE Sub-Prime conditioned upon execution of a contract with the Prime on the project. As a Second Tier DBE subcontractor, I will cooperate with the certification, compliance and monitoring process set forth by NJ TRANSIT. I attest that I will perform 100% of my subcontract with my own workforce for the referenced project.

Signature of Second Tier DBE _____

Date _____

Title _____

Print Name _____

Telephone #: _____

Failure to adhere to these instructions or the falsification of any information on this form shall result in breach of contract and subject to the appropriate penalties as determined by NJ TRANSIT.

EXHIBIT 4

**STATE OF NEW JERSEY
EQUAL EMPLOYMENT OPPORTUNITY PROVISIONS
FOR PROCUREMENT, PROFESSIONAL AND SERVICE CONTRACTS**

I. BID REQUIREMENTS

This contract is subject to the provisions of N.J.S.A. 10:2-1 through 10:2-4 and N.J.S.A. 10:5-31 et seq. (P.L. 1975, c.127), and in accordance with the rules and regulations promulgated pursuant thereto, the proposer agrees to comply with the following:

At the time the signed contract is returned to NJ TRANSIT, the said proposer (contractor) shall submit one of the following three documents:

1. A Federal Affirmative Action Plan Approval which consists of a valid letter from the Office of Federal Control Compliance Programs; or
2. A Certificate of Employee Information Report from the State of New Jersey, Department of Treasury, Division of Public Contracts Equal Employment Opportunity Compliance; or
3. A Division of Public Contracts Equal Employment Opportunity Compliance Employee Information Report (Form AA-302).

A contractor shall not be eligible to submit an employee information report unless contractor certifies and agrees that it has never before applied for a certificate of employee information report in accordance with rules promulgated pursuant to N.J.S.A. 10:5-31 et seq.; and agrees to submit immediately to the Division of Public Contracts Equal Employment Opportunity Compliance a copy of the employee information report.

Contractors that have previously filed an Employee Information Report are required to apply for a renewal of the Certificate of Employee Information Report with the Department of Treasury, Division of Public Contracts Equal Employment Opportunity Compliance and submit a valid Certificate of Employee Information Report.

(NOTE: FOR THE PURPOSE OF THIS CONTRACT THE "PUBLIC AGENCY COMPLIANCE OFFICER" REFERENCED BELOW IS NJ TRANSIT'S ASSISTANT EXECUTIVE DIRECTOR, DIVERSITY PROGRAMS AND THE "PUBLIC AGENCY" IS NJ TRANSIT.)

II. 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 5

**STATEMENT OF JOINT VENTURE
FOR
PROFESSIONAL SERVICES**

WE, THE UNDERSIGNED, BEING DULY SWORN ACCORDING TO LAW, UPON OUR RESPECTIVE OATHS DEPOSE AND SAY THAT:

1. THE CONSULTANT, UNDER WHOSE NAME WE HAVE AFFIXED OUR RESPECTIVE SIGNATURES, HAS DULY AUTHORIZED AND EMPOWERED US TO EXECUTE THIS STATEMENT OF JOINT VENTURE IN THE NAME OF AND ON BEHALF OF SUCH CONSULTANT FOR THE PURPOSES HEREIN FURTHER SET FORTH.

2. THE FOLLOWING NAMED CONSULTANTS:

(a);
() Individual () Partnership () Corporation

(b);
() Individual () Partnership () Corporation

(c);
() Individual () Partnership () Corporation

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

3. UNDER THE PROVISIONS OF SUCH JOINT VENTURE THE ASSETS OF EACH OF THE CONSULTANTS NAMED IN PARAGRAPH 2 HEREOF, AND IN CASE ANY CONSULTANT SO NAMED ABOVE IS A PARTNERSHIP THE ASSETS OF THE INDIVIDUAL MEMBERS OF SUCH PARTNERSHIP, WILL BE AVAILABLE FOR THE PERFORMANCE OF SUCH JOINT VENTURE AND LIABLE THEREFOR AND FOR ALL OBLIGATIONS INCURRED IN CONNECTION THEREWITH.

