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Kim Guadagno, Lieutenant Governor  
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One Penn Plaza East  
Newark, NJ 07105-2246  
973-491-7000

March 13, 2014

To Whom It May Concern:

The New Jersey Transit Corporation (NJ TRANSIT) is issuing this Request for Proposal (RFP) to obtain proposals from qualified firms to perform Integrity Oversight Monitoring Services for the Superstorm Sandy Recovery and Resiliency Program. NJ TRANSIT intends to award up to three (3) Contracts to independent firms which will serve as the pool from which Work Authorizations (WA) for particular assignments will be assigned by NJ TRANSIT's Internal Audit Department.

NJ TRANSIT is requesting proposals from firms with the intention of negotiating up to three (3) contracts with the organization(s) whose proposals best serves the needs of NJ TRANSIT based upon the proposed approach to the enclosed Scope of Services, qualification of individuals, experience of the firm, etc. 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 Thursday, March 20, 2014 at 11:00 a.m., at NJ TRANSIT Headquarters in 6<sup>th</sup> Floor Conference Room located at One Penn Plaza East, Newark, New Jersey for the purpose of answering questions and providing directives and clarification.

A Technical Evaluation Committee (TEC) comprised of NJ TRANSIT staff and a representative from New Jersey Department of the Treasury 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 proposal should consist of one (1) original and six (6) copies of the Technical Proposal, and one (1) original and four (4) copies of the Cost Proposal. The Technical and Cost proposals shall be submitted in separate volumes and labeled accordingly. Proposals must be received by Thursday, April 3, 2014 at 2:00 p.m. and addressed as follows:

NJ TRANSIT  
Procurement Department, 6th Floor  
One Penn Plaza East  
Newark, New Jersey 07105-2246  
Attn: Bid Room  
Re: RFP NO. 14-033

General inquiries about the project should be directed to the undersigned at (973) 491-8476. Technical questions must be submitted in writing and may be faxed to the attention of the undersigned at (973) 232-4829. However, this RFP may be amended only in writing.

Consultants are required to register with the Department of Treasury, Division of Revenue prior to conducting business with NJ TRANSIT.

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.

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  
Principal Contract Specialist  
Procurement Department

**NEW JERSEY TRANSIT CORPORATION**

**REQUEST FOR PROPOSAL**

**SUPERSTORM SANDY RECOVERY AND RESILIENCY**

**INTEGRITY OVERSIGHT MONITORING SERVICES**

**RFP NO. 14-033**

**NEW JERSEY TRANSIT CORPORATION**  
**REQUEST FOR PROPOSAL NO. 14-033**

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# NEW JERSEY TRANSIT CORPORATION

## REQUEST FOR PROPOSAL NO. 14-033

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#### **Attachments**

- A. Criteria for Evaluation of Proposals
- B. Proposal Format
- C. Cost Proposal Form
- D. NJ TRANSIT SSRP Integrity Monitors Selection Work Authorizations Process Overview
- E. Federal Register Notices relating to Transportation Emergency Funding in Response to Hurricane Sandy including but not limited to Oversight and Audit Requirements
- F. N.J.S.A. 52:15D-2 (A-60) Integrity Oversight Monitors for the implementation of certain contracts; selection; State Treasurer authority; reporting protocols; definitions.
- G. Potential List of Projects Subject to Integrity Oversight Monitoring Services

#### **Exhibits**

- 1. NJ TRANSIT's Professional Services Agreement
- 2. Travel & Business Reimbursement Guidelines
- 3. Equal Employment Opportunity Requirements
- 4. DBE Requirements
- 5. Acknowledgement of Receipt of Addenda
- 6. Non-Collusion Affidavit
- 7. Ineligible Contractors Certification
- 8. Affidavit of Compliance (Code of Vendor Ethics)
- 9. Certification of Contracts, Grants, Loans & Cooperative Agreements
- 10. Ownership Disclosure
- 11. State of NJ Division of Purchase & Property – Disclosure of Investment Activities in Iran
- 12. Source Disclosure Certification

**NEW JERSEY TRANSIT CORPORATION  
REQUEST FOR PROPOSAL NO. 14-033**

**INTEGRITY OVERSIGHT MONITORING SERVICES**

**I. GENERAL PROJECT INFORMATION**

New Jersey Transit (NJ TRANSIT), in conjunction with New Jersey Department of the Treasury is issuing this Request for Proposal (RFP) in order to obtain proposals from Consultants to provide Integrity Oversight Monitoring Services for the Superstorm Sandy Recovery and Resiliency Program.

NJ TRANSIT intends to award up to three (3) Contracts to independent firms which will serve as the pool from which Work Authorizations (WA) for particular assignments will be made through NJ TRANSIT's Internal Audit Department in accordance with Attachment D.

NJ TRANSIT, through its Internal Audit Department (NJTAD) and in consultation with the New Jersey Department of the Treasury, reserves the right to assign Oversight Monitoring duties and obligations to each of the approved Consultants at NJ TRANSIT's sole discretion, through the issuance of individual Work Authorizations in accordance with approved proposals for a particular scope of work. NJ TRANSIT may designate one or more of the selected Integrity Oversight Monitor Consultants to assist or otherwise provide management of overall oversight as a separate Work Authorization or to provide an oversight assignment that applies to more than one construction or other type of contract. The level and amount of work to be awarded to any of the Integrity Oversight Integrity Monitor Consultants is not guaranteed.

Approved Integrity Oversight Monitors shall not be a firm or an affiliate thereof involved in Sandy Program Management or in the design, preparation or delivery of Sandy Recovery and Resiliency contracts, task orders, projects and programs.

Tasks and/or services to be performed by the selected Consultant(s) are detailed in Section IV below entitled "Scope of Services – Detailed Scope of Work".

NJ TRANSIT reserves the right to reject any and all proposals. Contract award is subject to the availability of funds and agreement to NJ TRANSIT terms and conditions. NJ TRANSIT will not reimburse proposers for expenses incurred in responding to this RFP.

All proposers are notified that NJ TRANSIT reserves the right to delete or modify any Work Authorization from the Consultant's scope of services at any time during the course of the contract. NJ TRANSIT also reserves the right to approve all subconsultants.

In addition, all proposers are advised that all communications with NJ TRANSIT that in

any way relates to this RFP shall be conducted with or through the authorized representative of the Contracting Officer in NJ TRANSIT's Division of Procurement. All other contacts with others are strictly prohibited and are considered improper. Proposers are advised that any violation of this prohibition may result in the removal of the firm from consideration for award of this contract and possible suspension/debarment at NJ TRANSIT's sole discretion.

Prior to the execution of this contract by NJ TRANSIT and before commencing any performance, the Consultant shall provide NJ TRANSIT with the required proof(s) of insurance as set forth in Section 11 of Exhibit 1.

All proposers are notified that it is NJ TRANSIT's 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, of conflict of interest, but might nevertheless appear questionable to the general public, thereby compromising the integrity of NJ TRANSIT. All proposers must comply with the NJ TRANSIT Code of Ethics as set forth in Section 27 of Exhibit 1.

#### B. Anticipated Consultant Selection Schedule

<u>Action</u>	<u>Date</u>
Solicit Proposals	March 13, 2014
Pre-Proposal Conference	March 20, 2014 @ 11:00 am
Due Date for Proposer's Questions	March 24, 2014 @ 4:00pm
Proposal Due Date	April 3, 2014 @ 2:00 pm
Oral Presentations	April 14-16, 2014
Begin Negotiations	April 21-23, 2014
Selection of Firms	April 2014
Board Approval	May 2014
Notice to Proceed	June 2014

#### C. Contract Duration and Expenditure Limitations

The anticipated duration of the contract(s), subject to continuing satisfactory performance and availability of funds, is thirty-six (36) months, with two additional two-year options. Each of these two year options will be exercised at the sole discretion of NJ TRANSIT following consultation with the New Jersey Department of the Treasury.

#### D. Request For Information and Addenda

The proposer shall examine carefully the Proposal package and conditions affecting the work. By submitting a proposal, the firm 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. To be given consideration, all such inquiries must be received by **4:00pm on Monday, March 24, 2014** and must reference contract name and number, section and page number.

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 Proposal Package. NJ TRANSIT will not be bound by any informal explanation, clarification, or interpretation, oral or written, by whoever made, that is not incorporated into an addendum. Copies of all such Addenda will be mailed to each firm. Receipt of the Addenda by the firm shall be acknowledged as specified below.

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

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

Proposers are required to acknowledge receipt of all addenda by signing the "Acknowledgement of Receipt of Addenda" form. This form (Exhibit 5) shall be included as part of the technical proposal. Failure to acknowledge receipt of all Addenda may render proposals nonresponsive.

#### E. Joint Venture

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

#### F. DBE Involvement and Equal Employment Opportunity

The Consultant (proposer) will cooperate with NJ TRANSIT in meeting its commitments and goals with regard to the maximum utilization of Disadvantaged Business Enterprises (DBEs) and will use its best efforts to ensure that DBEs shall have the maximum opportunity to compete for subconsultant work. A ten percent (10 %) Race Conscious DBE goal has been assigned to this project.

In addition to the DBE requirement, the Consultants will be required to comply with State Equal Employment Opportunity requirements contained in P.L. 1975, c. 127



(N.J.S.A. 10:5-31) and N.J.A.C.17:27.

G. Division of Revenue

In accordance with N.J.S.A. 52:32-44, all New Jersey and out of state business organizations shall obtain a Business Registration Certificate (BRC) from the Department of the Treasury, Division of Revenue, prior to conducting business with NJ TRANSIT. The business registration form (form NJ-REG) can be found online at: <http://www.state.nj.us/treasury/revenue/gettingregistered.htm#busentity>.

H. Field Visits

Before any field visits are conducted by a Consultant, all persons visiting a construction site or a NJ TRANSIT facility or right of way shall successfully complete all required safety training and instruction.

I. Technical Evaluation Committee

A Technical Evaluation Committee (TEC) will be responsible for reviewing written and oral proposals, and recommending the Consultants to be selected to perform Oversight Monitoring. The TEC will be comprised of members from NJ TRANSIT and a representative from the New Jersey Department of the Treasury.

J. Modification or Withdrawal

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

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

K. Disqualification of Proposers

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.

L. Disclosure of Investment Activities In Iran

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

M. Ownership Disclosure

Pursuant to N.J.S.A. 52:25-24.2, in the event the Proposer is a corporation, partnership or sole proprietorship, the Proposer must complete a current, Ownership Disclosure Form prior to the receipt of the proposal or accompanying the proposal. Failure to submit the form will preclude the award of a contract.

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

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

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

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

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

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

If, during the term of the contract, the Consultant or Subconsultant, who had on contract award declared that services would be performed in the United States, proceeds to shift the performance of the services outside the United States, the Consultant shall be deemed to be in breach of its contract, which contract shall be subject to termination for cause pursuant to Article 14 of the Agreement, unless previously approved by the Contracting Officer and the Executive Director.

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

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

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

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

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

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

### A. Project Background - Sandy Recovery and Resiliency Program

The Superstorm Sandy Recovery and Resiliency Program (“Program”), currently being

funded in part by the FTA, has been established in order to recover from damages to the NJ TRANSIT System, including but not limited to, equipment, Right of-Way and infrastructure caused by Superstorm Sandy in October of 2012, and to reconstruct the damaged elements in a more resilient manner as well as to construct new Resiliency Projects, that may or may not be related to such damage, but are designed to allow the NJ TRANSIT System to be better able to withstand future weather events and to reduce the risk of damage to public transportation assets by reason of natural disasters. The projects to be constructed vary in type, scope and location, but are principally in or are to be in northern and central New Jersey.

## B. Project Description

The services of the selected Consultant(s) shall generally consist of performing integrity monitoring and Internal, IT and Construction Auditing in connection with the Program for construction and repair as well as resiliency contracts funded by the FTA or other federal agencies in excess of \$5 Million in accordance with the scopes of work prescribed by NJTIAD in consultation with the NJ TRANSIT Accountability Officer under Executive Order 125 and the New Jersey Department of the Treasury. The anticipated contract values subject to integrity monitoring services will be approximately \$100 Million in year one, \$140 Million in year two and \$200 Million in year three. The actual contract values and projects subject to integrity monitoring services in each year may change depending on availability of funds and the number of contracts awarded. Attachment G provides the potential list of projects subject to integrity monitoring services.

## C. Consultant Qualifications

Integrity Monitoring Firms shall demonstrate:

1. At least five (5) years' experience providing similar Integrity Monitoring Services and Auditing Services in the specific areas identified herein.
2. The capacity to provide experienced and qualified staff, including subconsultants, who will be performing services hereunder.
3. Effective management approach for the performance of services identified herein including methodology, approach, and deliverables.
4. An effective quality assurance process.
5. The capacity to provide an estimated 6,000 to 30,000 hours per year of integrity monitoring services. Note that there is no guarantee as to number and size of Work Authorizations issued. The hours of integrity monitoring, including but not limited to auditing, required by NJ TRANSIT may increase or decrease in subsequent years depending upon NJ TRANSIT's needs.
6. The capacity to provide services in accordance with Generally Accepted Government Audit Standards (U.S. Government Accountability Office) and/or the International Standard for the Professional Practice of Internal Auditing (Institute of Internal Auditors).

### III. SCOPE OF SERVICES - GENERAL

- A. The Consultant shall provide an organizational structure that will address each Work Authorization (WA), manage the budget, the schedule, product/staff quality, and expedite the successful completion of each WA. The Consultant will designate a single point of contact for each WA, who will manage and be accountable for all Consultant efforts of the WA and will serve as a focal point for contact between all parties affected in implementing the individual assignments. In addition:
1. The Consultant's point of contact shall represent the entire team and be responsible for all communications with NJIAD and the New Jersey Department of the Treasury.
  2. The Consultant's single point of contact and key personnel utilized on each assignment shall be approved by NJTIAD in consultation with the New Jersey Department of the Treasury.
  3. The Consultant shall attend and assist at all meetings required to inform and coordinate work with NJTIAD and the New Jersey Department of the Treasury.
  4. The Consultant shall supply, at its own cost, all of its employees training and required hardware, software (the most current version of Visio, ACL and TeamMate) and other necessary equipment as required.
  5. The Consultant shall provide reporting in accordance with Section IV below to New Jersey Department of the Treasury, Office of the State Comptroller, New Jersey Attorney General and NJIAD.
- B. The Consultant shall maintain and make available, as requested, all documents, records and other evidence pertaining to services and costs thereof for a period of five (5) years from final payment under the contract and will be subject to audit by Office of the State Comptroller within said period.

Nothing contained in this RFP or any resultant contract is intended to relieve the Consultant of responsibility for maintaining adequate supervision/responsible charge over the services provided in order to guard NJ TRANSIT and the New Jersey Department of the Treasury against deficiencies in any work performed by the Consultant.

- C. All submittals shall be prepared in a professional manner as agreed to for specific services and in accordance with the FTA, NJ TRANSIT and the New Jersey Department of the Treasury requirements and standards. All deliverables, such as work papers, reports, etc., will be required to be provided in the required format in accordance with this RFP and the WA.

- D. Services of the Consultant will be used on an as-directed basis. Individual project assignments will be negotiated and authorized in writing by NJ TRANSIT in consultation with the New Jersey Department of the Treasury and in accordance with the general terms and conditions of the contract as documented in the Work Authorization.
- E. NJTIAD and New Jersey Department of the Treasury shall have the right to pre-approve staffing and removal of particular staff members at their discretion.

#### **IV. SCOPE OF SERVICES - DETAILED SCOPE OF WORK**

Tasks and services to be performed by the selected Consultant(s) may include, but are not limited to:

##### **Task A – Monitoring Contractor/Vendor Compliance with Applicable Laws and Contract Requirements**

1. Monitoring the compliance of contractors, vendors, and consultants to ensure their compliance with applicable laws, regulations, codes, programs and contractual requirements.
2. Satisfying applicable FTA Federal Procurement Requirements and FTA Federal Register Notice Requirements for Oversight Monitoring (See Attachment E – Federal Register May 29, 2013 pages 32301- 32302), State of New Jersey Department of the Treasury Requirements under N.J.S.A. 52: 15D-2 (See Attachment F) and providing necessary investigative services as required by NJTIAD.

##### **Task B – Developing and Implementing Integrity Programs**

1. Programs and procedures to prevent and deter fraud, corruption, conflicts of interest and illegal activity by entities doing, or seeking to do, business with NJ TRANSIT; Procedures should include methods to remediate or mitigate fraud, waste, corruption and abuse.
2. Assisting with a program for facilitating the reporting of illegal and improper conduct, through measures such as education and awareness, posters, leaflets, hotlines, etc.

##### **Task C – Conducting Background Checks, Reviews of Documents and Investigations**

1. Background checks of businesses, principals, officials, employees and other individuals by utilizing research of public records, databases, interviews, etc.;
2. Review of documents, including disclosure forms, payment requests, change orders, invoices, certified payrolls, manifests, etc., submitted by vendors for honesty and accuracy;
3. Investigations and inquiries; including interviews, site visits, surveillances, field activities and head counts, as well as research into public records and databases, for the prevention and detection of violations, fraudulent and/or illegal acts.

#### Task D – Reporting

1. Quarterly to the State Treasurer utilizing prescribed forms as to each assigned contract under a Work Authorization in a timely manner as to activities performed in accordance with N.J.S.A. 52:15-D-2.
2. Report integrity monitoring activities and results periodically to NJ TRANSIT as required
3. In compliance with malfeasance and inefficiency reporting protocols developed by the State Treasurer.
4. Immediately upon making finding of a likely criminal violation or lesser degree of waste, fraud or abuse, to New Jersey Attorney General and Comptroller.

#### Task E – Preparing and Maintaining a Fraud Risk Assessment.

A fraud risk assessment including, but not be limited to:

- a) Potential Sandy Recovery and Resiliency Project fraud risks/ scenarios/ schemes including prioritization and probability and potential impact.
- b) Specific methodology and detailed work programs/ audit programs/ other procedures that are employed by the firm to mitigate, minimize and/or identify fraud for each risk/scenario/scheme.
- c) Specific deliverables for each work program/audit program/other procedures.
- d) Detailed plan for the assigned contract(s) under the WA addressing key fraud risks. This plan should include but not be limited to:
  - i. Prioritized fraud risk/scenario/schemes.
  - ii. Detailed strategy for the life of the project for how each fraud risk will be addressed.
  - iii. Deliverables for each risk.
  - iv. Level of effort (hours) needed for each risk by personnel category.
  - v. Other relevant data.

#### Task F – Internal, IT and Construction Auditing

Internal, IT, and Construction auditing (including pre-award, execution, change orders, closeout, etc.), forensic audits and reviews of Program related businesses, and government programs to identify areas of risk that could potentially lead to fraud and/or corruption, and providing recommendations for correcting these areas of risk and for improving the integrity of the affected areas; audits so as to ensure procurement compliance and other audit services (financial, attestation, or performance audits) as needed for the Program.

#### TASK DELIVERABLES

Deliverables to support all of the above Tasks A through H will include but not be limited to:

1. Work papers, reports and other required documentation in the format and content required by NJ TRANSIT to support all work.
2. Presenting reports, findings and other results of audits, reviews, investigations and other assigned tasks, and incorporating comments provided by NJ TRANSIT as appropriate and resubmitting the reports as final.
3. Audits as required under WA.
4. Preparing information to be included in Monthly and Quarterly Reports to FTA
5. Upon a finding of a likely criminal violation or lesser degree of any malfeasance, inefficiency, waste, fraud, abuse or mismanagement of funds, report findings to the State Comptroller and the Attorney General immediately consistent with the requirements of N.J.S.A. 52:15D-2 with a copy to State Treasurer. Provide a copy to NJTIAD.
6. Status Reports - Provide NJ TRANSIT update on activities conducted on, or for, each task to include the type of activity, analysis, results, recommendations, resolutions, and/or preventative measures; and follow-up on any previous outstanding issues.
7. Quarterly Report- On the first business day of each calendar quarter, the Consultant shall provide to the State Treasurer, for distribution to the Legislature and the Governor, a report detailing the Consultant's provision of services during the three-month period second preceding the due date of the report and any previously unreported provision of services, which shall include, but not be limited to, detailed findings concerning the Consultant's provision of services and recommendations for corrective or remedial action relative to findings of malfeasance and inefficiency. The report shall include a privilege log which shall detail each denial of sensitive information that the Consultant exercises in preparing the report for transmission to the Legislature and the Governor. The report shall not include any information which may compromise a potential criminal investigation or prosecution or any proprietary information.
8. Time Logs - Copies (and upon request, originals) of time logs shall be maintained by the Consultant and shall include information on the allocation of hours worked by the Consultant and staff to the respective federally-funded programs and all other data required in order to ensure compliance with all federal requirements.

Activities to be conducted by the Consultant(s) include, but not limited to the following:

1. Attending site meetings as to ongoing construction work where warranted.
2. Attending agency meetings.
3. Attending scopes reviews and meetings with prospective contractors and vendors in order to ensure procurements are conducted in accordance with NJ TRANSIT Rules and Regulations and that a level playing field is maintained.
4. Reviewing information and activities in relation to project contract/program.
5. Auditing to ensure procurement compliance.
6. Addressing work quality, safety, environmental, and historical preservation issues.
7. Taking actions to remediate, waste, fraud, corruption and abuse.
8. Making unannounced periodic headcounts of construction site workers in order to



deter no-show jobs.

## **V. ADMINISTRATION OF THE CONSULTANT – STANDARD PROJECT INITIATION**

Consultant activities will be managed by NJ TRANSIT's Department of Internal Audit (NJTIAD) in consultation with the New Jersey Department of the Treasury, NJ TRANSIT Accountability Officer and NJ TRANSIT's authorized Procurement representative with responsibility for initiating all contractual work and the administration of and resolution of all WA items.

A. Work Authorization - A WA executed between the Consultant's authorized representative and NJ TRANSIT's authorized Procurement representative is required prior to any services being provided by the Consultant. The parties agree that the signing of a WA shall be necessary to commit NJ TRANSIT to compensate the Consultant for accepted work referenced therein and to commit the Consultant to perform the work according to its written description, for an amount not to exceed the fee provided in the WA. Any change in the scope and/or fee must have the prior written consent of NJ TRANSIT's authorized representative. A separate WA shall be required for each assignment of the Consultant.

### **B. Acceptance**

(1) Any items which the Consultant must deliver to NJ TRANSIT as noted in a Work Authorization shall be delivered to the NJTIAD. NJTIAD will review the deliverables and shall have the right, in its sole judgment, to refuse the acceptance of any items if they do not meet the Standards of Performance established by NJ TRANSIT. Such review does not relieve the Consultant of its liability for errors and omissions.

(2) Any items which the Consultant must deliver to New Jersey Department of the Treasury as noted in a Work Authorization and/or the reporting requirements shall be delivered to the New Jersey Department of the Treasury. New Jersey Department of the Treasury will review the deliverables and shall have the right, in its sole judgment, to refuse the acceptance of any items if they do not meet the Standards of Performance established by New Jersey Department of the Treasury. Such review does not relieve the Consultant of its liability for errors and omissions.

(3) If the services or any deliverables are not accepted, NJ TRANSIT has the option of terminating the Agreement, or terminating the associated WA.

(4) NJ TRANSIT and New Jersey Department of the Treasury reserve the right to seek reimbursement of all costs, expenses or damages incurred, because of any act, error or omission, neglect or negligence, or misconduct of said Consultant or its sub-consultants in the performance of the work outlined in this Agreement. In such an event, NJ TRANSIT may withhold payment pending resolution of disputed claim not to exceed the amount due under the item of dispute, but without limitation to the amount

NJ TRANSIT or Treasury may seek or claim to the extent allowed by law or equity. NJ TRANSIT shall not be obligated to make any payment for work that is unsatisfactory or does not comply with the terms of this Agreement. Furthermore, the Consultant shall not receive additional compensation for the cost of redoing, correcting or otherwise revising work by reason of any act, error or omission, neglect or negligence, or misconduct of said Consultant or its sub-consultants in the performance of the work outlined in this Agreement.

C. Standards of Performance:

- (1) The applicable Standards of Performance shall be established by NJ TRANSIT or the Department of the Treasury and set forth in the WA.

## **VI. ADMINISTRATION OF THE CONSULTANT - CONSULTANT TEAM CHANGES**

Where the Consultant finds it necessary or prudent to vary the composition of its resources, the Consultant shall be required to submit for NJ TRANSIT and the New Jersey Department of the Treasury, as the case may be, approval in advance such information and justifications as are necessary to support the restructuring of the team.

In making such changes, the Consultant must remain cognizant of all DBE participation requirements and goals as specified in the contract documents. For resources that are added, NJ TRANSIT will require a description of the resources' credentials and background. In addition, NJ TRANSIT may require an interview of the personnel.

NJTIAD and New Jersey Department of the Treasury shall have the right to pre-approve staffing and removal of particular staff members at its discretion.

## **VII. ADMINISTRATION OF THE CONSULTANT - COMPENSATION**

Payment for services to be rendered under this contract shall be on an hourly fee basis with a maximum not-to-exceed cost established for each individual WA authorized in accordance with the procedures described herein, and subject to the terms and conditions established for the overall contract. Payments of invoices will be made within thirty (30) days of approval by the Procurement Department and NJ TRANSIT Auditor General or his designee. No charges for work directed by unauthorized NJ TRANSIT or New Jersey Department of the Treasury personnel shall be binding upon NJ TRANSIT, and any work performed pursuant to such authorization shall be entirely at the risk of the Consultant. Additionally, no compensation will be allowed for the revision of work which has been rejected as failing to satisfy the requirements of a specific Work Authorization. The Consultant shall use a standard invoice form detailing the particular tasks, deliverables completed, particular work completed, hours expended by personnel, cost basis and total cost, and other detailed information that may be required by NJ TRANSIT. The Consultant shall submit all itemized bills separately for each WA. Each invoice shall be accompanied by an itemization of each task performed during said period of time and identification of the employees or subconsultants (and their respective employees) providing such services, the time

expended, and the actual work performed summarized, a listing of all meetings attended by date as well as all field visitations along with the name of employee and subconsultants (and their respective employee) in attendance. Each invoice may be reviewed by IAD and New Jersey Department of the Treasury as well as by the Accountability Officer, the Board's Representatives and NJ TRANSIT staff.

## **VIII. OWNERSHIP OF WORK**

All work product produced by the Consultant in accordance with this contract and Work Authorizations are the sole property of NJ TRANSIT. Work product includes, but is not limited to: reports, documents, analyses, worksheets, work papers, cost estimates, tapes (audio or video), correspondence, computer files/media storage/programs/data, sample lists, sign-in sheets, audits, photographs, drawings, spread sheets, graphics and all other information resulting from or obtained during the Consultant's work performed under this contract.

## **IX. PROPOSAL REQUIREMENTS**

The proposal package shall consist of one (1) original and six (6) copies of the technical proposal and one (1) original and four (4) copies of the cost proposal. The technical and cost proposals shall be bound in separate volumes, and prepared on 8 1/2" x 11" paper. A limited number of 11" x 17" fold out sheets for exhibits are acceptable. All pages are to be sequentially numbered.

Unnecessarily elaborate proposals are not being sought. Elaborate artwork, expensive paper and binding, and expensive visual and other preparation aids are neither necessary nor desirable. Copies of the proposals are to be delivered to the address in the RFP cover letter, on or before the time specified.

Proposals shall be considered valid for the period of time it takes to negotiate an agreement and execute a contract with the successful firm. The said period of time will not exceed four (4) months from the date of receipt of proposals. A duly authorized official of the firm or joint venture must sign such proposals

### **A. Technical Proposal Format**

Technical proposals shall follow the format outlined below. 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 restricted, provided the firm identifies the appropriate pages of the proposal and places a label on those pages.

Proposers are urged to be concise in the preparation of their proposal and adhere to page limits in Attachment B. Guidance in preparing the proposal follows:

**COVER LETTER:** The cover letter shall summarize key points of the proposal and include any introductory or explanatory remarks. The cover letter should convey an understanding of the overall contract objectives and the work required of the Consultant.

**FIRM AND PROJECT ORGANIZATION CHART:** Information showing the reporting and contractual relationship of the Consultant's Director and all members on the team, contract/project organization, as well as control mechanisms.

The Consultant will identify disadvantaged owned business enterprises (DBEs) that will or may act as subconsultants in accordance with NJ TRANSIT's established goals.

The Consultant shall certify that the listed 'key personnel' will be employed by the consultant and will be assigned to the project in the manner prescribed. The 'key personnel' identified by the consultant shall not be removed from the contract without written approval from NJ TRANSIT. Therefore, if a 'key personnel' member leaves the firm, NJ TRANSIT must be notified in writing within five (5) business days of their termination/separation.

**MANAGEMENT APPROACH:** Provide a detailed description of the proposed approach to be taken for the performance of the tasks identified in Section IV ( Detailed Scope of Work).

**TECHNICAL SECTION:** Each Consultant shall provide a Fraud Risk / Scenario/ Schemes Identification and Assessment as part of its technical proposal based on the firm's expertise, experience, and knowledge. The Assessment shall include:

- a) Potential fraud risks/scenarios/schemes including methodology for prioritization, assessing probability and calculating potential impacts.
- b) Specific methodology and detailed work programs/audit programs/other procedures that are employed by the firm to identify and mitigate or minimize fraud for each risk/scenario/scheme.
- c) Specific deliverables for each work program/audit program/other procedure including examples of each deliverable (redacted if necessary)
- d) Detailed plan for addressing key fraud risks. This plan should include but not be limited to:
  - i. Prioritized Fraud Risk/Scenario/Schemes
  - ii. Detailed strategy for the life of the project for how each fraud risk will be addressed
  - iii. Deliverables for each risk
  - iv. Level of effort (hours) needed for each risk by personnel category
  - v. Process for how the Fraud Risk Assessment will be updated
  - vi. Other relevant data

**CONSULTANT'S AFFILIATES:** Provide complete list of the proposer's affiliates so that NJ TRANSIT can determine whether there is a conflict of interest with NJ TRANSIT. Affiliates shall be as defined as follows: Two or more firms are affiliates if a parent owns more than fifty percent of the voting stock of each of the firms, or a common shareholder or group of shareholders owns more than 50 percent of the voting stock of each of the firms, or if the firms have a common proprietor or partner.

**FULL-TIME OFFICE CERTIFICATION:** The proposal shall contain the Consultant's certification that a full time office will be maintained during the project period, and that the Consultant's Project Manager can be reached through this office during regular working hours.

**QUALIFICATION OF INDIVIDUALS:** This section shall contain resumes of the key persons proposed to work on this project. Resumes shall cite formal education, professional licenses and certifications, entire work history, and training in industry skills. Specific skills and any other relevant experiences should be highlighted.

**QUALIFICATION OF FIRM(S) AND RELATED EXPERIENCE:** Provide a list of previous placements made by the Consultant relating to the services to be performed as outlined in Section IV. Include a description of the assignments, client names, start and end dates, total cost of the assignment, and a contact (name, telephone number and email address) as required to confirm said information.

This section shall also demonstrate the Consultant's ability to meet the Consultant's Qualifications identified in Section Item II C, above.

Submit a table, with the following headings, that includes examples of three (3) major projects where the Consultant has provided Integrity Monitoring services and auditing services similar in scope as required in this RFP.

- A. Detail any experience providing these services to economic development organizations, municipalities, other governmental entities, private developers, and not-for-profit and civic organizations:
- Project Title
  - Primary Consultant
  - Project Manager
  - Date Started
  - Completion Date (Planned and Actual)
  - Total Construction Project Cost (Planned and Final)
  - Client
  - Contact Name, Address and Phone Number (project reference)

- B. Provide a brief narrative summary of each project identified in the Table. For each project, include: discussion about the specific role performed by your firm and the key individual(s), any problem(s) encountered, how the problem(s) were dealt with, the outcome of the project, cost savings, cost recoveries, and to the best of your knowledge, what happened to the client once your firm's role in the project was completed.
- C. For each of the projects above, indicate whether your services were completed at an actual cost or at an amount in excess of, less than, or equal to the original budget and state the reason(s) for each of these situations.

**QUALITY ASSURANCE PLAN (QAP):** This section shall contain a summary of the Consultant's QAP outlining the process which will be followed for checking, reviewing and approving of the Consultant's work product to ensure it is consistent with NJ TRANSIT and New Jersey Department of the Treasury expectations, requirements and standards. Typical titles of responsible individuals shall be identified along with descriptions of experience and other qualifications required for these positions. A complete QAP is not required; however Consultant shall provide sufficient detail of its quality assurance program in order to permit a clear understanding.

**KEY PERSONNEL CERTIFICATION:** Each Consultant shall submit a statement signed by a duly authorized officer of the firm to the effect that all personnel offered in the proposal are or will be, bona fide employees of the firm and sub-Consultants and are available for the duration of the project. The Consultant will include a statement to the effect that the appropriate officers and personnel of each firm will be available and ready to negotiate during the negotiating period.

Name/title and contact information for the person who will be responsible for managing the Consultant's execution of the work.

**CONFLICTS:** If the Consultant or any employee, agent or subconsultant of the Consultant may have, or may give the appearance of a possible conflict of interest, the Consultant 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. NJ TRANSIT reserves the right to disqualify the Consultant 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.

**REFERENCES:** A minimum of three (3) references must be provided for the key team members including the Project Manager.

## B. COST PROPOSAL FORMAT

A cost proposal will be submitted in a separate volume, utilizing the cost sheets provided in Attachment C (or similar produced sheets). Each proposer shall provide their pricing structure for the three (3) year base period and each of the two additional, two-year options, including labor rates that reflect fully-loaded costs in accordance with the limitations provided below. In addition, proposers shall provide the levels of expected staffing.

NJ TRANSIT will only pay for straight time labor at the fully loaded rate with no overtime or night differential, i.e., NJ TRANSIT will not pay for travel, meals, lodging, commutation, overhead, profit, administration, or other expenses except as otherwise specifically provided below. Any other necessary expenses on a project basis will be at the sole discretion of NJ TRANSIT and all decisions are final. Rates shall be fully loaded and apply per job title. The rate shall apply to all work during the initial 36 month contract period. For each two year option exercised by NJ TRANSIT at its discretion, the rates may not increase more than 5% per each two year period.

There is an allowance established for all contract(s) for the initial three year contract period for reimbursement of reasonable, documented costs incurred in order to relocate staff members and managers to New Jersey where their primary residences are 90 or more miles from the City of Newark, New Jersey documented by computer mapping calculations. In such instances only costs of initial travel and move of personal property to New Jersey will be reimbursed and only where approved in writing by NJIAD prior to move or travel occurring. No travel back and forth to primary residence during work assignment will be reimbursable; however, reasonable documented costs of transportation of assigned personnel and move of personal property will be paid upon conclusion of Work Authorizations to which staff member or manager has been assigned. Travel in relation to assigned duties shall not be reimbursable. All reimbursable travel expenses shall be in accordance with the Travel & Business Reimbursement Guidelines (Exhibit 2).

As to Subject Matter Experts (SMEs), only costs of travel and stays in hotel as well as breakfast and dinner will be reimbursable where SME attendance is required in New Jersey and has been previously approved in writing by NJIAD for periods of 30 or fewer consecutive days. Travel in relation to assigned duties shall not be reimbursable. Stays of SMEs for more than 30 days will be reimbursed for reasonable, documented relocation costs as provided above as it applies to staff members and managers. All reimbursable travel expenses shall be in accordance with the Travel & Business Reimbursement Guidelines (Exhibit 2).

All proposers shall demonstrate their 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.

## CONSULTANT CERTIFICATIONS

The Cost Proposal shall also include the certifications and affidavits required under this solicitation (e.g., Acknowledgment of Receipt of Addenda, DBE Forms and Affidavits, Non-Collusion Affidavit, Ineligible Contractors Certificate, Affidavit of Compliance, Certification of Grants, Loans & Cooperative Agreements, Business Registration Certificate, Non-Disclosure Agreement, Ownership Disclosure and State of NJ Division of Purchase and Property – Disclosure of Investment Activities in Iran).

## CONSULTANT'S REVIEW of NJ TRANSIT'S PROFESSIONAL SERVICE AGREEMENT

The Consultant shall review NJ TRANSIT's Professional Service Agreement in its entirety and submit with its Cost Proposal any exceptions to Agreement (Exhibit 1). All exceptions, clarifications, and modifications must be specifically identified and explained in a clearly identified section of the Consultant's Cost Proposal. Consultant's standard terms and conditions will not be considered as an exception, clarification, or modification. Exceptions, clarifications or modifications to NJ TRANSIT's Professional Services Agreement that are not provided with the Cost Proposal **will not** be entertained should the Consultant be selected for award of one of the Contracts.

### **X. METHOD OF SELECTION**

#### **A. PROPOSAL DISTRIBUTION**

NJ TRANSIT will provide a copy of each technical proposal to members of the Technical Evaluation Committee (TEC). Duties of the committee will include:

- Evaluation, rating, and selection of the Consultant
- Recommending the award
- Assisting the Procurement Department as required with the negotiations of the Consultant's costs.

#### **B. PROPOSAL EVALUATION**

Each individual on the TEC will review, evaluate and rate the technical proposals based on quality and substance of the presentation. Written Technical proposals will be scored against the criteria enumerated in Attachment A for technical proposals. The written technical score shall constitute 70% of the total evaluation score and establish the initial competitive range. The number of firms deemed to be in the competitive range may be limited for efficiency purposes.

