

CONTRACT NO. 19-041A- Group A

GENERAL PROVISIONS

THIS AGREEMENT (Contract) made as of January 15, 2020 between New Jersey Transit Corporation, a public instrumentality of the State of New Jersey, hereinafter referred to as NJ TRANSIT, having its principal office at One Penn Plaza East, Newark, New Jersey 07105-2246 and Twinco Mfg.Co., Inc., hereinafter referred to as the Contractor, includes four parts namely: a) General Provisions; b) Specifications; c) Exhibits; and d) all addenda issued prior to execution of the Contract.

THIS AGREEMENT (Contract) shall become binding upon the parties hereto when executed on behalf of NJ TRANSIT by the Contracting Officer or his/her designee. The Contractor shall commence work within five (5) calendar days upon receipt of a written Notice to Proceed to that effect which shall be issued on behalf of NJ TRANSIT by its Contracting Officer or his/her designee upon the execution of the Agreement by NJ TRANSIT. The term of this Agreement shall be for two (2) years.

1. **Goods/Materials/Services to be Provided**

The Contractor, for and in consideration of the payments hereinafter specified and agreed to be made by NJ TRANSIT, agrees to do and perform all work and labor required to furnish and deliver all goods, materials or services in conformity with the Specifications included hereinafter.

2. **Quantities and Unit Prices**

The Contractor agrees that the prices hereinafter set forth are firm for the period of this Contract. The Contractor also agrees that the quantities noted are approximate and subject to increases or decreases at the sole option of NJ TRANSIT. NJ TRANSIT is obligated to pay for only those goods, materials or services and quantities thereof ordered, delivered/provided and accepted in accordance with this Contract.

3. **Proper Payments**

The Contractor agrees to make timely payment of all proper charges for labor and materials required to provide NJ TRANSIT the aforementioned goods, materials or services.

4. **Non-restrictive Clause**

Wherever brand names may appear in this Contract, they are included for the purpose of establishing identification and a general description of the item. Wherever such names may appear, the term "or approved equal" is considered to follow. The decision on the approved equal will be rendered by NJ TRANSIT at its sole discretion.

5. **Payment**

NJ TRANSIT agrees, subject to the availability of funds, to pay the Contractor upon submission of proper invoices for the quantities of goods, materials or services ordered, delivered and accepted by NJ TRANSIT, in accordance with the prices set forth in the Bid Price Form attached hereto in Attachment 1 of this Contract.

NJ TRANSIT shall order goods, materials or services by use of a NJ TRANSIT Purchase Order referencing this Contract, and such Purchase Order shall be the only authorization the Contractor shall use

to deliver goods, materials or services and invoice NJ TRANSIT.

6. Release of Claims

It is agreed that the Contractor's acceptance of final payment from NJ TRANSIT shall release in full all claims against NJ TRANSIT or any of its employees under this Contract.

7. Assignment

This Contract shall not be assigned by the Contractor without the prior written consent of NJ TRANSIT, which consent may be withheld at NJ TRANSIT's sole discretion.

8. Subcontracting

The Contractor shall not subcontract any portion of this Contract without the prior written consent of NJ TRANSIT, which consent may be withheld at NJ TRANSIT's sole discretion. Utilization of independent delivery services and other similar activities are acceptable.

A Subcontractor or Supplier shall look only to the Contractor for the payment of any claims of any nature whatsoever arising out of the said subcontract, and said Subcontractor agrees, as a condition of NJ TRANSIT's consent to the making of said subcontract, that it shall make no claim whatsoever against NJ TRANSIT, its officers, agents, servants or employees for any work performed or thing done by reason of said subcontract, or for any other cause whatsoever that may arise by reason of the relationship created between the Contractor and Subcontractor by the subcontract.

9. Prompt Payment

(a) The Contractor agrees to pay each Subcontractor and Supplier under this Contract for satisfactory performance of completed work under its subcontract no later than ten (10) calendar days from the receipt of each payment the Contractor receives from NJ TRANSIT. The Contractor shall ensure that all lower tier Subcontractors and suppliers are paid all invoiced amounts (less any retainage) that meet all applicable requirements within fifteen (15) calendar days from the time the Subcontractor receives payment from the Contractor.

(b) In accordance with N.J.S.A. 52.32-41, the Contractor shall certify, prior to the issuance of a progress payment by NJ TRANSIT, that all Subcontractors and Suppliers have been paid any amounts due from previous progress payments and shall be paid any amounts due from the current progress payment. Alternatively, the Contractor shall certify that there exists a valid basis under the terms of the Subcontractor's or Supplier's contract to withhold payment from the Subcontractor or Supplier and therefore payment is withheld.

(c) If the Contractor withholds payment from the Subcontractor or Supplier, the Contractor shall provide to the Subcontractor or Supplier written notice thereof. The notice shall detail the reason for withholding payment and state the amount of payment withheld. If a Performance/ Payment Bond has been provided under this Contract, the Contractor shall send a copy of the notice to the Surety providing the bond for the Contractor. A copy of the notice shall also be submitted to NJ TRANSIT with the certification that payments are being withheld.