4. THIS STATEMENT OF JOINT VENTURE IS EXECUTED SO THAT THE NAMED CONSULTANTS MAY, UNDER SUCH JOINT VENTURE, PROPOSE TO PERFORM THE WORK AND PROFESSIONAL SERVICES HEREIN MENTIONED AND THEY MAY, IF THE SUCCESSFUL PROPOSER THEREFOR, BE AWARDED THE CONTRACT FOR SUCH WORK AND PROFESSIONAL SERVICES. ANY CONTRACT RELATING TO THE WORK AND PROFESSIONAL SERVICES HEREINAFTER SPECIFIED SHALL BE EXECUTED BY ANY PERSON AUTHORIZED TO BIND ANY MEMBER OF THIS JOINT VENTURE, AND WHEN SO EXECUTED SHALL BIND THIS JOINT VENTURE AND EACH AND EVERY CONSULTANT NAMED HEREIN, SEVERALLY AND JOINTLY. SIMULTANEOUS WITH THE EXECUTION OF THE CONTRACT THE JOINT VENTURERS SHALL DESIGNATE AND APPOINT A PROJECT MANAGER/DIRECTOR TO ACT AS THEIR TRUE AND LAWFUL AGENT WITH FULL POWER AND AUTHORITY TO DO AND PERFORM ANY AND ALL ACTS OR THINGS NECESSARY TO CARRY OUT THE WORK AND PROFESSIONAL SERVICES SET FORTH IN SAID CONTRACT.

**STATEMENT OF JOINT VENTURE
FOR
PROFESSIONAL SERVICES
(Continued)**

5. AS JOINT VENTURERS, WE BIND THE CONSULTANT FOR WHOM WE RESPECTIVELY EXECUTE THIS STATEMENT OF JOINT VENTURE IN FIRM AGREEMENT WITH NJ TRANSIT THAT EACH OF THE REPRESENTATIONS HEREIN SET FORTH IS TRUE.

6. THE WORK AND PROFESSIONAL SERVICES FOR WHICH THIS JOINT VENTURE HAS BEEN ENTERED INTO IS IDENTIFIED AS:

.....
.....
.....
.....

SUBSCRIBED AND SWORN TO BEFORE ME,

THIS DAY OF
....., 20

(a)
(Name of Consultant)

BY
(Also type or print name of signer)

SUBSCRIBED AND SWORN TO BEFORE ME,

THIS DAY OF
....., 20

(b)
(Name of Consultant)

BY
(Also type or print name of signer)

SUBSCRIBED AND SWORN TO BEFORE ME,

THIS DAY OF
....., 20

(c)
(Name of Consultant)

BY
(Also type or print name of signer)

TO BE EXECUTED BY EACH JOINT VENTURER

(a) HEREBY CERTIFIES THAT
(Name of Consultant)

TO SIGN THE STATEMENT OF JOINT VENTURE ATTACHED HERETO AS THE AUTHORIZED
REPRESENTATIVE OF
(Name of Consultant)

ATTEST.....

• • • • •

TO SIGN THE STATEMENT OF JOINT VENTURE ATTACHED HERETO AS THE AUTHORIZED
REPRESENTATIVE OF
(Name of Consultant)

ATTEST.....

• • • • •

TO SIGN THE STATEMENT OF JOINT VENTURE ATTACHED HERETO AS THE AUTHORIZED
REPRESENTATIVE OF
(Name of Consultant)

ATTEST

(SEAL NECESSARY IF CORPORATION)

EXHIBIT 6



STATE OF NEW JERSEY
DEPARTMENT OF THE TREASURY
DIVISION OF PURCHASE AND PROPERTY

33 WEST STATE STREET, P.O. BOX 230
TRENTON, NEW JERSEY 08625-0230

OWNERSHIP DISCLOSURE FORM

BID SOLICITATION #: _____ VENDOR/BIDDER: _____

PART 1

PLEASE COMPLETE THE QUESTIONS BELOW BY CHECKING EITHER THE "YES" OR THE "NO" BOX. ALL PARTIES ENTERING INTO A CONTRACT WITH THE STATE ARE REQUIRED TO COMPLETE THIS FORM PURSUANT TO N.J.S.A. 52:25-24.2

PLEASE NOTE THAT IF THE VENDOR/BIDDER IS A NON-PROFIT ENTITY, THIS FORM IS NOT REQUIRED.

- | | YES | NO |
|---|--------------------------|--------------------------|
| 1. Are there any individuals, corporations, partnerships, or limited liability companies owning a 10% or greater interest in the Vendor/Bidder? | <input type="checkbox"/> | <input type="checkbox"/> |

IF THE ANSWER TO QUESTION 1 IS "NO", PLEASE SIGN AND DATE THE FORM.