Reference checks will be performed for each Consultant firm/team deemed within the initial competitive range. Although the reference checks will not be scored per se, they



will be used to validate information contained in the Technical proposal.

Oral Presentations may be required from those firms/teams within the “competitive range” or may be waived at the discretion of NJ TRANSIT. Oral Presentations, if necessary, will provide an opportunity for the 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.

The Procurement Department will evaluate the Cost proposals. The Cost proposal will constitute 30% of the total evaluated score. The Cost Proposals will be evaluated using a relative scoring system. The lowest cost will receive 100% of available points. The next lowest cost will receive a prorated score based on the relative difference in lowest cost, and so on.

The combined weighted written technical proposal evaluations (including evaluation of oral presentations, if necessary, and reference checks) and cost proposal evaluations will be used to identify the most qualified firms.

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 consultant costs.

## **XI. NEGOTIATION AND AWARD**

It is NJ TRANSIT’s intension to award up to three (3) contracts. NJ TRANSIT will enter into negotiations with the highest ranked firms to reach an agreement of 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 end negotiations and initiate negotiations with the next highest ranked 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 negotiations.

Once negotiations have been completed, a recommendation for award of the contracts to the Proposers whose proposals are determined to be the most advantageous and provide the best value to NJ TRANSIT, will be issued for approval by NJ TRANSIT Board of Directors. Upon approval of the recommendations for award, NJ TRANSIT will enter into the cost reimbursable contract found in Exhibit 1.

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

The firms selected under this procurement will be included in the New Jersey Department of the Treasury's approved pool of Integrity Oversight Monitoring Service Consultants for use by NJ TRANSIT.

## **XII. NJ TRANSIT CORPORATION PROTEST PROCEDURE**

### **A. PURPOSE**

This section describes the policies and procedures governing the receipt and resolution of vendor protests in connection with this Request for Proposal.

### **B. POLICY**

#### **1. Parties**

Only an interested party may file a protest.

#### **2. Types of Protest/Time Limits**

- a. Protests based upon restrictive specifications or alleged improprieties in NJ TRANSIT's procurement process must be filed no later than five (5) days prior to the closing date for receipt of initial proposals.
- b. Protests based upon alleged improprieties of a Proposal shall be filed no later than five (5) days after the Protestor knows or should have known of the facts giving rise thereto.
- c. Protests based upon the award of a contract shall be filed no later than five (5) days after the notification to the unsuccessful firms of NJ TRANSIT's intent to award, or no later than (5) days after an unsuccessful firm becomes aware of NJ TRANSIT's intent to award a contract, whichever comes first.
- d. All protests must be filed in writing. Oral protest will not be accepted.

#### **3. Where to File**

Protests must be filed directly with NJ TRANSIT's Contracting Officer, or designee, at the address indicated in the solicitation.

#### **4. The Protest**

- a. The 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. Additional materials in support of the protest will only be considered if filed within the time limits set in Paragraph B.
  - iv. An indication of the ruling or relief desired from NJ TRANSIT.
- b. If the protest is filed before contract award, the potential Management Firm will be advised by NJ TRANSIT of the pending protest.
- c. If deemed appropriate by NJ TRANSIT, an informal conference on the merits of the protest may be conducted with all interested parties allowed to attend.

#### 5. Confidentiality of Protest

Material 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 considers that the protest contains proprietary material, which should be withheld, a statement advising of this fact must be affixed to the front page of the protest documents and the alleged proprietary information must be so identified wherever it appears.

#### 6. Response to the Protest

NJ TRANSIT's Contracting Officer, or designee, will respond to the protest within a reasonable time after receipt of the protest by NJ TRANSIT. NJ TRANSIT's response shall address only the issues raised originally by the protestor.

#### 7. Rebuttal to NJ TRANSIT's Response

The protestor may submit a written rebuttal to NJ TRANSIT's response, addressed to the Contracting Officer, but must do so within five (5) days after receipt of the original NJ TRANSIT response. New issues in the rebuttal will not be addressed by NJ TRANSIT. After receipt of the protestor's rebuttal, the Contracting Officer will review the protest and notify the protestor of his final decision.

#### 8. Request for Additional Information

Failure of the protestor to comply expeditiously with a request for information as specified by NJ TRANSIT's Contracting Officer or designee may result in determination of the protest without consideration of the additional information. If any parties to the protest request information from another party, the request shall be made to NJ TRANSIT's Contracting Officer, or designee, and shall be complied with by the other party within five (5) days if NJ TRANSIT so directs.

## 9. Request for Reconsideration

If data becomes available that were not previously known, or there has been an error of law, a protestor may submit a request for reconsideration of the protest. NJ TRANSIT's Contracting Officer will again review the protest considering all currently available information. The Contracting Officer's determination will be made within a reasonable period of time, and his decision will be final.

## 10. Procurement Process Status

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

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

## 12. Definitions

- a. 'Days' means working days.
- b. 'File or Submit' means date of receipt by NJ TRANSIT's Contracting Officer.
- c. 'Federal Law or Regulation' means any valid requirement imposed by Federal statute or regulation governing contracts awarded pursuant to a grant agreement. This includes the requirements as stated in FTA Circular 4220.1F.
- d. 'Contracting Officer' means the Chief of Procurement or his designee as indicated in the solicitation documents.
- e. 'Interested Party' means all proposers/offerors. It may also include a

subcontractor or supplier provided they have a substantial economic interest in a portion of the RFP.

- f. 'Potential Consultant' means the proposer that is in line for award of the contract in the event that the protestor is denied.

**NEW JERSEY TRANSIT CORPORATION**  
**REQUEST FOR PROPOSAL (RFP) NO. 14-033**

**ATTACHMENTS**

**NEW JERSEY TRANSIT CORPORATION  
REQUEST FOR PROPOSAL (RFP) NO. 14-033  
ATTACHMENT A**

Proposal Evaluation Criteria  
(Listed in order of descending importance)

The criteria by which a firm will be evaluated shall include consideration of the following factors:

1. Did the firm demonstrate the extent and quality of the firm's experience in the performance of similar services identified in Section IV provided to others?
2. Did the firm demonstrate the quality and depth of the experience and qualifications of the staff, including subconsultants, who will be performing services hereunder?
3. Does the firm's Management approach for the performance of services identified in the fraud risk assessment include methodology, approach, and deliverables?
4. Did the firm demonstrate the effectiveness of its quality assurance process?
5. Did the firm demonstrate at least five (5) years of documented experience in providing investigating, and other services related to the prevention and detection of violations, fraud and/or illegal acts?
6. Does the firm have the capacity to potentially provide an estimated 6,000 to 18,000 hours per year of integrity monitoring services per year?
7. Does the firm have the capacity to provide services in accordance with Generally Accepted Government Audit Standards (U.S. Government Accountability Office)?
8. Did the firm demonstrate at least five (5) years of experience in providing internal audit staff with experience in the specific audit service requested (Internal, IT, Construction, Fraud Risk Management and Forensic audits, and reviews of project related businesses, and government programs to identify areas of risk and/or other audit services such as financial, attestation or performance)?

**NEW JERSEY TRANSIT CORPORATION  
REQUEST FOR PROPOSAL (RFP) NO. 14-033  
ATTACHMENT B - PROPOSAL FORMAT**

ITEM	DESIRED MAX PAGE LIMIT
1. Cover Letter	2
2. Consultant and Project Organization Chart	5
3. Management Approach Fraud Risk/Scenario/Schemes identification and Assessment (integrity monitoring services only)	As Required
4. Consultant's' Affiliates	2
5. Full Time Office	1
6. Resumes	10
7. Qualifications of Consultant and Related Experience	5
8. Quality Assurance Program	5
9. Certifications	As Required
10. Conflict Of Interest	2
11. Key Contacts	1
12. References	2
13. Cost Proposal	As Required



**NEW JERSEY TRANSIT CORPORATION  
REQUEST FOR PROPOSAL (RFP) NO. 14-033  
ATTACHMENT C – COST PROPOSAL FORMAT**

Staffing Category	Year 1			Year 2			Year 3		
	Estimated Staff Hours	Rates	Cost	Estimated Staff Hours	Rates	Cost	Estimated Staff Hours	Rates	Cost
Partner/Principal/Director	200			200			200		
Program Manager / Project Manager	1,800			2,700			3,600		
Subject Matter Expert	3,600			4,000			5,500		
Supervisor/Senior Consultant/	3,600			6,000			8,500		
Consultant/Associate/Staff	7,200			12,000			17,000		
Administrative Support	1,800			1,800			1,800		
<b>Total</b>	<b>18,200</b>			<b>26,700</b>			<b>36,600</b>		

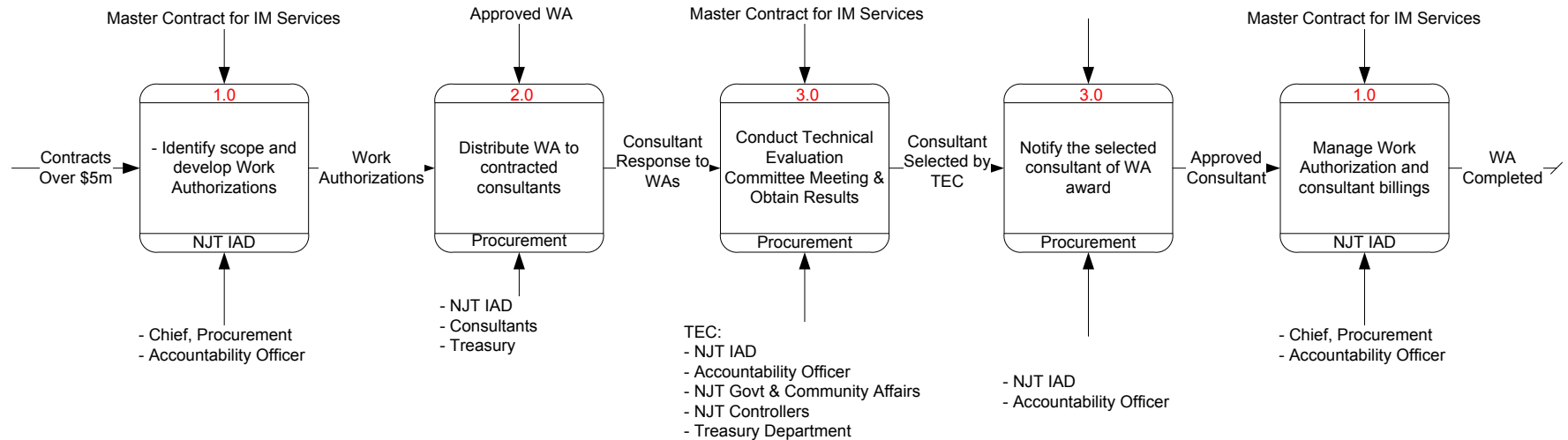
**Total Cost Years 1-3** \_\_\_\_\_

Travel allowances for all contracts for all Consultants are as follows:

Year 1:       \$ 75,000  
Year 2:       \$130,000  
Year 3:       \$175,000  
Total:         \$380,000

**NEW JERSEY TRANSIT CORPORATION  
REQUEST FOR PROPOSAL (RFP) NO. 14-033  
ATTACHMENT D**

**NJ TRANSIT – SSRP INTEGRITY OVERSIGHT MONITORING SERVICES  
WORK AUTHORIZATIONS SELECTION PROCESS OVERVIEW 1/28/2014**



NJ TRANSIT reserves the right to modify the Work Authorization Selection Process as it deems appropriate under the circumstances. The proposed flow chart reflects anticipated process that will apply to the selection of a Consultant for a particular Work Authorization. Circumstances may require adjustments to the process in the future, during the life of the contract.

**NEW JERSEY TRANSIT CORPORATION  
REQUEST FOR PROPOSAL (RFP) NO. 14-033**

**ATTACHMENT E**

**Federal Register Notices relating to Transportation Emergency Funding in  
Response to Hurricane Sandy including but not limited to Oversight and Audit  
Requirements**

the CSA program. These topics should include but not be limited to Safety Measurement System (SMS) and the interventions/investigative processes.

2. Prioritize recommended enhancements of CSA to enable the Agency to direct its efforts to the most important or timely needs of the program.

**Task 11-06: Motorcoach HOS**

The Motorcoach HOS Subcommittee will meet to discuss information, concepts, and ideas it believes the full MCSAC should provide to FMCSA relating to the hours-of-service (HOS) requirements for drivers of passenger-carrying vehicles. A copy of the full task statement is posted at FMCSA's Web site: <http://mcsac.fmcsa.dot.gov>.

**II. Meeting Participation**

Oral comments from the public will be heard during the last half-hour of the meetings each day. Should all public comments be exhausted prior to the end of the specified period, the comment period will close. Members of the public may submit written comments on the topics to be considered during the meeting by Wednesday, June 12, 2013, to Federal Docket Management System (FDMC) Docket Number FMCSA-2006-26367 using any of the following methods:

- **Federal eRulemaking Portal:** Go to <http://www.regulations.gov>. Follow the online instructions for submitting comments.
- **Fax:** 202-493-2251.
- **Mail:** Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building, Room W12-140, Washington, DC 20590.
- **Hand Delivery:** U.S. Department of Transportation, 1200 New Jersey Avenue SE., Room W12-140, Washington, DC, between 9 a.m. and 5 p.m., E.T. Monday through Friday, except Federal holidays.

Issued on: May 22, 2013.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2013-12693 Filed 5-28-13; 8:45 am]

BILLING CODE 4910-EX-P

**DEPARTMENT OF TRANSPORTATION**

**Federal Transit Administration**

**Second Allocation of Public Transportation Emergency Relief Funds in Response to Hurricane Sandy: Response, Recovery & Resiliency**

**AGENCY:** Federal Transit Administration (FTA), DOT.

**ACTION:** Notice of allocation of Emergency Relief funds.

**SUMMARY:** The Federal Transit Administration (FTA) announces the allocation of \$3.7 billion under the Public Transportation Emergency Relief Program (Emergency Relief Program, Catalogue of Federal Domestic Assistance #20.527) to the four FTA recipients most severely affected by Hurricane Sandy: the Metropolitan Transportation Authority, New Jersey Transit Corporation, the Port Authority of New York and New Jersey, and the New York City Department of Transportation. This amount is in addition to the initial \$2 billion allocation announced in the March 29, 2013 **Federal Register** notice, bringing the total amount of Hurricane Sandy Emergency Relief funds allocated to date to \$5.7 billion. Within the \$3.7 billion announced in this notice, FTA is allocating \$2.4 billion for additional recovery and rebuilding projects and \$1.3 billion for project elements or freestanding projects that increase the resiliency of the affected transit systems to future disasters. Such resiliency investments shall be subject to specific conditions cited in this notice. FTA is allocating funds consistent with the requirements of the Disaster Relief Appropriations Act of 2013 (Pub. L. 113-2), Interim Final Rule for the Emergency Relief Program, 49 CFR part 602, published in the **Federal Register** on March 29, 2013, the Notice of Availability of Emergency Relief Funds published in the **Federal Register** on February 6, 2013, and additional requirements and program guidance included in the March 29, 2013 **Federal Register** notice.

FTA anticipates allocating additional funding for recovery and rebuilding and announcing the availability of competitive funding for eligible resiliency projects in areas impacted by Hurricane Sandy in a subsequent notice.

Prior to submitting grant applications to FTA for the funds allocated in this notice, recipients should develop a list of potentially eligible projects, consistent with the Emergency Relief Program rule, at 49 CFR 602.17, and submit and review the list of projects with the applicable FTA Regional Office.

Affected recipients are granted pre-award authority as of the publication date of this notice for recovery and rebuilding projects; pre-award authority for the \$1.3 billion allocated for resiliency projects may be contingent upon FTA's prior approval as described later in this notice. Prior to exercising pre-award authority, recipients should

work with the appropriate Regional Office to ensure that the applicable Federal requirements are followed.

All funds allocated in this notice must comply with FTA and other Federal requirements as described in the Interim Final Rule. Recipients may request waivers of FTA administrative requirements by submitting a request to [www.regulations.gov](http://www.regulations.gov), FTA docket number FTA-2013-0001, as described in the Emergency Relief Program rule at 49 CFR § 602.15, however, recipients should not proceed with a project under the expectation that waivers will be provided. Additional program requirements, considerations and grant application procedures specific to these funds are included in this notice.

**FOR FURTHER INFORMATION CONTACT:**

Contact the appropriate FTA Regional Office found at <http://www.fta.dot.gov> for application-specific information and other assistance needed in preparing a TEAM grant application. For program-specific questions, please contact Adam Schildge, Office of Program Management, 1200 New Jersey Ave SE., Washington, DC 20590, phone: (202) 366-0778, or email, [Adam.Schildge@dot.gov](mailto:Adam.Schildge@dot.gov). For legal questions, contact Bonnie Graves, Office of Chief Counsel, same address, phone: (202) 366-4011, or email, [Bonnie.Graves@dot.gov](mailto:Bonnie.Graves@dot.gov). For questions about direct transfers to other modes within Department of Transportation, please contact Vinn White, Office of Policy, Office of the Secretary, same address, phone: (202) 366-9044, or email, [Vinn.White@dot.gov](mailto:Vinn.White@dot.gov); or Ed Beightel, Office of Policy, Office of the Secretary, same address, phone: (202) 366-8154, or email, [Ed.Beightel@dot.gov](mailto:Ed.Beightel@dot.gov).

**SUPPLEMENTARY INFORMATION:**

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## I. Considerations for Recipients of Emergency Relief Funds

### A. Allocation of Funds

FTA's Emergency Relief Program (49 U.S.C. 5324) was authorized by Congress in the Moving Ahead for Progress in the 21st Century Act (MAP-21, Pub. L. 112-141) and provides FTA with primary responsibility for reimbursing emergency response and recovery costs after an emergency or major disaster that affects public transportation systems. The Disaster Relief Appropriations Act provides \$10.9 billion for FTA's Emergency Relief Program for recovery, relief and resiliency efforts in areas affected by Hurricane Sandy. However, as a result of the Office of Management and Budget's March 1, 2013, report to Congress required by the Balanced Budget and Emergency Deficit Control Act of 2011 (Pub. L. 112-25) for fiscal year (FY) 2013, approximately five percent, or almost \$545 million of the \$10.9 billion, is subject to sequestration and is unavailable for Hurricane Sandy disaster relief. That leaves approximately \$10.3 billion available. FTA is allocating the remaining \$10.3 billion in multiple tiers for response, recovery and rebuilding, for locally-prioritized resiliency projects, and for competitively selected resiliency projects, which will be solicited in a future notice of funding availability.

FTA is allocating funding in this notice for recovery and rebuilding and for locally-prioritized resiliency projects based on detailed damage assessments submitted by affected agencies and prepared in cooperation with FTA and Federal Emergency Management Administration (FEMA) staff. FTA contractors validated the methodologies affected agencies used to estimate the costs of the damage. These affected agencies included the following major transit agencies:

- The Metropolitan Transportation Authority (MTA), doing business as:
  - MTA New York City Transit (NYCT);
  - MTA Bus Company (MTA Bus);
  - MTA Metro-North Railroad (MNR);
  - MTA Long Island Railroad (LIRR);
  - MTA Capital Construction Division (MTACC);
- The New York City Department of Transportation (NYCDOT);
- The Port Authority of New York and New Jersey (PANYNJ) which operates Port Authority Trans Hudson (PATH) rail service and the rebuilding of the World Trade Center Transportation Hub and site; and
- New Jersey Transit.

The damage assessments include an initial overall cost of recovery and rebuilding for the affected agencies, excluding projects to improve the resiliency of the affected systems to future disasters, which totals approximately \$5.83 billion.

On March 29, 2013, FTA published an allocation of \$2 billion to affected recipients for eligible emergency response and recovery costs, less a takedown for program implementation and oversight. FTA allocated funds in that notice in two parts: First, FTA allocated approximately \$576.6 million to affected agencies based on specific emergency response and recovery costs that were incurred or budgeted to date. Second, FTA allocated approximately \$1.4 billion to the four agencies most severely impacted by Sandy proportional to each agency's projected overall recovery costs. Of this \$1.4 billion, FTA set aside approximately \$28 million for other affected agencies that may have additional response and recovery expenses not reimbursed to date. The funding allocated under that notice was equivalent to approximately 32 percent of the projected total recovery costs for the four most severely affected public transportation systems, not including the costs of improvements designed to increase the resiliency of the affected transit systems to future disasters. Both the current and previous allocations are based on detailed damage assessments compiled by the affected agencies in cooperation with FTA and FEMA.

FTA is now allocating an additional \$3.7 billion in Emergency Relief Program funding to the four agencies above, based on a percentage of the anticipated full cost of recovery and rebuilding. Of the \$3.7 billion allocated in this notice, FTA is allocating \$2.4 billion for eligible recovery and rebuilding projects, as outlined in the previous allocation notice and the Interim Final Rule. Combined with the previous allocations (see *78 FR 19357*, March 29, 2013), total allocations for recovery and rebuilding are equivalent to approximately 70 percent of the total projected recovery costs for the hardest hit agencies. The remaining \$1.3 billion allocated in this notice is being provided on a pro-rated basis to these recipients for the cost of projects and project components that are intended to increase those public transportation systems' resiliency to future disasters (resiliency projects). As a result of these allocations to date, the four hardest hit agencies will be permitted to use approximately 23 percent of their Emergency Relief allocations for locally

prioritized resiliency projects and improvements, subject to FTA approval.

Based on FTA's earlier damage assessment efforts and applications submitted for immediate response and recovery costs, FTA is aware that other public agencies suffered serious damage and may request funding for resiliency projects, including, but not limited to, Massachusetts Bay Transportation Authority, Southeastern Pennsylvania Transportation Authority, Connecticut Department of Transportation, New York State Department of Transportation and many smaller transit agencies such as the City of Long Beach and Nassau County Intercounty Express (NICE); and the counties of Putnam, Rockland and Westchester. FTA has funded response and recovery costs for these agencies under the previous allocation, and has reserved approximately \$28 million for additional longer-term recovery and rebuilding projects for these and other affected agencies, which may not have received a pro-rated allocation. These and other eligible entities, which may not be limited to transit agencies, will be permitted to apply for competitive resiliency project funding in a subsequent notice. Evaluation criteria and project eligibility for competitive resiliency project funding will be published in a notice of funding availability.

Recipients of local prioritized resiliency funds made available under this notice are encouraged to pursue projects of a scale and nature commensurate with the funding distribution levels made herein. Primarily, recipients are encouraged to coordinate, as appropriate, resiliency improvements in tandem with recovery and rebuilding projects where joint implementation will prove cost effective. Local prioritized resiliency funds allocated under this notice are also intended for lower cost, stand-alone resiliency improvements that can be implemented relatively quickly. Conversely, larger scale, high cost resiliency investments—particularly those that involve major new infrastructure projects with longer, more complex planning and pre-construction activities; and/or that involve multiple agency contributions beyond a single recipient—will likely be better suited to the subsequent competitive resiliency funding, subject to a future notice that will specify appropriate eligibility and evaluation criteria.

FTA encourages eligible project sponsors to secure funding available under the Disaster Relief Appropriations Act through the formula allocation set forth in this and prior notices and the

competitive application process that will be announced in a future notice. FTA nonetheless recognizes that there may be some projects that are eligible for funding under the Disaster Relief Appropriations Act that are not readily fundable through FTA's Emergency Relief Program. In those limited cases, the Secretary may use his authority under the Act to directly transfer resiliency funds to other agencies to fund programs authorized under titles

23 and 49, United States Code, in order to carry out resiliency projects in areas impacted by Hurricane Sandy. Necessity and urgency are among the factors the Department of Transportation (DOT) will consider in allocating funding to a project outside the formula or competitive processes. While project sponsors are encouraged to use the formula and competitive sponsors if feasible, interested parties may contact the Office of the Secretary for additional

information about the direct transfer process. Should the Secretary make any such transfers, those funds would be administered by the agency receiving the transfer, separate and apart from FTA administrative requirements outlined in this notice.

The following chart<sup>1</sup> illustrates the overall allocation of funding under the FTA Emergency Relief Program:

Award type	Applicants	Available funding	Damage assessment/criteria
Response, Recovery & Rebuilding.	Affected FTA Recipients ...	\$4.4 billion .....	Damage assessments submitted by affected agencies and reviewed by FTA, and costs incurred by affected agencies.
Locally-Prioritized Resiliency	MTA, NJT, PANYNJ, NYCDOT.	\$1.3 billion .....	Resiliency Projects and Project Components as outlined in this notice.
Competitive Resiliency .....	Statutorily Eligible .....	TBD in subsequent notice	TBD in subsequent notice.
Response, Recovery & Rebuilding.	Affected FTA Recipients ...	\$1.1 billion (to be announced in a subsequent notice).	Damage assessments submitted by affected agencies and reviewed by FTA, and costs incurred by affected agencies.
Direct Transfer Resiliency ...	Eligible DOT grantees/funding recipients implementing programs authorized under titles 23 and 49 U.S.C.	TBD .....	TBD.

**B. Use of Funds for Recovery and Resiliency Projects**

Consistent with the February 6, 2013, Federal Register notice, funds allocated in this notice for recovery and rebuilding projects must be used by affected agencies for the cost of emergency operations, emergency protective measures, and emergency and permanent repairs to (or the replacement of) assets that suffered serious damage as a result of the storm. Eligible projects include the repair or replacement of public transportation vehicles, infrastructure and other assets that were seriously damaged by Hurricane Sandy.

Since a significant portion of the seriously damaged transit infrastructure was technologically obsolete, and hence not appropriate to replace in-kind or to restore to the exact previous condition, FTA will fund recovery and rebuilding projects that bring transit assets up to a state of good repair. For the purposes of this allocation, a project is considered to bring the transit assets up to a "state of good repair" if it consists of the installation of comparable equipment that meets the same basic function, class, or capacity of the equipment replaced and also meets current technological or design standards, or a like-new condition. FTA may permit some adjustment to meet current needs, for example, to match other recent

equipment purchases of an agency and to ensure compatibility or consistency (e.g. replacing a 35' bus with a 40' bus, purchasing a bus with a different propulsion system; installing the same fare payment systems as other recent acquisitions). Projects that significantly alter the function or capacity of the underlying transit asset or infrastructure are not eligible recovery and rebuilding projects.

Specifically, when repairing or replacing facilities and infrastructure damaged or destroyed by Hurricane Sandy, the following activities are eligible for Emergency Relief funding: (1) Replacement of older features with new ones; (2) incorporation of current design standards, including those that decrease an asset's vulnerability to future disasters or that increase access to persons with disabilities, including those who use wheelchairs, to the extent practicable; (3) replacement of a destroyed facility to a different location (from its existing location) when driven by resiliency decision-making or when replacing it at the existing location is not practical or feasible; and (4) additional required features resulting from the National Environmental Policy Act (NEPA) process. Rolling stock and other equipment used in public transportation that was damaged or destroyed before the end of its useful life may be replaced with new rolling

stock and equipment. The cost of improvements or changes designed solely to improve the resiliency of transit infrastructure is not eligible as a recovery and rebuilding project expense, and must be funded from the \$1.3 billion allocated in this notice specifically for resiliency projects or resiliency funds made available in the future.

Resiliency projects funded from the \$1.3 billion must be intended to reduce the risk of serious damage from future disasters. As defined in the Interim Final Rule, resiliency is defined as "a capability to anticipate, prepare for, respond to, and recover from significant multi-hazard threats with minimum damage to social well-being, the economy, and the environment." Further, a resiliency project is "a project designed and built to address future vulnerabilities to a public transportation facility or system due to future recurrence of emergencies or major disasters that are likely to occur again in the geographic area in which the public transportation system is located; or projected changes in development patterns, demographics, or extreme weather or other climate patterns."

As such, resiliency projects include eligible FTA transit capital projects as defined under 49 U.S.C. 5302(3) that are designed and built to reduce the risk of serious damage to a vulnerable asset or

<sup>1</sup> The Secretary is authorized by the Disaster Relief Appropriations Act to transfer emergency

relief resiliency funding to other DOT operating administrations for eligible projects.

aspect of the public transportation system. Resiliency projects may also consist of the costs of specific improvements associated with eligible recovery and rebuilding projects that increase the resiliency of the transit asset or system once rebuilt. All resiliency projects funded from the agency's resiliency allocation must be reviewed and approved by FTA, either individually or as part of a program of projects.

Examples of resiliency projects may include: The relocation of critical infrastructure above projected flood levels; waterproofing sensitive equipment and facilities; installing additional or higher capacity water pumps; implementing infrastructure improvements to reduce the intrusion of water into the transit system; improving communications equipment used in disaster management; and the installation of alternate or redundant sources of power for lighting, flood pumps, and dispatch facilities. Specific resiliency projects and improvements should be identified in relationship to the identified vulnerabilities of the transit system to future disasters.

As indicated in section I.A. "Allocation of Funds," resiliency funding allocated in this notice is intended primarily for local priority improvements that can be implemented in tandem with restoration and recovery projects; as well as lower cost stand-alone projects that can be implemented relatively quickly. To inform their project priorities, recipients should use information such as damage assessments from past disasters, including Hurricane Sandy, FEMA's Advisory Base Flood Elevation (ABFE) Maps (see, e.g., <http://www.region2coastal.com/sandy/abfe>), or other hazard vulnerability assessments, and should consider identifying and prioritizing projects for funding based on at least these five considerations:

- (1) the identification of and assessment of the reasonable likelihood of a potential hazard or disaster,
- (2) the vulnerability of a particular system or asset to a particular hazard or disaster, and the criticality of that asset to the overall performance of the transit system,
- (3) the potential extent of damage to the asset or system from the identified hazard(s),
- (4) the total cost of implementing the proposed hazard mitigation or resiliency improvement, and
- (5) the anticipated reduction in damage or other negative impacts that will result from the proposed project.

In addition, with regard to a Hurricane Sandy-related resiliency project located in a floodplain, FTA recipients should consider the requirements of Executive Order 11988 discussed later in this notice.

Recipients are encouraged to consult resources published by FTA for transit agencies under FTA's Climate Change Adaptation Initiative (<http://fta.dot.gov/climatechange>), including the report "Flooded Bus Barns and Buckled Rails: Public Transportation & Climate Change Adaptation." Although the procedures for developing and selecting resiliency projects may differ between FTA and FEMA programs, FTA recipients are also encouraged to review FEMA's hazard mitigation planning and project development resources at <http://www.fema.gov/hazard-mitigation-planning-resources>.

#### C. Pre-Award Authority

In the February 6, 2013, **Federal Register** notice, FTA granted pre-award authority to affected recipients for expenses incurred in preparation for Hurricane Sandy (e.g., evacuation, relocation, protecting and safeguarding assets) and for response and recovery expenses incurred as a result of Hurricane Sandy. Pre-award authority allows affected recipients to incur certain project costs before grant approval and retain the eligibility of those costs for subsequent reimbursement after grant approval.

If a recipient intends to use pre-award authority for the recovery and rebuilding funds allocated in this notice, FTA recommends the recipient submit a proposed program of projects to FTA to verify that all pre-requisite requirements have been met, and that the proposed costs are all eligible under the Emergency Relief Program, in advance of incurring any costs. Pre-award authority for resiliency projects is not automatic; FTA may require a resiliency project funded from the agency's resiliency allocation be reviewed and approved by FTA, either individually or as part of a program of projects, prior to incurring costs. Since this program is new and interim final regulations were published in March 2013, recipients may not be familiar with all applicable statutory and regulatory requirements for this program, including those that might be different from other FTA grant programs. If funds are expended for an ineligible project or activity, or for an eligible activity but at an inappropriate time (e.g., prior to environmental review completion), FTA will be unable to reimburse the project sponsor and, in

certain cases, the entire project may be rendered ineligible for FTA assistance.

Pre-award authority is described in the Emergency Relief Program rule at 49 CFR 602.11. In considering the use of pre-award authority, recipients should be aware of the following:

(i) Pre-award authority is not a legal or implied commitment that the subject project will be approved for FTA assistance or that FTA will obligate Federal funds. Furthermore, it is not a legal or implied commitment that all activities undertaken by the applicant will be eligible for inclusion in the project.

(ii) Except as provided for Categories One, Two and Three in section II.D. of the February 6, 2013, **Federal Register** notice, or waived pursuant to the waiver process described in section J of this notice, all FTA statutory, procedural, and contractual requirements must be met.

(iii) The recipient must take no action that prejudices the legal and administrative findings that FTA must make in order to approve a project.

(iv) The Federal amount of any future FTA assistance awarded to the recipient for the project will be determined on the basis of the overall scope of activities and the prevailing statutory provisions with respect to the Federal/non-Federal match ratio at the time the funds are obligated.

(v) When FTA subsequently awards a grant for the project, the Federal Financial Report in TEAM-Web must indicate the use of pre-award authority.

#### D. Planning Requirements

Emergency Relief projects, excluding initial response and recovery projects under Categories 1, 2 and 3, for which FTA has issued a waiver of the planning requirements, are subject to the joint Federal Highway Administration (FHWA)-FTA planning rule (23 CFR 450.324). The joint planning rule requires that capital and non-capital surface transportation projects (or phases of projects) within the boundaries of the metropolitan planning area proposed for funding under title 23 U.S.C. and 49 U.S.C. chapter 53 be included in the Transportation Improvement Program (TIP) and Statewide Transportation Improvement Program (STIP) prior to incurring costs, unless the project qualifies as one of the exceptions listed in the rule. The planning rule at 23 CFR 450.324 provides that emergency relief projects are not required to be included in the TIP (and STIP) except for those involving substantial functional, locational, or capacity changes.

To qualify for this exception, the recipient must certify in writing that the emergency relief project does not involve substantial functional, locational or capacity changes and that the local share is available. The recipient must submit this documentation to FTA in order for the project to be eligible for federal participation. Absent such certification, FTA expects Emergency Relief projects, including resiliency projects, to be included in the TIP/STIP prior to incurring costs. Recipients may petition FTA for a waiver from this requirement by using the FTA docket process outlined in section J of this notice. FTA encourages recipients to work closely with their metropolitan planning organization (MPO) in determining whether to include emergency relief projects in the TIP, and ultimately in the STIP.

#### *E. 24 Month Expenditure Requirement*

Projects funded through the Disaster Relief Appropriations Act of 2013 are subject to section 904(c) of that Act, which requires expenditure of funds within 24 months of grant obligation, unless this requirement is subsequently waived for this program in accordance with guidance to be issued by the Office of Management and Budget. Absent a waiver, oversight procedures will be put in place to ensure that projects are implemented in accordance with the project schedule.

#### *F. Treatment of Insurance Proceeds*

If a recipient receives or allocates insurance proceeds to a cost for which FTA either allocated or awarded Emergency Relief Program funds, the recipient will be required to amend the grant to reflect a reduced Federal amount, and will be required to reimburse FTA for any FTA payments (drawdown of funds) in excess of the new Federal amount. FTA will deobligate any excess funds from the grant. FTA will subsequently reallocate these funds through the Emergency Relief Program for other eligible Hurricane Sandy emergency relief projects.

If a recipient receives an insurance settlement that is not entirely allocable to specific losses, FTA may require the recipient to allocate a percentage of the settlement to response, recovery and resiliency projects funded by FTA in proportion to the amount of damage that is eligible for funding under the Emergency Relief Program relative to the overall damage sustained by the transit agency. FTA will publish further guidance regarding the treatment of insurance proceeds.

#### *G. Executive Order 11988, Floodplain Management*

Executive Order 11988, Floodplain Management, requires Federal agencies to avoid to the extent possible the long and short-term adverse impacts associated with the occupancy and modification of floodplains and to avoid direct and indirect support of floodplain development wherever there is a practicable alternative. In accordance with the Executive Order, recipients shall not use grant funds for any activity in an area delineated as a 'special flood hazard area' or equivalent, as labeled in FEMA's most recent and current data source, unless, prior to seeking FTA funding for such action, the recipient designs or modifies its actions in order to minimize potential harm to or within the floodplain. To guide decision making, recipients shall use the "best available information" as identified by FEMA, which includes advisory data (such as Advisory Base Flood Elevations), preliminary and final Flood Insurance Rate Maps (FIRMs), and Flood Insurance Studies (FISs). If FEMA data is mutually determined by FTA and the recipient to be unavailable or insufficiently detailed, other Federal, State, or local data may be used as the "best available information" in accordance with Executive Order 11988.

For Hurricane Sandy, the Secretary of Transportation has determined that if a Federally-funded project or activity is located in a floodplain, that the "best available information" requires a minimum baseline standard for elevation no less than that found in FEMA's Advisory Base Flood Elevations, at the 1 percent elevation (also referred to as the 100 year flood elevation), where available, plus one foot (ABFE+1). This determination recognizes that some of the existing FIRMs were developed more than 25 years ago. Updated FIRMs are yet to be finalized and will not be available in time to provide updated information to support vital and immediate reconstruction efforts. This determination is based on FEMA's assessment that, following recent storm events including Hurricane Sandy, the base flood elevations shown on some existing FIRMs do not adequately reflect the current coastal flood hazard risk. FEMA recognizes that the ABFEs are based on sound science and engineering, and are derived from more recent data and improved study methodologies compared to existing FIRMs. To reduce the likelihood of future damage from such risks as storm surge, coastal hazards, and projections of sea level rise, the application of an

ABFE+1 standard provides a limited safeguard against the natural recurrence of flood hazards.