(d) Should the Contractor provide notice and proceed to withhold payment from any Subcontractor or Supplier, NJ TRANSIT may elect, at its sole discretion, to help resolve the dispute. NJ TRANSIT's efforts shall be limited to meeting with the Contractor and the Subcontractor or Supplier and reviewing the

relevant facts with both parties. NJ TRANSIT will not act as a decider of fact nor will NJ TRANSIT direct a settlement to the dispute. Any NJ TRANSIT effort is solely intended to assist the parties in understanding their respective positions and to encourage a reasonable resolution of the dispute.

10. Taxes and Applicable Laws

The Contractor and any subcontractor agree that any taxes to be paid as a result of this Contract will be paid by the Contractor and any subcontractor and that NJ TRANSIT's obligation is limited to payment for the goods, materials or services in accordance with the unit prices stated herein. As a public agency, NJ TRANSIT is exempt from State use & sales taxes and Federal Excise Taxes. They must not be included in the Contractor's price quotations or invoices. The State of New Jersey's Federal Excise Tax Exemption Number is [REDACTED] and the State of New Jersey's State Excise Tax Exemption Number is [REDACTED]

The Contractor shall comply with applicable laws, regulations, ordinances, and codes of the United States, the State of New Jersey and local governments within the State. If NJ TRANSIT determines that the Contractor has violated or failed to comply with applicable federal, state or local laws with respect to its performance under this Contract, NJ TRANSIT may withhold payments for such performance and take such other actions that it deems appropriate under the circumstances until compliance or remedial action has been accomplished by the Contractor to the satisfaction of NJ TRANSIT. This Contract shall be governed by and construed in accordance with the laws of the State of New Jersey.

11. Succession

This Contract is to be binding upon NJ TRANSIT, its successor or successors, and upon the Contractor, its successor or successors.

12. Changes

Any change in this Contract proposed by the Contractor shall be submitted to NJ TRANSIT for its prior approval, and, if approved, NJ TRANSIT will make the change by a written Contract modification. Oral change orders are not permitted. The Contractor shall be liable for all costs resulting from and/or for satisfactorily correcting any change not approved by written Contract modification to the Contract signed by the Contracting Officer.

NJ TRANSIT may, at any time, by a written order, and without notice to the sureties, make changes, within the general scope of this Contract. If any such change causes an increase or decrease in the cost of, or the time required for, the performance of any part of the work, whether changed or not changed by any such order, an equitable adjustment shall be made in the Contract price or delivery schedule, or both, and the Contract shall be modified in writing accordingly.

Within five (5) calendar days after receipt of the proposed written change order, the Contractor shall provide the Contracting Officer a detailed price and schedule proposal for the work to be performed. This proposal shall be accepted or modified by negotiations between the Contractor and the Contracting Officer. At that time, a Contract modification shall be executed in writing by both parties. Disagreements that cannot be resolved through negotiations shall be resolved in accordance with Section 19, "Disputes". Regardless of any disputes, the Contractor shall proceed with the work ordered.

If a price adjustment is indicated either upward or downward, it shall be negotiated between NJ TRANSIT and the Contractor for changes that are mandated as a result of legislation or regulation that are promulgated and become effective between the date of bid opening and the date of performance. Such

price adjustment may be audited by NJ TRANSIT.

13. Delays

If performance under the Contract should be unavoidably delayed, the Contracting Officer shall extend the time for completion of the Contract for the determined number of days of such delay. A delay is unavoidable only if the delay was not reasonably expected to occur in connection with or during the Contractor's performance, was not caused directly or substantially by acts, omissions, negligence, or mistakes of the Contractor, the Contractor's suppliers, or their agents, was substantial and in fact caused the Contractor to miss delivery dates, and could not adequately have been guarded against by contractual or legal means.

The Contractor shall notify the Contracting Officer as soon as the Contractor has, or should have, knowledge that an event has occurred which will delay performance. Within five (5) calendar days, the Contractor shall confirm such notice in writing furnishing as much detail as is available. Failure of the Contractor to so notify the Contracting Officer shall result in a waiver of any rights that the Contractor may have for an extension of time under this Contract.

The Contractor agrees to supply, as soon as such data are available, any reasonable proof that is required by the Contracting Officer to make a decision on any request for extension. The Contracting Officer shall examine the request and any documents supplied by the Contractor and shall determine if the Contractor is entitled to an extension and the duration of such extension. The Contracting Officer shall notify the Contractor of his decision in writing.

It is expressly understood and agreed that the Contractor shall not be entitled to damages or compensation, and shall not be reimbursed for losses on account of delays, resulting from any cause under this provision.

14. Labor Disputes

Whenever the Contractor has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of this Contract, the Contractor shall immediately give notice thereof, including all relevant information to NJ TRANSIT.