IF THE ANSWER TO QUESTION 1 IS "YES", PLEASE ANSWER QUESTIONS 2 – 4 BELOW.

- | | | |
|--|--------------------------|--------------------------|
| 2. Of those parties owning a 10% or greater interest in the Vendor/Bidder, are any of those parties individuals? | <input type="checkbox"/> | <input type="checkbox"/> |
| 3. Of those parties owning a 10% or greater interest in the Vendor/Bidder, are any of those parties corporations, partnerships, or limited liability companies? | <input type="checkbox"/> | <input type="checkbox"/> |
| 4. If your answer to Question 3 is "YES", are there any parties owning a 10% or greater interest in the corporation, partnership, or limited liability company referenced in Question 3? | <input type="checkbox"/> | <input type="checkbox"/> |

IF ANY OF THE ANSWERS TO QUESTIONS 2 - 4 ARE "YES", PLEASE PROVIDE THE REQUESTED INFORMATION IN PART 2 BELOW.

PART 2

PLEASE PROVIDE FURTHER INFORMATION RELATED TO QUESTIONS 2 – 4 ANSWERED AS "YES".

If you answered "YES" for questions 2, 3, or 4, you must disclose identifying information related to the individuals, corporations, partnerships, and/or limited liability companies owning a 10% or greater interest in the Vendor/Bidder. Further, if one or more of these entities is itself a corporation, partnership, or limited liability company, you must also disclose all parties that own a 10% or greater interest in that corporation, partnership, or limited liability company. This information is required by statute.

INDIVIDUALS

NAME	_____	DATE OF BIRTH	_____
ADDRESS 1	_____		
ADDRESS 2	_____		
CITY	_____	STATE	_____
	_____	ZIP	_____

NAME	_____	DATE OF BIRTH	_____
ADDRESS 1	_____		
ADDRESS 2	_____		
CITY	_____	STATE	_____
	_____	ZIP	_____

NAME	_____	DATE OF BIRTH	_____
ADDRESS 1	_____		
ADDRESS 2	_____		
CITY	_____	STATE	_____
	_____	ZIP	_____

Attach Additional Sheets If Necessary.

PART 2 continued
PARTNERSHIPS/CORPORATIONS/LIMITED LIABILITY COMPANIES

ENTITY NAME			
PARTNER NAME			
ADDRESS 1			
ADDRESS 2			
CITY	STATE	ZIP	

ENTITY NAME			
PARTNER NAME			
ADDRESS 1			
ADDRESS 2			
CITY	STATE	ZIP	

ENTITY NAME			
PARTNER NAME			
ADDRESS 1			
ADDRESS 2			
CITY	STATE	ZIP	

ENTITY NAME			
PARTNER NAME			
ADDRESS 1			
ADDRESS 2			
CITY	STATE	ZIP	

Attach Additional Sheets If Necessary.

In the alternative, to comply with the ownership disclosure requirement, a Vendor/Bidder with any direct or indirect parent entity which is publicly traded may submit the name and address of each publicly traded entity and the name and address of each person that holds a 10% or greater beneficial interest in the publicly traded entity as of the last annual filing with the federal Securities and Exchange Commission or the foreign equivalent, and, if there is any person that holds a 10% or greater beneficial interest, also shall submit links to the websites containing the last annual filings with the federal Securities and Exchange Commission or the foreign equivalent and the relevant page numbers of the filings that contain the information on each person that holds a 10 percent or greater beneficial interest. N.J.S.A. 52:25-24.2.

CERTIFICATION

I, the undersigned, certify that I am authorized to execute this certification on behalf of the Vendor/Bidder, that the foregoing information and any attachments hereto, to the best of my knowledge are true and complete. I acknowledge that the State of New Jersey is relying on the information contained herein, and that the Vendor/Bidder is under a continuing obligation from the date of this certification through the completion of any contract(s) with the State to notify the State in writing of any changes to the information contained herein; that I am aware that it is a criminal offense to make a false statement or misrepresentation in this certification. If I do so, I will be subject to criminal prosecution under the law, and it will constitute a material breach of my agreement(s) with the State, permitting the State to declare any contract(s) resulting from this certification void and unenforceable.