Thus, for projects in floodplains, when considering alternatives to avoid adverse effects and determining how to design or modify actions in order to minimize potential harm to or within the floodplain consistent with Executive Order 11988, recipients should consider that the "best available information" for baseline elevation is ABFE at the 1 percent elevation, or, if that is not available, FIRM, +1 foot. This standard does not necessarily mean that transit agencies will be required to move existing facilities to a higher elevation; however, in order to minimize potential harm within the floodplain in accordance with Executive Order 11988, recipients must consider the best available information (ABFE or FIRMs), including sea level rise consistent with the addition of at least one foot over the most up-to-date elevations. Particularly with respect to existing facilities where relocating them may not be feasible, examples of actions to minimize potential harm to or within the floodplain and reduce the risk of damage from future disasters may include but are not limited to updated design features or added protective features (resiliency projects). Recipients must also consider the best available data on sea-level rise, storm surge, scouring and erosion before rebuilding. Consistent with FTA's interim final rule, if State or locally-adopted code or standards require higher elevations, those higher standards would apply.

#### *H. Use of Force Accounts*

Force accounts refer to the use of a recipient's own labor force to carry out a capital project. Force account work may consist of design, construction, refurbishment, inspection, and construction management activities, if eligible for reimbursement under the grant. Incremental labor costs from flagging protection, service diversions, or other activities directly related to the capital grant may also be defined as force account work. Force account work does not include grant or project administration activities which are otherwise direct project costs. Force account work also does not include preventive maintenance or other items under the expanded definition of capital (i.e. security drills, mobility management) which are traditionally not a capital project.

Any one of the following four conditions may warrant the use of a recipient's own labor force. These are: (1) Cost savings, (2) exclusive expertise, (3) safety and efficiency of operations,



and (4) union agreement. Recipients are required to maintain a force account plan for projects funded under the Emergency Relief program and the plan should be in place prior to incurring costs, unless waived by FTA pursuant to the waiver process described in section J of this notice. Recipients are not required to obtain prior FTA approval of force account plans (including justifications for the use of force accounts) for emergency response and recovery work, however, recipients are encouraged to update force account plans as needed for response and recovery projects on which force account labor will be used.

#### *I. Eligible Sources of Local Match*

The non-Federal share of Emergency Relief grants may be provided from an undistributed cash surplus, a replacement or depreciation cash fund or reserve, or new capital. In addition, recipients may utilize the following provisions for complying with the non-Federal share requirement.

The Community Development Block Grant (CDBG) statute at 42 U.S.C. 5305(i) provides that "payment of the non-Federal share required in connection with a Federal grant-in-aid program undertaken as part of activities assisted under [chapter 53 of title 42]" is an eligible activity. Since the CDBG statute specifically is available to fund the "non-Federal share" of other Federal grant programs, if the activity is eligible under the CDBG program, FTA will accept CDBG funds as local match.

Recipients may also utilize Transportation Development Credits (TDCs), formerly known as Toll Revenue Credits, in place of the non-Federal share. The use of TDCs must be approved by the State, which must send a letter to the FTA Regional Office certifying the availability of sufficient TDCs and approving their use prior to submitting a grant application. Recipients are advised that the use of TDCs means that no local funds will be required for projects in the grant, and that the funds allocated by FTA will not alone be sufficient to fund the entirety of the proposed Emergency Relief projects. FTA will not allocate additional Federal funds to recipients that use TDCs in place of the non-Federal share, so sufficient alternative funds will need to be located to fully finance projects utilizing TDCs. FTA will not approve a retroactive application of TDCs.

#### *J. Waiver Process*

Recipients may request waivers of FTA administrative requirements by submitting a request to

[www.regulations.gov](http://www.regulations.gov), FTA docket number FTA-2013-0001, as described in the February 6, 2013 **Federal Register** notice, and in the Emergency Relief Program rule at 49 CFR § 602.15, however, recipients should not proceed with a project with the expectation that waivers will be provided.

## **II. Award Administration**

### *A. Grant Application*

Once FTA allocates Emergency Relief funds to a recipient, the recipient will be required to submit a grant application electronically via FTA's TEAM system. Prior to submitting a grant application or modification for new recovery and rebuilding projects and for resiliency projects, recipients must submit a proposed list of projects and expenses to FTA's Regional Office for review, consistent with 49 CFR § 602.17. This review will ensure that all proposed projects and costs are eligible under the Emergency Relief Program.

Distinct project identification numbers have been assigned for recovery/rebuilding projects and for resiliency projects. Recipients should work with the FTA Regional Offices to determine when, if appropriate, multiple grant applications may be required. While there is nothing that precludes the obligation of funding allocated for resiliency projects in the same grant as recovery and rebuilding projects, recipients will be required to track these costs separately and to include a separate non-add scope for costs associated with resiliency projects. This will allow FTA to track the obligation of funds for resiliency costs.

Recipients are required to maintain records, including but not limited to all invoices, contracts, time sheets, and other evidence of expenses to assist FTA in periodically validating the eligibility and completeness of a recipient's reimbursement requests under the Improper Payment Information Act.

### *B. Payment*

Upon award, payments to recipients will be made by electronic transfer to the recipient's financial institution through FTA's Electronic Clearing House Operation (ECHO) system.

### *C. Grant Requirements*

Emergency Relief funds may only be used for eligible purposes as defined under 49 U.S.C. 5324 and as described in the Emergency Relief Program Rule (49 CFR part 602) and the February 6, 2013, Notice of Availability of Emergency Relief Funds.

Recipients of section 5324 funds must comply with all applicable Federal

requirements, including FTA's Master Agreement. Each grant for section 5324 funds will include special grant conditions, including but not limited to, application of insurance proceeds, application of any FEMA funds received, section 904(c) of the Disaster Relief Appropriations Act of 2013, Federal share, and enhanced oversight. These special conditions will be incorporated into the grant agreement for all Hurricane Sandy Emergency Relief funds.

### *D. Reporting Requirements*

Post-award reporting requirements include a monthly submission of the Federal Financial Report and Milestone reports in TEAM consistent with FTA's grants management Circular 5010.1D, as well as any other reporting requirements FTA determines are necessary.

### *E. Oversight and Audits*

Recipients are advised that FTA is implementing an enhanced oversight process for Disaster Relief Appropriation Act funds awarded under the Emergency Relief Program. FTA intends to undertake a risk analysis of each recipient and grant to determine the appropriate level of oversight. Within a grant or for scopes in multiple grants FTA will review projects (or scopes) over \$100 million separately. Based on these assessments FTA may assign program level reviews such as procurement system reviews or financial management oversight reviews. FTA also will review random samplings of payments to examine eligibility of costs and proper documentation. FTA will monitor the use of insurance proceeds to ensure they meet program requirements. FTA may undertake other reviews of projects, such as Technical Capacity and Capability Assessments; Risk Assessments; Cost, Schedule, and Scope Reviews; and other reviews FTA determines are necessary.

Project scopes with over \$100 million in Federal funds, or those that are generally expected to exceed \$100 million in Federal funds, will be declared Major Capital Projects (MCPs) and subject to the requirements of Project Management Oversight in 49 CFR 633 Project Management Oversight. However, approval of Project Management Plans will be required before funds drawdown rather than before grant award. All MCPs will be required to have a review meeting at least once every quarter. The meeting requires the participation of FTA and the project sponsor and shall include the FTA Regional Administrator or his or her designee and the project

sponsor's Chief Executive Officer or designee. The objective of the meeting is for FTA and the project sponsor to discuss the overall health of the agency, the status of its project(s), address project issues and discuss potential solutions. Project scopes less than \$100 million may also be declared MCPs at FTA's discretion under the criteria set forth in 49 CFR 633.5.

Construction Grant Agreements will be required for all projects over \$500 million and will be considered for all projects over \$100 million. These construction agreements will: (a) Serve as the legal instrument by which section 5324 funds will be provided to the sponsoring recipient consistent with the Appropriations Act and the interim final rule; (b) describe the project with particularity, and set forth the mutual understandings, terms, conditions, rights and obligations of FTA and the implementing recipient; (c) establish

certain limitations on the Federal financial assistance for the project and the manner in which Federal funds will be awarded and released to the implementing recipient; (d) establish the implementing recipient's obligations to complete the project with a specified amount of Federal funds; and (e) ensure timely and efficient management of the project by the implementing recipient.

Any recipient receiving over \$100 million in Disaster Relief Appropriations Act funds will be required to hire and use independent Integrity Monitors. It is FTA's expectation that such Integrity Monitors will conduct an initial review of all existing procedures and processes for susceptibility to fraud, corruption and cost abuse; recommend and assist in implementing procedures designed to mitigate all risks identified in its initial review; conduct forensic reviews of payment requisitions and supporting

documentation, payments, change-orders, and review for indications of bid rigging and overcharging; provide investigative services, as necessary; conduct periodic, unannounced headcounts of workers to detect and deter the practice of no-show jobs; attend bid openings, scope reviews, and meeting with prospective contractors and vendors to ensure procurements are conducted in accordance with the recipient's rules and regulations and that a "level playing field" is being maintained for all involved; and make recommendations to tighten controls on the procurement process.

In addition, recipients should anticipate a high likelihood of additional scrutiny by the Government Accountability Office (GAO) and the Department of Transportation's Office of the Inspector General (OIG).

FEDERAL TRANSIT ADMINISTRATION

State(s)	Agency	Discretionary funding ID	Previous allocation	Additional recovery and restoration	Resiliency	Total allocations
<b>FTA Section 5324 Emergency Relief Program Allocations for Hurricane Sandy, by Agency*</b>						
NY .....	New York Metropolitan Transportation Authority.	D2013-SAND-014 (recov.); D2013-SAND-015 (resil.).	\$1,194,309,560	\$1,702,462,214	\$897,848,194	\$ 3,794,619,968
NY .....	New York City Department of Transportation.	D2013-SAND-016 (recov.); D2013-SAND-017 (resil.).	33,918,813	2,834,128	8,561,124	45,314,065
NY, NJ .....	Port Authority of New York and New Jersey.	D2013-SAND-018 (recov.); D2013-SAND-019 (resil.).	489,120,634	583,904,018	287,391,637	1,360,416,289
NJ .....	New Jersey Transit Corporation.	D2013-SAND-020 (recov.); D2013-SAND-021 (resil.).	231,191,117	110,799,640	106,199,045	448,189,802
Mult. ....	Other affected agencies.	.....	2,456,379	.....	2,456,379	.....
Multi .....	Reserved for future allocation.	.....	28,048,497	.....	.....	28,048,497
<b>Grand Total .....</b>			<b>1,979,045,000</b>	<b>2,400,000,000</b>	<b>1,300,000,000</b>	<b>5,679,045,000</b>

\* Allocation amounts reflect reductions due to sequestration.

Issued in Washington, DC, this 23rd day of May, 2013.

Peter Rogoff,  
Administrator.

[FR Doc. 2013-12766 Filed 5-28-13; 8:45 am]

BILLING CODE P

DEPARTMENT OF THE TREASURY

Submission for OMB Review;  
Comment Request

May 23, 2013.

The Department of the Treasury will submit the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, Public Law 104-13, on or after the date of publication of this notice.

**DATES:** Comments should be received on or before June 28, 2013 to be assured of consideration.

**ADDRESSES:** Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestion for reducing the burden, to (1) Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Treasury, New Executive Office Building, Room 10235, Washington, DC 20503, or email at [OIRA\\_Submission@OMB.EOP.GOV](mailto:OIRA_Submission@OMB.EOP.GOV) and (2) Treasury PRA Clearance Officer,

Issued in Washington, DC, on March 25, 2013.

**Mark W. Bury,**  
*Acting Assistant Chief Counsel for  
 International Law, Legislation, and  
 Regulations.*

[FR Doc. 2013-07400 Filed 3-28-13; 8:45 am]

BILLING CODE 4910-13-P

**DEPARTMENT OF TRANSPORTATION**

**Federal Transit Administration**

**Allocation of Public Transportation  
 Emergency Relief Funds in Response  
 to Hurricane Sandy**

**AGENCY:** Federal Transit Administration (FTA), DOT.

**ACTION:** Notice of allocation of Emergency Relief funds.

**SUMMARY:** The Federal Transit Administration (FTA) announces the allocation of \$2,000,000,000 under the Public Transportation Emergency Relief Program (Emergency Relief Program, Catalogue of Federal Domestic Assistance #20.527) for FTA recipients affected by Hurricane Sandy, which impacted the northeastern seaboard in October 2012 and had a particularly devastating impact on transit systems in New York and New Jersey. FTA is allocating funds as outlined in a Notice of Availability of Emergency Relief Funds published in the *Federal Register* on February 6, 2013 (78 FR 8691), and consistent with the requirements of the Disaster Relief Appropriations Act of 2013 (Appropriations Act, Pub. L. 113-2).

Concurrently with this notice of allocations, FTA is publishing in today's *Federal Register* an interim final rule (IFR) for the Emergency Relief Program (49 CFR Part 602). This rule outlines general program requirements that will apply to all funds allocated in this notice and to subsequent grant awards under this program. The rule takes effect immediately.

FTA's Emergency Relief Program was authorized by Congress in the Moving Ahead for Progress in the 21st Century Act (MAP-21, Pub. L. 112-141) and provides FTA with primary responsibility for reimbursing emergency response and recovery costs after an emergency or major disaster that affects public transportation systems. The Appropriations Act provides \$10.9 billion for FTA's Emergency Relief Program for recovery, relief and resiliency efforts for public transportation in areas affected by Hurricane Sandy. As a result of the Budget Control Act of 2011 (Pub. L. 112-25), five percent of the \$10.9 billion

made available under the Appropriations Act (\$545,000,000) is subject to the significant spending cuts known as sequestration and is unavailable for Hurricane Sandy disaster relief.

The Appropriations Act requires that not more than \$2 billion shall be made available no later than March 30, 2013. With this notice, FTA is allocating the initial \$2 billion, excluding funds to be used for program implementation and oversight, to recipients affected by Hurricane Sandy (affected recipients) for eligible emergency response and recovery costs.

In the February 6, 2013, *Federal Register* notice, FTA instructed affected recipients to submit requests for reimbursement of eligible expenses incurred in advance of January 29, 2013, and for the costs of contract work advertised and force account work budgeted prior to January 29, 2013. FTA announced individual allocations on a rolling basis beginning March 6, 2013. Table 1 shows a summary of the allocations made in this notice. Table 2 shows the allocation for each affected recipient.

In addition to funds allocated for the reimbursement of costs meeting the above criteria, FTA is allocating the remainder of the initial \$2 billion, based on the anticipated cost of recovery for each affected recipient. These funds are available for eligible emergency operations, emergency protective measures, and emergency and permanent repairs to and replacement of assets that suffered serious damage as a result of the storm. Recipients should develop a list of eligible projects, consistent with the Emergency Relief Program rule, at 49 CFR § 602.17, and review the list of projects with the applicable FTA Regional Office prior to submitting a grant application in FTA's Transportation Electronic Award Management (TEAM) system. FTA granted affected recipients pre-award authority for projects eligible for the initial \$2 billion allocation in the February 6, 2013 *Federal Register* notice. Prior to exercising pre-award authority, recipients are encouraged to work with the appropriate Regional Office to ensure that the applicable Federal requirements are followed. All allocations, including these pro-rated allocations, are included in Table 2.

Guidance regarding project eligibility and determinations regarding applicability of certain FTA requirements issued in the February 6, 2013 notice will only apply to costs incurred prior to January 29, 2013, and to other expenses that meet the requirements specified in that notice for

inclusion under Category One, Two or Three. Recipients may request waivers of FTA administrative requirements by submitting a request to FTA docket number FTA-2013-0001, as described in the February 6, 2013 *Federal Register* notice, and in the Emergency Relief Program rule at 49 CFR § 602.15, however, recipients should not proceed with a project under the expectation that waivers will be provided. Additional program requirements, considerations and grant application procedures specific to these funds are included in this notice.

**FOR FURTHER INFORMATION CONTACT:**

Contact the appropriate FTA Regional Office found at <http://www.fta.dot.gov> for application-specific information and other assistance needed in preparing a TEAM grant application. For program-specific questions, please contact Adam Schildge, Office of Program Management, 1200 New Jersey Ave. SE., Washington, DC 20590, phone: (202) 366-0778, or email, [Adam.Schildge@dot.gov](mailto:Adam.Schildge@dot.gov). For legal questions, contact Bonnie Graves, Office of Chief Counsel, same address, phone: (202) 366-4011, or email, [Bonnie.Graves@dot.gov](mailto:Bonnie.Graves@dot.gov).

**SUPPLEMENTARY INFORMATION:**

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**I. Considerations for Recipients of Emergency Relief Funds**

**A. Allocation of Funds**

FTA is allocating the first \$2 billion to affected recipients in two steps. In the first step, FTA prioritized the reimbursement of immediate response and recovery expenses related to Hurricane Sandy. While the list of eligible activities is the same for all allocations under this notice, in order to qualify for reimbursement in this first step, costs must have met the requirements of one of the following three categories: Category One includes

costs incurred or disbursed prior to January 29, 2013. Category Two includes costs related to requests for proposals or invitations to bid that were advertised prior to January 29, 2013. Category Three includes the costs of future force account work that was budgeted prior to January 29, 2013. FTA has already allocated \$576,620,159 for expenses under Categories One, Two and Three. The specific grant requirements listed in section II.D. in the February 6, 2013, **Federal Register** notice apply to these three categories of projects.

In the second step, FTA is allocating additional funding for pending validated costs requested under Categories One, Two, and Three and for additional eligible recovery and rebuilding costs. For this second step, which involves a pro-rated allocation, FTA is allocating funds based on detailed damage assessments submitted by affected agencies and prepared in cooperation with FTA and FEMA staff and firms contracted by FTA to provide assistance in compiling and reviewing these assessments. FTA, in coordination with FEMA, performed preliminary assessments of the damage caused by Sandy to assets owned by those transit providers in the states of New York and New Jersey most affected by the storm. These transit providers included the following major transit agencies:

- The Metropolitan Transportation Authority, doing business as:
  - MTA New York City Transit (NYCT)
  - MTA Bus Company (MTA Bus)
  - MTA Metro-North Railroad (MNR)
  - MTA Long Island Railroad (LIRR)
  - MTA Capital Construction Division (MTACC)
- The New York City Department of Transportation (NYCDOT)
- The Port Authority of New York and New Jersey (PANYNJ) which operates Port Authority Trans Hudson (PATH) service and the rebuilding of the World Trade Center Transportation Hub and site
- New Jersey Transit

Affected recipients have had the opportunity to review and provide comments on these damage assessments. The damage assessments include an initial overall cost of recovery and rebuilding for the affected agencies, excluding projects to improve the resiliency of the affected systems to future disasters, is approximately \$5.83 billion. Using these initial costs estimates based on these damage assessments, FTA is allocating the remaining \$1,402,424,841, less pending validation of Category One, Two, and

Three expenses, on a pro-rated basis to the agencies listed above and setting aside two percent of this amount for agencies other than these four that suffered damage. From FTA's earlier damage assessment efforts, it knows that New York State Department of Transportation and many smaller transit agencies such as the City of Long Beach and Nassau County Intercounty Express (NICE); and the counties of Putnam, Rockland and Westchester suffered serious damage. Two percent, or \$28,048,497, is available for affected recipients, such as these, that may have eligible expenses not yet reimbursed to date. Affected recipients should contact their regional office to discuss outstanding response and recovery expenses.

As of the date of publication of the Emergency Relief Program rule, FTA is authorized to allocate additional funding beyond the initial \$2 billion allocated in this notice. FTA intends to issue a second Notice of Availability of Emergency Relief Funding in the near future for this additional Hurricane Sandy disaster relief funding, over and above the \$2 billion allocated in this notice.

#### *B. Use of Funds*

Consistent with the February 6, 2013, **Federal Register** notice, funds allocated in this notice are available to reimburse eligible emergency operations, emergency protective measures, and emergency and permanent repairs to and replacement of assets that suffered serious damage as a result of the storm.

FTA has determined that the operating costs of re-establishing regular transit service in the immediate aftermath of the storm are eligible emergency operating expenses and are eligible under this program, subject to the determination by FTA of the appropriate time period and extent of operations as warranted by the condition of the transit system in the immediate aftermath of the storm.

#### *C. Pre-award Authority*

In the February 6, 2013, **Federal Register** notice, FTA granted pre-award authority to affected recipients for expenses incurred in preparation for Hurricane Sandy (e.g., evacuation, relocation, protecting and safeguarding assets) and for response and recovery expenses incurred as a result of Hurricane Sandy. Pre-award authority allows affected recipients to incur certain project costs before grant approval and retain the eligibility of those costs for subsequent reimbursement after grant approval.

If a recipient intends to use pre-award authority for the funds allocated in this notice, FTA recommends the recipient submit a proposed program of projects to FTA to verify that all pre-requisite requirements have been met, and that the proposed costs are all eligible under the Emergency Relief program, in advance of incurring any costs. Since this program is new and interim final regulations are being published concurrently with this allocation, recipients may not be familiar with all applicable statutory and regulatory requirements for this program, including those that might be different from other FTA grant programs. If funds are expended for an ineligible project or activity, or for an eligible activity but at an inappropriate time (e.g., prior to environmental review completion), FTA will be unable to reimburse the project sponsor and, in certain cases, the entire project may be rendered ineligible for FTA assistance.

Pre-award authority is described in the Emergency Relief Program rule at 49 CFR § 602.11. In considering the use of pre-award authority, recipients should be aware of the following:

(i) Pre-award authority is not a legal or implied commitment that the subject project will be approved for FTA assistance or that FTA will obligate Federal funds. Furthermore, it is not a legal or implied commitment that all activities undertaken by the applicant will be eligible for inclusion in the project.

(ii) Except as provided for Categories One, Two and Three in section II.D. of the February 6, 2013, **Federal Register** notice, all FTA statutory, procedural, and contractual requirements must be met.

(iii) The recipient must take no action that prejudices the legal and administrative findings that the FTA Regional Administrator must make in order to approve a project.

(iv) The Federal amount of any future FTA assistance awarded to the recipient for the project will be determined on the basis of the overall scope of activities and the prevailing statutory provisions with respect to the Federal/non-Federal match ratio at the time the funds are obligated.

(v) When FTA subsequently awards a grant for the project, the Federal Financial Report in TEAM-Web must indicate the use of pre-award authority.

#### *D. Application Process*

Amounts allocated for costs in Categories One, Two and Three are based on a recipient's demonstration of expenses incurred for emergency operations and capital repair,

reconstruction and replacement expenses in response to Hurricane Sandy. FTA has reviewed each recipient's justification for reimbursement, and has validated specific costs as eligible for reimbursement. Recipients are permitted to submit grant applications in TEAM upon the announcement of an allocation for these expenses. FTA's Regional Offices will review these grant applications for consistency with each agency's request for reimbursement.

Amounts allocated for costs outside these three categories are based on damage assessments prepared by FTA staff, FEMA staff, and contractors. Prior to submitting a grant application or modification for new recovery and rebuilding projects, recipients should submit a proposed list of projects and expenses to FTA's Regional Office for review, consistent with 49 CFR § 602.17. Upon verification by FTA that such projects are eligible, recipients may submit grant applications in TEAM. This review will ensure that all proposed projects and costs are eligible under the Emergency Relief Program.

Recipients are required to maintain records, including but not limited to all invoices, contracts, time sheets, and other evidence of expenses to assist FTA in periodically validating the eligibility and completeness of a recipient's reimbursement requests.

#### *E. 24 Month Expenditure Requirement*

Projects funded through the Disaster Relief Appropriations Act of 2013 are subject to section 904(c) of that Act, which requires expenditure of funds within 24 months of grant obligation, unless this requirement is subsequently waived for this program in accordance with guidance to be issued by the Office of Management and Budget. In all cases, oversight procedures will be put in place to ensure that projects are implemented in accordance with the project schedule.

#### *F. Waiver of Remaining Useful Life Requirement*

FTA is implementing a blanket waiver to relieve FTA recipients from its useful life requirement with respect to assets that were destroyed or seriously damaged as a result of the storm and taken out of service before the end of their useful life. Due to the damage inflicted by Hurricane Sandy, facilities and equipment that have suffered serious damage and hence qualify for replacement under the Emergency Relief Program are presumed to have no remaining useful life. As a result of this waiver, recipients may apply for funds to replace assets at a 90% Federal share

without regard to the Federal share remaining in the destroyed asset.

#### *G. Disposition of Damaged or Destroyed Assets*

Although FTA has determined that federally-funded assets seriously damaged or destroyed by Hurricane Sandy have no remaining useful life, recipients may have a financial obligation to FTA for assets that have a fair market value (FMV) in excess of \$5,000 at the time of disposition.

Each recipient must notify FTA of how it is disposing of any federally-funded assets that have reached the end of their useful life (or those for which FTA has waived remaining useful life) that have a FMV greater than \$5,000 and calculate the pro-rata share of the FMV if FTA funded the asset.

Consistent with the common grant rule at 49 CFR § 18.32(e), FTA Circular 5010.1D, "Grant Management Requirements," October 1, 2008, Chapter IV, subsection 3, [http://www.fta.dot.gov/documents/C\\_5010\\_1D\\_Finalpub.pdf](http://www.fta.dot.gov/documents/C_5010_1D_Finalpub.pdf), discusses disposition of equipment that has reached the end of its service life. If the unit has a FMV of \$5,000 or more, then the recipient must reimburse FTA's share of the fair market value of the FTA assisted equipment. Reimbursements and documentation should be documented in the Sandy grant in TEAM.

#### *H. Treatment of Insurance Proceeds*

As stated in the February 6, 2013, Notice of Availability of Emergency Relief Funding, recipients that have received insurance payments for damaged equipment and facilities prior to the receipt of FTA Emergency Relief funding must reduce their reimbursement request by the amount of insurance proceeds allocated for the repair or replacement of a given asset. FTA will participate at a 90 percent Federal share of the net project cost after application of insurance proceeds. If a recipient receives or allocates insurance proceeds to a project after receiving FTA Emergency Relief funds, the recipient must repay to FTA either 90 percent or 100 percent of the insurance proceeds received, depending on the Federal share for that project. Remaining insurance proceeds after repayment may be used as local match. In the event a recipient receives insurance proceeds for an asset and decides not to replace that asset, the waiver of useful life described in section F does not apply, and the recipient must reimburse FTA the remaining Federal interest in that asset in accordance with FTA Circular 5010.1D.

#### *I. Executive Order 11988, Floodplain Management*

Executive Order 11988, Floodplain Management, requires Federal agencies to avoid to the extent possible the long and short-term adverse impacts associated with the occupancy and modification of floodplains and to avoid direct and indirect support of floodplain development wherever there is a practicable alternative. In accordance with the Executive Order, recipients shall not use grant funds for any activity in an area delineated as a 'special flood hazard area' or equivalent, as labeled in the Federal Emergency Management Administration's (FEMA) most recent and current data source, unless, prior to seeking FTA funding for such action, the recipient designs or modifies its actions in order to minimize potential harm to or within the floodplain. To guide decision making, recipients shall use the "best available information" as identified by FEMA, which includes advisory data (such as Advisory Base Flood Elevations), preliminary and final Flood Insurance Rate Maps (FIRMs), and Flood Insurance Studies (FISs). If FEMA data is mutually determined by FTA and the recipient to be unavailable or insufficiently detailed, other Federal, State, or local data may be used as the "best available information" in accordance with Executive Order 11988.

For Hurricane Sandy, the Secretary of Transportation has determined that if a Federally-funded project or activity is located in a floodplain, that the "best available information" requires a minimum baseline standard for elevation no less than that found in FEMA's Advisory Base Flood Elevations, where available, plus one foot (ABFE+1). This determination recognizes that the existing Flood Insurance Rate Maps (FIRMs) for the New Jersey and New York coastlines were developed more than 25 years ago. Updated FIRMs are yet to be finalized and will not be available in time to provide updated information to support vital and immediate reconstruction efforts. This determination is based on FEMA's assessment that, following recent storm events including Hurricane Sandy, the base flood elevations shown on some existing FIRMs do not adequately reflect the current coastal flood hazard risk. FEMA recognizes that the ABFEs are based on sound science and engineering, and are derived from more recent data and improved study methodologies compared to existing FIRMs. To reduce the likelihood of future damage from such risks as storm surge, coastal hazards, and projections of sea level rise, the application of an

ABFE+1 standard provides a limited safeguard against the natural recurrence of flood hazards.

Thus, for projects in floodplains, when considering alternatives to avoid adverse effects and determining how to design or modify its actions in order to minimize potential harm to or within the floodplain consistent with Executive Order 11988, recipients should consider that the "best available information" for baseline elevation is ABFE, or, if that is not available, FIRM+1. This standard does not mean that transit agencies will be required to move existing facilities to a higher elevation; however, in order to minimize potential harm within the floodplain in accordance with Executive Order 11988, recipients must consider the best available information (ABFE or FIRMs), including sea level rise consistent with the addition of at least one foot over the most up to date elevations. Particularly with respect to existing facilities where relocating them may not be feasible, examples of actions to minimize potential harm to or within the floodplain and reduce the risk of damage from future disasters include but are not limited to updated design features or added protective features (resiliency projects). Consistent with FTA's interim final rule, if State or locally adopted code or standards require higher elevations, those higher standards would apply.

## II. Award Administration

### A. Grant Application

Once FTA allocates Emergency Relief funds to a recipient, the recipient will be required to submit a grant application electronically via FTA's TEAM system. Recipients should work with their FTA Regional Office to develop and submit their application in TEAM so that funds can be obligated expeditiously. Grant applications in TEAM may only include eligible activities under the Emergency Relief program.

A discretionary project identification number has been assigned to each recipient's allocation for tracking purposes and must be used in the TEAM application.

### B. Payment

Upon award, payments to recipients will be made by electronic transfer to the recipient's financial institution through FTA's Electronic Clearing House Operation (ECHO) system.

### C. Grant Requirements

Emergency Relief funds may only be used for eligible purposes as defined under 49 U.S.C. 5324 and as described in the Emergency Relief Program Rule (49 CFR Part 602) and the February 6, 2013, Notice of Availability of Emergency Relief Funds.

Recipients of section 5324 funds must comply with all applicable Federal requirements, including FTA's Master

Agreement. Each grant for section 5324 funds will include special grant conditions, including but not limited to, application of insurance proceeds, application of any FEMA funds received, section 904(c) of the Disaster Relief Appropriations Act of 2013, Federal share, and enhanced oversight.

### D. Reporting Requirements

Post-award reporting requirements include a monthly submission of the Federal Financial Report and Milestone reports in TEAM consistent with FTA's grants management Circular 5010.1D, as well as any other reporting requirements FTA determines are necessary.

### E. Oversight and Audits

Recipients are advised that FTA will implement an enhanced oversight process for funds awarded under the Emergency Relief Program in response to Hurricane Sandy. FTA will issue separate guidance on the applicable oversight procedures for grants awarded in response to Hurricane Sandy. In addition, recipients should anticipate a high likelihood of additional scrutiny by the Government Accountability Office (GAO) and the Department of Transportation's Office of the Inspector General (OIG).

Issued in Washington, DC, this 25th day of March, 2013.

**Peter Rogoff,**  
Administrator.  
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**FEDERAL TRANSIT ADMINISTRATION****Table 1****FTA Section 5324 Emergency Relief Program***Allocation of \$2 Billion for Hurricane Sandy Disaster Relief*

<b>FY 2013 Disaster Relief Appropriations Available</b>						<b>\$</b>	<b>2,000,000,000</b>
<b>Less Transfer to DOT Office of the Inspector General (OIG)</b>						<b>\$</b>	<b>(6,000,000)</b>
<i>Actual amount available for DOT OIG<sup>1</sup></i>						<b>\$</b>	<b>(5,700,000)</b>
<b>Less Program Administration and Oversight</b>						<b>\$</b>	<b>(14,955,000)</b>
<b>Less Allocations to Date (Categories One, Two, Three)<sup>2</sup></b>						<b>\$</b>	<b>(576,620,159)</b>
<b>Total Available for Pro-Rated Allocation</b>						<b>\$</b>	<b>1,402,424,841</b>

<sup>1</sup> The actual amount reflects a five percent reduction as a result of the Budget Control Act of 2011 (Pub. L. 112-25) and the March 1, 2013, OMB Report to the Congress on the Joint Committee Sequestration for Fiscal Year 2013. The reduction is applied to the total appropriation for Hurricane Sandy (less the transfer to the OIG) and for purposes of this allocation was applied to the amount transferred to the OIG.

<sup>2</sup> FTA has allocated funds to date for eligible expenses in three categories. The three categories represent eligible disaster response and recovery expenses incurred, advertised or budgeted prior to January 29, 2013, as described in the February 6, 2013 Notice of Availability of Emergency Relief Funding.

## FEDERAL TRANSIT ADMINISTRATION

Table 2

## FTA Section 5324 Emergency Relief Program

Allocations for Hurricane Sandy, by Agency

State(s)	Agency	Discretionary Funding ID	Allocated to Date	Pro-Rated Allocations	Total Allocations
CT	Greater Bridgeport Transit District	D2013-SAND-009	\$ 21,783	\$ -	\$ 21,783
CT	Milford Transit District	D2013-SAND-007	\$ 5,352	\$ -	\$ 5,352
CT	Connecticut Department of Transportation	D2013-SAND-010	\$ 55,622	\$ -	\$ 55,622
MA	Massachusetts Bay Transportation Authority	D2013-SAND-011	\$ 344,311	\$ -	\$ 344,311
NY	New York Metropolitan Transportation Authority	D2013-SAND-001	\$ 193,893,898	\$ 1,000,415,662	\$ 1,194,309,560
NY	New York City Department of Transportation <sup>1</sup>	D2013-SAND-012	\$ 21,889,326	\$ 12,029,487	\$ 33,918,813
NY, NJ	Port Authority of New York and New Jersey <sup>2</sup>	D2013-SAND-002; D2013-SAND-008	\$ 213,963,997	\$ 275,156,637	\$ 489,120,634
NJ	New Jersey Transit Corporation	D2013-SAND-004	\$ 144,416,559	\$ 86,774,558	\$ 231,191,117
NY	City of Long Beach	D2013-SAND-006	\$ 518,364	\$ -	\$ 518,364
NY	Westchester County Department of Transportation	D2013-SAND-005	\$ 317,200	\$ -	\$ 317,200
PA	Southeastern Pennsylvania Transportation Authority	D2013-SAND-003	\$ 1,192,568	\$ -	\$ 1,192,568
RI	Rhode Island Public Transit Authority	D2013-SAND-013	\$ 1,179	\$ -	\$ 1,179
N/A	Other (2% of pro-rated allocation) <sup>3</sup>		\$ -	\$ 28,048,497	\$ 28,048,497
	<b>Grand Total</b>		<b>\$ 576,620,159</b>	<b>\$ 1,402,424,841</b>	<b>\$ 1,979,045,000</b>

<sup>1</sup>New York City Department of Transportation's pro-rated allocation includes an allocation of \$11,700,000 for an expense that is pending validation.

<sup>2</sup> Includes two project-specific allocations. A total of \$159,720,171 has been allocated for the Port Authority Trans Hudson Rail Service and \$54,243,826 has been allocated for the World Trade Center Hub Project

<sup>3</sup> Pro-rated allocation for "other" is reserved for agencies that have additional costs that were not allocated under the Category One, Two, Three allocation and have not received an allocation based on their currently estimated cost of recovery.

[FR Doc. 2013-07268 Filed 3-28-13; 8:45 am]

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**DEPARTMENT OF TRANSPORTATION**

**Maritime Administration**

[Docket No. MARAD-2013 0026]

**Requested Administrative Waiver of the Coastwise Trade Laws: Vessel W.L. STEWART III; Invitation for Public Comments**

**AGENCY:** Maritime Administration, Department of Transportation.

**ACTION:** Notice.

**SUMMARY:** As authorized by 46 U.S.C. 12121, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by

MARAD. The vessel, and a brief description of the proposed service, is listed below.

**DATES:** Submit comments on or before April 29, 2013.

**ADDRESSES:** Comments should refer to docket number MARAD-2013-0026. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE., Washington, DC 20590. You may also send comments electronically via the Internet at <http://www.regulations.gov>. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on

the World Wide Web at <http://www.regulations.gov>.

**FOR FURTHER INFORMATION CONTACT:**

Linda Williams, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE., Room W23-453, Washington, DC 20590. Telephone 202-366-0903, Email [Linda.Williams@dot.gov](mailto:Linda.Williams@dot.gov).

**SUPPLEMENTARY INFORMATION:**

As described by the applicant the intended service of the vessel W.L. STEWART III is:

*Intended Commercial Use of Vessel:* "Yacht Club Regatta and Sailing Instruction Support"

*Geographic Region:* "California"

The complete application is given in DOT docket MARAD-2013-0026 at <http://www.regulations.gov>. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in



output from the Organisation for Economic Cooperation and Development (OECD) calculation procedures. EPA is also establishing the separate tolerance on pepper at 0.80 ppm which is different than the requested tolerance at 0.7 ppm for pepper/eggplant subgroup 8–10B. EPA based the 0.80 tolerance level on the non-bell-pepper residue data and OECD Calculation Procedures.

Finally, to account for the establishment of a “separate” pepper tolerance, EPA re-defined the existing crop group tolerance expression “vegetable, fruiting, group 8” as “vegetable, fruiting, group 8, except pepper”.