Signature (Do not enter vendor ID as a signature)

Date

Print Name and Title

FEIN/SSN

EXHIBIT 7

N.J.S.A 52:34-13.2 CERTIFICATION

SOURCE DISCLOSURE CERTIFICATION FORM

Consultant: _____

Contract Number: _____

I hereby certify and say:

I have personal knowledge of the facts set forth herein and am authorized to make this Certification on behalf of the Consultant.

The consultant submits this Certification as part of its proposal in response to the referenced solicitation issued by NJ TRANSIT, in accordance with the requirements of N.J.S.A. 52:34-13.2.

The following is a list of every location where services will be performed by the consultant and all subconsultants.

<u>Consultant or Subconsultant</u>	<u>Description of Services</u>	<u>Performance Location[s] by Country</u>
------------------------------------	--------------------------------	---

Any changes to the information set forth in this Certification during the term of any contract awarded under the referenced solicitation or extension thereof will be immediately reported by the consultant to the Director of Contracts, NJ TRANSIT Corporation, One Penn Plaza East, Newark, NJ 07105.

I understand that, after award of a contract to the consultant, it is determined that the consultant has shifted services declared above to be provided within the United States to sources outside the United States prior to a written determination by the Contracting Officer, that the services cannot be performed in the United States, the consultant shall be deemed in breach of contract, which contract will be subject to termination for cause pursuant to Article 16 of the Professional Services Agreement.

I further understand that this Certification is submitted on behalf of the consultant in order to induce NJ TRANSIT to accept a proposal, with knowledge that NJ TRANSIT is relying upon the truth of the statements contained herein.

I certify that, to the best of my knowledge and belief, the foregoing statements by me are true. I am aware that if any of the statements are willfully false, I am subject to punishment.

Consultant: _____
[Name of Organization or Entity]

By: _____

Title: _____

Print Name: _____

Date: _____

EXHIBIT 8

DISCLOSURE OF INVESTMENT ACTIVITIES IN IRAN

IFB/RFP No.: _____ Bidder/Proposer: _____

PART 1: CERTIFICATION

BIDDERS MUST COMPLETE PART 1 BY CHECKING EITHER BOX.

FAILURE TO CHECK ONE OF THE BOXES WILL RENDER THE PROPOSAL
NON-RESPONSIVE.

Pursuant to Public Law 2012, c. 25, any person or entity that submits a bid or proposal or otherwise proposes to enter into or renew a contract must complete the certification below to attest, under penalty of perjury, that neither the person or entity, nor any of its parents, subsidiaries, or affiliates, is identified on the State of New Jersey, Department of Treasury's Chapter 25 list as a person or entity engaging in investment activities in Iran. The Chapter 25 list is found at the following website:

<http://www.state.nj.us/treasury/purchase/pdf/Chapter25List.pdf>.

Bidders must review this list prior to completing the below certification. Failure to complete the certification will render a bidder's proposal non-responsive. If the Director finds a person or entity to be in violation of law, s/he shall take action as may be appropriate and provided by law, rule or contract, including but not limited to, imposing sanctions, seeking compliance, recovering damages, declaring the party in default and seeking debarment or suspension of the party

1. PLEASE CHECK THE APPROPRIATE BOX:

☐ I certify, pursuant to Public Law 2012, c. 25, that neither the bidder listed above nor any of the bidder's parents, subsidiaries, or affiliates is listed on the N.J. Department of the Treasury's list of entities determined to be engaged in prohibited activities in Iran pursuant to P.L. 2012, c. 25 ("Chapter 25 List"). I further certify that I am the person listed above, or I am an officer or representative of the entity listed above and am authorized to make this certification on its behalf. I will skip Part 2 and sign and complete the Certification below.

2. OR

☐ I am unable to certify as above because the bidder and/or one or more of its parents, subsidiaries, or affiliates is listed on the Department's Chapter 25 list. I will provide a detailed, accurate and precise description of the activities in Part 2 below and sign and complete the Certification below. Failure to provide such will result in the proposal being rendered as nonresponsive and appropriate penalties, fines and/or sanctions will be assessed as provided by law.

PART 2: PLEASE PROVIDE FURTHER INFORMATION RELATED TO INVESTMENT ACTIVITIES IN IRAN

You must provide a detailed, accurate and precise description of the activities of the bidding person/entity, or one of its parents, subsidiaries or affiliates, engaging in the investment activities in Iran outlined above by completing the boxes below.