**V. Conclusion**

Therefore, tolerances are established for residues of clothianidin, (E)-1-(2-chloro-1,3-thiazol-5-ylmethyl)-3-methyl-2-nitroguanidine, in or on tea, dried at 70 ppm, pepper at 0.80 ppm, and vegetable, fruiting, group 8, except pepper at 0.20 ppm.

**VI. Statutory and Executive Order Reviews**

This final rule establishes tolerances under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled “Regulatory Planning and Review” (58 FR 51735, October 4, 1993). Because this final rule has been exempted from review under Executive Order 12866, this final rule is not subject to Executive Order 13211, entitled “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use” (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled “Protection of Children from Environmental Health Risks and Safety Risks” (62 FR 19885, April 23, 1997). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), nor does it require any special considerations under Executive Order 12898, entitled “Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations” (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerances in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), do not apply.

This final rule directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled “Federalism” (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled “Consultation and Coordination with Indian Tribal Governments” (65 FR 67249, November 9, 2000) do not apply to this final rule. In addition, this final rule does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (2 U.S.C. 1501 *et seq.*).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA) (15 U.S.C. 272 note).

**VII. Congressional Review Act**

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

**List of Subjects in 40 CFR Part 180**

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: March 15, 2013.

Lois Rossi,  
Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

**PART 180—[AMENDED]**

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. Section 180.586 is amended in paragraph (a)(1) by revising the commodity “vegetable, fruiting, group 8”, by alphabetically adding the commodities “pepper” and “tea, dried”, and by adding footnote 1 to the table to read as follows:

**§ 180.586 Clothianidin; tolerances for residues.**

(a) *General.* (1) \* \* \*

Commodity	Parts per million
Pepper .....	0.80
Tea, dried <sup>1</sup> .....	70
Vegetable, fruiting, group 8, except pepper .....	0.20

<sup>1</sup> No U.S. registrations.

\* \* \* \* \*

[FR Doc. 2013-07093 Filed 3-28-13; 8:45 am]

BILLING CODE 6560-50-P

**DEPARTMENT OF TRANSPORTATION**

**Federal Transit Administration**

**49 CFR Part 602**

[Docket No. FTA-2013-0004]

RIN 2132-AB13

**Emergency Relief Program**

**AGENCY:** Federal Transit Administration (FTA), DOT.

**ACTION:** Interim final rule; request for comments.

**SUMMARY:** This action establishes procedures governing the implementation of the Federal Transit Administration’s (FTA) Public Transportation Emergency Relief Program under 49 U.S.C. 5324, as authorized by the Moving Ahead for Progress in the 21st Century Act. FTA is issuing this interim final rule in order to comply with the Disaster Relief Appropriations Act of 2013. FTA will accept comments on the interim final rule and will publish a final rule after the comment period closes.

**DATES:** This interim final rule becomes effective on March 29, 2013. Comments on this interim final rule are due May 28, 2013. Late-filed comments will be considered to the extent practicable. In compliance with the Paperwork Reduction Act, FTA is also seeking

comment on a new information collection. See the Paperwork Reduction Act section under Regulatory Analyses and Notices below. Please submit all comments relating to new information collection requirements to FTA and to the Office of Management and Budget (OMB) at the address listed in the ADDRESSES section on or before May 28, 2013. Comments to OMB are most useful if submitted within 30 days of publication.

**ADDRESSES:** Please submit your comments by only one of the following methods, identifying your submission by docket number FTA-2013-0004. All electronic submissions must be made to the U.S. Government electronic site at <http://www.regulations.gov>.

(1) **Federal eRulemaking Portal:** Go to <http://www.regulations.gov> and follow the online instructions for submitting comments.

(2) **Mail:** Docket Management Facility: U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building, Ground Floor, Room W12-140, Washington, DC 20590-0001.

(3) **Hand Delivery or Courier:** West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE., between 9 a.m. and 5 p.m. Eastern time, Monday through Friday, except Federal holidays.

(4) **Fax:** 202-493-2251.

Comments regarding the proposed information collection should be submitted to FTA through one of the preceding methods and a copy should also be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725-17th Street NW., Washington, DC 20503, Attention: FTA Desk Officer.

**Instructions:** You must include the agency name (Federal Transit Administration) and Docket number (FTA-2013-0004) for this notice at the beginning of your comments. Submit two copies of your comments if you submit them by mail. For confirmation that FTA received your comments, include a self-addressed stamped postcard. Note that all comments received will be posted without change to [www.regulations.gov](http://www.regulations.gov) including any personal information provided and will be available to internet users. You may review DOT's complete Privacy Act Statement published in the **Federal Register** on April 11, 2000 (65 FR 19477).

**Docket:** For access to the docket to read background documents and comments received, go to [www.regulations.gov](http://www.regulations.gov) at any time or to the U.S. Department of Transportation, 1200 New Jersey Ave SE., Docket Operations, M-30, West Building

Ground Floor, Room W12-140, Washington, DC 20590 between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** For program issues: Adam Schildge, Office of Program Management, 1200 New Jersey Ave. SE., Room E44-420, Washington, DC 20590, phone: (202) 366-0778, or email, [Adam.Schildge@dot.gov](mailto:Adam.Schildge@dot.gov). For legal issues: Bonnie Graves, Office of Chief Counsel, same address, Room E56-306, phone: (202) 366-4011, or email, [Bonnie.Graves@dot.gov](mailto:Bonnie.Graves@dot.gov).

#### SUPPLEMENTARY INFORMATION:

##### Background

The Moving Ahead for Progress in the 21st Century Act (MAP-21, Pub. L. 112-141) authorized the Public Transportation Emergency Relief Program at 49 U.S.C. 5324. The Emergency Relief Program allows FTA to make grants for eligible public transportation capital and operating costs in the event of a catastrophic event, such as a natural disaster, that affects a wide area, as a result of which the Governor of a State has declared an emergency and the Secretary of Transportation has concurred, or the President has declared a major disaster under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act, 42 U.S.C. 5121-5207).

The Disaster Relief Appropriations Act, 2013 (Pub. L. 113-2), enacted on January 29, 2013, provides \$10.9 billion for FTA's Emergency Relief Program solely for recovery, relief and resiliency efforts in areas affected by Hurricane Sandy. The law provides that not more than \$2 billion shall be made available no later than March 30, 2013. On February 6, 2013, FTA issued a notice of availability of emergency relief funds for the first \$2 billion (78 FR 8691). In accordance with the statute, the remainder of the appropriated funds will be made available only after FTA enters into a Memorandum of Agreement (MOA) with the Federal Emergency Management Agency (FEMA) as required by section 20017(b) of MAP-21, and FTA issues interim regulations for the Emergency Relief Program. FTA entered into an MOA with FEMA on March 4, 2013 (available at [http://www.fta.dot.gov/documents/FTA\\_FEMA\\_MOA.pdf](http://www.fta.dot.gov/documents/FTA_FEMA_MOA.pdf)). This interim final rule meets the requirement for interim regulations.

Projects funded through the Disaster Relief Appropriations Act of 2013 are subject to section 904(c) of that Act, which requires expenditure of funds within 24 months of grant obligation,

unless this requirement is waived for this program in accordance with guidance to be issued by the Office of Management and Budget. In all cases, oversight procedures will be put in place to ensure that projects are implemented in accordance with the project schedule.

This interim final rule applies to FTA's Emergency Relief Program, authorized at 49 U.S.C. 5324, and is not limited to Hurricane Sandy response. The rule includes a description of eligible projects, the criteria FTA will use to identify projects for funding, and additional details on how FTA will administer the program. As with FTA's recent **Federal Register** notice of availability of emergency relief funds for Hurricane Sandy (78 FR 8691, Feb. 6, 2013), FTA will set priorities regarding the type of projects that will most likely receive funding for each specific emergency, based on the facts of the emergency and the type of relief most needed, as well as the availability of annual and supplemental appropriations. FTA seeks public comment on this interim final rule.

##### Authority

Section 5324(a)(2) of title 49, United States Code, defines an "emergency" as follows:

The term 'emergency' means a natural disaster affecting a wide area (such as a flood, hurricane, tidal wave, earthquake, severe storm, or landslide) or a catastrophic failure from any external cause, as a result of which—

(A) the Governor of a State has declared an emergency and the Secretary has concurred; or

(B) the President has declared a major disaster under section 401 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5170).

Section 5324(b) of title 49, United States Code, authorizes the Secretary to make awards for FTA's Emergency Relief (Emergency Relief) Program as follows:

**General Authority.**—The Secretary may make grants and enter into contracts and other agreements (including agreements with departments, agencies, and instrumentalities of the Government) for—

(1) capital projects to protect, repair, reconstruct, or replace equipment and facilities of a public transportation system operating in the United States or on an Indian reservation that the Secretary determines is in danger of suffering serious damage, or has suffered serious damage, as a result of an emergency; and

(2) eligible operating costs of public transportation equipment and facilities in an area directly affected by an emergency during—

(A) the 1-year period beginning on the date of a declaration described in subsection (a)(2); or

(B) if the Secretary determines there is a compelling need, the 2-year period beginning on the date of a declaration described in subsection (a)(2).

In addition, section 5324(d) provides that a grant awarded under section 5324 shall be subject to the terms and conditions the Secretary determines are necessary, and made only for expenses that are not reimbursed under the Stafford Act. Accordingly, FTA will not fund project expenses that FEMA has funded.

### Section-by-Section Analysis

#### Section 602.1 Purpose

This section states the purpose of the rule, which is to establish policy and provide program requirements for the administration of emergency relief funds for emergency public transportation services, and the protection, replacement, repair or reconstruction of public transportation equipment and facilities which have suffered or are in danger of suffering serious damage by a natural disaster over a wide area or a catastrophic failure from an external cause.

#### Section 602.3 Applicability

This section specifies that part 602 applies to entities that provide public transportation services and that are impacted by emergencies and major disasters.

#### Section 602.5 Definitions

This section provides definitions that apply to terms used in part 602. Some of the definitions are statutory, such as "emergency," which is found in 49 U.S.C. 5324, "major disaster," found in the Stafford Act, and "net project cost," found in 49 U.S.C. 5302. Other definitions, such as "catastrophic failure," "emergency repairs," "external cause," "heavy maintenance," and "serious damage" are included in the Federal Highway Administration's (FHWA) emergency relief rule (23 CFR part 668). For consistency, FTA has incorporated these definitions into the FTA Emergency Relief Program.

The definition of "emergency operations" is consistent with the definition in 49 U.S.C. 5324. Eligible emergency operating assistance expenses are for operating costs outside the scope of a recipient's typical service or operations, and include but are not limited to: costs to assist with evacuations prior to an emergency and to assist with rescue operations; the net project cost of providing temporary public transportation service, such as

bus or ferry service around inoperable rail lines, or additional service to meet the needs of an influx of evacuees; and the net project costs related to reestablishing, expanding, or relocating public transportation service before, during, or after an emergency or major disaster.

Section 5324 provides that capital projects to "protect" equipment and facilities in danger of suffering serious damage are an eligible expense. FTA has included two definitions that address these types of projects. First, "emergency protective measures" are actions taken immediately before, during or after an emergency to protect public health and safety, and to protect property from immediate damage or from further immediate damage. Such actions eliminate or lessen immediate threats to public health or safety, or eliminate or lessen the immediate threat of significant damage or additional damage to an affected recipient's property through measures that are cost effective. This definition is consistent with FEMA's description of emergency protective measures in 44 CFR 206.225. Some examples of emergency protective measures include, but are not limited to: moving rolling stock to protect it from damage, for example, to higher ground in order to protect it from storm surges; emergency communications; security forces; sandbagging; bracing/shoring damaged structures; debris removal; dewatering; and removal of health and safety hazards.

Second, for this rule, we have defined the term "resilience" to mean a capability to anticipate, prepare for, respond to, and recover from significant multi-hazard threats with minimum damage to social well-being, the economy, and the environment. This definition of "resilience" is consistent with the definition in the 2010 *Interagency Climate Change Adaptation Task Force Progress Report to the President and America's Climate Choices: Adapting to the Impacts of Climate Change* by the National Academy of Sciences. A "resiliency project" is a project designed and built to address future vulnerabilities to a public transportation facility or system due to future recurrence of emergencies or major disasters that are likely to occur again in the geographic area in which the public transportation system is located; or projected changes in development patterns, demographics, or extreme weather or other climate patterns. "Permanent repairs" are defined as those repairs undertaken following the disaster occurrence for the purpose of repairing, replacing or reconstructing seriously damaged public

transportation system elements, including rolling stock, equipment, facilities and infrastructure to a state of good repair. For all capital projects, the cost to perform the work, whether by in-house or contracted personnel, is an eligible cost. FTA seeks public comment on these definitions.

#### Section 602.7 Policy

This section describes FTA's policies related to the Emergency Relief Program. FTA's first goal in the Emergency Relief Program is to assist public transportation agencies in restoring public transportation service and in repairing and reconstructing transit assets to a state of good repair as expeditiously as possible. FTA has not defined the term "state of good repair" in this rule. This summer, FTA plans to issue interim policy guidance on the definition of the term state of good repair, and also plans to issue an advance notice of proposed rulemaking for the transit asset management program authorized by 49 U.S.C. 5326. In conjunction with repair and reconstruction activities, a second goal is to increase the resiliency of affected public transportation systems in order to help protect those systems from damage due to future emergencies and major disasters.

Grants awarded with section 5324 funds, as well as grants awarded under sections 5307 and 5311 for emergency relief purposes, may be made only for expenses that are not reimbursed by FEMA under the Stafford Act, or by other Federal agencies, or by insurance proceeds. If an applicant has already received FEMA or other Federal agency funding or insurance proceeds, the applicant may not apply for FTA emergency relief funding for the same project expenses. However, partial compensation for a loss by such other sources will not preclude FTA participation for the part of the loss not compensated. For example, insurance proceeds may only cover the value of a vehicle at the time it was destroyed, and not the cost to replace that vehicle. Consistent with FTA Circular 5010.1D, FTA may participate in the replacement cost beyond what the insurance proceeds may cover.

If FTA makes a grant and the recipient subsequently receives compensation from another source, the funds received from the other source must be used to reduce FTA's share of the project cost. FTA seeks public comment on the aforementioned policies and other policies for ensuring emergency relief funds are expended efficiently and consistent with the law's purposes.

The language in FTA's Emergency Relief Program at 49 U.S.C. 5324 is the same as the FHWA's Emergency Relief Program at 23 U.S.C. 125, in that assets must have "suffered serious damage." FHWA's Emergency Relief Program rule provides that the Emergency Relief Program "is not intended to fund heavy maintenance or routine emergency repair activities which should normally be funded as contingency items in the State and local road programs." 23 CFR 668.105(j). Therefore, FHWA has determined that eligible Emergency Relief repair activities in a State in the range of \$700,000 (Federal share) or more are usually significant enough to justify approval of Emergency Relief funds.

FTA has not included such a provision in this interim final rule, but has included a definition of heavy maintenance and § 602.13 provides that heavy maintenance is not an eligible activity. FTA seeks public comment on whether and how, in a final rule, FTA should establish a similar policy that sets a minimum monetary damage threshold for FTA participation in the cost of repair, reconstruction, or replacement activities for public transportation systems after an emergency. Similarly, FTA seeks comment on whether there should be a minimum monetary cost threshold for emergency protective measures or emergency operations. Further, on what basis should FTA establish minimum cost thresholds for FTA participation, given that the size of public transportation systems and the resources of entities that operate them vary? In other words, should such a threshold vary based on the size of public transportation systems, as measured by annual revenue miles, directional miles, number of vehicles, unlinked passenger trips, budget, or some other basis?

#### *Section 602.9 Federal Share*

This section of the interim final rule provides that the Federal share for emergency relief project funds made available under 49 U.S.C. 5324, for both operating and capital projects, shall be for up to 80 percent of the project cost, unless the Secretary waives the local share requirement. This section also provides that when a recipient chooses to use funds available to it under 49 U.S.C. 5307 or 5311 for emergency projects, the Federal share will be 80 percent for capital projects and 50 percent for operating projects, which is consistent with the Federal share requirements of those sections. FTA seeks public comment on these Federal share requirements.

#### *Section 602.11 Pre-Award Authority*

This section describes the conditions under which FTA will grant pre-award authority. The purpose of pre-award authority is to allow affected recipients to respond to critical needs in preparation for, or in the immediate aftermath of, an emergency or major disaster, and in advance of receiving a grant from FTA under the Emergency Relief Program. Generally, pre-award authority will be effective beginning on the effective date of the declared emergency or major disaster, and subject to the appropriation of Emergency Relief Program funds. In expected weather events, such as hurricanes, pre-award authority for evacuations and activities to protect public transportation vehicles, equipment and facilities, shall be effective within a reasonable period of time in advance of the event, such as during the period the storm is forecast with some certainty to hit the affected area. FTA seeks comment on whether the language "forecast with some certainty to hit the affected area" is specific enough, or if FTA should adopt a policy with more specificity. FEMA Policy FP 010-4, May 18, 2012, ([pre\\_disaster\\_emergency\\_declaration\\_requests\\_policy\\_fp010\\_4\[2\].pdf](#)) provides the conditions under which FEMA will fund pre-disaster emergency protective measures. For example, a Federal agency must determine or affirm that a potential major disaster is imminent, the Governor must take action under State law and direct execution of the State emergency plan, and Direct Federal Assistance must be needed to meet critical emergency protection requirements before impact that are beyond the capability or capacity of the State, tribal or local governments; or the appropriate State, tribal, or local governments must have issued evacuation orders for three or more areas or for a geographical area with a combined population of more than 100,000 individuals. Adopting text similar to this in the final rule would provide affected recipients with some certainty as to when FTA would fund emergency protective measures, evacuations, etc.

Pre-award authority shall be subject to a maximum amount as determined by FTA. Except as provided in section 602.15 of this interim final rule, all applicable Federal grant requirements must be met for the project to remain eligible for Federal funding. As with pre-award authority for FTA's other programs, pre-award authority is not a legal or implied commitment that the project will be approved for FTA assistance or that FTA will obligate

Federal funds, and affected recipients expend local funds at their own risk. Furthermore, pre-award authority is not a legal or implied commitment that all activities undertaken by the applicant will be eligible for inclusion in the project. In other words, not all activities undertaken by the applicant may be eligible for Federal assistance, even if the project is otherwise eligible. FTA seeks public comment on the use of pre-award authority for the Emergency Relief Program.

#### *Section 602.13 Eligible Activities*

This section describes the eligible activities under 49 U.S.C. 5324, as well as activities ineligible for emergency relief funding. An affected recipient may apply for section 5324 emergency relief funds on behalf of itself as well as affected subrecipients.

Emergency operations, emergency protective measures, emergency repairs, permanent repairs and resiliency projects, as those terms are defined in section 602.5 of this rule, are eligible for emergency relief funding. Affected recipients should repair, replace or reconstruct seriously damaged public transportation system elements as necessary to restore the elements to a state of good repair taking into account current as well as future conditions and risks. For example, replace destroyed rolling stock with new rolling stock, replace older seriously damaged elements with new ones, incorporate current design standards, replace a destroyed facility at a different location when replacing at the existing location is not practical or feasible, or when doing so will eliminate vulnerabilities to future disasters, incorporate additional required features resulting from the environmental review process, and incorporate or add protective features or design standards in order to protect the equipment or facilities from future damage. In other words, FTA does not expect affected recipients to replace old, destroyed rolling stock, equipment, and elements of facilities with similarly-aged rolling stock, equipment, and elements of facilities. Instead, affected recipients should replace these destroyed elements with new ones. New rolling stock acquired to replace destroyed rolling stock should be fully compliant with current safety and other design standards, including the Americans with Disabilities Act (ADA), as well as Buy America requirements. Facilities damaged by the emergency or disaster that require substantial work to bring into a state of good repair should be similarly brought up to current design standards, including the ADA. In addition, where

feasible, resiliency projects should be incorporated into replacement and repairs such that equipment, facilities and infrastructure will be protected from future disasters.

It is not the intent or purpose of the Emergency Relief Program to provide substitute funding for regular capital maintenance that is not a result of an emergency or major disaster. Therefore, heavy maintenance and projects for which funds were obligated in an FTA grant prior to the declared emergency or major disaster are not eligible expenses under the Emergency Relief Program. In addition, FTA will not fund project costs for which the recipient has received funding through FEMA, another Federal agency or through insurance proceeds. In general, projects that change the function of the original infrastructure, and do not enhance or otherwise improve system resiliency—for example, a change from a bus rapid transit system to light rail, or a replacement of bus shelters with intermodal facilities, or projects that significantly upgrade a maintenance facility—do not qualify for Emergency Relief funding. However, formula and other funds available to the recipient may be used in conjunction with Emergency Relief Program funds to make substantial changes or improvements to an affected transit asset during the course of an Emergency Relief project.

Replacing damaged diesel buses with compressed natural gas or other clean fuel buses is eligible under the Emergency Relief Program, but any costs associated with new alternative fueling stations or maintenance facilities is not eligible for Emergency Relief funds. Those associated costs are eligible, however, under FTA's formula programs, and recipients and subrecipients may use funds apportioned under sections 5307 or 5311 formula funds for those costs. Lost revenue as a result of service disruptions is not an eligible expense. Finally, project costs associated with the replacement or replenishment of stockpiles of materials that are not the property of the affected recipient and have not yet been integrated into the public transportation system are not eligible. This would include contractor-owned property on a construction site that has not yet been installed, and would be covered by the contractor's insurance company. This is distinguished from the cost to replace spare parts and other maintenance items necessary for the operation of the system that are seriously damaged or destroyed as a result of an emergency, which is an eligible expense. FTA seeks

public comment on the list of eligible and ineligible activities.

FTA also requests comment on the extent of the benefit-cost analysis that is appropriate to carry out in the context of emergency repairs, permanent repairs, and resiliency projects. Because the benefits of resiliency projects include a reduction in the risk of damage from future emergencies, FTA particularly requests comments on the extent of risk analysis that should be conducted for resiliency projects. Similarly, factoring in the full cost of the loss of the function or service provided by critical transit infrastructure can affect how benefit-cost analyses should be addressed. For example, damage to rail and transit infrastructure can result in additional costs to transit riders who would use alternative modes of travel or forgo a trip, and result in decreases in business productivity because employees cannot get to work. Similarly, the transit system serves to help move people and goods before, during and after an emergency, a function that is very detrimental to lose and expensive to replace once lost. FTA welcomes comment on how these costs should be taken into account in a benefit-cost analysis.

#### *Section 602.15 Grant Requirements*

Section 5324(d) of title 49, United States Code provides that a grant awarded under sections 5324, 5307 and 5311 that is made to address an emergency shall be subject to the terms and conditions the Secretary determines are necessary. In general, projects will be subject to the requirements of chapter 53 of title 49, United States Code, as well as cross-cutting requirements, including but not limited to those outlined in FTA's Master Agreement.

This section provides information as to when FTA may determine the inapplicability of Federal requirements in order to expedite restoration of service through delivery of Emergency Relief Program funds. FTA will determine the terms and conditions of Emergency Relief grants based on the circumstances of a specific emergency or major disaster for which funding is available under the Emergency Relief Program.

FTA may determine the inapplicability of requirements associated with public transportation programs as necessary and appropriate for emergency repairs, permanent repairs, and emergency operating expenses that are incurred within 45 days of the emergency or major disaster, or longer as determined by FTA. This 45-day period is consistent with FTA's charter rule at 49 CFR 604.2(f), which

provides that the charter rule does not apply to a recipient for actions directly responding to an emergency or major disaster. If FTA determines that any requirement does not apply, this determination shall apply to all eligible activities undertaken with funds authorized under 49 U.S.C. 5324 within the 45-day period, as well as funds authorized under 49 U.S.C. 5307 and 5311 and used for eligible emergency relief activities.

In the event an affected recipient or subrecipient finds that FTA requirements would limit the recipient's or subrecipient's ability to respond to an emergency or major disaster, the affected recipient or subrecipient may request that applicable requirements be waived in accordance with the emergency relief docket process as outlined below. Affected recipients and subrecipients should never assume that a waiver will be granted.

Under 49 CFR part 601, subpart D, FTA establishes an emergency relief docket each calendar year. The purpose of the docket is to allow recipients affected by national or regional emergencies to request relief from FTA administrative requirements set forth in FTA policy statements, circulars, guidance documents, and regulations. As stated above, 49 U.S.C. 5324(d) provides that a grant awarded under section 5324 or under section 5307 or 5311 to address an emergency shall be subject to the terms and conditions the Secretary determines are necessary. Effective with calendar year 2013, recipients affected by an emergency or major disaster may request waivers of chapter 53 requirements when the requirement(s) will limit a recipient's or subrecipient's ability to respond to an emergency or major disaster. Recipients must follow the procedures as set forth in 49 CFR part 601, subpart D when requesting a waiver of statutory or administrative requirements. FTA seeks public comment on the types of requirements that FTA should prospectively determine inapplicable or waived in the event of an emergency or major disaster.

Executive Order 11988, Floodplain Management, requires Federal agencies to avoid to the extent possible the long and short-term adverse impacts associated with the occupancy and modification of floodplains and to avoid direct and indirect support of floodplain development wherever there is a practicable alternative. The Executive Order provides an eight-step process that agencies should carry out as part of their decision-making on projects that have potential impacts to or within the floodplain. Executive Order 11988 is

further implemented by DOT Order 5650.2, Floodplain Management and Protection.

Since this rule addresses natural disasters, including weather events that can produce serious flooding, FTA has included a provision in this rule that addresses Executive Order 11988. Specifically, recipients shall not use grant funds for any activity in an area delineated as a 'special flood hazard area' or equivalent, as labeled in the Federal Emergency Management Administration's (FEMA) most recent and current data source, unless, prior to seeking FTA funding for such action, the recipient designs or modifies its actions in order to minimize potential harm to or within the floodplain, in accordance with Executive Order 11988. To guide decision making, recipients shall use the "best available information" as identified by FEMA, which includes advisory data (such as Advisory Base Flood Elevations), preliminary and final Flood Insurance Rate Maps (FIRMs), and Flood Insurance Studies (FISs). If FEMA data is mutually determined by FTA and the recipient to be unavailable or insufficiently detailed, other Federal, State, or local data may be used as the "best available information" in accordance with Executive Order 11988.

The final determination on "best available information" shall be used to establish such reconstruction requirements as a project's minimum elevation. In certain situations, notably where a project or activity is located within a special flood hazard area, use of FTA funds will require that a project and activity shall be designed and constructed in accordance with specific and additional reconstruction terms, such as elevated minimums for project elevations (e.g. best available data plus one foot in elevation), as determined necessary to adequately enhance long-term structural resilience, and mitigate against the reoccurrence of flood-related damages. Additionally, in scenarios where higher minimum elevations are required by either State or locally adopted building codes or standards, the higher of the competing minimums would apply. This standard does not necessarily mean that transit agencies will be required to move existing facilities to a higher elevation; however, in order to minimize potential harm within the floodplain in accordance with Executive Order 11988, recipients should consider updated design features or added protective features (resiliency projects) in order to reduce the risk of damage from future disasters. A base flood elevation from an interim or preliminary or non-FEMA source cannot

be used if it is lower than the current FIRM. Recipients shall also consider the best available data on sea-level rise, storm surge, scouring and erosion before rebuilding. In all instances, FTA retains the authority to award funds in direct alignment with recipient acceptance of and continued compliance with Federal determinations regarding increased standards for floodplain management. FTA seeks public comment on this provision.

#### *Section 602.17 Application Procedures*

Applications for Emergency Relief funding must include a detailed damage assessment report to support the request for assistance for capital projects. Typically, a damage assessment involves on-the-ground visits to the damaged sites to verify the extent of the damage and to estimate the cost of repairs. The damage assessment report should be coordinated with FEMA, if appropriate, to avoid duplication of effort. FTA seeks comment on how to maximize harmonization of FTA and FEMA requirements for damage assessment reports. The damage assessment report should include, by political subdivision or other generally recognized administrative or geographic boundaries, a description of the types and extent of damage to public transportation systems and a preliminary estimate of cost of restoration, replacement, or reconstruction for seriously damaged systems in each jurisdiction. Pictures showing the kinds and extent of damage and sketch maps detailing the damaged areas should be included, as appropriate, in the damage assessment report. In addition, the damage assessment report should include recommendations for resiliency projects to protect equipment and facilities from future emergencies and disasters.

FTA is requesting public comment regarding whether, with respect to requests for Emergency Relief funding for permanent repairs or resiliency projects relating to damaged or destroyed facilities, it is appropriate to incorporate requirements of Section 1315(b) of MAP-21 such that the damage assessment report should include an evaluation of whether such damaged or destroyed facilities have repeatedly required repair or reconstruction in the past. If so, FTA seeks comment as to whether the applicant should evaluate whether there are reasonable alternatives that could reduce the need for Federal funds to be expended on such repair or reconstruction activities in the future, better protect public safety, health and the environment, and/or meet

transportation needs as described in relevant and applicable Federal, State, local and tribal plans.

Generally, a damage assessment report should be completed within six weeks of the emergency or major disaster. For large disasters where extensive damage to public transportation systems is readily evident, the appropriate FTA Regional Administrator may approve a grant application under section 602.17(f) prior to submission of the damage assessment report. In these cases, the applicant shall prepare and submit to the appropriate FTA Regional Administrator an abbreviated or preliminary damage assessment report, summarizing eligible repair costs by jurisdiction, after the damage inspections have been completed.

The applicant shall include the damage assessment report as an appendix to the grant application. In addition to the report, an applicant shall submit a copy of the Governor's declaration or a Presidential declaration; a list of projects which describes emergency operations, emergency protective measures, and emergency repairs completed as well as permanent work needed to repair or replace the damaged or destroyed rolling stock, equipment, facilities, and infrastructure; and supporting documentation showing other sources of funding available, including insurance policies, agreements with other Federal agencies, and any other source of funds available to address the damage resulting from the emergency or major disaster.

Applications for emergency operating expenses must include the dates, hours, number of vehicles, and total fare revenues received (if any) for the emergency service. Only net project costs may be reimbursed.

Applicants that apply for and/or receive funding from another Federal agency, including FEMA, for operating expenses and also seek funding from FTA for operating costs must include a copy of the agreement with the other Federal agency, including the scope of the agreement, the amount funded, and the dates the other Federal agency funded operating costs, as well as the scope of service and dates for which the applicant is seeking FTA funding. Applicants that apply for and/or receive funding from another Federal agency, including FEMA, for emergency or permanent repairs or emergency protective measures and also seek funding from FTA for emergency or permanent repairs or emergency protective measures must include a copy of the agreement with the other Federal agency, including the scope of



the agreement, the amount funded, and a list of projects included in the other Federal agency's application.

Each applicant is responsible for preparing and submitting a grant application, and the appropriate FTA regional office may provide technical assistance to the applicant in preparing a list of projects for the grant application. This work may involve joint site inspections to view damage and reach tentative agreement on the type of permanent corrective work the applicant will undertake. The data collected must be sufficient to make a determination of eligibility of the proposed work. The FTA Regional Administrator's approval of the grant application constitutes a finding of eligibility under 49 U.S.C. 5324. FTA seeks public comment on the application procedures.

#### Rulemaking Analyses and Notices

All comments received on or before the close of business on the comment closing date indicated above will be considered and will be available for examination in the docket at the above address. Comments received after the comment closing date will be filed in the docket and will be considered to the extent practicable. A final rule may be published at any time after close of the comment period.

#### Immediate Effective Date

As required by the Disaster Relief Appropriations Act of 2013, FTA is issuing this interim final rule in order to implement the Emergency Relief Program and to provide information regarding the application procedures for Emergency Relief Program grants in response to Hurricane Sandy. This interim final rule is effective immediately. In addition, FTA requests comments on the rule, given that its requirements will apply to the Emergency Relief Program in general, and not only to grant funds disbursed in response to Hurricane Sandy.

The Administrative Procedure Act (5 U.S.C. 553(d)) requires that a rule be published 30 days prior to its effective date unless one of three exceptions applies. One of these exceptions is when the agency finds good cause for a shorter period. Here, FTA has determined that good cause exists for immediate effectiveness of this rule because the rule is expected to address the immediate need to repair transit system facilities, infrastructure and equipment damaged by Hurricane Sandy. Hurricane Sandy affected mid-Atlantic and northeastern states in October 2012, and particularly devastated transit operations in New

Jersey and New York. Through immediate promulgation of the interim final rule, many of the much-needed Hurricane Sandy recovery efforts can occur in a more expeditious manner. Thus, it is in the public interest for this final rule to have an immediate effective date.

FTA will publish a notice responding to any comments received and, if appropriate, will amend provisions of the rule. If FTA subsequently establishes criteria or conditions for grants made under the Emergency Relief Program that are different from those in this interim final rule, the different criteria or conditions will not be applied retroactively to applications submitted or grants awarded consistent with this interim final rule, unless the change benefits the applicant.

#### Executive Order 12866 (Regulatory Planning and Review), EO 13563 (Improving Regulation and Regulatory Review), and DOT Regulatory Policies and Procedures

FTA has determined preliminarily that this action is a significant regulatory action within the meaning of Executive Order 12866 and is significant within the meaning of Department of Transportation regulatory policies and procedures because of substantial congressional, State and local government, and public interest. Those interests include restoring public transportation service as quickly as possible after an emergency or major disaster, the receipt of Federal financial support for repairing and replacing public transportation investments damaged or destroyed by emergencies and major disasters as expeditiously as possible, and the receipt of Federal financial support for emergency operations before, during and after emergencies and major disasters.

FTA has determined that this is an economically significant rule within the meaning in Executive Order 12866 because of the amount of funding FTA reasonably expects to distribute as a result of Hurricane Sandy. FTA was appropriated \$10.9 billion for the Emergency Relief Program in response to Hurricane Sandy, and FTA expects to distribute more than \$100 million to entities impacted by the hurricane in the upcoming year. The Obama Administration's budget request included \$25 million for fiscal year 2013 for the Emergency Relief program, and the authorization in 49 U.S.C. 5338(f) is for "such sums as are necessary to carry out section 5324." Congress did not appropriate any funds for the Emergency Relief Program in the 2013 Continuing Appropriations

Resolution (Pub. L. 112-175). Hurricane Sandy was an extraordinary event resulting in historical damage to public transportation systems. While it is impossible to predict how much funding Congress might appropriate for the Emergency Relief Program for extraordinary events such as Hurricane Sandy, in a typical year without an extraordinary event such as Hurricane Sandy, FTA does not expect this rule to have an economic impact greater than \$100 million.

The purpose of this interim final rule is to provide grant application procedures and describe eligible activities as directed by statute. The rule itself does not affect the total amount of grant funds available to States or local governmental authorities. That amount will be specified in annual or supplemental appropriations acts of Congress. FTA will distribute funds through the Emergency Relief Program consistent with the requirements of this rule to those States and local governmental authorities that have experienced emergencies or major disasters.

Through the Emergency Relief Program, FTA will reimburse affected recipients for eligible operating and capital costs incurred as a result of an emergency or major disaster. MAP-21 generally prescribes the criteria and types of projects eligible for emergency relief grants, and FTA has exercised limited discretion in this rulemaking to implement the statute.

While complying with the application procedures set forth in this rule is a requirement for receiving grant funds, the rule does not impose any mandate on States or governmental authorities to submit an application. However, should a State or local governmental authority choose to submit an application, there are some costs and burdens associated with the application process. FTA received emergency clearance from OMB under the Paperwork Reduction Act (PRA) for funds made available by the Disaster Relief Appropriations Act, and included in this notice is a request for comment for the information collection required by this rule. Interested persons should consult the Paperwork Reduction Act section of this document for further information.

#### Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (Pub. L. 96-354, 5 U.S.C. 601-612), FTA has evaluated the effects of this interim final rule on small entities and has determined the interim final rule will not have a significant economic impact on a substantial number of small entities. Recipients of

Emergency Relief Program funds are generally States and local governmental authorities. The only burden placed upon local governments by this rule is the small paperwork burden associated with the application process, which is addressed in the Paperwork Reduction Act section of this notice and is designed to minimize the paperwork burdens of the rule. For this reason, FTA certifies that this action will not have a significant economic impact on a substantial number of small entities.

#### **Unfunded Mandates Reform Act of 1995**

This interim final rule will not impose unfunded mandates as defined by the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4, March 22, 1995, 109 Stat. 48). The Federal share for grants made under the Emergency Relief Program is 80 percent, and the Secretary may waive all or part of the non-Federal share. This interim final rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$143.1 million or more in any one year (2 U.S.C. 1532).

#### **Executive Order 13132 (Federalism)**

This interim final rule has been analyzed in accordance with the principles and criteria established by Executive Order 13132, and FTA has determined that this interim final rule will not have sufficient Federalism implications to warrant the preparation of a Federalism assessment. FTA has also determined that this interim final rule will not preempt any State law or State regulation or affect the States' abilities to discharge traditional State governmental functions.

#### **Executive Order 12372 (Intergovernmental Review)**

The regulations effectuating Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this interim final rule.

#### **Paperwork Reduction Act**

On February 6, 2013, in compliance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 *et seq.*) and the Office of Management and Budget (OMB) implementing regulation at 5 CFR 1320.13, FTA received emergency approval from OMB for an Information Collection for funds appropriated by the Disaster Relief Appropriations Act (Information Collection number 2132-0575). The approval for this information collection will expire on August 13, 2013.

In compliance with the PRA and OMB implementing regulation at 5 CFR 1320.8(d), FTA is seeking longer-term approval from OMB for Information Collection number 2132-0575, for which FTA received emergency approval, as abstracted below. The Information Collection includes not only funds specific to Hurricane Sandy but for the Emergency Relief Program in its entirety. In order to receive emergency relief funds, applicants will be required to fill out and submit a grant application. This is the same grant application used by FTA recipients for other FTA programs and will be submitted electronically through the Transportation Electronic Award and Management (TEAM) system. In addition to the grant application, applicants will be required to develop a damage assessment report. FTA is seeking comment on whether the information collected will have practical utility; whether its estimation of the burden of the proposed information collection is accurate; whether the burden can be minimized through the use of automated collection techniques or other forms of information technology; and for ways in which the quality, utility, and clarity of the information can be enhanced.

*Type of Review:* OMB Clearance.

Updated information collection request.

*Respondents:* In any given year, FTA estimates that as many as 20 recipients may experience an emergency that is declared by a Governor of a State or the President. The PRA estimate was based on a total of 20 recipients seeking emergency relief funds per year.

*Frequency:* Information will be collected periodically whenever an applicant applies for emergency relief funding.

*Estimated Total Annual Burden Hours:* 3,600. FTA estimates the average annual time burden per applicant is 180 hours. This estimate includes: (1) 50 hours for preparation of a grant application, including any supplemental emergency relief forms (49 CFR 602.17(b)); (2) 50 hours per grant recipient to develop a damage assessment report (49 CFR 602.17(a)); and 80 hours for project management, including submission of Milestone Progress Reports, Federal Financial Reports and other required reports.

Additional documentation detailing FTA's Paperwork Reduction Act Information Collection Request, including FTA's Justification Statement, may be accessed from OMB's Web site at <http://www.reginfo.gov/public/do/PRAsearch>, Information Collection number 2132-0575. OMB is required to file comments or make a decision

concerning the proposed information rule within 60 days after receiving the information collection request submission from FTA. FTA will summarize and respond to any comments on the proposed information collection request from OMB and the public in the preamble to the final rule.

#### **National Environmental Policy Act**

The National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), requires Federal agencies to analyze the potential environmental effects of their proposed actions either through a Categorical Exclusion, an Environmental Assessment or an Environmental Impact Statement. This interim final rule is categorically excluded under FTA's NEPA implementing procedures at 23 CFR 771.118(c)(4), which covers planning and administrative activities which do not involve or lead directly to construction, such as the promulgation of rules, regulations and directives. FTA has determined that no unusual circumstances exist and that this Categorical Exclusion is applicable.

#### **Executive Order 12898 (Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations)**

Executive Order 12898 directs every Federal agency to make environmental justice part of its mission by identifying and addressing the effects of all programs, policies, and activities on minority populations and low-income populations. The DOT's environmental justice initiatives accomplish this goal by involving the potentially affected public in developing transportation projects that fit harmoniously within their communities without sacrificing safety or mobility. FTA has developed a program circular addressing environmental justice in transit projects, C 4703.1, *Environmental Justice Policy Guidance for Federal Transit Administration Recipients*. The Circular is designed to provide a framework to assist recipients as they integrate principles of environmental justice into their transit decision-making process. The Circular contains recommendations for State DOTs, MPOs and transit providers on (1) How to fully engage environmental justice populations in the transportation decision-making process; (2) how to determine whether environmental justice populations would be subjected to disproportionately high and adverse human health or environmental effects of a public transportation project, policy, or activity; and (3) how to avoid, minimize, or mitigate these effects.



**Executive Order 12630 (Taking of Private Property)**

This action will not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

**Executive Order 12988 (Civil Justice Reform)**

This action meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

**Executive Order 13045 (Protection of Children)**

FTA has analyzed this action under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. FTA certifies that this interim final rule will not cause an environmental risk to health or safety that may disproportionately affect children.

**Executive Order 13175 (Tribal Consultation)**

FTA has analyzed this action under Executive Order 13175 (Nov. 6, 2000), and believes that it will not have substantial direct effects on one or more Indian tribes; will not impose substantial direct compliance costs on Indian tribal governments; and will not preempt tribal laws. Therefore, a tribal summary impact statement is not required.

**Executive Order 13211 (Energy Effects)**

FTA has analyzed this action under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use (May 18, 2001). FTA has determined that it is not a significant energy action under that order since it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Therefore, a Statement of Energy Effects is not required.

**Privacy Act**

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review U.S. DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477).

**Regulation Identification Number**

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN set forth in the heading of this document can be used to cross-reference this action with the Unified Agenda.

**List of Subjects in 49 CFR Part 602**

Disaster assistance, Grant programs, Mass transportation, Transportation.

Issued on: March 25, 2013.

Peter M. Rogoff,  
*Administrator.*

For the reasons set forth in the preamble, FTA amends Chapter VI of Title 49, Code of Federal Regulations, by adding Part 602, as set forth below.

**PART 602—EMERGENCY RELIEF**

Sec.

- 602.1 Purpose.
- 602.3 Applicability.
- 602.5 Definitions.
- 602.7 Policy.
- 602.9 Federal share.
- 602.11 Pre-award authority.
- 602.13 Eligible activities.
- 602.15 Grant requirements.
- 602.17 Application procedures.

**Authority:** 49 U.S.C. 5324 and 5334; 49 CFR 1.91.

**§ 602.1 Purpose.**

This part establishes the procedures and eligibility requirements for the administration of emergency relief funds for emergency public transportation services, and the protection, replacement, repair or reconstruction of public transportation equipment and facilities which are found to have suffered or are in danger of suffering serious damage by a natural disaster over a wide area or a catastrophic failure from an external cause.

**§ 602.3 Applicability.**

This part applies to entities that provide public transportation services and that are impacted by emergencies and major disasters.

**§ 602.5 Definitions.**

The following definitions apply to this part:

**Affected recipient.** A recipient or subrecipient that operates public transportation service in an area impacted by an emergency or major disaster.

**Applicant.** An entity that operates or allocates funds to an entity to operate

public transportation service and applies for a grant under 49 U.S.C. 5324.

**Catastrophic failure.** The sudden failure of a major element or segment of the public transportation system due to an external cause. The failure must not be primarily attributable to gradual and progressive deterioration or lack of proper maintenance.

**Emergency.**—A natural disaster affecting a wide area (such as a flood, hurricane, tidal wave, earthquake, severe storm or landslide) or a catastrophic failure from any external cause, as a result of which:

(1) The Governor of a State has declared an emergency and the Secretary of Transportation has concurred; or

(2) The President has declared a major disaster under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5170).

**Emergency operations.** The net project cost of temporary service that is outside the scope of an affected recipient's normal operations, including but not limited to: evacuations; rescue operations; bus or ferry service to replace inoperable rail service or to detour around damaged areas; additional service to accommodate an influx of passengers or evacuees; returning evacuees to their homes after the disaster or emergency; and the net project costs related to reestablishing, expanding, or relocating public transportation service before, during, or after an emergency or major disaster.

**Emergency protective measures.** (1) Capital projects undertaken immediately before, during or following the emergency or major disaster for the purpose of protecting public health and safety or for protecting property. Such projects:

- (i) Eliminate or lessen immediate threats to public health or safety; or
- (ii) Eliminate or lessen immediate threats of significant damage or additional damage to an affected recipient's property through measures that are cost effective.

(2) Examples of such projects include, but are not limited to:

- (i) Moving rolling stock in order to protect it from damage, e.g., to higher ground in order to protect it from storm surges;
- (ii) Emergency communications;
- (iii) Security forces;
- (iv) Sandbagging;
- (v) Bracing/shoring damaged structures;
- (vi) Debris removal;
- (vii) Dewatering; and
- (viii) Removal of health and safety hazards.

**Emergency repairs.** Capital projects undertaken immediately following the

emergency or major disaster, until such time as permanent repairs can be undertaken, for the purpose of:

- (1) Minimizing the extent of the damage, or
- (2) Restoring service.

*External cause.* An outside force or phenomenon that is separate from the damaged element and not primarily the result of existing conditions.

*Heavy maintenance.* Work usually done by a recipient or subrecipient in repairing damage normally expected from seasonal and occasionally unusual natural conditions or occurrences, such as routine snow removal, debris removal from seasonal thunderstorms, or heavy repairs necessitated by excessive deferred maintenance. This may include work required as a direct result of a disaster, but which can reasonably be accommodated by a recipient or subrecipient's routine maintenance, emergency or contingency program.

*Major Disaster.* Any natural catastrophe (including any hurricane, tornado, storm, high water, wind-driven water, tidal wave, tsunami, earthquake, volcanic eruption, landslide, mudslide, snowstorm, or drought), or, regardless of cause, any fire, flood, or explosion, in any part of the United States, which in the determination of the President causes damage of sufficient severity and magnitude to warrant major disaster assistance under the Stafford Act to supplement the efforts and available resources of States, local governments, and disaster relief organizations in alleviating the damage, loss, hardship, or suffering caused thereby. 42 U.S.C. 5122.

*Net project cost.* The part of a project that reasonably cannot be financed from revenues. 49 U.S.C. 5302.

*Permanent repairs.* Capital projects undertaken following the emergency or major disaster for the purpose of repairing, replacing or reconstructing seriously damaged public transportation system elements, including rolling stock, equipment, facilities and infrastructure, as necessary to restore the elements to a state of good repair.

*Recipient.* An entity that operates public transportation service and receives Federal transit funds directly from FTA.

*Resilience/Resiliency.* A capability to anticipate, prepare for, respond to, and recover from significant multi-hazard threats with minimum damage to social well-being, the economy, and the environment.

*Resiliency Project.* A project designed and built to address future vulnerabilities to a public transportation facility or system due to future recurrence of emergencies or major

disasters that are likely to occur again in the geographic area in which the public transportation system is located; or projected changes in development patterns, demographics, or extreme weather or other climate patterns.

*Serious damage.* Heavy, major or unusual damage to a public transportation facility which severely impairs the safety or usefulness of the facility. Serious damage must be beyond the scope of heavy maintenance.

*State.* Any one of the United States, the District of Columbia, Puerto Rico or the Virgin Islands, Guam, American Samoa or Commonwealth of the Northern Mariana Islands.

*Subrecipient.* An entity that operates public transportation service and receives FTA funding through a recipient.

#### § 602.7 Policy.

(a) The Emergency Relief Program is intended to aid recipients and subrecipients in restoring public transportation service and in repairing and reconstructing public transportation assets to a state of good repair as expeditiously as possible following an emergency or major disaster.

(b) Emergency relief funds are not intended to supplant other Federal funds for correction of preexisting, non-disaster related deficiencies.

(c) In conjunction with repair and reconstruction activities, recipients may include projects that increase the resiliency of affected public transportation systems to protect the systems from the effects of future emergencies and major disasters.

(d) The expenditure of emergency relief funds for emergency repair shall be in such a manner so as to reduce, to the greatest extent feasible, the cost of permanent restoration work completed after the emergency or major disaster.

(e) Emergency relief funds, or funds made available under 49 U.S.C. 5307 (Urbanized Area Formula Program) or 49 U.S.C. 5311 (Rural Area Formula Program) awarded for emergency relief purposes shall not duplicate assistance under another Federal program or compensation from insurance or any other source. Partial compensation for a loss by other sources will not preclude FTA emergency relief fund assistance for the part of such loss not compensated otherwise. Any compensation for damages or insurance proceeds for repair or replacement of the public transit equipment or facility must be used upon receipt to reduce FTA's emergency relief fund participation in the project.

#### § 602.9 Federal share.

(a) A grant, contract, or other agreement for emergency operations, emergency protective measures, emergency repairs, permanent repairs and resiliency projects under 49 U.S.C. 5324 shall be for up to 80 percent of the net project cost.

(b) A grant made available under 49 U.S.C. 5307 or 49 U.S.C. 5311 to address an emergency shall be for up to 80 percent of the net project cost for capital projects, and up to 50 percent of the net project cost for operations projects.

(c) The FTA Administrator may waive, in whole or part, the non-Federal share required under paragraphs (a) and (b) of this section.

#### § 602.11 Pre-award authority.

(a) Except as provided in paragraph (b) of this section, pre-award authority for the Emergency Relief Program shall be effective beginning on the effective date of a declaration of emergency or major disaster, and subject to the appropriation of Emergency Relief Program funds.

(b) For expected weather events, pre-award authority for evacuations and activities to protect public transportation vehicles, equipment and facilities, shall be effective within a reasonable period of time in advance of the event, such as during the period the storm is forecast with some certainty to hit the affected area.

(c) Pre-award authority shall be subject to a maximum amount determined by FTA based on estimates of immediate financial need, preliminary damage assessments, available Emergency Relief funds and other criteria to be determined.

(d) Pre-award authority is not a legal or implied commitment that the subject project will be approved for FTA assistance or that FTA will obligate Federal funds. Furthermore, it is not a legal or implied commitment that all activities undertaken by the applicant will be eligible for inclusion in the project(s).

(e) Except as provided in § 602.15, all FTA statutory, procedural, and contractual requirements must be met.

(f) The recipient must take no action that prejudices the legal and administrative findings that the FTA Regional Administrator must make in order to approve a project.

(g) The Federal amount of any future FTA assistance awarded to the recipient for the project will be determined on the basis of the overall scope of activities and the prevailing statutory provisions with respect to the Federal/non-Federal match ratio at the time the funds are obligated.

(h) When FTA subsequently awards a grant for the project, the Financial Status Report in FTA's electronic grants management system must indicate the use of pre-award authority.

**§ 602.13 Eligible activities.**

(a) An affected recipient may apply for emergency relief funds on behalf of itself as well as affected subrecipients.

(b) Eligible uses of Emergency Relief funds include:

(1) Emergency operations;

(2) Emergency protective measures;

(3) Emergency repairs;

(4) Permanent repairs;

(5) Actual engineering and

construction costs on approved projects; and

(6) Resiliency projects.

(c) Ineligible uses of Emergency Relief funds include:

(1) Heavy maintenance;

(2) Project costs for which the recipient has received funding from another Federal agency;

(3) Project costs for which the recipient has received funding through payments from insurance policies;

(4) Projects that change the function of the original infrastructure;

(5) Projects for which funds were obligated in an FTA grant prior to the declared emergency or major disaster;

(6) Reimbursements for lost revenue due to service disruptions caused by an emergency or major disaster.

(7) Project costs associated with the replacement or replenishment of damaged or lost material that are not the property of the affected recipient and not incorporated into a public transportation system such as stockpiled materials or items awaiting installation.

(8) Other project costs FTA determines are not appropriate for the Emergency Relief Program.

**§ 602.15 Grant requirements.**

(a) Funding available under the Emergency Relief program is subject to the terms and conditions FTA determines are necessary.

(b) The FTA Administrator shall determine the terms and conditions based on the circumstances of a specific emergency or major disaster for which funding is available under the Emergency Relief Program.

(1) In general, projects funded under the Emergency Relief Program shall be subject to the requirements of chapter 53 of title 49, United States Code, as well as cross-cutting requirements, including but not limited to those outlined in FTA's Master Agreement.

(2) The FTA Administrator may determine requirements associated with public transportation programs are

inapplicable as necessary and appropriate for emergency repairs, permanent repairs, emergency protective measures and emergency operating expenses that are incurred within 45 days of the emergency or major disaster, or longer as determined by FTA. If the FTA Administrator determines any requirement is inapplicable, the determination shall apply to all eligible activities undertaken with funds authorized under 49 U.S.C. 5324 within the 45-day period, as well as funds authorized under 49 U.S.C. 5307 and 5311 and used for eligible emergency relief activities.

(3) FTA shall publish a notice on its Web site and in the emergency relief docket established under 49 CFR part 601 regarding the grant requirements for a particular emergency or major disaster.

(c) In the event an affected recipient or subrecipient believes an FTA requirement limits its ability to respond to the emergency or major disaster, the recipient or subrecipient may request that the requirement be waived in accordance with the emergency relief docket process as outlined in 49 CFR part 601, subpart D. Applicants should not proceed on projects assuming that requests for such waivers will be granted.

(d) In accordance with Executive Order 11988, Floodplain Management, recipients shall not use grant funds for any activity in an area delineated as a special flood hazard area or equivalent, as labeled in the Federal Emergency Management Administration's (FEMA) most recent and current data source unless, prior to seeking FTA funding for such action, the recipient designs or modifies its actions in order to minimize potential harm to or within the floodplain.

(1) Except as otherwise provided in this subparagraph, recipients shall use the "best available information as identified by FEMA, which includes advisory data (such as Advisory Base Flood Elevations (ABFEs)), preliminary and final Flood Insurance Rate Maps (FIRMs), or Flood Insurance Studies (FISs).

(2) If FEMA data is mutually determined by FTA and the recipient to be unavailable or insufficiently detailed, other Federal, State, or local data may be used as "best available information" in accordance with Executive Order 11988.

(3) The final determination on "best available information" shall be used to establish such reconstruction requirements as a project's minimum elevation.

(4) Where higher minimum elevations are required by either State or locally adopted building codes or standards, the higher of the competing minimums would apply.

(5) A base flood elevation from an interim or preliminary or non-FEMA source may not be used if it is lower than the current FIRM.

**§ 602.17 Application procedures.**

(a) As soon as practical after occurrence, affected recipients shall make a preliminary field survey, working cooperatively with the appropriate FTA Regional Administrator and other governmental agencies with jurisdiction over eligible public transportation systems. The preliminary field survey should be coordinated with the Federal Emergency Management Agency, if applicable, to eliminate duplication of effort. The purpose of this survey is to determine the general nature and extent of damage to eligible public transportation systems.

(1) The affected recipient shall prepare a damage assessment report. The purpose of the damage assessment report is to provide a factual basis for the FTA Regional Administrator's finding that serious damage to one or more public transportation systems has been caused by a natural disaster over a wide area, or a catastrophic failure. As appropriate, the damage assessment report should include political subdivision or other generally recognized administrative or geographic boundaries—

(i) The specific location, type of facility or equipment, nature and extent of damage;

(ii) The most feasible and practical method of repair or replacement;

(iii) A preliminary estimate of cost of restoration, replacement, or reconstruction for damaged systems in each jurisdiction.

(iv) Potential environmental and historic impacts;

(v) Photographs showing the kinds and extent of damage and sketch maps detailing the damaged areas;

(vi) Recommended resiliency projects to protect equipment and facilities from future emergencies or major disasters.

(2) Unless unusual circumstances prevail, the damage assessment report should be prepared within six weeks following the natural disaster or catastrophic failure.

(3) For large disasters where extensive damage to public transportation systems is readily evident, the FTA Regional Administrator may approve an application prior to submission of the damage assessment report. In these

cases, the applicant shall prepare and submit to the FTA Regional Administrator an abbreviated or preliminary damage assessment report, summarizing eligible repair costs by jurisdiction, after the damage inspections have been completed.

(b) Before funds can be made available, a grant application for emergency relief funds must be made to, and approved by, the appropriate FTA Regional Administrator. The application shall include:

(1) A copy of the Governor's declaration or a Presidential declaration;

(2) A copy of the damage assessment report, as appropriate;

(3) A list of projects, as documented in the damage assessment report, identifying emergency operations, emergency protective measures, and emergency repairs completed as well as permanent repairs needed to repair or replace the damaged or destroyed rolling stock, equipment, facilities, and infrastructure; and

(4) Supporting documentation showing other sources of funding available, including insurance policies, agreements with other Federal agencies, and any other source of funds available

to address the damage resulting from the emergency or major disaster.

(c) Applications for emergency operations must include the dates, hours, number of vehicles, and total fare revenues received for the emergency service. Only net project costs may be reimbursed.

(d) Applicants that receive funding from another Federal agency for operating expenses and also seek funding from FTA for operating expenses must include:

(1) A copy of the agreement with the other Federal agency, including the scope of the agreement, the amount funded, and the dates the other agency funded operating costs; and

(2) The scope of service and dates for which the applicant is seeking FTA funding.

(e) Applicants that receive funding from another Federal agency for emergency or permanent repairs or emergency protective measures and also seek funding from FTA for emergency or permanent repairs or emergency protective measures must include:

(1) A copy of the agreement with the other Federal agency, including the scope of the agreement and the amount funded; and

(2) A list of projects included in the other agency's application or equivalent document.

(f) Applicants are responsible for preparing and submitting a grant application. The FTA regional office may provide technical assistance to the applicant in preparation of a program of projects. This work may involve joint site inspections to view damage and reach tentative agreement on the type of permanent repairs the applicant will undertake. Program data should be kept to a minimum, but should be sufficient to identify the approved disaster or catastrophe and to permit a determination of the eligibility of proposed work. If the appropriate FTA Regional Administrator determines the damage assessment report is of sufficient detail to meet these criteria, additional program support data need not be submitted.

(g) The appropriate FTA Regional Administrator's approval of the grant application constitutes a finding of eligibility under 49 U.S.C. 5324.

[FR Doc. 2013-07271 Filed 3-28-13; 8:45 am]

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notice at the beginning of your comments. Submit two copies of your comments if you submit them by mail. For confirmation that FTA has received your comments, include a self-addressed stamped postcard. Note that all comments received, including any personal information, will be posted and will be available to Internet users, without change, to [www.regulations.gov](http://www.regulations.gov). You may review DOT's complete Privacy Act Statement in the *Federal Register* published April 11, 2000, (65 FR 19477), or you may visit [www.regulations.gov](http://www.regulations.gov). Docket: For access to the docket to read background documents and comments received, go to [www.regulations.gov](http://www.regulations.gov) at any time. Background documents and comments received may also be viewed at the U.S. Department of Transportation, 1200 New Jersey Avenue SE., Docket Operations, M-30, West Building, Ground Floor, Room W12-140, Washington, DC 20590-0001 between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays.

**FOR FURTHER INFORMATION CONTACT:**

49 U.S.C. 5307—Capital Assistance Program and Section 5309 Urbanized Area Formula Program—Vanessa Williams, FTA Office of Program Management (202) 366-4818, or email [Vanessa.Williams@dot.gov](mailto:Vanessa.Williams@dot.gov).

49 U.S.C. 5310—Capital Assistance Program for Elderly Persons and Persons with Disabilities and Section 5311—Nonurbanized Area Formula Program—Elan Flippin, FTA Office of Program Management (202) 366-3800, or email [Elan.Flippin@dot.gov](mailto:Elan.Flippin@dot.gov).

**SUPPLEMENTARY INFORMATION:**

Interested parties are invited to send comments regarding any aspect of these information collections, including: (1) The necessity and utility of the information collections for the proper performance of the functions of the FTA; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the collected information; and (4) ways to minimize the collection burden without reducing the quality of the collected information. Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection.

**Title: 49 U.S.C.—5307 Capital Assistance Program and Section 5309—Urbanized Area Formula Program**

(OMB Number: 2132-0502)

*Background:* 49 U.S.C. 5307—Capital Assistance Program and Section 5309—Urbanized Area Formula Program authorize the Secretary of Transportation to make grants to State

and local governments and public transportation authorities for financing mass transportation projects. In response to requirements authorized by the new legislation, Moving Ahead for Progress in the 21st Century (MAP-21), a Passenger Ferry Grant Program has been added under 49 U.S.C. 5307. The Passenger Ferry Grant Program is a new discretionary grant program that will award funding on a competitive selection basis. Grant recipients for 49 U.S.C. 5307 and 5309 are required to make information available to the public and publish a program of projects for affected citizens to comment on the proposed program and performance of the grant recipients at public hearings. Notices of hearings must include a brief description of the proposed project and be published in a newspaper circulated in the affected area. FTA also uses the information to determine eligibility for funding and to monitor the progress of the grantee in implementing and completing project activities. The information submitted ensures FTA's compliance with applicable federal laws, OMB Circular A-102 and 49 CFR Part 18, "Uniform Administrative Requirements for Grants and Cooperative Agreements with State and Local Governments."

*Respondents:* State and local government, business or other for-profit institutions and non-profit institutions.

*Estimated Annual Burden on*

*Respondents:* Approximately 50 hours for each of the 3,345 respondents.

*Estimated Total Annual Burden:* 167,250 hours.

*Frequency:* Annual.

**Title: 49 U.S.C. 5310—Capital Assistance Program for Elderly Persons and Persons with Disabilities and Section 5311—Nonurbanized Area Formula Program**

(OMB Number 2132-0500)

*Background:* 49 U.S.C. 5310—Capital Assistance Program for Elderly Persons and

Persons with Disabilities provides financial assistance for the specialized transportation service needs of elderly persons and persons with disabilities in all areas, urbanized, small urban and rural. 49 U.S.C. 5311—Nonurbanized Area Formula Program provides financial assistance for the provision of public transportation services in nonurbanized areas. Both programs are administered by the State. The Tribal Transit Program, which was approved as a separate program under the American Recovery and Reinvestment Act (ARRA), is now being added under 49 U.S.C. 5311. Under the new

legislation, Moving Ahead for Progress in the 21st Century (MAP-21), the Tribal Transit Program continues to be a set-aside from the rural area formula program (Section 5311), but now consists of a \$25 million formula program and a \$5 million discretionary grant program. This program no longer provides a single apportionment to the State. It now provides apportionments specifically for large urbanized, small urbanized and rural areas and will require new designations in large urbanized areas. MAP-21 also expands the eligibility provisions to include operating expenses.

49 U.S.C. 5310 and 5311 authorize FTA to review applications for federal financial assistance to determine eligibility and compliance with statutory and administrative requirements. The applications must contain sufficient information to enable FTA to make the findings required by law to enforce the requirements of the programs. Information collected during the project management stage provides a basis for monitoring approved projects to ensure timely and appropriate expenditure of federal funds by grant recipients.

*Respondents:* State and local government, business or other for-profit institutions and non-profit institutions and small business organizations.

*Estimated Annual Burden on Respondents:* Approximately 111 hours for each of the 178 respondents.

*Estimated Total Annual Burden:* 20,775 hours.

*Frequency:* Annual.

Issued: January 30, 2013.

Matthew M. Crouch,

Deputy Administrator for Administration.

[FR Doc. 2013-02664 Filed 2-5-13; 8:45 am]

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**DEPARTMENT OF TRANSPORTATION**

**Federal Transit Administration**

**Notice of Availability of Emergency Relief Funds in Response to Hurricane Sandy**

**AGENCY:** Federal Transit Administration (FTA), DOT.

**ACTION:** Notice of availability of emergency relief funds.

**SUMMARY:** The Federal Transit Administration (FTA) announces the availability of funds under the Public Transportation Emergency Relief Program (Emergency Relief Program) for States, local governmental authorities, Indian tribes and other FTA recipients impacted by Hurricane Sandy, which

affected mid-Atlantic and northeastern states in October 2012, and particularly devastated transit operations in New Jersey and New York. FTA will distribute these funds in a manner consistent with the eligibility requirements of this program on a non-competitive basis, subject to the priorities set forth below.

The Disaster Relief Appropriations Act of 2013 (Pub. L. 113-2) was enacted on January 29, 2013, and provides \$10.9 billion for FTA's Emergency Relief Program for recovery, relief and resiliency efforts in areas affected by Hurricane Sandy. The law provides that not more than \$2 billion shall be made available no later than March 30, 2013. The remainder of the appropriated funds shall be made available only after FTA enters into a Memorandum of Agreement with the Federal Emergency Management Agency (FEMA) as required by section 20017(b) of the Moving Ahead for Progress in the 21st Century Act (MAP-21, Pub. L. 112-141), and FTA issues interim regulations for the Emergency Relief Program, both of which are underway.

MAP-21 authorized the Emergency Relief Program at 49 U.S.C. 5324. With the authorization of this program, Congress provided FTA with primary responsibility for reimbursing emergency response and recovery costs after an emergency or major disaster that affects public transportation systems. The Emergency Relief Program allows FTA to make grants for eligible public transportation capital and operating costs in the event of a natural disaster, such as a hurricane, that affects a wide area. Beginning in late October, President Obama issued major disaster declarations for the following States: Connecticut, Delaware, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, Virginia, and West Virginia, as well as the District of Columbia. Numerous counties in these States have been designated as eligible for FEMA assistance under the major disaster declarations. Public transportation agencies in the affected areas as defined by these Presidential declarations, including any declarations related to Hurricane Sandy made after the date of this notice, are eligible for Emergency Relief funding.

This notice announces grant funding for the \$2 billion made available immediately by the Disaster Relief Appropriations Act to States, local governmental authorities, Indian tribes, and other FTA grant recipients that provide public transportation service in the above impacted States for reimbursement of capital costs to repair,

reconstruct, or replace equipment and facilities of a public transportation system that has suffered serious damage as a result of Hurricane Sandy. In addition, costs eligible for reimbursement include emergency operating costs incurred for evacuations, rescue operations, moving rolling stock to higher ground in order to protect it from storm surges, temporary public transportation service, and reestablishing, expanding or relocating public transportation service before, during, or after Hurricane Sandy.

FTA has identified three categories of projects for funding for this notice: Category One projects will reimburse eligible expenses affected FTA recipients incurred and disbursed on or before January 29, 2013, in preparation for or response to Hurricane Sandy. Category Two projects will fund existing contractual commitments and contracts for which an affected recipient issued requests for proposals or invitations to bid for hurricane response and recovery projects on or before January 29, 2013. Category Three projects will fund ongoing force account work for hurricane response and recovery for which the recipient can submit documentation showing the expense was in the recipient's budget on or before January 29, 2013.

The application process will occur in two stages. First, applicants will submit proposals requesting reimbursement of eligible costs for the categories of projects described in this notice. Since funds must be made available no later than March 30, 2013, applications for funding must be submitted between the date of publication of this notice and March 8, 2013 through *GRANTS.GOV*. FTA encourages affected recipients to submit their requests for reimbursement expeditiously, as FTA intends to allocate funds on a rolling basis. Second, upon allocation of funds, FTA will notify recipients that they can enter a grant application in FTA's Transportation Electronic Award Management system (TEAM). Subsequent to receipt of applications for the above project categories, and prior to March 30, 2013, FTA will issue a notice in the *Federal Register* showing the allocation of the initial \$2 billion.

Prior to the Disaster Relief Appropriations Act, affected recipients may have received funding from FEMA for operating or capital costs incurred in response to the hurricane. Section 5324(d) of title 49 United States Code provides that a grant awarded under section 5324 may be made only for expenses that are not reimbursed under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford

Act, 42 U.S.C. 5121-5207). Accordingly, FTA will not fund project expenses that FEMA has already funded.

Additionally, prior to the Disaster Relief Appropriations Act, affected recipients may have received insurance proceeds to repair or replace damaged capital items. FTA will not fund project expenses for which a recipient has already received insurance proceeds. Affected recipients may apply for Emergency Relief funds in advance of expected insurance proceeds; when the affected recipient receives those insurance proceeds, the funds must be applied to an Emergency Relief grant to offset the Federal share.

This notice includes a description of eligible projects, the criteria FTA will use to identify projects for funding, and a description of how to apply for funding. This announcement is available on the FTA Web site at: <http://www.fta.dot.gov>. A synopsis of the funding opportunity will be posted in the FIND module of the government-wide electronic grants Web site at <http://www.GRANTS.GOV>. FTA intends to announce funding allocations on a rolling basis and will notify applicants directly of allocations made under the program. In addition, FTA will announce final allocations on the FTA Web site.

Pursuant to the requirement in the Disaster Relief Appropriations Act that FTA publish interim regulations before additional funds beyond the initial \$2 billion will be available, FTA is in the process of drafting interim regulations for the Emergency Relief Program. If FTA subsequently establishes criteria or conditions for grants made under the Emergency Relief Program that are different from those in this notice of availability of emergency relief funds, the different criteria or conditions will not be applied retroactively to applications submitted or grants awarded consistent with this notice, unless the change benefits the applicant.

**DATES:** Since funds must be made available no later than March 30, 2013, complete proposals requesting reimbursement of eligible costs must be submitted between the date of publication of this notice and March 8, 2013 by 11:59 p.m. EST. All proposals must be submitted electronically through the *GRANTS.GOV* "APPLY" function. Any prospective applicant intending to submit a proposal should initiate the process of registering on the *GRANTS.GOV* site immediately to ensure completion of registration before the submission deadline. Instructions for submitting a proposal can be found on FTA's Web site at <http://www.fta.dot.gov>

[www.fta.dot.gov](http://www.fta.dot.gov) and in the "FIND" module of *GRANTS.GOV*.

**FOR FURTHER INFORMATION CONTACT:** Contact the appropriate FTA Regional Office found at <http://www.fta.dot.gov> for application-specific information and other assistance needed in preparing a complete proposal or TEAM grant application. For program-specific questions about applying for the funds as outlined in this notice, please contact Adam Schildge, Office of Program Management, 1200 New Jersey Ave, SE., Washington, DC 20590, phone: (202) 366-0778, or email, [Adam.Schildge@dot.gov](mailto:Adam.Schildge@dot.gov). For legal questions, Bonnie Graves, Office of Chief Counsel, same address, phone: (202) 366-4011, or email, [Bonnie.Graves@dot.gov](mailto:Bonnie.Graves@dot.gov).

**SUPPLEMENTARY INFORMATION:**

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**I. Overview of FTA Public Transportation Emergency Relief Program as It Applies to Hurricane Sandy Relief**

**A. Authority**

Section 5324(a)(2) of title 49, United States Code, defines an "emergency" as follows:

The term 'emergency' means a natural disaster affecting a wide area (such as a flood, hurricane, tidal wave, earthquake, severe storm, or landslide) or a catastrophic failure from any external cause, as a result of which—

(A) The Governor of a State has declared an emergency and the Secretary has concurred; or

(B) The President has declared a major disaster under section 401 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5170).

Section 5324(b) of title 49, United States Code, authorizes the Secretary to make awards for FTA's Emergency Relief Program as follows:

General authority.—The Secretary may make grants and enter into contracts and other agreements (including agreements with departments, agencies, and

instrumentalities of the Government) for—

(1) Capital projects to protect, repair, reconstruct, or replace equipment and facilities of a public transportation system operating in the United States or on an Indian reservation that the Secretary determines is in danger of suffering serious damage, or has suffered serious damage, as a result of an emergency; and

(2) Eligible operating costs of public transportation equipment and facilities in an area directly affected by an emergency during—

(A) The 1-year period beginning on the date of a declaration described in subsection (a)(2); or

(B) If the Secretary determines there is a compelling need, the 2-year period beginning on the date of a declaration described in subsection (a)(2).

In addition, section 5324(d) provides that a grant awarded under section 5324 shall be subject to the terms and conditions the Secretary determines are necessary; and made only for expenses that are not reimbursed under the Stafford Act. Accordingly, FTA will not fund project expenses that FEMA has already funded.

**B. Policy Priorities for Hurricane Sandy Relief**

The Emergency Relief Program is intended to assist recipients and subrecipients in restoring public transportation service and in repairing and reconstructing public transportation assets to a state of good repair as expeditiously as possible following an emergency or major disaster. With regard to the \$2 billion available immediately under the Disaster Relief Appropriations Act of 2013, FTA has identified three categories of projects: Category One projects will reimburse eligible expenses already incurred and disbursed by affected recipients on or before January 29, 2013, in preparation for or response to Hurricane Sandy. Category Two projects will fund existing contractual commitments and contracts for which an affected recipient issued requests for proposals (RFP) or invitations to bid (ITB) for hurricane response and recovery projects on or before January 29, 2013, as evidenced by a signature/date page for each contract, RFP and ITB. Category Three projects will fund ongoing force account work for hurricane response and recovery for which the recipient can submit documentation, such as Board approval or budget documents, showing the expense was in the recipient's budget on or before January 29, 2013.

Section 5324(b) provides that funds are available for capital projects to

"protect \* \* \* equipment and facilities of a public transportation system \* \* \* the Secretary determines is in danger of suffering serious damage." Steps taken to protect equipment and facilities in preparation or response to Hurricane Sandy are eligible expenses under this notice. However, FTA has prioritized recovery and response activities for the first \$2 billion of the funds available in the Disaster Relief Appropriations Act. Therefore, projects related to reducing the risk of damage from future disasters in areas impacted by Hurricane Sandy are not eligible for funding under this notice, but will be eligible in future notices.

In the event the total costs of the three categories of projects identified in this notice do not reach \$2 billion, FTA reserves the right to fund additional recovery and response projects identified by affected recipients, without issuing a supplemental notice of availability of emergency relief funds.

**C. Definitions for Use in This Notice**

The following terms are used in this notice:

**Applicant.** An entity that operates or allocates funds to operate public transportation service and applies for a grant under 49 U.S.C. 5324.

**Affected recipient.** An FTA recipient that operates public transportation service in an area impacted by Hurricane Sandy.

**Emergency.** A natural disaster affecting a wide area or a catastrophic failure from any external cause, as a result of which: (a) The Governor of a State has declared an emergency and the Secretary of Transportation has concurred; or (b) the President has declared a major disaster under the Stafford Act, 49 U.S.C. 5324.

**Emergency operations.** The net project cost of temporary service that is outside the scope of an affected recipient's normal operations, including but not limited to: Evacuations; rescue operations; moving rolling stock to higher ground in order to protect it from storm surges; additional bus or ferry service to replace inoperable rail service or to detour around damaged areas; returning evacuees to their homes after Hurricane Sandy; and the net project costs related to reestablishing, expanding, or relocating public transportation service before, during, or after Hurricane Sandy.