PLEASE PROVIDE THOROUGH ANSWERS TO EACH QUESTION.
IF YOU NEED TO MAKE ADDITIONAL ENTRIES, PLEASE COPY AND COMPLETE THIS SHEET AND SUBMIT IT WITH YOUR BID.

Name _____	Relationship to Bidder/Offeror _____
Description of Activities _____	

Duration of Engagement _____	Anticipated Cessation Date _____
Bidder/Offeror Contact Name _____	Contact Phone Number _____

Name _____	Relationship to Bidder/Offeror _____
Description of Activities _____	

Duration of Engagement _____	Anticipated Cessation Date _____
Bidder/Offeror Contact Name _____	Contact Phone Number _____

Certification: I, being duly sworn upon my oath, hereby represent and state that the foregoing information and any attachments thereto to the best of my knowledge are true and complete. I attest that I am authorized to execute this certification on behalf of the above-referenced person or entity. I acknowledge that the State of New Jersey is relying on the information contained herein and thereby acknowledge that I am under a continuing obligation from the date of this certification through the completion of any contracts with the State to notify the State in writing of any changes to the answers of information contained herein. I acknowledge that I am aware that it is a criminal offense to make a false statement or misrepresentation in this certification, and if I do so, I recognize that I am subject to criminal prosecution under the law and that it will also constitute a material breach of my agreement(s) with the State of New Jersey and that the State at its option may declare any contract(s) resulting from this certification void and unenforceable.

Full Name (Print): _____ Signature: _____

Title: _____ Date: _____

EXHIBIT 9

CONTRACTOR'S CERTIFICATION OF ELIGIBILITY

The _____ (Insert Name of Company) hereby certifies that it is not listed on the State of New Jersey, Department of Labor and Workforce Development, Division of Wages and Hour Compliance, Prevailing Wage Debarment List or on the State of New Jersey, Department of Treasury, Consolidated Debarment Report.

_____ (Insert Name of Company) no no exclusion on the consolidated U.S. Government, Systems for Award Management (SAM) database.

I, being duly authorized, certify that the information supplied above is complete and correct to the best of my knowledge. I certify that all of the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Signature

Type or Print Name

Title

Date

EXHIBIT 10

NON-COLLUSION AFFIDAVIT

STATE OF NEW JERSEY

COUNTY OF _____

I, _____ of the City of _____
in the County of _____ and the State of _____
of full age, being duly sworn according to law on my oath depose and say that:

I am _____ of the firm
Of _____ the bidder making the Proposal
for the above named project, and that I executed the said Proposal with full authority so to do; that said
bidder has not, directly or indirectly, entered into any agreement, participated in any collusion, or
otherwise taken any action in restraint of free, competitive bidding in connection with the above named
project; and that all statements contained in said Proposal and in this affidavit are true and correct, and
made with full knowledge that the State of New Jersey relies upon the truth of the statements contained in
said Proposal and in the statements contained in this affidavit in awarding the contract for the said
project.

I further warrant that no person or selling agency has been employed or retained to solicit or
secure such contract upon agreement or understanding for a commission, percentage, brokerage or
contingent fee, except bona fide employees or bona fide established commercial or selling agencies
maintained by _____

(Name of Contractor).

(Also type or print name of affiant under signature)

Subscribed and sworn to before me this

_____ day of _____, 20____

Notary Public of

My commission expires _____ 20____

EXHIBIT 11

AFFIDAVIT OF COMPLIANCE

I, _____ (*name of individual*), executing this document on behalf of the undersigned company, partnership, corporation, or entity hereinafter referred to as "Contractor", presently seeking to do business with NJ TRANSIT by way of a Request for Proposals ("RFP") or Invitation for Bids ("IFB"), hereby warrant and affirm to NJ TRANSIT as follows:

1. I warrant and affirm that Contractor has received a copy of NJ TRANSIT's Code of Vendor Ethics and that I have read and studied this document and distributed this document to all of Contractor's personnel involved in seeking to do business with NJ TRANSIT and required said personnel to fully read this document. In addition, I further warrant and affirm that Contractor has received from NJ TRANSIT a document entitled "Important Notice to All Contractors and Consultants" and that I have read and studied this document, including the page setting forth various New Jersey statutory provisions, and that Contractor has distributed this document to all of Contractor's personnel involved in seeking to do business with NJ TRANSIT and required said personnel to fully read this document.