**Emergency repairs.** Those repairs undertaken immediately before, during, or following Hurricane Sandy for the purpose of:

- (1) Minimizing the extent of the damage,
- (2) Protecting remaining facilities, or



## (3) Restoring service.

**Heavy maintenance.** Work usually done by a recipient or subrecipient in repairing damage normally expected from seasonal and occasionally unusual natural conditions or occurrences, such as routine snow removal, or debris removal from seasonal thunderstorms. This may include work required as a direct result of a disaster, but which can reasonably be accommodated by a recipient or subrecipient's maintenance, emergency or contingency program.

**Major Disaster.** Any natural catastrophe (including any hurricane, tornado, storm, high water, wind-driven water, tidal wave, tsunami, earthquake, volcanic eruption, landslide, mudslide, snowstorm, or drought), or, regardless of cause, any fire, flood, or explosion, in any part of the United States, which in the determination of the President causes damage of sufficient severity and magnitude to warrant major disaster assistance under the Stafford Act to supplement the efforts and available resources of States, local governments, and disaster relief organizations in alleviating the damage, loss, hardship, or suffering caused thereby. 42 U.S.C. 5122.

**Net project cost.** The part of a project that reasonably cannot be financed from revenues. 49 U.S.C. 5302.

**Permanent repairs.** Those repairs undertaken following the occurrence of Hurricane Sandy for the purpose of repairing, replacing or reconstructing seriously damaged public transportation system elements, including rolling stock, equipment, facilities and infrastructure, as necessary to restore the elements to a state of good repair.

**Recipient.** An entity that operates or allocates funds to operate public transportation service and receives federal transit funds directly from FTA.

**Serious damage.** Heavy, major or unusual damage to a public transportation facility that severely impairs the safety or usefulness of the facility. Serious damage must be beyond the scope of heavy maintenance.

**Subrecipient.** An entity that operates public transportation service and receives FTA funding through a recipient.

## II. Emergency Relief Program Information for Hurricane Sandy Relief

### A. Description and Purpose

For purposes of this notice, eligible activities include eligible emergency operating costs and capital projects to repair, reconstruct, or replace equipment and facilities of a public transportation system that the Secretary determines has suffered serious damage

as a result of Hurricane Sandy, including projects undertaken prior to the storm to minimize or prevent serious damage. Section 5324 funds are in addition to a recipient's formula funds and the receipt of section 5324 funds does not preclude the receipt of funds from FEMA.

### B. Pre-award Authority

FTA grants pre-award authority to affected recipients for expenses incurred in preparation for Hurricane Sandy (e.g., evacuation, relocation, protecting and safeguarding assets) and for immediate disaster-response and recovery expenses incurred as a result of Hurricane Sandy. Pre-award authority allows affected recipients to incur certain project costs before grant approval and retain the eligibility of those costs for subsequent reimbursement after grant approval.

The conditions under which pre-award authority may be utilized are specified below:

(i) Pre-award authority is not a legal or implied commitment that the subject project will be approved for FTA assistance or that FTA will obligate Federal funds. Furthermore, it is not a legal or implied commitment that all items undertaken by the applicant will be eligible for inclusion in the project.

(ii) All FTA statutory, procedural, and contractual requirements must be met, except as provided for the three project categories in this notice. See section II.D of this notice.

(iii) The recipient must take no action that prejudices the legal and administrative findings that the Federal Transit Administrator must make in order to approve a project.

(iv) The Federal amount of any future FTA assistance awarded to the recipient for the project will be determined on the basis of the overall scope of activities and the prevailing statutory provisions with respect to the Federal/non-Federal match ratio at the time the funds are obligated.

(v) When a grant for the project is subsequently awarded, the Financial Status Report in TEAM-Web must indicate the use of pre-award authority.

In addition to the pre-award authority described above, affected recipients are permitted to submit grant amendments for existing section 5307 and 5311 grants in order to utilize available unexpended balances for eligible disaster-related project costs. Use of formula funds for these purposes is at the discretion of the affected recipient. Section 5324 funds may not be used to replenish formula funds spent in response to an emergency.

### C. Eligibility Information

#### 1. Eligible Applicants

FTA recipients affected by Hurricane Sandy, including States, local governmental authorities, and Indian tribes that provide public transportation service may apply for section 5324 Emergency Relief funds on behalf of themselves and their subrecipients. As of the date of this notice, the President has declared a major disaster for the following States: Connecticut, Delaware, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, Virginia, and West Virginia, as well as the District of Columbia. The affected transit system must be located in or serving an area that was impacted by Hurricane Sandy, as defined by the presidential declaration of major disaster or declaration of emergency for that State. See <http://www.fema.gov/disasters/>. In addition, public transportation agencies in areas that receive a major disaster declaration related to Hurricane Sandy after the date of this notice are eligible for Emergency Relief funding.

Entities that provide public transportation service and are not current recipients of FTA funding may be eligible to receive Emergency Relief funding as a subrecipient of an FTA recipient. These entities should contact the appropriate FTA Regional Office, the contact information of which is available at [www.fta.dot.gov](http://www.fta.dot.gov), to find a direct FTA recipient in their area to apply on their behalf.

#### 2. Eligible Costs

##### *New York, New Jersey and Connecticut Operating Assistance*

On October 31, 2012, the President amended the cost-sharing arrangements for the States of New York, New Jersey and Connecticut regarding Federal funds provided under the authority of the Stafford Act as follows:

I authorize a one hundred percent (100%) Federal cost share for ten days for emergency power restoration assistance and emergency public transportation assistance, including direct Federal assistance, for those areas within counties designated for Public Assistance [in New York, New Jersey and Connecticut]. I authorize this cost-share adjustment beginning October 30, 2012 through November 9, 2012.

On November 9, 2012, the President authorized continuation "until 11:59 p.m. on Wednesday, November 14, 2012, of the 100 percent Federal cost share for emergency power restoration assistance and emergency public transportation assistance (including emergency protective measures to



secure public transportation infrastructure), including direct Federal assistance, for those areas within counties designated for Public Assistance [in New York, New Jersey and Connecticut].”<sup>1</sup>

Section 5324 provides that the Federal share for operating expenses and capital projects for the Emergency Relief Program is 80 percent; however, the Secretary may waive, in whole or in part, the non-Federal share. Therefore, consistent with the President’s authorization and what FEMA would fund under section 419 of the Stafford Act (Emergency Public Transportation), FTA will fund the net project costs of emergency operations in specified counties in New York, New Jersey and Connecticut from October 30 to November 14, 2012, at a 100 percent Federal share, that FEMA has not already funded. All of New Jersey’s counties qualify for the 100 percent Federal share under this authorization. In New York, the following counties may apply for emergency operating assistance at a 100 percent Federal share: Bronx, Kings, Orange, Nassau, New York, Putnam, Queens, Richmond, Rockland, Suffolk, Sullivan, Ulster, and Westchester. See <http://www.fema.gov/disaster/4085/affected-counties>. In Connecticut, the following counties may apply for emergency operating assistance at a 100 percent Federal share: Fairfield, Litchfield, Middlesex, New Haven, New London, Tolland, Windham and the Mashantucket Pequot and Mohegan Tribal Nations in New London County. See <http://www.fema.gov/disaster/4087/affected-counties>. The President’s authorizations include the costs of emergency public transportation service provided in affected counties in New York, New

Jersey and Connecticut for that 16-day period. Affected recipients in New York, New Jersey and Connecticut may apply for the full net project cost of temporary service that is outside the scope of the affected recipient’s normal operations provided between October 30 and November 14, 2012, including but not limited to: Evacuations; rescue operations; moving rolling stock to higher ground in order to protect it from storm surges; additional bus or ferry service to replace inoperable rail service or to detour around damaged areas; returning evacuees to their homes after the hurricane; and the net project costs related to reestablishing, expanding, or relocating public transportation service before, during, or after the hurricane. Lost revenue as a result of Hurricane Sandy is not an eligible cost.

In addition, the costs incurred for any emergency protective measures to secure public transportation infrastructure taken between October 30 and November 14, 2012, are eligible for 100 percent Federal share if not already funded by FEMA.

#### *Other Operating Assistance*

Section 5324 provides that the Federal share for operating expenses and capital projects for the Emergency Relief Program is 80 percent; however, the Secretary may waive, in whole or in part, the non-Federal share. The Administration’s December 7, 2012, request to Congress for emergency relief funds acknowledged that the “level of damage caused by Hurricane Sandy is expected to meet the regulatory threshold necessary to increase the Federal share of most disaster programs to 90 percent.”<sup>2</sup> Therefore, the Secretary has determined that the Federal share for operating and capital projects undertaken in response to Hurricane Sandy will be 90 percent, thus waiving part of the non-Federal share. The following operating costs are eligible at a 90 percent Federal share: The net project cost of temporary service that is outside the scope of an affected recipient’s normal operations, including but not limited to: evacuations; rescue operations; moving rolling stock to higher ground in order to protect it from storm surges; additional bus or ferry service to replace inoperable rail service or to detour around damaged areas; returning evacuees to their homes after the hurricane; and the net project costs related to reestablishing, expanding, or relocating public transportation service

before, during, or after the hurricane. The non-Federal share of the net project cost may be provided from an undistributed cash surplus, a replacement or depreciation cash fund or reserve, or new capital.

FTA notes that some States entered into agreements or mission assignments with FEMA to fund operating costs immediately after the storm. If those States are seeking operating funds from FTA and have already received funding from FEMA, they must submit a copy of the agreement with FEMA, including the scope of the agreement, the amount funded, and the dates that FEMA agreed to fund operating costs, as well as the scope and dates of service for which the applicant is seeking FTA funding, in order to ensure that an application submitted to FTA for project costs has not already been funded by FEMA. FTA will not fund project expenses for which a recipient has already received insurance proceeds. Loss of operating revenue is not an eligible expense. However, the cost of providing fare-free emergency public transportation service in the days immediately following the storm is eligible if FEMA has not already funded the service.

#### *Capital Projects*

As stated above, FTA will fund all projects eligible for the Emergency Relief Program in response to Hurricane Sandy at a 90 percent Federal share. The non-Federal share of the net project cost may be provided from an undistributed cash surplus, a replacement or depreciation cash fund or reserve, or new capital. Eligible capital projects include those projects to repair, reconstruct, or replace equipment and facilities of a public transportation system that has suffered serious damage as a result of Hurricane Sandy.

It is not the intent of the Emergency Relief Program to provide substitute funding for regular capital maintenance that is not a result of an emergency or major disaster. Therefore, heavy maintenance and projects for which funds were obligated in a grant prior to Hurricane Sandy are not eligible expenses under the Emergency Relief Program. Further, projects funded by the Federal Highway Administration’s Emergency Relief program are not eligible for FTA funding.

Both emergency repairs and permanent repairs are eligible for Emergency Relief funding. When repairing or replacing facilities and infrastructure damaged or destroyed by Hurricane Sandy, the following activities are eligible for Emergency Relief funding: (1) Replacement of older features with new ones; (2)

<sup>1</sup> See the following Federal Register notices for details of the authorizations:

New York adjustment: Amendment No. 1 to Notice of a Major Disaster Declaration, 77 FR 66862 (Nov. 7, 2012), available at <http://www.gpo.gov/fdsys/pkg/FR-2012-11-07/pdf/2012-27269.pdf>.

New York extension: Amendment No. 4 to Notice of a Major Disaster Declaration, 77 FR 73489 (Dec. 10, 2012), available at <http://www.gpo.gov/fdsys/pkg/FR-2012-12-10/pdf/2012-29652.pdf>.

New Jersey adjustment: Amendment No. 1 to Notice of a Major Disaster Declaration, 77 FR 66861 (Nov. 7, 2012), available at <http://www.gpo.gov/fdsys/pkg/FR-2012-11-07/pdf/2012-27273.pdf>.

New Jersey extension: Amendment No. 5 to Notice of a Major Disaster Declaration, 77 FR 73488 (Dec. 10, 2012), available at <http://www.gpo.gov/fdsys/pkg/FR-2012-12-10/pdf/2012-29654.pdf>.

Connecticut adjustment: Amendment No. 1 to Notice of a Major Disaster Declaration, 77 FR 66860 (Nov. 7, 2012), available at <http://www.gpo.gov/fdsys/pkg/FR-2012-11-07/pdf/2012-27275.pdf>.

Connecticut extension: Amendment No. 2 to Notice of a Major Disaster Declaration, 77 FR 73487 (Dec. 10, 2012), available at <http://www.gpo.gov/fdsys/pkg/FR-2012-12-10/pdf/2012-29656.pdf>.

<sup>2</sup> [http://www.whitehouse.gov/sites/default/files/supplemental\\_december\\_7\\_2012\\_hurricane\\_sandy\\_funding\\_needs.pdf](http://www.whitehouse.gov/sites/default/files/supplemental_december_7_2012_hurricane_sandy_funding_needs.pdf).

incorporation of current design standards; (3) replacement of a destroyed facility at a different location when replacing at the existing location is not practical or feasible; and (4) additional required features resulting from the NEPA process.

Grants awarded with section 5324 funds, as well as section 5307 and 5311 grants made for emergency relief purposes, may be made only for expenses that are not reimbursed by another Federal agency or by insurance proceeds. If an applicant has already received funding from another Federal agency, the applicant may not apply for FTA emergency relief funding for the same project expenses. However, partial compensation for a loss by other sources will not preclude FTA participation for the part of the loss not compensated. For example, insurance proceeds may only cover the remaining Federal interest of a vehicle that was destroyed before the end of its useful life, and not the cost to replace that vehicle. Consistent with FTA Circular 5010.1D, FTA may participate in the replacement cost beyond the insurance proceeds. Rolling stock and other equipment used in public transportation that was damaged or destroyed before the end of its useful life may be replaced with new rolling stock and equipment. FTA advises applicants to review FTA Circular 5010.1D, chapter IV, ([http://www.fta.dot.gov/legislation\\_law/12349\\_8640.html](http://www.fta.dot.gov/legislation_law/12349_8640.html)) for additional information on how to determine the remaining Federal interest and how to apply insurance proceeds to the cost of replacing the damaged or destroyed property.

Any compensation for damages or insurance proceeds recovered by the recipient or subrecipient for repair or replacement of the public transit equipment or facility must be used upon receipt to reduce emergency relief fund participation in the project. In other words, affected recipients may apply for Emergency Relief funds in advance of expected insurance proceeds; when the affected recipient receives those insurance proceeds, the funds must be applied to an Emergency Relief grant to offset the Federal share.

As with operating expenses, if a recipient has already received FEMA funding for repairs and replacement of capital assets, and also intends to apply for FTA funding, the recipient must submit a copy of any agreement with or funding request from FEMA, including the scope of the agreement or funding request (e.g., a list of projects), the amount funded, and the disposition of the request.

### 3. Ineligible Activities

The following expenses are not eligible under the emergency relief program:

- (1) Heavy maintenance;
- (2) Project costs for which the recipient has received funding from another Federal agency;
- (3) Project costs for which the recipient has received funding through payments from insurance policies;
- (4) Projects that change the function of the original infrastructure;
- (5) Projects for which funds were obligated in a grant prior to Hurricane Sandy;
- (6) Reimbursements for lost revenue due to service disruptions caused as a direct result of the hurricane;
- (7) Project costs associated with the replacement or replenishment of damaged or lost material not incorporated into a public transportation system such as stockpiled materials or items awaiting installation; and
- (8) Other project costs FTA determines are not appropriate for the Emergency Relief Program.

Projects included under item (4) above that change the function of the original infrastructure would be projects, for example, that change a bus rapid transit system to light rail, or that replace bus shelters with intermodal facilities, or that significantly upgrade a maintenance facility. Replacing damaged diesel buses with compressed natural gas buses is eligible under the Emergency Relief Program, but any costs associated with new alternative fueling stations or maintenance facilities is not eligible for Emergency Relief funds. However, those associated costs are eligible under FTA's formula programs, and recipients may use funds apportioned under sections 5307 or 5311 formula funds for those costs.

#### D. Grant Requirements

Section 904(c) of the Disaster Relief Appropriations Act provides that grant funds awarded under the Act must be expended within 24 months following FTA's obligation of funds in a grant. Any unexpended balances remaining in a grant must be returned to FTA 24 months after obligation of grant funds. FTA will include this term in all grants made with funds appropriated by the Disaster Relief Appropriations Act.

Section 5324(d)(1) provides that grants awarded under the Emergency Relief Program to address an emergency shall be subject to the terms and conditions the Secretary determines are necessary. Affected recipients responded quickly to Hurricane Sandy

in an effort to restore public transportation service as quickly as possible. For the three categories of projects described in this notice, FTA has determined the following:

1. Planning requirements. Operating and capital projects do not need to be included in a Statewide Transportation Improvement Program (STIP) or a metropolitan Transportation Improvement Program (TIP) in order to be reimbursed by FTA.

2. Buy America. Because of extensive damage to public transportation systems impacted by Hurricane Sandy and the exigent need to rebuild those systems in order to restore service, FTA finds that applying its Buy America requirements at 49 U.S.C. 5323(j) would have resulted in undue delay in service restoration. Therefore, FTA will reimburse those purchases that are included in projects funded under Categories One, Two, and Three as described in this notice, even if the recipient did not follow FTA Buy America requirements.

3. Procurement and contracting guidelines. Recipients may have extended existing contracts and taken other actions necessary to complete response and recovery projects expeditiously. Therefore, FTA will reimburse existing contractual commitments and contracts for which an affected recipient issued requests for proposals or invitations to bid for hurricane response and recovery projects on or before January 29, 2013, even if the recipient did not follow FTA procurement and contracting requirements. Amendments to existing contracts and bid requests after January 29, 2013, are subject to all FTA requirements, including procurement and contracting requirements.

The above conditions apply only to this notice and have no applicability to future notices. Further, these conditions should not be construed as indicative of the conditions FTA may grant in future emergencies or disasters. FTA's Public Transportation Emergency Relief Program was recently authorized by Congress and FTA had not yet had the opportunity to publish guidance or a rule for implementing the program when Hurricane Sandy impacted the eastern seaboard. Setting the above conditions for this disaster is an acknowledgement that affected recipients had to act quickly in order to restore service and may not have met all FTA requirements when making those efforts. FTA expects that all Federal requirements as outlined in FTA's Master Agreement will apply to all grants made in response to Hurricane Sandy that do not meet the description

of the three categories of projects described in this notice.

In the event an affected recipient or subrecipient finds that FTA requirements other than those listed above limit the recipient's or subrecipient's ability to respond to Hurricane Sandy, the affected recipient or subrecipient may request that applicable administrative requirements be waived in accordance with the emergency relief docket process as outlined below.

Under 49 CFR part 601, subpart D, FTA establishes an emergency relief docket each calendar year. The purpose of the docket is to allow recipients affected by national or regional emergencies to request relief from FTA administrative requirements set forth in FTA policy statements, circulars, guidance documents, and regulations. As stated above, section 5324(d) of title 49, United States Code provides that a grant awarded under section 5324 that is made to address an emergency shall be subject to the terms and conditions the Secretary determines are necessary. Effective with calendar year 2013, recipients affected by an emergency or major disaster may request FTA Administrator determination that certain terms and conditions not apply when the requirement(s) will limit a recipient's or subrecipient's ability to respond to an emergency or major disaster. Recipients must follow the procedures as set forth in 49 CFR part 601, subpart D when requesting such a determination or seeking a waiver of administrative requirements. The docket is available on [www.regulations.gov](http://www.regulations.gov), and the docket number for calendar year 2013 is FTA-2013-0001.

#### *E. Application Content and Allocation of Program Funds Under This Notice*

##### **1. Application Content**

FTA will evaluate applications based on information requested below. FTA encourages applicants to demonstrate the responsiveness of their application with the most relevant information the applicant can provide, regardless of whether FTA has specifically requested such information in this notice. FTA will assess the extent to which the application addresses each of the three criteria below.

There are three project categories for this notice of availability of emergency relief funds: (1) Reimbursement for expenses already incurred and disbursed by FTA recipients on or before January 29, 2013; (2) existing contractual commitments and contracts for which an affected recipient issued requests for proposals (RFP) or

invitations to bid (ITB) for hurricane response and recovery projects on or before January 29, 2013, as evidenced by a signature/date page for each contract, RFP and ITB; and (3) ongoing force account work for hurricane response and recovery for which the recipient budgeted the expense, as evidenced by Board approval or budget documents, on or before January 29, 2013.

*Documentation to Support Emergency Operating Requests.* Applications to [GRANTS.GOV](http://GRANTS.GOV) must include the purpose of the emergency public transportation service provided, which may include: evacuations; rescue operations; moving rolling stock to higher ground in order to protect it from storm surges; additional bus or ferry service to replace inoperable rail service or to detour around damaged areas; returning evacuees to their homes after the hurricane; and the net project costs related to reestablishing, expanding, or relocating public transportation service before, during, or after the hurricane. The application must include the dates, hours, number of buses, ferries, and/or trains, and information relating to fares charged. Only net project costs may be reimbursed.

*Documentation to Support Capital Requests.* Applications to [GRANTS.GOV](http://GRANTS.GOV) must include copies of detailed damage assessments to support the request for assistance for capital projects. FTA and FEMA have engaged in a significant effort to conduct damage assessments and validate repair/replacement cost estimates in New York and New Jersey. Specifically, FTA and FEMA have worked with the New York Metropolitan Transportation Authority, the Port Authority for New York and New Jersey, New Jersey Transit, and the New York City Department of Transportation. When submitting applications for the three categories of projects described in this notice, these agencies may include the damage assessments developed with FTA and FEMA. Typically, a damage assessment involves on-the-ground visits to the damage sites to verify the extent of the damage and to estimate the cost of repairs eligible for Emergency Relief funding. The damage assessment should document: (1) The specific location, type of facility or equipment, nature and extent of damage; (2) the most feasible and practical method of repair or replacement; and (3) the estimated repair and replacement cost.

*Other Relevant Items.* Applicants must provide supporting documentation showing other sources of funding available, including insurance policies, agreements with FEMA, and any other source of funds available to address the

damage resulting from the hurricane. Applicants from all States that have received funding from FEMA for emergency operating expenses and also seek funding from FTA for emergency operating costs must include a copy of the agreement with FEMA, including the scope of the agreement, the amount funded, and the dates that FEMA agreed to fund operating costs, as well as the scope of service and dates for which the applicant is seeking FTA funding. Applicants that have received funding from FEMA for capital projects and also seek funding from FTA for capital projects must include a copy of the agreement with FEMA, including the scope of the agreement, the amount funded, and a list of projects included in the FEMA application or equivalent document. In addition, applicants must provide supporting documentation for Category Two and Category Three projects, including a signature/date page for each existing contract, RFP and ITB; and Board approval or budget documents showing the applicant budgeted ongoing force account work in response to the hurricane on or before January 29, 2013.

##### **2. Allocation of Program Funds**

FTA will allocate funds on a non-competitive basis for the three categories of eligible expenses described above. The FTA Administrator will determine the final allocation of funding for each applicant after validating damage assessments and cost estimates. FTA reserves the right to request additional information prior to making a determination as to Emergency Relief funding eligibility of any particular project. FTA may also seek clarification from any applicant about any statement in its proposal that FTA finds ambiguous. FTA intends to announce funding allocations on a rolling basis and will notify applicants directly of allocations made under the program. In addition, FTA will announce final allocations on the FTA Web site.

#### **III. Application and Submission Information for this Notice**

##### *A. Application Submission Instructions*

Proposals requesting reimbursement must be submitted electronically through <http://www.GRANTS.GOV> by March 8, 2013 by 11:59 p.m. EST. Mail and fax submissions will not be accepted.

A complete proposal submission will consist of at least two files: (1) The SF 424 Mandatory form (downloaded from [GRANTS.GOV](http://GRANTS.GOV)) and (2) the Hurricane Sandy-specific supplemental form found on the FTA Web site: <http://>

[www.fta.dot.gov/emergencyrelief](http://www.fta.dot.gov/emergencyrelief). The supplemental form provides guidance and a consistent format for applicants to respond to the information required as outlined in this notice. Once completed, the supplemental form must be placed in the attachments section of the SF 424 Mandatory form.

Applicants must attach the Hurricane Sandy-specific supplemental form to their submission in *GRANTS.GOV* to successfully complete the application process. A proposal submission may contain additional supporting documentation as attachments. Within 24–48 hours after submitting an electronic application, the applicant should receive three email messages from *GRANTS.GOV*: (1) Confirmation of successful transmission to *GRANTS.GOV*, (2) confirmation of successful validation by *GRANTS.GOV* and (3) confirmation of successful validation by FTA. If an applicant does not receive confirmations of successful validation and receives a notice of failed validation or incomplete materials, the applicant must address the reason for the failed validation, as described in the notice, and resubmit before the submission deadline. If making a resubmission for any reason, include all original attachments regardless of which attachments were updated. Complete instructions on the application process can be found on FTA's Web site at <http://www.fta.dot.gov/emergencyrelief>. FTA urges applicants to submit their applications at least 72 hours prior to the due date to allow time to receive the validation message and to correct any problems that may have caused a rejection notification. *GRANTS.GOV* scheduled maintenance and outage times are announced on the *GRANTS.GOV* Web site <http://www.GRANTS.GOV>. Deadlines will not be extended due to scheduled maintenance or outages.

#### B. Proposal Content

Applicants may submit one proposal which can include multiple projects. Additional projects may be added within the Hurricane Sandy-specific supplemental form by clicking the "add project" button in Section II of the supplemental form.

Information such as applicant name, Federal amount requested, non-Federal match amount, description of areas served, etc. may be requested in varying degrees of detail on both the SF 424 form and supplemental form. All fields are required unless stated otherwise on the forms. Use both the "Check Package for Errors" and the "Validate Form" validation buttons on both forms to check all required fields on the forms.

Ensure that the Federal and non-Federal amounts specified are consistent.

#### IV. Award Administration

Once FTA allocates Emergency Relief funds to a recipient, the recipient will be required to submit a grant application electronically via FTA's Transportation Electronic Award Management system (TEAM). Recipients should work with their FTA Regional Office to develop and submit their application in TEAM so that funds can be obligated expeditiously. Grant applications in TEAM may only include eligible activities under the Emergency Relief program. Upon award, payments to recipients will be made by electronic transfer to the recipient's financial institution through FTA's Electronic Clearing House Operation (ECHO) system.

Post-award reporting requirements include submission of the Federal Financial Report and Milestone reports in TEAM consistent with FTA's grants management Circular 5010.1D, as well as any other reporting requirements FTA determines are necessary.

Dated: Issued in Washington, DC, this 1st day of February 2013.

Peter Rogoff,  
Administrator.

[FR Doc. 2013-02729 Filed 2-4-13; 11:15 am]  
BILLING CODE P

## DEPARTMENT OF TRANSPORTATION

### Maritime Administration

[Docket No. MARAD-2013 0005]

#### Requested Administrative Waiver of the Coastwise Trade Laws: Vessel COOL BEANS; Invitation for Public Comments

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Notice.

**SUMMARY:** As authorized by 46 U.S.C. 12121, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

**DATES:** Submit comments on or before March 8, 2013.

**ADDRESSES:** Comments should refer to docket number MARAD-2013-0005. Written comments may be submitted by hand or by mail to the Docket Clerk,

U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE., Washington, DC 20590. You may also send comments electronically via the Internet at <http://www.regulations.gov>. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at <http://www.regulations.gov>.

#### FOR FURTHER INFORMATION CONTACT:

Linda Williams, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE., Room W23-453, Washington, DC 20590. Telephone 202-366-0903, Email [Linda.Williams@dot.gov](mailto:Linda.Williams@dot.gov).

**SUPPLEMENTARY INFORMATION:** As described by the applicant the intended service of the vessel COOL BEANS is: *Intended Commercial Use of Vessel:* Sightseeing and sunset cruises.

*Geographic Region:* Florida.

The complete application is given in DOT docket MARAD-2013-0005 at <http://www.regulations.gov>. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR Part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR Part 388.

#### Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the *Federal Register* published on April 11, 2000 (Volume 65, Number 70; Pages 19477-78).

Dated: January 31, 2013.

**NEW JERSEY TRANSIT CORPORATION  
REQUEST FOR PROPOSAL (RFP) NO. 14-033**

**ATTACHMENT F**

**N.J.S.A. 52:15D-2 (A-60) Integrity Oversight Monitors for the implementation of certain contracts; selection; State Treasurer authority; reporting protocols; definitions**

New Jersey Statutes Annotated

Title 52. State Government, Departments and Officers

Subtitle 3. Executive and Administrative Departments, Officers and Employees (Refs & Annos)

Chapter 15D. Integrity Oversight Monitors (Refs & Annos)

N.J.S.A. 52:15D-2

52:15D-2. Integrity oversight monitors for the implementation of certain contracts; selection; State Treasurer authority; reporting protocols; definitions

Effective: March 27, 2013

[Currentness](#)

a. (1) Subject to the availability of federal funding, for each State contract involving consideration of \$5,000,000 or more for a recovery and rebuilding project, the State Treasurer shall require to be included in the contract such conditions as the State Treasurer deems necessary to facilitate the use of integrity oversight monitors.

The State Treasurer shall select integrity oversight monitors for the implementation of a contract, unless this condition is waived by the State Treasurer upon a determination that sufficient integrity oversight is already present in the contract or a funding recipient's existing compliance controls.

The State Treasurer shall have the authority to require that the services of an integrity oversight monitor be retained from the qualified integrity oversight monitor pool established pursuant to subsection b. of this section for any duration of the contract upon a determination by the State Treasurer that an integrity oversight monitor is necessary to alleviate potential or ongoing inefficiency or that the size or nature of the contract makes the procurement of an integrity oversight monitor prudent.

(2) Subject to the availability of federal funding, for recovery and rebuilding projects not involving a State contract, the governmental entity that is a party to such contract shall provide the State Treasurer, in such form as the State Treasurer may prescribe, notice of such contract, a description of the recovery and rebuilding project, the parties thereto, and the funding source for the project costs, including integrity oversight monitoring services. Upon receipt of such notice, and subject to the availability of federal funding, the State Treasurer shall procure the services of an integrity oversight monitor from the qualified integrity oversight monitor pool established pursuant to subsection b. of this section during the initial implementation of the recovery and rebuilding project involving a contract that includes consideration of \$5,000,000 or more, unless this condition is waived by the State Treasurer upon a determination of sufficient funding recipient compliance controls.

For recovery and rebuilding projects not involving a State contract, the State Treasurer shall have the authority to procure the services of an integrity oversight monitor from the qualified integrity oversight monitor pool established pursuant to subsection b. of this section for any duration of a recovery and rebuilding project involving a contract that includes consideration of \$5,000,000 or more upon a determination by the State Treasurer that an integrity oversight monitor is necessary to alleviate potential or ongoing inefficiency or that the size or nature of the recovery and rebuilding project makes the procurement of an integrity oversight monitor prudent.

(3) If the State Treasurer issues a waiver of the requirement for an integrity oversight monitor pursuant to this subsection, the State Treasurer shall provide the Governor, the Senate President, and the Speaker of the General Assembly a report in accordance with section 2 of P.L.1991, c. 164 (C.52:14-19.1), which report shall detail the reasoning associated with the waiver and the contract or funding recipient's existing compliance controls. The report shall be due within ten business days of the issuance of the waiver.

(4) Subject to the availability of federal funding, for a State or non-State contract involving consideration of less than \$5,000,000 for a recovery and rebuilding project, the State Treasurer's authorization to impose conditions concerning integrity oversight monitors pursuant to paragraphs (1) and (2) of this subsection shall apply if the State Treasurer determines that integrity oversight monitor conditions are necessary to alleviate potential or ongoing inefficiency or that the size or nature of a recovery and rebuilding project makes the procurement of an integrity oversight monitor prudent.

b. The State Treasurer shall establish a pool of qualified integrity oversight monitors. The State Treasurer shall qualify integrity oversight monitors for inclusion in the pool through a public procurement process in accordance with existing public contracting laws and regulations. Provided, however, to expedite the implementation of integrity oversight monitor oversight for recovery and rebuilding projects, the State Treasurer is authorized to administer the public procurement process for integrity oversight monitors in as expeditious a manner as is feasible under existing public contracting laws and regulations and to take such anticipatory action as is necessary to begin the selection process and creation of a qualified integrity oversight monitor pool in advance of the State's receipt of applicable federal resources dedicated to the recovery from Hurricane Sandy or other storms.

Upon inclusion on the qualified integrity oversight monitor pool, a qualified integrity oversight monitor is eligible for assignment pursuant to subsection a. of this section. The pool of qualified integrity oversight monitors shall be made available through a public website. This section shall not be construed to authorize the waiver of any applicable provision of law or regulation governing conflicts of interest.

c. An integrity oversight monitor shall periodically report to the governmental entity that is a party to the contract as the State Treasurer deems necessary and shall be subject to the malfeasance and inefficiency reporting protocol developed by the State Treasurer in consultation with the State Comptroller. The State Treasurer's reporting protocol shall require an integrity oversight monitor upon a finding of a likely criminal violation or lesser degree of waste, fraud, or abuse, to make a report immediately to the Attorney General and State Comptroller.

d. For purposes of executing the oversight functions of an integrity oversight monitor an integrity oversight monitor shall be afforded access to all records and information necessary to execute the integrity oversight monitor's oversight functions. Provided however, if an integrity oversight monitor's access to records and information may compromise sensitive information, the chief executive officer of the entity in possession of the records may limit the integrity oversight monitor's access accordingly. If a chief executive officer denies sensitive information to an integrity oversight monitor pursuant to this subsection, the chief executive officer shall provide the integrity oversight monitor with its reasoning for the denial in a written notice.

e. On the first business day of each calendar quarter, each integrity oversight monitor shall provide to the State Treasurer for distribution to the Legislature, in accordance with section 2 of P.L.1991, c. 164 (C.52:14-19.1), and the Governor a report detailing the integrity oversight monitor's provision of services during the three-month period second preceding the due date of the report and any previously unreported provision of services, which shall include, but not be limited to, detailed findings concerning the integrity oversight monitor's provision of services and recommendations for corrective or remedial action relative to findings of malfeasance and inefficiency. The report shall include a privilege log which shall detail each denial of sensitive information that the integrity oversight monitor exercises in preparing the report for transmission to the Legislature and the Governor pursuant to this subsection. The report shall not include any information which may compromise a potential criminal investigation or prosecution or any proprietary information. The State Treasurer shall have the authority to specify reporting requirements for an integrity oversight monitor pursuant to this subsection relative to the specific services provided by an integrity oversight monitor.

No report shall become due for an integrity oversight monitor until at least three months after commencing duties as an integrity oversight monitor. The State Treasurer shall provide the integrity oversight monitor reports received pursuant to this subsection to the Legislature and the Governor within ten business days of receipt.



f. As used in this section:

“Recovery and rebuilding project” means (1) the use of funds provided pursuant to federal legislation enacted by the 113<sup>th</sup> Congress of the United States of America which contains, but is not limited to, disaster assistance for impacts associated with Hurricane Sandy, or other major storms, in New Jersey; (2) the use of funds disbursed through the State treasury for undertakings to address the damage associated with the State of Emergency identified in the Governor’s [Executive Order 104](#), dated October 27, 2012, concerning Hurricane Sandy, which undertakings shall include emergency operations, loss reimbursement, repairs, rebuilding, restorations, reconstruction, removal of debris, temporary housing, household assistance, relief, hazard mitigation improvements, construction, and other recovery and rebuilding activities deemed to be a recovery and rebuilding project by the State Treasurer; and (3) the use of funds provided pursuant to federal legislation or disbursed through the State Treasury for undertakings to address the damage associated with any other major storm or natural disaster.

“Integrity oversight monitor” means a private entity that contracts to provide specialized services to ensure legal compliance, detect misconduct, and promote best practices in the administration of recovery and rebuilding projects, which services may include, but shall not be limited to, legal, investigative, accounting, forensic accounting, engineering, other professional specialties, risk assessment, developing compliance system constructs, loss prevention, monitoring, contract managers and independent private inspectors general.

“Sensitive information” means information which if disclosed to an integrity oversight monitor would jeopardize compliance with State or federal law, threaten public health, welfare, or safety, or harm the competitive economic position of a party including, but not limited to, information deemed confidential or proprietary or related to copyright or trade secrets.

**Credits**

[L.2013, c. 37, § 2, eff. March 27, 2013.](#)

N. J. S. A. 52:15D-2, NJ ST 52:15D-2  
Current with laws effective through L.2013, c. 169 and J.R. No. 13.

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End of Document

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**NEW JERSEY TRANSIT CORPORATION  
REQUEST FOR PROPOSAL (RFP) NO. 14-033**

**ATTACHMENT G**

**Potential List of Projects Subject to Integrity Oversight Monitoring Services**

**RFP No. 14-033 - Attachment G**

**Potential List of Projects Subject to Integrity Oversight Monitoring Services**

Project Name	Scope of Work
Mason Traction Power Substation	Design and construct Mason Traction Power Substation with resiliency
Hoboken Yard Power Supply System Repairs (Wayside, Building, Yard Lighting, Traction Power Control, Switch Heater)	Repair and resiliency modifications including relocation and raising of the main power supply system (13.2 kVa - 3 phase) for Hoboken Yard including main feeders, transformers, switches, breakers, support structures, secondary feeders and the associated conduit and duct banks for supplying power to wayside power outlets, yard lighting, yard buildings, switch heater control cabinets, traction power control equipment. Included in the scope is to provide back up generator power for selected buildings including the Engine House and the Engineering Building.
System Wide Rail Yard Power Repairs and Upgrade	Replace all power feeders in yard with 13.2 KV rather than 4.16 KV. Requires replacement of transformers and controls which will be installed on raised platforms with stairs. Replace wayside 600 amp receptacles throughout the yard.
Hoboken Depot and Observer Highway Traction Power Substation	Design and construct Hoboken Depot and Observer Highway Substation at one central location, Pullman/Immigration Building. Modifications and repairs to the building structure/envelope as necessary to accommodate installation of switch gear, transformers and the associated relays, breakers, other electrical system components, and ancillary equipment.
Hoboken Yard Signal Power Supply System Repairs	Material to support the Repair and resiliency modifications including relocation and raising of the signal power supply system for Hoboken Yard including system components GS1 and GS2 feeders, transformers, switches, breakers, support structures, secondary feeders and the associated TMAC sub system
Building N0. 9 Substation at the Meadows Maintenance Complex	Design and construct Building No. 9 Substation with resiliency
Rail Inventory and Spares	The assessment and replacement in kind of parts and material inventory that was lost or damaged. This is also to provide additional stock of spare parts to enable NJT to recover quickly from a storm. Identify any offsite areas/facilities to provide additional spare parts storage such that materials are available to bring damaged systems back online in a timely manner.
Henderson Street Traction Power Substation Repair	Design and repair/replacement of switch gear, transformers and the associated relays, breakers, back up power, other electrical system components, and ancillary equipment for Henderson Street Substation. A redundant utility service feeder will be included in the replacement substation.
Bayhead Yard Traction Power Substation	Design and repair/replacement of electrical equipment including breakers, transformers, load break switches, cooling fans and heaters, automatic transfer switches, back up power and ancillary equipment for Bay Head Yard Traction Power Substation. A redundant utility service feeder will be included in the replacement substation.
Hoboken Yard B Traction Power Substation	Rail/ET Substation repairs - Specific Scope TBD
North Jersey Coast Line River Draw Repairs	Permanent repairs at piers 8, 9, 10, 11, 12 & 13, which were damaged by Sandy
North Jersey Cost Line Cable Trays and Submarine Cables Repairs	Replacement of power supply cables from Essay to bridge approach spans; three transformers connecting power supply cables to submarine cables; connections to fender lights; replacement of signal cables on approach spans and from existing submarine cable to operators house; new overhead traction/fiber optic cable from Essay to new cabinet on east shore; new communication cables on approach spans; new cable trays on approach spans
Hoboken Station Ferry Terminal Repairs & Modifications	Restore and modify abandoned space off Main Terminal Waiting Room for relocation of Ferry Operations ticketing and employee welfare facilities. Repair and make resiliency improvements to Ferry concourse areas and piers including clean up and repairs/modifications to utility huts and rooms, power supply equipment, passenger information signs, heating equipment, spud wells , spud piles, corridor walls, berthing facilities and associated equipment.

**RFP No. 14-033 - Attachment G**

**Potential List of Projects Subject to Integrity Oversight Monitoring Services**

Project Name	Scope of Work
Meadows Maintenance Complex Perimeter Protection	Protect perimeter of Meadow Maintenance Complex - Building 1, 2, 3, 4, 7, 10, 12 and 13. Priorities are Building 1, 2, 3, and 7. Options include repair and waterproof building joints, waterproof any windows that are below flood level, waterproof door openings with watertight doors or stop log systems. Use stop log system where tracks enter buildings. Also add back flow preventers on storm and sanitary sewers. Scope also includes emergency power for lighting and pumps.
North Jersey Coast Line Embankment Hardening	Assessment, design and construction of embankment hardening along the North Jersey Coast Line at various locations.
Yard Interoperable Communications Upgrade	This project involves assessment, design, and fit out, within the existing Maplewood General Office Building (GOB), a consolidated Emergency Operations Center (EOC) for all NJ TRANSIT Operations and Service including Rail, Light Rail, Bus, Access Link, Police, and Customer Communications. The GOB site has been selected for these critical functions as it is an existing NJ TRANSIT facility and is not in a floodplain. The work will include fit-out of spaces in the Maplewood GOB, (approximately 25,000 square feet) with electrical and communication systems hardware and software for LAN electronics, security system, CATV/AV, PA system, EOC phone system and backup power. New connections from Maplewood to existing wayside signal system infrastructure will be made so as to create new redundant pathways, avoiding the ROC, and located strategically to bypass or avoid known vulnerabilities. The GOB is located at the intersection of Springfield Avenue and Boyden Avenue in Maplewood, NJ. The work of this project is located entirely within the transit agency's existing right-of-way/footprint. This project will require Pre-award Authority, will not require the acquisition of any additional property and there potential utility coordination or redundant service. The area surrounding the project site is mixed residential and commercial and there are no significant environmental impacts anticipated in the work of this project.
SANDY Program Management/Oversight	This project involves the tasks associated with Program Management, Administration, and the mandated Oversight and Integrity Monitors required for the Superstorm Sandy Recovery Program. Such tasks may be performed by NJ TRANSIT personnel or by consultants.
Tier III Competitive Resiliency Project	Tier III Competitive Projects. Federal Transit Administration (FTA) as per the Notice of Funding Availability (NOFA) (December 2013) is awarding competitive \$3 Billion for the resilience projects in response to the Hurricane Sandy. NJ TRANSIT is applying for the grant money to protect the power grid, signals, substations, bridges, rail terminal, rail yards and bus garage assets by making them resilient against future disasters.

**NEW JERSEY TRANSIT CORPORATION**  
**REQUEST FOR PROPOSAL (RFP) NO. 14-033**

**EXHIBITS**

**NEW JERSEY TRANSIT CORPORATION  
REQUEST FOR PROPOSAL (RFP) NO. 14-033**

**EXHIBIT 1 – NJ TRANSIT’s PROFESSIONAL SERVICE AGREEMENT**

**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 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 scope of services set forth in Exhibit A (Project Services), annexed hereto and made a part hereof.

2.       COMPENSATION: This Agreement is a cost reimbursable contract with a maximum not-to-exceed cost of \$\_\_\_\_\_ per year for a three (3) year contract term. Costs are subject to adjustment in accordance with Section 5, Modification of Agreement. NJ TRANSIT shall, 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 for these Project Services shall be in accordance with the schedule set forth

in Exhibit B (Cost Information), annexed hereto and made part hereof. Payment shall be made only for work which is actually performed and approved by NJ TRANSIT. The Consultant shall render monthly invoices for all charges incurred pursuant to this Agreement no later than two (2) weeks after the end of the month. NJ TRANSIT will make payment within thirty (30) days after approval of the Consultant's invoice. The invoices shall be detailed in accordance with procedures and formats prescribed by 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 made competitively wherever practicable.

Direct expense compensation for travel, subsistence and lodging costs are included in the all-inclusive hourly rates set forth in Exhibit B and will be in accordance with the NJ TRANSIT Travel and Business Expense Directive (Exhibit C).

All monies paid to the Consultant are subject to audit by NJ TRANSIT and further adjustment, if any, as determined by the audit(s).

Interest payable on excess amounts paid to the Consultant by NJ TRANSIT, and not previously remitted to 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 in excess of \$5,000 as determined by either the Consultant or NJ TRANSIT. 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.

Costs incurred above the authorized contract amount are not reimbursable unless the Contracting Officer has authorized, in writing, the reimbursement of such costs.

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, must as a minimum be considered allowable and allocable in accordance with the cost principles of Part 31 of the Federal Acquisition Regulations (48 CFR, Part 31). The Contracting Officer's determination on the allowability, allocability and reasonableness of incurred costs shall be final and conclusive.

3. LIMITATION OF FUNDS:

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

B.) The Purchase Order specifies the amount presently available for payment by NJ TRANSIT and allotted to Phase I of 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 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) days the costs it expects to incur under this Agreement by each task, when added to all costs previously incurred, will exceed seventy-five percent (75%) of the total task amount so far allotted by NJ TRANSIT. The notice shall state the estimated amount of additional funds required to continue performance for the task, as specified in Exhibit A, beyond the total estimated allotted task amount.

D.) If, after notification, additional funds are not allotted for that task identified in Paragraph C the Contracting Officer may terminate this Agreement, in whole or in part, in accordance with the provisions of Section 13, 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 total amount allotted by task or in total by NJ TRANSIT for this Agreement; and

2.) The Consultant is not obligated to continue performance under this Agreement (excluding actions under Section 13, 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, 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 amount allotted by NJ TRANSIT 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, 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 is entitled to a percentage of the fee specified in Exhibit B equalling 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 designee. The Consultant shall commence work upon the Project Services within five (5) working 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 designee upon the execution of the Agreement by NJ TRANSIT. The Consultant shall complete the Project Services by \_\_\_\_\_. The Contracting Officer for NJ TRANSIT shall be the Chief of Procurement & Support Services or his designees within NJ TRANSIT's Procurement Department.

5. MODIFICATION OF AGREEMENT:

A.) The Project Services set forth in Exhibit A of this Agreement may be reduced, modified or expanded within or beyond the scope of this Agreement by written contract modifications executed by NJ TRANSIT and the Consultant.

Except as provided in Paragraph B, below, in the event that NJ TRANSIT requires a reduction, expansion, or modification of the Project Services, the Contracting Officer shall issue to the Consultant a written notification which specifies such reduction, expansion, or modification. Within fifteen (15) 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 shall be accepted by

NJ TRANSIT or modified by negotiations between the Consultant and NJ TRANSIT and, thereafter, a contract modification shall be 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 shall 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) 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 Section 29 "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 Project 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 Work" and/or Exhibit B "Cost Information", NJ TRANSIT has provided an allowance for additional or supplemental Consultant work that has not yet been defined. This allowance is provided for the sole convenience of NJ TRANSIT and can only be used for work authorized by NJ TRANSIT.

All additional or supplemental work authorized under this provision will be incorporated into the Contract 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 at Final Completion will be deleted from the Contract Amount by NJ TRANSIT.

6. STATUS REPORTS: The Consultant shall submit to NJ TRANSIT a monthly 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. A final report, one (1) original and seven (7) copies, shall be submitted by the Consultant upon completion of the project.

7. REVIEWS: Until the completion of the Project Services and the final payment therefore 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 shall, 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. 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) days of said notification.

9. 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. The Consultant shall not, without the prior written approval of NJ TRANSIT, assign or subcontract any of the Project Services under this Agreement. Neither shall any 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 subconsultant, the Consultant shall provide NJ TRANSIT with sufficient documentation regarding the proposed subconsultant or assignee for NJ TRANSIT 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, shall be void and unenforceable unless NJ TRANSIT 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.

10. INDEMNIFICATION: The Consultant shall defend, indemnify and save harmless the USDOT, State of New Jersey, New Jersey Department of the Treasury, NJ TRANSIT, and their officers, employees, servants and agents ("Indemnified Parties") from all suits, actions, or claims of any character including, but not limited to, expenditures and costs of investigations, hiring of witnesses, court costs, counsel fees, settlements, judgments or otherwise, brought because of any injuries or damage received or sustained by any person, persons, or property on account of the operations of said Consultant or its sub-consultants in the performance of the work in this Agreement; or because of any act or omission, neglect, or misconduct of said Consultant or its sub-consultants in the performance of the work outlined 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 Contract 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 public liability and property damage insurance. NJ TRANSIT shall, as soon as practicable after a claim has been made against it, give written notice thereof to the Consultant along with full and complete particulars of the claim. If the suit is brought against NJ TRANSIT, NJ TRANSIT shall immediately forward to the Consultant every claim, demand, complaint, notice, summons, pleading or other process received by NJ TRANSIT or its representatives. 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 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 or servants of NJ TRANSIT. The Consultant assumes full responsibility for liability arising out of their conduct 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.

11. 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 any professional liability arising under this Agreement. Said insurance shall be in an amount not less than \$5,000,000 for any one claim and annual aggregate with a deductible not to exceed \$50,000 for any one claim, unless approved otherwise by NJ TRANSIT. The Consultant agrees to maintain this coverage for 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 Consultant agrees to carry, and shall require its assignees and subconsultants, if any, to carry, commercial general liability insurance using ISO Occurrence Form CG0001 10/93 or equivalent. The policy shall provide a minimum amount of \$5,000,000 each occurrence, \$5,000,000 personal and advertising injury, \$5,000,000 general aggregate and \$5,000,000 products completed operations aggregate. Coverage provided under this liability policy shall be on an occurrence basis and shall include, but not be limited to, bodily injury and property damage coverage including products liability/completed operations coverage, premises operations liability, blanket contractual liability, personal injury liability, advertising injury coverage, independent contractors liability, mobile equipment, damage from explosion, collapse and underground hazards, and cross liability and severability of interests clause. Additional insured endorsement CG2026 11/85, CG 2010 11/85 or CG 2010 10/93 (but only if modified to include both ongoing and completed operations) naming NJ TRANSIT and the 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 years following acceptance of the overall Contract, regardless of any beneficial occupancy by NJ TRANSIT during the Contract term.

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

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

The Consultant agrees to carry, and shall require its assignees and subconsultants, if any, to carry, contractor's pollution liability insurance covering the liability arising out of any sudden and/or non-sudden pollution or impairment of the environment, including clean-up 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. This policy shall name NJ TRANSIT and the indemnified parties as additional insured at no cost to NJ TRANSIT.

The Consultant (or whomever is performing environmental removal or remediation work) must procure and maintain through the term of this Agreement Environmental Impairment Liability Insurance, including lead abatement if required, and removal operations in an amount of \$2,000,000 per occurrence and \$2,000,000 aggregate. Transport of any hazardous waste generated under this Contract shall require Hazardous Waste Haulers Insurance (MCS90) in an amount of \$2,000,000 per occurrence or statutory minimum, whichever is greater.

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

All policies are to be written by insurance companies authorized to do business in New Jersey with an A.M. Best and Company rating of "A-" or better (or equivalent rating). All policies shall contain an

endorsement that if the policy is canceled, non-renewed or is subject to any material reduction in limits, the Insurer will provide written notice to NJ TRANSIT's Contract Specialist for this project at least thirty (30) days prior to the occurrence of such event. The foregoing insurance coverage is not intended to nor does it limit the liability of the Consultant to hold the State and NJ TRANSIT 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 Project 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.

12. AUDIT AND INSPECTION OF RECORDS: The Consultant shall retain all records, data, documents, reports and material relating to the Agreement and Contract work and shall permit authorized representatives of NJ TRANSIT, and the Office of the State Comptroller, U.S. Department of Transportation (USDOT) and the Comptroller General of the United States, upon request, to inspect, audit and photocopy all project work, materials, payroll, and all data and records of the Consultant relating to products, transactions or services provided under its performance and its subconsultants and assignees, if any, under this Agreement from the effective date hereof through and until the expiration of five (5) years after completion of and final payment for the Project Services. The Consultant further agrees to include in all its subcontracts hereunder a provision to the effect that the subconsultant agrees that it will keep all Agreement records and that the Office of State Comptroller, NJ TRANSIT, the USDOT, and the Comptroller General of the United States and any of their duly authorized representatives shall, until the expiration of three years after final payment under the subcontract, have access to and the right to examine any books, documents, and other records related to the subconsultant's performance under the subcontract.

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 30 days of NJ TRANSIT's request.

At least until the expiration of five (5) years after the completion of, and final payment by, NJ TRANSIT for the Project Services, the Consultant shall keep and maintain complete financial records showing actual time devoted and cost incurred in connection with services rendered under this Agreement, and it shall make same subject to inspection and audit by NJ TRANSIT, should NJ TRANSIT desire. Following passage of five (5) years from the date of completion of and final payment by NJ TRANSIT for the Project Services, the Consultant may request from NJ TRANSIT permission to dispose of the various records. NJ TRANSIT may either order the records be destroyed or surrendered to NJ TRANSIT.

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

The periods of access and examination described above, for records which relate to (1) appeals under the "Disputes" clause of the Contract, (2) litigation or the settlement of claims arising out of the performance of this Contract, or (3) costs and expenses of this Contract as to which exception has been taken by NJ TRANSIT or the State of New Jersey or any of their duly authorized representatives, shall continue until such appeals, litigation, claims, or exceptions have been disposed of.

13. 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 shall be given written notice by the Contracting Officer of such termination specifying the effective date thereof. Compensation shall be paid to the Consultant pursuant to the terms of Section 2 of this Agreement 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-cancelable 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.

14. TERMINATION OF THE AGREEMENT FOR CAUSE: NJ TRANSIT may terminate this Agreement in whole or in part at any time if the Consultant has materially failed to comply with terms of the



Agreement. In the event of such failure, NJ TRANSIT shall promptly give written notification to the Consultant of its intent to terminate and the reasons therefore. The Consultant shall have ten (10) 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, the Consultant shall be held in breach of contract and the contract will be terminated (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 Project Services pursuant to the terms of Exhibit B 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.

No damages of any nature shall be claimed against NJ TRANSIT in the event it exercises this right of termination. The rights and remedies available to NJ TRANSIT in this section 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 section, it is determined for any reason that the Consultant was not in default under the provisions of this section, or that the default was excusable under the provisions of this section, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to Section 13 "Termination for Convenience".

15. BUSINESS REGISTRATION NOTIICE: 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, prior to conducting business with NJ TRANSIT. It is requested that proof of valid business registration be submitted by a proposer with its proposal. Failure to submit such valid business registration with a proposal will not render the proposal materially non-responsive. If not submitted with the proposal, the Business Registration Certificate must be submitted prior to award of a

contract. The certificate must be valid at time of award. The business registration form (Form NJ-REG) can be found online at <http://www.state.nj.us/treasury/revenue/gettingregistered.html>.

A Subconsultant shall provide a copy of its business registration to any Consultant who shall forward it to NJ TRANSIT. 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 provide written notice to all subconsultants that they are required to submit a copy of their business registration to the Consultant who shall forward them to NJ TRANSIT. 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 goods and services rendered under the Agreement.

The Consultant and any Subconsultant providing goods or performing services under the contract, 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.

#### 16. SOURCE DISCLOSURE REQUIREMENT – N.J.S.A. 52:34-13.2:

Under N.J.S.A. 52:34-13.2, effective August 5, 2005, 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.

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

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

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

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

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 to provision 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 consultant or subconsultant, who had on contract award declared that services would be performed in the United States, proceeds to shift the performance of the services outside the United States, the consultant shall be deemed to be in breach of its contract, which contract shall be subject to termination for cause pursuant to Article 14 of the Professional Services Agreement, unless previously approved by the Contracting Officer and the Executive Director.

17. USE OF BRAND NAME PRODUCTS IN DESIGN:

Federal Transit Administration Circular C4220.1E requires that all procurement actions be conducted in a manner providing 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 performing design work for NJ TRANSIT are required to include the salient characteristics of a product when it is identified by "brand name". 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].

18. 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.) As authorized by 49 CFR Part 18.34, the Consultant agrees to grant and does hereby grant to NJ TRANSIT and the Federal Transit Administration (FTA) 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 section 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 for transmission to FTA.

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

19. 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 Project Services.

20. EQUAL EMPLOYMENT OPPORTUNITY: The parties to this Agreement do hereby agree that 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) as amended and supplemented and the rules and regulations promulgated pursuant thereunto, and the provisions set forth in the State of New Jersey Equal Employment Opportunity Provisions for Professional Service Contracts, annexed hereto are hereby made a part of this Agreement.

- a. In accordance with 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;
- b. No Consultant, subconsultant, nor any person on his behalf shall, in any manner, discriminate against or intimidate any employee engaged in the performance of work under this Agreement or any subcontract hereunder, or engaged in the procurement, manufacture, assembling or furnishing of any such materials, equipment, supplies or services to be acquired under such Agreement, on account of race, creed, color, national origin, ancestry, marital status, gender identity or expression, affectional or sexual orientation or sex;
- c. There may be deducted from the amount payable to the Consultant by the contracting public agency, under this Agreement, a penalty of \$50.00 for each person for each calendar day during which such person is discriminated against or intimidated in violation of the provisions of the Agreement; and
- d. This Agreement may be canceled or terminated by the contracting public agency and all money due or to become due hereunder may be forfeited, for any violation of this section of the Agreement occurring after notice to the Consultant from the contracting public agency of any prior violation of this section of the Consultant.

21. 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 prohibits 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 subcontractors 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. 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 ADA, 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 shall expeditiously forward 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.

22. **DISADVANTAGED BUSINESS ENTERPRISES:** Disadvantaged Business Enterprises, as defined in 49 CFR 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 CFR Part 26 and the provisions set forth in Exhibit D, annexed hereto, to ensure that Disadvantaged Businesses have equal opportunity to participate. Failure by the Consultant to carry out the requirements of this section shall be deemed a material breach of this Agreement.

23. COMPLIANCE WITH FEDERAL, STATE AND LOCAL LAW: 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. The Consultant acknowledges that federal requirements may change and the changed requirements will apply to the project as required, unless the Federal Government determines otherwise.

24. 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 for convenience in accordance with Section 13 hereof.

25. CONSULTANT'S EMPLOYEES: All personnel employed on this project and their daily rates shall be approved in writing by NJ TRANSIT prior to assignment to this project and, in addition, any employee of the Consultant or its subconsultants declared undesirable by NJ TRANSIT shall be relieved of any work under this Agreement.

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

26. 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.



27. 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.

28. NJ TRANSIT CODE OF ETHICS FOR CONSULTANTS:

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

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

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

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

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

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

1.) Makes any offer or agreement to pay or to make payment of, either directly or indirectly, any fee, commission, compensation, gift, gratuity, or other thing of value of any kind to any NJ TRANSIT Board member, officer, or employee or to any member of the immediate family of such Board member, officer, or employee, or any partnership, firm, or corporation with which they are employed or

associated, or in which such Board member, officer, or employee has an interest within the meaning of N.J.S.A. 52:13D-13g;

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

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

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

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

29. 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.

30. NONSOLICITATION: The Consultant warrants that it has not retained any party other than a bona fide employee working for the Consultant to solicit this Agreement, and that it has not paid or agreed to pay any outside party consideration in any form contingent upon securing this Agreement. For breach of this warranty, NJ TRANSIT shall have the right to terminate this Agreement for cause.

31. 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.

32. 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:

Mr. James Schworn  
Acting, 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.

33. DISPUTES: Disputes arising in the performance of this Agreement which are not resolved by agreement of the parties shall be decided in writing by the authorized representative of the Contracting Officer. This decision shall be final and conclusive unless within ten (10) 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. The decision of the Contracting Officer shall be binding upon the Consultant and the Consultant shall abide by the decision. The New Jersey Contractual Liability Act, N.J.S.A.

59:13-1 et seq., shall govern any action which may be brought by the Consultant as a result of NJ TRANSIT's decision.

34. 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 agent having a business office in New Jersey and shall file with the Secretary of State the name of said agent and address of said office and provide a copy thereof to NJ TRANSIT

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

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

36. GOVERNING LAW: The parties hereto stipulate that the provisions of this Agreement shall be governed by and interpreted pursuant to the laws of the State of New Jersey.

37. 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.

38. PROJECT SUPERVISION: The Consultant shall assign an engineer duly licensed to practice in the State of New Jersey to supervise the Project 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 the preparation of contract 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 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.

39. 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 CFR 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.

40. FALSE OR FRAUDULENT STATEMENTS AND CLAIMS:

A.) The Consultant recognizes that the requirements of the Program Fraud Civil Remedies Act of 1986, as amended, 49 USC § 3801 et seq. and USDOT regulations, "Program Fraud Civil Remedies," 49 CFR 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 USC § 5307, the Government reserves the right to impose on the Consultant the penalties of 18 USC § 1001 and 49 USC § 5307(n)(1), to the extent the Federal Government deems appropriate.

41. 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 or 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.

42. 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 USC § 5323(h)(2) by refraining from using any Federal Assistance awarded by FTA to support procurements using exclusionary or discriminatory specifications.

43. CLEAN WATER AND CLEAN AIR ACTS: If this Agreement shall be in an amount greater than \$100,000, the Consultant shall comply with Section 306 of the Clean Air Act (42 USC 1857(h)), Section 508 of the Clean Water Act (33 USC 1368), Executive Order 11738, Environmental Protection Agency Regulations (40 CFR Part 15), and any other applicable standard, order or requirement issued pursuant to Federal statute or regulation. The Consultant shall report violations to NJ TRANSIT, FTA and to the USEPA Assistant Administrator for Enforcement.

44. 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 USC 6321 et seq.).

45. TITLE VI COMPLIANCE: 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.) Compliance with Regulations: The Consultant shall comply with the Regulations relative to nondiscrimination in federally-assisted programs of the Department of Transportation (hereinafter, "DOT") 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 Agreement.

B.) Nondiscrimination: The Consultant, with regard to the work performed by it during the Agreement, shall not discriminate on the grounds of race, religion, color, sex, age, or national origin in the selection and retention of subconsultants, including procurements of materials and leases of equipment. The Consultant shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when contract covers a program set forth in Appendix B of the Regulations.

C.) Solicitations for Subcontracts Including Procurements of Materials and Equipment: In all solicitations either by competitive bidding or negotiation made by the Consultant for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subconsultant or supplier shall be notified by the Consultant of the Consultant's obligations under this Agreement and the Regulations relative to nondiscrimination on the grounds of race, religion, color, sex, age, or national origin.

D.) 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 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.

E.) Sanctions for Noncompliance: In the event of the Consultant's noncompliance with the nondiscrimination provisions of this Agreement, 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 Agreement until the Consultant complies; and/or

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

F.) Incorporation of Provisions: The Consultant shall include the provisions of Paragraphs A through F of this Section in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto. The Consultant shall take such action with respect to any subcontract or procurement as NJ TRANSIT or the FTA may direct as a means of enforcing such provisions including sanctions for noncompliance: provided, however, that, in the event a Consultant becomes involved in, or is threatened with, litigation with a subconsultant or supplier as a result of such direction, the Consultant may request NJ TRANSIT to enter into such litigation to protect the interests of NJ TRANSIT and, in addition, the Consultant may request NJ TRANSIT to enter into such litigation to protect the interest of the United States.

46. 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 eight hours in any calendar day or in excess of forty hours in such work week unless such laborer or mechanic receives compensation at rate not less than one and one-half times the basic rate of pay for all hours worked in excess of eight hours in any calendar day or in excess of forty 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 CFR 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 CFR Section 5.5 in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of eight hours or in excess of the standard work week of forty hours without payment of the overtime wages required by the clause set forth in subparagraph (b)(1) of 29 CFR Section 5.5.

C.) Withholding for Unpaid Wages and Liquidated Damages: DOT or NJ TRANSIT shall upon its own action or upon written request of an authorized representative of the 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 CFR 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.

#### 47. 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 CFR Part 1200 and 2 CFR 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 CFR 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.

48. LIMITATIONS ON LOBBYING: THE CONSULTANT AND ITS SUBCONSULTANTS SHALL COMPLY WITH 31 USC 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 Article.

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 Article 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 Article 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 a 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.

49. 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.

50. FLY AMERICA REQUIREMENTS: The Contractor agrees to comply with 49 U.S.C. 40118 (the "Fly America" Act) in accordance with the General Services Administration's regulations at 41 CFR Part 301-10, which provide that recipients and subrecipients of Federal funds and their contractors 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 Contractor 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 Contractor agrees to include the requirements of this section in all subcontracts that may involve international air transportation.

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

52.       SETTING OFF TAX ARREARS AGAINST SUMS OWED: Whenever a taxpayer under contract with the State of New Jersey and 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 30 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 section 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.

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:**

**NJ TRANSIT**

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

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

**WITNESS:**

**CONSULTANT**

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

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

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

JOHN J. HOFFMAN  
ACTING ATTORNEY GENERAL OF NEW JERSEY

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

**NEW JERSEY TRANSIT CORPORATION  
REQUEST FOR PROPOSAL (RFP) NO. 14-033**

**EXHIBIT 2 - TRAVEL & BUSINESS REIMBURSEMENT GUIDELINES**



**Per Diem (Major Cities)\*  
Effective October 1, 2013**

\* \$46 Standard Meal Rate applies to all destinations not specifically listed  
Average Per Diem Rates are listed below  
A full listing of domestic Per Diem Rates can be found online at [www.gsa.gov](http://www.gsa.gov)  
Current foreign Per Diem Rates can be found at <http://aoprals.state.gov>

**NJ TRANSIT**

**TRAVEL & BUSINESS REIMBURSEMENT GUIDELINES**

**FOR CONTRACTORS AND VENDORS**

**GENERAL:**

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

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

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

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

<b>M&amp;IE Total</b>	<b>\$46.00</b>	<b>\$51.00</b>	<b>\$56.00</b>	<b>\$61.00</b>	<b>\$66.00</b>	<b>\$71.00</b>
Breakfast	\$7.00	\$8.00	\$9.00	\$10.00	\$11.00	\$12.00
Lunch	\$11.00	\$12.00	\$13.00	\$15.00	\$16.00	\$18.00
Dinner	\$23.00	\$26.00	\$29.00	\$31.00	\$34.00	\$36.00
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 \$0.565 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.

**NEW JERSEY TRANSIT CORPORATION  
REQUEST FOR PROPOSAL (RFP) NO. 14-033**

**EXHIBIT 3 - EQUAL EMPLOYMENT OPPORTUNITY REQUIREMENTS**

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

**I. BID REQUIREMENTS**

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

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

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

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

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

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

**II. SUBCONTRACTS; EQUAL EMPLOYMENT GOALS**

The contractor agrees to incorporate these State of New Jersey EEO Provisions for Procurement, Professional and Service Contracts in its subcontracts for services.

In accordance with N.J.A.C. 17:27, Contractors and subcontractors are required to make a good faith effort to provide equal employment opportunity for minorities and women. Failure to make good faith efforts to provide equal employment opportunity for minorities and women may result in sanctions including fines/penalties, withholding of payment, termination of the contract, suspension/debarment or such other action as provided by law.

### III. MANDATORY CONTRACT LANGUAGE

#### N.J.S.A. 10:5-31 et seq. and N.J.A.C. 17:27 MANDATORY AFFIRMATIVE ACTION LANGUAGE FOR PROCUREMENT, PROFESSIONAL AND 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, where applicable, will send to each labor union or representative or workers with which it has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer advising the labor union or workers' representative of the contractor's commitments under this act 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 afford equal employment opportunities to minority and women workers consistent with Good faith efforts to meet targeted county employment goals established in accordance with **N.J.A.C. 17:27-5.2**, or Good faith efforts to meet targeted county employment goals determined by the Division, pursuant to **N.J.A.C. 17:27-5.2**.

The contractor or subcontractor agrees to inform in writing its appropriate recruitment agencies including, but not limited to, employment agencies, placement bureaus, colleges, universities, labor unions, that it does not discriminate on the basis of age, 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, 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

The contractor and its subcontractor shall furnish such reports or other documents to the Division of Public Contracts Equal Employment Opportunity Compliance as may be requested by the Division 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 Public Contracts Equal Employment Opportunity Compliance for conducting a compliance investigation pursuant to **Subchapter 10 of the Administrative Code at N.J.A.C.17:27.**

**NEW JERSEY TRANSIT CORPORATION  
REQUEST FOR PROPOSAL (RFP) NO. 14-033**

**EXHIBIT 4 - DBE REQUIREMENTS**

**NEW JERSEY TRANSIT CORPORATION  
DBE REQUIREMENTS FOR  
RACE-CONSCIOUS  
FEDERAL PROCUREMENT ACTIVITIES**

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**NEW JERSEY TRANSIT CORPORATION  
DBE REQUIREMENTS FOR  
RACE-CONSCIOUS  
FEDERAL PROCUREMENT ACTIVITIES**

The following pages provide Bidders/Proposers/Primes on federal contracts with New Jersey Transit (NJT), information about NJT's Disadvantaged Business Enterprise (DBE) Program, administered by the Office of Business Development (OBD). Prospective Bidders/Proposers/Primes will have an opportunity to ask questions regarding the directives contained in the DBE specifications at the pre-bid/pre-proposal conference(s). Further clarification of the DBE specifications, along with assistance in completing the forms, can be obtained by calling (973) 491-7593.

A list of certified DBE firms may be found in the NJ Unified Certification Program (NJUCP) Directory at [www.njucp.net](http://www.njucp.net). **Note: Use of this list does not relieve the Bidder/Proposer/Prime contractor/consultant of responsibility to seek DBE participation from other sources. The list is updated daily and must be checked periodically, as firms are certified and decertified daily.**

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

### **1.1 POLICY**

As defined in the U.S. Department of Transportation (USDOT) Regulation 49 CFR Part 26, it is the policy of NJT that Disadvantaged Business Enterprises shall have the opportunity to compete for and participate in the performance of contracts financed in whole or in part with federal funds. Each subcontract a Prime signs with a subcontractor/subconsultant must include the following assurance referenced in **article 1.2**.

### **1.2 ASSURANCE**

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



the commitment of NJT to see that NJT's DBE Policy is carried out in all instances.

### 1.3 DBE GOAL FOR THIS PROJECT

As an aid in meeting the commitment of its DBE Program, NJT is setting a *race conscious* goal of awarding 10% percent of the gross sum bid/proposal to certified NJUCP DBE firms. Should the actual contract amount increase or decrease, through approved change order(s), the assigned goal may remain. The OBD will determine if the change orders and/or contract phases will result in an adjustment to the DBE participation goal.

### 1.4 GUIDANCE TO BIDDER/PROPOSERS/PRIMES

- 1.4.1 Failure by a Bidder/Proposer/Prime to comply with any of the requirements contained herein shall result in breach of contract and it shall be subject to the appropriate penalties, remedies, or liquidated damage(s). Refer to articles 5.6-5.7
- 1.4.2 All required forms, including the supplemental section (see articles 2.3-2.4) must be submitted in accordance with the requirements. **Firms must be certified under the NJUCP at the time of contract award in order to obtain DBE credit toward the goal.**
- 1.4.3 Price alone is not an acceptable basis for rejecting a DBE subcontractor/subconsultant's bid.
- 1.4.4 The Bidder/Proposer/Prime shall, at a minimum, seek DBEs in the same geographic area in which it generally seeks subcontractors/subconsultants. However, the Bidder/Proposer/Prime may be required to expand its search under specific circumstances as determined by OBD. Refer to article 2.0
- 1.4.5 Agreements between a Bidder/Proposer/Prime and a DBE in which the DBE promises not to provide subcontracting quotations to other Bidder/Proposers are prohibited.
- 1.4.6 The desire of a Bidder/Proposer/Prime to self-perform the work of a contract with its own organization is not an acceptable basis to not meet the goal or demonstrate a good faith effort to do so.
- 1.4.7 The Bidder/Proposer/Prime is responsible for verifying that the DBE is certified under the appropriate NAICS code for the scope of work identified. DBE credit shall be given only for work performed in the NAICS code(s) under which the DBE is certified.
- 1.4.8 A DBE firm listed on the First-Tier DBE Utilization Form (Form A) shall constitute a binding representation to NJT, by the Bidder/Proposer/Prime, that the DBE firm is qualified, available, and certified under the appropriate and required NAICS code to perform the scope of work identified. Refer to article 2.5a

### 1.5 TRANSIT VEHICLE MANUFACTURERS (TVM)

- 1.5.1 As a transit vehicle manufacturer, you must establish and submit for FTA's approval an annual overall DBE percentage goal. A TVM must certify that it submitted the annual DBE goal required by 49 CFR 26.49 and FTA has approved it or not disapproved it.
  - (a) As a condition of being authorized to bid or propose on FTA assisted transit vehicle procurements, the Bidder/Proposer must complete and submit the TVM Certification form with the bid/proposal certifying that it has complied with the requirements of 49 CFR 26.49.

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

## 1.6 RESPONSIBLE BID/PROPOSAL CRITERIA

- 1.6.1 As a matter of responsibility, the two lowest Bidders or two highest ranked Proposers must submit the required forms, including the supplemental section (if applicable), with the bid/proposal or within seven (7) days after the bid opening or proposal due date. *NJT may grant a formal written request to extend this 7-day requirement at its sole discretion on a case-by-case basis.*
- 1.6.2 Failure to satisfactorily complete or submit all required forms when due may result in determination by NJT that the Bidder/Proposer is non-responsible and may cause rejection of the bid or proposal.
- 1.6.3 If the two lowest Bidders/highest ranked Proposers submit the DBE forms, but fail to meet the DBE goal, the OBD will consider the efforts made to determine if a Bidder/Proposer/Prime has in fact, demonstrated a good faith effort. **See article 2.0**
- 1.6.4 If it is determined that efforts were made to include DBE participation on the contract, however these efforts did not result in meeting the goal, NJT may request that additional efforts be made within 10 business days of the request. If at this time the Bidder/Proposer fails to demonstrate a good faith effort to achieve the goal, NJT shall consider awarding the contract to the next lowest bidder or highest ranked proposer who offers a reasonable price and meets the DBE goal or demonstrates a good faith effort and other bid requirements or requirements of 49 CFR Part 26.