2. Contractor warrants and affirms that it has issued written instructions to all of Contractor's personnel involved in seeking to do business with NJ TRANSIT instructing and requiring same to strictly adhere to the Contractor's responsibilities as set forth in NJ TRANSIT's Code of Vendor Ethics and in the "Important Notice to All Contractors and Consultants".

3. Contractor warrants and affirms that during the bidding or proposal process for the contract with NJ TRANSIT, no gratuities or other inducements have been offered or given or will be offered or given in any form including gifts, gratuities, benefits, inducements, meals (other than *de minimis* valued snacks such as coffee, tea, soda, pretzels, cookies, or similar non-meal items), entertainment, or any other thing of value or favors of any kind to any member of NJ TRANSIT's Board of Directors, officer or employee of NJ TRANSIT.

4. The Contractor warrants and affirms that during the RFP or IFB process for the contract with NJ TRANSIT, Contractor has not and will not make any offers of employment to any member of the NJ TRANSIT Board of Directors, officer or employee directly involved with this contract or solicit or interview therefor, directly or indirectly, without first seeking and obtaining written approval from NJ TRANSIT's Ethics Liaison Officer.

5. The Contractor warrants and affirms that during the RFP or IFB process for the contract with NJ TRANSIT it has and shall promptly report in writing to NJ TRANSIT every instance that comes to the Contractor's attention and knowledge regarding any member of NJ TRANSIT's Board of Directors, officer or employee of NJ TRANSIT who has solicited or asked Contractor to provide gifts, gratuities, benefits, inducements, meals (other than *de minimis* valued snacks such as coffee, tea, soda, pretzels, cookies, or similar non-meal items), entertainment or any other thing of value or favors of any kind or has made any solicitation or request, directly or indirectly, for employment with or through the Contractor.

6. The Contractor acknowledges and accepts that for breach or violation of the foregoing warranties and affirmations, NJ TRANSIT shall have the discretion and legal right to disqualify Contractor from bidding or proposing for a contract between the Contractor and NJ TRANSIT.

(Print Name of Contractor)

(Signature of Authorized Principal or Officer)

(Print Name and Title of Signator)

Sworn to and Subscribed to before me, this _____ day of _____, 20_____

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.

EXHIBIT 12

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.

Signature of Authorized Official

Print Name

Title

Firm

Date

EXHIBIT 13

**Per Diem (Major Cities)*
Effective October 1, 2015**

* \$51 Standard Meal Rate applies to all destinations not specifically listed
Average Per Diem Rates are listed below
A full listing of domestic Per Diem Rates can be found online at www.gsa.gov
Current foreign Per Diem Rates can be found at <http://aoprals.state.gov>

**NJ TRANSIT
TRAVEL & BUSINESS REIMBURSEMENT GUIDELINES
FOR CONTRACTORS AND VENDORS**

GENERAL:

All overnight travel must be authorized in writing by the Project Manager. Overnight lodging expenses for New York City are prohibited.

These guidelines are subject to periodic review and adjustment by NJ TRANSIT.

Meals: NJ TRANSIT has adopted the IRS-established "Major Cities" method for meal and incidental travel expenses within the continental United States.

The following table shows the average per diem rates for meals and incidental expenses while on travel. The M&IE rates differ by travel location. View the per diem rates for your destination to determine which M&IE rates apply.

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 carriers, bellhops, hotel maids, stewards and stewardesses and others on ships and hotel servants".

2. Conveyances: Travel expenses will be reimbursed subject to their reasonableness and subject to the following maximums (receipts required):
 1. Air-Fare: When authorized in writing and only at the prevailing coach rates. First class travel costs are not reimbursable.
 2. Rail or Bus: Only regular coach fares are reimbursable.
 3. Automobile: Mileage will be reimbursed at a rate of \$0.54 cents per mile. Mileage claims in excess of 30 miles one-way must be supported with documentation from a reputable online service (e.g. Map Quest). Gas, tolls and parking fees will be reimbursed only when validated by receipt.
3. Lodging: Reimbursed for single occupancy rates at reasonable, actual costs for the location. Lodging costs exceeding \$140.00 per night require prior approval of the Project Manager.