## 2. GUIDANCE ON A GOOD FAITH EFFORT

- 2.1 To demonstrate a good faith effort to meet the DBE goal, a Bidder/Proposer/Prime shall provide written documentation in addition to Form D (article 2.3e), of the steps it has taken, prior to the bid opening/proposal due date, or during the life of the contract to obtain DBE participation. **The Bidder/Proposer/Prime can meet this requirement in either of two ways:**
- (1) The Bidder/ Proposer/Prime can meet the goal.
  - (2) The Bidder/Proposer/Prime shall exhaust the available options referenced in **article 2.2** in making a continuous good faith effort to meet the assigned contract goal for the life of the contract.
- (a) The efforts employed by the bidder should be those that one could reasonably expect a bidder to take if the bidder were actively and aggressively trying to obtain DBE participation sufficient to meet the contract goal.
- (b) In determining a good faith effort, the OBD will consider the **quality, quantity, and intensity** of the different kinds of efforts that the Bidder/Proposer/Prime has made. Mere *pro forma* efforts will not be considered as demonstration of good faith effort to meet the DBE contract requirements.
- (c) The Bidder/Proposer/Prime shall use good business judgment and consider a number of factors in negotiating with subcontractors/subconsultants, including DBE subcontractors/ subconsultants, and should **take a firm's price and capabilities as well as contract goals into consideration**. **The fact that there may be some additional costs involved in finding and using DBEs is not in itself sufficient reason for a Bidder's/Proposer's failure to meet the contract DBE goal, as long as such costs are reasonable as determined by NJT. Primes are not, however, required to accept higher quotes from DBEs if the**

**price difference is excessive or unreasonable.**

- (d) The Bidder/Proposer/Prime's ability or desire to perform the work of a contract with its own organization (self-performance) does not relieve the Bidder/Proposer/Prime of the responsibility to meet the goal or demonstrate a good faith effort.
- (e) The Bidder/Proposer/Prime shall not reject DBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities. The Bidder/Proposer/Prime's standing within its industry, membership in specific groups, organizations, or associations and political or social affiliations (for example, union vs. non-union employee status) are not legitimate causes for the rejection or non-solicitation of bids in the Bidder/Proposer/Prime's efforts to meet the assigned project goal.
- (f) The OBD will support the Bidder/Proposer/Prime in indentifying ways to meet the assigned contract goal.

## **2.2 A GOOD FAITH EFFORT**

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

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

insurance as required by NJT or the Prime contractor.

- (f) The Bidder/Proposer/Prime shall make efforts to assist interested DBEs in obtaining necessary equipment, supplies, materials, or related assistance or services.
- (g) The Bidder/Proposer/Prime shall effectively use the services of available minority/women community organizations; minority/women Prime contractors groups; local, State and Federal minority/women business assistance offices; and other organizations as allowed on a case-by-case basis to provide assistance in the recruitment and placement of DBEs.

### 2.3 REQUIRED FORMS

- (a) **Form A - First Tier DBE Utilization:** Lists all First Tier DBE firms scheduled to participate on this contract.
- (b) **Form A1 - Bidder/Proposer Solicitation and Contractor Information:** Lists all DBE and Non-DBE sub contractor/subconsultants, including suppliers, solicited for, and participating on this contract.
- (c) **Form A2- Non-DBE Sub Utilization:** Lists all DBE and Non-DBE subcontractors/ subconsultants, including suppliers, participating on this contract.
- (d) **Form B - Intent to Perform as a DBE Sub:** Identifies the work the 1<sup>st</sup> Tier DBE intends to perform including scope of work, subcontract dollar value, etc.
- (e) **DBE Good Faith Effort Form (if applicable):** Identifies any DBE subcontractor invited to quote, but declined to do so for any reason.
- (f) **Trucking Commitment Agreement (if applicable):** Identifies all trucking firms (DBE and Non-DBE) participating on this contract, at any tier.
- (g) **NJ UCP DBE Certification & NAICS Code Verification:** Confirms the DBE status and NAICS code(s) of each First Tier DBE subcontractor/subconsultant.
- (h) **\*Form E - Contractor's Monthly DBE Payment Report & Payment Certification Voucher (Post-Award):** Records monthly payments issued to each DBE subcontractor/subconsultant/supplier and monthly payments issued by NJ TRANSIT to the Prime. Certifies that DBE subs have been paid for previous month's invoices.
- (i) **Form E2 – DBE's Monthly Payment Report (Post-Award):** Records monthly invoices submitted by the DBE, payments owed to the DBE on past due invoices and payments received from the prime by each DBE subcontractor/subconsultant.
- (j) **Form E1- DBE Prime's Monthly Payment Report (For DBE Prime Only):** Records monthly payments issued to each DBE Prime by NJ TRANSIT to.

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

### 2.4 SUPPLEMENTAL REQUIRED FORMS (IF APPLICABLE)

- (a) **Form AA – Second Tier DBE Utilization:** Lists all Second Tier DBE firms scheduled to participate on the DBE sub-Prime's contract.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**2.6 INSTRUCTIONS FOR COMPLETING SUPPLEMENTAL REQUIRED FORMS:**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

### **3.0 GUIDANCE ON COUNTING DBE PARTICIPATION**

3.1 If a firm is not currently certified as a DBE in accordance with 49 CFR part 26 at the time of the execution of the 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) Packers, 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 shall not terminate for convenience, or any other reason, and then perform the work of the terminated subcontractor/subconsultant with its own forces (self-perform) or those of an affiliate without NJT's prior written consent. Refer to Article 4.3.

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

#### 4.2 ADDITION OF DBE(s)

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

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

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

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

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

- 1) The DBE materially fails to successfully perform the contract tasks.
- 2) Under unusual situations referenced in article 4.3.8.

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

- (a) Written communications (over a period) from the Prime and/or NJT's PM/CM team to the DBE, notifying the DBE of its poor performance must be provided to the OBD.
- (b) **The OBD will arrange a meeting with the DBE, the Prime, and a representative from Procurement and project management to discuss the specifics of the performance issue.**
- (c) The DBE must provide a written plan identifying the efforts it will make to correct the deficiencies.
- (d) The Prime must provide the DBE with a minimum of 30 calendar days from acceptance of its plan to improve its performance. Throughout the 30-day window, the Prime and/or NJT PM/CM team must provide written communication to the DBE of any additional/continued performance issues, with a copy to the OBD.

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

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

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

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

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

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

- (a) Failure to qualify as a DBE, or maintain DBE certification status.
- (b) Death or physical disability of a key individual.
- (c) Dissolution, if a corporation or partnership.
- (d) Bankruptcy of the subcontractor/subconsultant, subject to applicable bankruptcy law, and only in instances where the bankruptcy affects the subcontractor/subconsultant’s ability to perform.
- (e) Inability to obtain, or loss of, a license necessary for the performance of the particular category of work.
- (f) Failure or inability to comply with a requirement of law applicable to Primes or, subcontractors/subconsultants.

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

4.4.1 When a DBE is unable to complete a subcontract (withdraws), for any reason, NJT will require a Bidder/Proposer/Prime to make a good faith effort to replace a withdrawn DBE at least to the extent needed to ensure that the Prime contractor is able to meet the contract goal established by NJT for the procurement. **These good faith efforts shall be directed at finding another DBE to perform at least the same amount of work under the contract as the removed DBE.**

4.4.2 The Bidder/Proposer/Prime is required to make a good faith effort to seek other DBE subcontractors/subconsultants in substitution of the original DBE. The good faith efforts described in **article 2** are required in finding another DBE to perform at least the same amount of work under the contract as the DBE that was terminated, to the extent needed to meet the contract goal established for the procurement.

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

4.5.1 If the Prime has reason to doubt that a proposed DBE is still eligible due to change in ownership, management, or size, the Prime shall, within 10 days of learning this information, notify NJT of that fact in writing.

4.5.2 If the subcontract has not been executed before the DBE’s ineligibility occurs, the Prime will not receive credit toward the contract goal for the ineligible DBE. The Prime may continue to use the ineligible DBE, however, DBE participation credit will not be granted.

(a) To the extent necessary to meet the assigned contract goal, the Prime will make a good faith effort to replace the ineligible DBE within 10 days after notification by the OBD. The OBD will support the Prime in its efforts to replace with an eligible DBE firm in order to meet the contract goal.

4.5.3 If the contract has been executed before the firm has been notified of its ineligibility, the Prime may continue to use the firm on the contract and receive credit toward its DBE goal for the duration of that particular phase of or option in the contract. This may not apply to future phases or options, which will be handled on a case-by-case

basis at the sole discretion of the OBD.

- 4.5.4 **Exception:** If the DBEs ineligibility is caused solely by its having exceeded the size standard during the performance of the contract the Prime may continue to count its participation on that contract only toward the contract goals. This may not apply to future phases or options and will be subject to determination by the OBD.

## 5.0 AWARD OBLIGATIONS

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

## 5.2 POST AWARD DELIVERABLES

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

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

- 5.2.5 **Form E1 (DBE Prime's Monthly Payment Report) (For DBE Prime Only)** - submit monthly to the Manager of

the OBD.

#### 5.2.6 Form E2 (DBE's Monthly Payment Report) – Refer to article 2.5j

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

### 5.3 PROMPT PAYMENT OF INVOICES TO SUBCONTRACTORS

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

### 5.4 SUBCONTRACTOR PAYMENT DISPUTE RESOLUTION

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

- (a) OBD's efforts shall be limited to meeting with the Prime and the subcontractor/ subconsultant, and reviewing the relevant facts with both parties.
  - (b) OBD will not act as a decider of fact nor will OBD direct a settlement to the dispute.
  - (c) Any OBD effort is solely intended to assist the parties in understanding their respective positions and to encourage a reasonable resolution of the dispute. The Prime is required to send written notification of the above to the OBD immediately.
- 5.4.2 Should payments be withheld that are not related to the previous items mentioned, and/or a determination can be made that the withholding of payments violates the prompt payment clause, NJT may execute the appropriate remedies in accordance with article 5.6.

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

- 5.5.1 **The Prime must include a contract clause in the subcontractor agreement obligating the Prime to pay all retainage owed to the subcontractor/subconsultant for satisfactory completion of the accepted scope of work no later than 15 days after the DBE subcontractor's/subconsultant's work is satisfactorily completed.**
- 5.5.2 Only subcontractors/subconsultants whose work has been 100% completed, including all punch list work or remaining work, and who have supplied closeout documents shall be eligible for release of retainage. *Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of NJT.*
- 5.5.3 NJT may agree to release an equivalent amount of Prime retainage provided that:
- (a) There is no offsetting claims from NJT (including, but not limited to, liquidated damages), other subcontractors/subconsultants, material men, or workers;
  - (b) None of the other reasons to withhold payments specified under the Prime contract exists.
- 5.5.4 Prior to release of the Prime's retainage, the Prime shall provide to NJT executed copies of the following subcontractor closeout documents, (shown in Appendix A of the contract) as appropriate:
- (a) Consent of Surety to Final Payment to the Subcontractor
  - (b) Certificate of Amounts Due and Owing to Subcontractor Employees
  - (c) Subcontractor Release of Claims
  - (d) Subcontractor Release of Liens and a Certificate of Final Acceptance of Subcontractor Work
- 5.5.5 Notwithstanding NJT's release or partial release of retainage, nothing in this clause shall be deemed to constitute NJT's partial or final acceptance of the work, or any portion thereof, unless either a Certificate of Partial Acceptance or a Certificate of Final Acceptance has been executed by NJT, in the form(s).

## **5.6 Audit and Penalties**

During the performance of any contract and for a period of up to three (3) years following completion of the contract work, NJ TRANSIT may conduct reviews for compliance with the requirements of the DBE Program. Such reviews may include, but not be limited to, the evaluation of monthly reports, desk audits and site visitations.

- 5.6.1 Where a Prime is found to be in breach of the requirements of the DBE Program during the performance of the DBE Requirements for Federal Procurement Activities

contract, and does not promptly take corrective action, the following sanctions may be instituted (singularly, in any combination, and in addition to any other contractual remedies or otherwise provided by law):

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

## **5.7 LIQUIDATED DAMAGES**

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

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

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

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

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



## APPENDIX I

### GLOSSARY

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

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

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

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

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

**DBE Sub-Prime** - means any 1<sup>st</sup> Tier DBE subcontractor/subconsultant listed on the Form A that will subcontract any portion of its subcontract/scope of work to a DBE(s) and/or non-DBE(s) firm(s).

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

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

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

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

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

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

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

**Race-neutral Measure or Program**- is one that is focused specifically on assisting all small businesses equally, including DBEs. Such activities include bonding, insurance, and technical assistance. For the purposes of this part, race-neutral includes gender-neutrality.

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

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

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

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

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

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

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

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

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

# REQUIRED FORMS

## ENCLOSED FOR COMPLETION (MANDATORY):

- **Form A; A1; A2; B; D & Trucking Commitment Schedule**

## TO BE OBTAINED AND SUBMITTED (MANDATORY):

- **Copy of a valid NJUCP DBE Certificate (Provided by 1<sup>st</sup> Tier DBEs.)**

Consult DBE Program Requirements for further guidance.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**2.6 INSTRUCTIONS FOR COMPLETING SUPPLEMENTAL REQUIRED FORMS:**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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 (\$) Awarded	Percentage of Subcontract Work (%)
			%
			%
			%
			%
			%
			%
			%
			%
			%
			%
<b>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.</b>	<b>TOTALS</b>	<b>\$</b>	<b>%</b>

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: \_\_\_\_\_

Federal Tax ID #: \_\_\_\_\_

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

Company Tel #: \_\_\_\_\_

Prime Contractor's DBE Liaison Officer: \_\_\_\_\_

Date Signed: \_\_\_\_\_



BIDDER SOLICITATION & CONTRACTOR INFORMATION - FORM A1

NJT Contract No: \_\_\_\_\_

Project Title: \_\_\_\_\_

Prime Contractor: \_\_\_\_\_

Telephone #: \_\_\_\_\_

Date: \_\_\_\_\_

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

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

BIDDER SOLICITATION & CONTRACTOR INFORMATION - FORM A1

NJT Contract No: \_\_\_\_\_  
 Prime Contractor: \_\_\_\_\_  
 Date: \_\_\_\_\_

Project Title: \_\_\_\_\_  
 Telephone #: \_\_\_\_\_

Complete the information below for "all" subcontractors/subconsultants solicited for or participating on this project.

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

**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/Sub-consultant Work (\$)	Percentage of Subcontract or Work (%)
			\$	%
			\$	%
			\$	%
			\$	%
<b>Must provide a detailed scope of work; one-word descriptions are not acceptable.</b>			<b>TOTALS</b>	%

To Add Subs Use Additional Forms

INTENT TO PERFORM AS A 1<sup>ST</sup> TIER DBE - FORM B

The Bidder/Proposer/Prime is prohibited from completing any portion of this form and directing the DBE to sign a blank form.

DIRECTIONS: DBE(s) listed on the Form A must complete all information on this form.

Name of Bidder/Proposer/Prime: \_\_\_\_\_

Name of DBE Firm: \_\_\_\_\_

Project/Contract Name: \_\_\_\_\_

IFB/RFP Contract Number: \_\_\_\_\_

**Does the undersigned DBE (Answer Accordingly):**

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

Intend to subcontract any portion of its scope of work to a DBE(s)? Circle one. (Yes or No)  
If yes, DBE Sub-Primes must complete and submit Form AA. At what percent? \_\_\_\_\_%

Intend to subcontract any portion of its scope of work to a Non-DBE(s)? Circle one. (Yes or No)  
If yes, must complete and submit Form AA2. At what percent? \_\_\_\_\_%

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

\_\_\_\_\_  
\_\_\_\_\_

Dollar Value of DBE Subcontract: \$ \_\_\_\_\_

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

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

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

DBE Contract Start Date: \_\_\_\_\_ DBE Contract Completion Date \_\_\_\_\_

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

Signature of 1<sup>st</sup> Tier DBE \_\_\_\_\_ Date \_\_\_\_\_

Title \_\_\_\_\_

Print Name \_\_\_\_\_

Telephone #: \_\_\_\_\_

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

ADDENDUM

**FORM D INSTRUCTION SHEET**  
**PRE AND POST AWARD GOOD FAITH EFFORT (IF APPLICABLE)**

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

**Important**

Bidder/proposer/prime compliance with contract goals and good faith efforts are handled as a matter of responsibility. If the bidder/proposer/prime did not meet the goal, they must document that they made Good Faith Efforts to do so. This requirement is an important and serious one. 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 1<sup>st</sup> Tier DBE subs. DBE sub-primes must provide required forms under Supplemental section to their 2<sup>nd</sup> Tier DBE/Non-DBE subs, if applicable. Please contact the compliance officer identified for this contract at the pre-bid/proposal conference for guidance on completing any of these forms.**

DBE GOOD FAITH EFFORT- FORM D

IFB/RFP Number: \_\_\_\_\_

Project Title: \_\_\_\_\_

Bidder/Proposer/Prime Name: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

Phone: \_\_\_\_\_

Email: \_\_\_\_\_

Date Signed: \_\_\_\_\_

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

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

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

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 Title

of \_\_\_\_\_  
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 Name

Type 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 #: ( )

**Mandatory Form Submit Monthly**

**PRIME CONTRACTOR Monthly DBE Payment Report - Form E**

Name of Project: \_\_\_\_\_ NJT Contract #: \_\_\_\_\_  
 Prime Original Contract Value: \_\_\_\_\_ Report for the Month of: \_\_\_\_\_  
 Change Orders (Overall Inc/Dec.): \_\_\_\_\_ Notice to Proceed Date: \_\_\_\_\_  
 Total Contract Amount to Date: \_\_\_\_\_ NJT Project Mgr Name: \_\_\_\_\_  
 Total Payments Received from NJT Date: \_\_\_\_\_ Assigned DBE Goal %: \_\_\_\_\_

DBE Subcontractor	Name of DBE Subcontractor	Work Task Performed	Original Contract Amount \$	Change Order Amount \$ (+/-)	Amount of Invoice Received this Month (\$)	Date of Invoice Received in this Month	Payment(s) Made to DBE in this Month in \$\$ (itemize)	Date(s) Payment Made This Month	Total DBE Payments made to Date in (\$)	% Overall Work Finished	Final Pmt (Y/N)
			Total(s) →	\$	\$	\$	Total(s)	\$	\$		
Itemize payments/invoices and dates if paid/received more than one payment/invoice between the 1 <sup>st</sup> and 31 <sup>st</sup> of THIS Month.											
<b>Prime Contractor Information:</b>											

Prime Firm Name: \_\_\_\_\_ Project Director Name: \_\_\_\_\_  
 Address: \_\_\_\_\_ Project Director Signature: \_\_\_\_\_  
 Telephone #: \_\_\_\_\_ Date: \_\_\_\_\_ Federal TIN #: \_\_\_\_\_

**Prime's Past Due Invoice Information:** List any invoice more than 40 days past due from the date submitted to NJT at the time you complete this form.

Invoice #	Invoice Date	Invoice Amount (\$)	Number of Days Past Due	Comments:

This form is not to be altered in any way. For assistance completing this form, call 973-491-7539, 8058, 8768, 8575, 8069, 8941 Fed Form E rev Sept 2010



**Form E - Prime Contractor's DBE Payment Certification**

1. Have all DBE subcontractors with executed subcontracts been paid amounts due from previous progress payments?
  - If yes, skip the next section and go to number 3.
  - If no, please complete fields in box below: (Use additional paper, if needed)

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

2. Have you notified the DBE subcontractor(s) that you are withholding payment and the reason(s) why?
  - If yes, provide a copy of written notification to the DBE subcontractor with this form, indicating the date of notification.
  - If no, lack of prior written notification to the DBE(s) that you are withholding payment violates the prompt payment clause guidelines. Please contact the DBE immediately, and provide a copy of written notification to the subcontractor with this form.
3. By signing this form, I certify that all of the above represent true and accurate information.

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

PROJECT DIRECTOR NAME (PRINT) \_\_\_\_\_

PROJECT DIRECTOR (SIGNATURE) \_\_\_\_\_

DATE \_\_\_\_/\_\_\_\_/\_\_\_\_

Additional Reasons/Comments for Withholding Payment:

DO NOT WRITE BELOW. DEPARTMENTAL USE ONLY.

- Approved
- Denied

THIS FORM IS DUE ON THE 7TH OF EACH MONTH Please forward to:

Office of Civil Rights and Diversity Programs  
 Business Development  
 NJ TRANSIT  
 One Penn Plaza East, 6<sup>th</sup> Fl  
 Newark, New Jersey 07105-2246

This form is not to be altered in any way.

For assistance completing this form, call 973-491-7539, 8058, 8768, 8575, 8069, 8941

Fed Form E rev Sept 2010

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

DATE CONTRACT EXECUTED: \_\_\_\_\_ CONTRACT NUMBER: \_\_\_\_\_ REPORT FOR THE MONTH OF: \_\_\_\_\_ YEAR \_\_\_\_\_

ORIGINAL CONTRACT AMOUNT: \_\_\_\_\_ FED TAX ID #: \_\_\_\_\_

CHANGE ORDERS (OVERALL INC/DEC.): \_\_\_\_\_ PURCHASE ORDER #: \_\_\_\_\_

TOTAL CONTRACT AMOUNT TO DATE: \_\_\_\_\_ NAME OF PROJECT: \_\_\_\_\_

Original Contract Value	Change Order Amount +/-	Date of Change Order	New Contract Value	Payments Received This Month	Total Payments Received to Date	% Work Completed To Date	Final Pmt Y/N
<b>TOTALS:</b>							

PRIME INVOICE 30 DAYS PAST DUE FROM NJT:

NJ TRANSIT

Invoice Date      Reference #      No. Days Past Due Amount

Project Manager (Name): \_\_\_\_\_  
Telephone #: \_\_\_\_\_

**PRIME CONTRACTOR INFORMATION**

Firm Name: \_\_\_\_\_

Compliance Officer (Name): \_\_\_\_\_

Date: \_\_\_\_\_ Telephone #: \_\_\_\_\_

FORM IS DUE ON THE 7<sup>TH</sup> OF EACH MONTH.  
PLEASE FORWARD TO:  
NJ TRANSIT  
Manager, Contract Compliance  
Office of Business Diversity - 6<sup>TH</sup> FL.  
One Penn Plaza East  
Newark, New Jersey 07105-2246

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

DBE SUBCONTRACTOR Monthly Payment Report - Form E2

Name of DBE Firm: \_\_\_\_\_ Report for the Month of: \_\_\_\_\_  
 DBE's FEIN#: \_\_\_\_\_ Contract Number: \_\_\_\_\_  
 DBE Address: \_\_\_\_\_ Contract Name: \_\_\_\_\_  
 DBE Telephone #: \_\_\_\_\_ DBE Contract Start Date: \_\_\_\_\_  
 Prime Contractor's Information: \_\_\_\_\_  
 Name of Prime: \_\_\_\_\_ Address: \_\_\_\_\_ Telephone #: \_\_\_\_\_

DBE PAYMENT INFO: *Itemize payments/invoices and dates if received/submitted more than one payment/invoice between the 1<sup>st</sup> and 31<sup>st</sup> of THIS Month.*

Work Task Performed	Original Subcontract Amount \$	Change Order Amount (+/-)	Invoice #(s) Submitted in this month	Dollar Amount of Each Invoice Submitted in this Month	Date of Invoice(s) Submitted in 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	Final Payment? Y or N
<b>TOTALS →</b>	\$	\$	<b>TOTALS →</b>	\$	<b>TOTALS →</b>	\$	<b>TOTALS →</b>	\$		

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

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

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

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

Name: \_\_\_\_\_ Signature: \_\_\_\_\_ Title: \_\_\_\_\_ Date: \_\_\_\_\_

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

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

Do not alter this form in any way. If you need assistance completing this form please call 973-491-7539, 8058, 8768, 8069, or 8941. Rev Fed Form E2 – Sept 2010

NON-DBE SUBCONTRACTOR Monthly Payment Report - Form E3

Name of Non-DBE Firm: \_\_\_\_\_  
 FEIN#: \_\_\_\_\_  
 Address: \_\_\_\_\_  
 Telephone #: \_\_\_\_\_

Report for the Month of: \_\_\_\_\_  
 Contract Number: \_\_\_\_\_  
 Contract Name: \_\_\_\_\_  
 Contract Start Date: \_\_\_\_\_

Prime or Sub-Prime Contractor/Subconsultant's Information:

Name of Prime/Sub-Prime: \_\_\_\_\_ Address: \_\_\_\_\_ Telephone #: \_\_\_\_\_

**PAYMENT INFO: Itemize payments/invoices and dates per each work task if received/submitted more than one payment/invoice between the 1<sup>st</sup> and 31<sup>st</sup> of THIS Month.**

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

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)

Is this your Final Form E3  YES  NO (check YES only if you have completed all work and have been paid in full and are owed no money from this prime or sub-prime)

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

Name: \_\_\_\_\_ Signature: \_\_\_\_\_ Title: \_\_\_\_\_ Date: \_\_\_\_\_

THIS FORM IS DUE ON THE 7<sup>TH</sup> OF EACH MONTH IMMEDIATELY FOLLOWING DBE'S SUBCONTRACT START DATE, EVEN IF PAYMENT NOT RECEIVED OR WORK IS 100% COMPLETED.

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

Do not alter this form in any way.

If you need assistance completing this form please call 973-491-7539, 8061, 8068 or 8941.

**NEW JERSEY TRANSIT CORPORATION  
REQUEST FOR PROPOSAL (RFP) NO. 14-033**

**EXHIBIT 5 - ACKNOWLEDGEMENT OF RECEIPT OF ADDENDA**

**RFP NO. 14-033**  
**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.

<u>Addendum Number</u>	<u>Date</u>
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

By: \_\_\_\_\_  
Signature of Company Official

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

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

**NEW JERSEY TRANSIT CORPORATION  
REQUEST FOR PROPOSAL (RFP) NO. 14-033**

**EXHIBIT 6 - NON-COLLUSION AFFIDAVIT**

**NON-COLLUSION AFFIDAVIT**

STATE OF NEW JERSEY

ss:

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\_\_\_\_



**NEW JERSEY TRANSIT CORPORATION  
REQUEST FOR PROPOSAL (RFP) NO. 14-033**

**EXHIBIT 7 - INELIGIBLE CONTRACTORS CERTIFICATION**

**INELIGIBLE CONTRACTORS CERTIFICATE**

The \_\_\_\_\_ **(Name of Contractor)**  
hereby certifies that it is not listed on the "Report of Suspensions, Debarments and Disqualifications of Firms and Individuals" published by the State of New Jersey Department of the Treasury in accordance with New Jersey Executive Order No. 34.

\_\_\_\_\_  
Company

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

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Address

Date: \_\_\_\_\_

**NEW JERSEY TRANSIT CORPORATION  
REQUEST FOR PROPOSAL (RFP) NO. 14-033**

**EXHIBIT 8- AFFIDAVIT OF COMPLIANCE (CODE OF VENDOR ETHICS)**



**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 any thing of value.

Do not, under any circumstance, tempt or put an NJ TRANSIT employee in the awkward position of having to refuse a gift or return a gift, no matter how well intentioned or innocuous the gift may be in your eyes.

The bright line rule for you and your staff in doing business with NJ TRANSIT is simple: Offer nothing and give nothing to any NJ TRANSIT employee or officer. It is your responsibility to circulate this Notice in your company and educate accordingly all personnel who do business with NJ Transit.

**52:13D-24. Solicitation, receipt or agreement to receive, thing of value for service related to official duties; exceptions**

a. No State officer or employee, special State officer or employee, or member of the Legislature shall solicit, receive or agree to receive, whether directly or indirectly, any compensation, reward, employment, gift, honorarium, out-of-State travel or subsistence expense or other thing of value from any source other than the State of New Jersey, for any service, advice, assistance, appearance, speech or other matter related to the officer, employee, or member's official duties, except as authorized in this section.

b. A State officer or employee, special State officer or employee, or member of the Legislature may, in connection with any service, advice, assistance, appearance, speech or other matter related to the officer, employee, or member's official duties, solicit, receive or agree to receive, whether directly or indirectly, from sources other than the State, the following:

(1) reasonable fees for published books on matters within the officer, employee, or member's official duties;

(2) reimbursement or payment of actual and reasonable expenditures for travel or subsistence and allowable entertainment expenses associated with attending an event in New Jersey if expenditures for travel or subsistence and entertainment expenses are not paid for by the State of New Jersey;

(3) reimbursement or payment of actual and reasonable expenditures for travel or subsistence outside New Jersey, not to exceed \$500.00 per trip, if expenditures for travel or subsistence and entertainment expenses are not paid for by the State of New Jersey. The \$500 per trip limitation shall not apply if the reimbursement or payment is made by (a) a nonprofit organization of which the officer, employee, or member is, at the time of reimbursement or payment, an active member as a result of the payment of a fee or charge for membership to the organization by the State or the Legislature in the case of a member of the Legislature; or (b) a nonprofit organization that does not contract with the State to provide goods, materials, equipment, or services.

Members of the Legislature shall obtain the approval of the presiding officer of the member's House before accepting any reimbursement or payment of expenditures for travel or subsistence outside New Jersey.

As used in this subsection, "reasonable expenditures for travel or subsistence" means commercial travel rates directly to and from an event and food and lodging expenses which are moderate and neither elaborate nor excessive; and "allowable entertainment expenses" means the costs for a guest speaker, incidental music and other ancillary entertainment at any meal at an event, provided they are moderate and not elaborate or excessive, but does not include the costs of personal recreation, such as being a spectator at or engaging in a sporting or athletic activity which may occur as part of that event.

c. This section shall not apply to the solicitation or acceptance of contributions to the campaign of an announced candidate for elective public office, except that campaign contributions may not be accepted if they are known to be given in lieu of a payment prohibited pursuant to this section.

d. (1) Notwithstanding any other provision of law, a designated State officer as defined in paragraph (2) of this subsection shall not solicit, receive or agree to receive, whether directly or indirectly, any compensation, salary, honorarium, fee, or other form of income from any source, other than the compensation paid or reimbursed to him or her by the State for the performance of official duties, for any service, advice, assistance, appearance, speech or other matter, except for investment income from stocks, mutual funds, bonds, bank accounts, notes, a beneficial interest in a trust, financial compensation received as a result of prior employment or contractual relationships, and income from the disposition or rental of real property, or any other similar financial instrument and except for reimbursement for travel as authorized in subsections (2) and (3) of paragraph b. of this section. To receive such income, a designated State officer shall first seek review and approval by the Executive Commission on Ethical Standards to ensure that the receipt of such income does not violate the "New Jersey Conflicts of Interest Law," P.L.1971, c. 182 (C.52:13D-12 et seq.) or any applicable code of ethics, and does not undermine the full and diligent performance of the designated State officer's duties.

(2) For the purposes of this subsection, "designated State officer" shall include: the Governor, the Adjutant General, the Secretary of Agriculture, the Attorney General, the Commissioner of Banking and Insurance, the Secretary and Chief Executive Officer of the Commerce and Economic Growth Commission, the Commissioner of Community Affairs, the Commissioner of Corrections, the Commissioner of Education, the Commissioner of Environmental Protection, the Commissioner of Health and Senior Services, the Commissioner of Human Services, the Commissioner of Labor, the Commissioner of Personnel, the President of the State Board of Public Utilities, the Secretary of State, the Superintendent of State Police, the Commissioner of Transportation, the State Treasurer, the head of any other department in the Executive Branch, and the following members of the staff of the Office of the Governor: Chief of Staff, Chief of Management and Operations, Chief of Policy and Communications, Chief Counsel to the Governor, Director of Communications, Policy Counselor to the Governor, and any deputy or principal administrative assistant to any of the aforementioned members of the staff of the Office of the Governor listed in this subsection.

e. A violation of this section shall not constitute a crime or offense under the laws of this State.

**52:13D-14. State officer or employee or member of legislature; acceptance of thing of value to influence public duties**

No State officer or employee, special State officer or employee, or member of the Legislature shall accept from any person, whether directly or indirectly and whether by himself or through his spouse or any member of his family or through any partner or associate, any gift, favor, service, employment or offer of employment or any other thing of value which he knows or has reason to believe is offered to him with intent to influence him in the performance of his public duties and responsibilities. This section shall not apply to the acceptance of contributions to the campaign of an announced candidate for elective public office.

## **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.

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*(Print Name of Contractor)*

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*(Signature of Authorized Principal or Officer)*

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*(Print Name and Title of Signator)*

**NEW JERSEY TRANSIT CORPORATION  
REQUEST FOR PROPOSAL (RFP) NO. 14-033**

**EXHIBIT 9 – CERTIFICATION OF CONTRACTS, GRANTS, LOANS &  
COOPERATIVE AGREEMENTS**



**NEW JERSEY TRANSIT CORPORATION**

**RFP NO. 14-033**

**CERTIFICATION FOR CONTRACTS, GRANTS, LOANS  
AND COOPERATIVE AGREEMENTS**

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal Contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal Contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal Contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit "Disclosure of Lobbying Activities," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

\_\_\_\_\_  
Signature of Authorized Official

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Firm

\_\_\_\_\_  
Date

**NEW JERSEY TRANSIT CORPORATION  
REQUEST FOR PROPOSAL (RFP) NO. 14-033**

**EXHIBIT 10 - OWNERSHIP DISCLOSURE**

**OWNERSHIP DISCLOSURE FORM**

NUMBER :  
 OPEN DATE :  
 T-NUMBER :  
 BIDDER :

PAGE

**INSTRUCTIONS:** Provide below the names, home addresses, dates of birth, offices held and any ownership interest of all officers of the firm named above. If additional space is necessary, provide on an attached sheet.

NAME	HOME ADDRESS	DATE OF BIRTH	OFFICE HELD	OWNERSHIP INTEREST (Shares Owned or % of Partnership)
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

**INSTRUCTIONS:** Provide below the names, home addresses, dates of birth, and ownership interest of all individuals not listed above, and any partnerships, corporations and any other owner having a 10% or greater interest in the firm named above. If a listed owner is a corporation or partnership, provide below the same information for the holders of 10% or more interest in that corporation or partnership. If additional space is necessary, provide that information on an attached sheet. Complete the certification at the bottom of this form. If this form has previously been submitted to the Purchase Bureau in connection with another bid, indicate changes, if any, where appropriate, and complete the certification below.

NAME	HOME ADDRESS	DATE OF BIRTH	OFFICE HELD	OWNERSHIP INTEREST (Shares Owned or % of Partnership)
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

**COMPLETE ALL QUESTIONS BELOW**

	YES	NO
1. Within the past five years has another company or corporation had a 10% or greater interest in the firm identified above? (If yes, complete and attach a separate disclosure form reflecting previous ownership interests.)	_____	_____
2. Has any person or entity listed in this form or its attachments ever been arrested, charged, indicted or convicted in a criminal or disorderly persons matter by the State of New Jersey, any other state or the U.S. Government? (If yes, attach a detailed explanation for each instance.)	_____	_____
3. Has any person or entity listed in this form or its attachments ever been suspended, debarred or otherwise declared ineligible by any agency of government from bidding or contracting to provide services, labor, material or supplies? (If yes, attach a detailed explanation for each instance.)	_____	_____
4. Are there now any criminal matters or debarment proceedings pending in which the firm and/or its officers and/or managers are involved? (If yes, attach a detailed explanation for each instance.)	_____	_____
5. Has any federal, state or local license, permit or other similar authorization, necessary to perform the work applied for herein and held or applied for by any person or entity listed in this form, been suspended or revoked, or been the subject of any pending proceedings specifically seeking or litigating the issue of suspension or revocation? (If yes to any part of this question, attach a detailed explanation for each instance.)	_____	_____

**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 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 or 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.

I, being duly authorized, certify that the information supplied above, including all attached pages, 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.

COMPANY NAME: \_\_\_\_\_ (Signature)

ADDRESS: \_\_\_\_\_ PRINT OR TYPE \_\_\_\_\_ (Name)

\_\_\_\_\_ (Title)

FEIN/SSN#: \_\_\_\_\_ Date: \_\_\_\_\_

**NEW JERSEY TRANSIT CORPORATION  
REQUEST FOR PROPOSAL (RFP) NO. 14-033**

**EXHIBIT 11 - STATE OF NJ DIVISION OF PURCHASE AND  
PROPERTY DISCLOSURE OF INVESTMENT ACTIVITIES IN IRAN**

STATE OF NEW JERSEY -- DIVISION OF PURCHASE AND PROPERTY  
DISCLOSURE OF INVESTMENT ACTIVITIES IN IRAN

Quote Number: \_\_\_\_\_

Bidder/Offeror: \_\_\_\_\_

**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 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>. 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.

**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.

**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 non-responsive 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.

EACH BOX WILL PROMPT YOU TO PROVIDE INFORMATION RELATIVE TO THE ABOVE QUESTIONS. PLEASE PROVIDE THOROUGH ANSWERS TO EACH QUESTION. IF YOU NEED TO MAKE ADDITIONAL ENTRIES, CLICK THE "ADD AN ADDITIONAL ACTIVITIES ENTRY" BUTTON.

Name \_\_\_\_\_ Relationship to Bidder/Offeror \_\_\_\_\_  
Description of Activities \_\_\_\_\_  
Duration of Engagement \_\_\_\_\_ Anticipated Cessation Date \_\_\_\_\_  
Bidder/Offeror Contact Name \_\_\_\_\_ Contact Phone Number \_\_\_\_\_

**ADD AN ADDITIONAL ACTIVITIES ENTRY**

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: \_\_\_\_\_

**NEW JERSEY TRANSIT CORPORATION  
REQUEST FOR PROPOSAL (RFP) NO. 14-033**

**EXHIBIT 12 – SOURCE DISCLOSURE CERTIFICATION**

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

I understand that, after award of a contract to the Consultant, it is determined that the Consultant has shifted services declared above to be provided within the United States to sources outside the United States prior to a written determination by the Contracting Officer, that the services can not be performed in the United States, the Consultant shall be deemed in breach of contract, which contract will be subject to termination for cause pursuant to Article 14 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: \_\_\_\_\_