15. Indemnification

The Contractor agrees to defend, indemnify, protect and save harmless the United States Department of Transportation, the FTA, the State of New Jersey, New Jersey Transit Corporation, its subsidiaries, and their agents, servants, directors, officers, and employees from and against any and all suits, claims, demands or damages of whatsoever kind or nature arising out of or related to the performance of this Contract by the Contractor or its directors, officers, agents, servants, or employees including but not limited to expenditures for and costs of investigations, hiring of expert witnesses, court costs, counsel fees, settlements, judgments or otherwise; provided, however, that the obligations of the Contractor hereunder shall not apply when the fault or negligence of an agent or employee of NJ TRANSIT is the sole cause. NJ TRANSIT shall, as soon as practicable, after a claim has been made against it, give written notice thereof to the Contractor along with full and complete particulars of the claim. If the suit is brought against NJ TRANSIT, NJ TRANSIT shall immediately forward to the Contractor every demand, complaint, notice, summons, pleading, or other process received by NJ TRANSIT or its representatives.

In the defense of any such claims, demands, suits, actions and proceedings, the Contractor 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 statute respecting suits against NJ TRANSIT or the State of New Jersey.

16. Environmental Indemnity Clause

The Contractor shall conduct all activities in compliance with all applicable federal, state and local laws, rules and regulations designed to prevent or control the discharge of substances into the land, water and air and to protect individual health and safety. The Contractor will indemnify, hold harmless and defend NJ TRANSIT, the State of New Jersey, their directors, officers, employees, agents and assigns from and against any and all suits, actions, proceedings, costs, fines, penalties and claims arising from or alleged to have arisen from its violation of any such environmental, health or safety laws, rules or regulations whenever such suits, actions, claims or proceedings shall be commenced, or whenever such costs are accrued, except for any violations, if any, at the NJ TRANSIT facility existing prior to the Contractor's activities. The Contractor shall take reasonable and necessary precautions to prevent the discharge of hazardous substances, including asbestos and petroleum products, onto NJ TRANSIT property or into the environment, including the air. Failure to comply will be considered grounds for default, and NJ TRANSIT may cancel the contract in accordance with Section 18, "Termination for Default". The indemnification obligations hereunder shall survive the completion or termination of this Contract.

17. Termination for Convenience

(a) NJ TRANSIT may terminate performance of work under this contract in whole or, from time to time, in part if the Contracting Officer determines that a termination is in NJ TRANSIT's interest. The Contracting Officer shall terminate by delivering to the Contractor a Notice of Termination specifying the extent of termination and the effective date.

(b) After receipt of a Notice of Termination, and except as directed by the Contracting Officer, the Contractor shall immediately proceed with the following obligations, regardless of any delay in determining or adjusting any amounts due under this clause:

- (1) Stop work as specified in the notice.
- (2) Place no further subcontracts or orders (referred to as subcontracts in this clause) for materials, services, or facilities, except as necessary to complete the continued portion of the contract.
- (3) Terminate all subcontracts to the extent they relate to the work terminated.
- (4) Assign to NJ TRANSIT, as directed by the Contracting Officer, all right, title, and interest of the Contractor under the subcontracts terminated, in which case NJ TRANSIT shall have the right to settle or to pay any termination settlement proposal arising out of those terminations.
- (5) With approval or ratification to the extent required by the Contracting Officer, settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts; the approval or ratification will be final for purposes of this clause.
- (6) As directed by the Contracting Officer, transfer title and deliver to NJ TRANSIT (i) the fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced or acquired for the work terminated, and (ii) the completed or partially completed plans, drawings, information, and other property that, if the contract had been completed, would be required to be furnished to NJ TRANSIT.
- (7) Complete performance of the work not terminated.
- (8) Take any action that may be necessary, or that the Contracting Officer may direct, for the protection and preservation of the property related to this contract that is in the possession of the Contractor and in which NJ TRANSIT has or may acquire an interest.
- (9) Use its best efforts to sell, as directed or authorized by the Contracting Officer, any property of the types

referred to in subparagraph (b)(6) of this clause; provided, however, that the Contractor (i) is not required to extend credit to any purchaser and (ii) may acquire the property under the conditions prescribed by, and at prices approved by, the Contracting Officer. The proceeds of any transfer or disposition will be applied to reduce any payments to be made by NJ TRANSIT under this contract, credited to the price or cost of the work, or paid in any other manner directed by the Contracting Officer.

(c) The Contractor shall submit complete termination inventory schedules no later than 120 calendar days from the effective date of termination, unless extended in writing by the Contracting Officer upon written request of the Contractor within this 120-day period.

(d) After expiration of the plant clearance period as defined in subpart 49.001 of the Federal Acquisition Regulation, the Contractor may submit to the Contracting Officer a list, certified as to quantity and quality, of termination inventory not previously disposed of, excluding items authorized for disposition by the Contracting Officer. The Contractor may request NJ TRANSIT to remove those items or enter into an agreement for their storage. Within fifteen (15) calendar days, NJ TRANSIT will accept title to those items and remove them or enter into a storage agreement. The Contracting Officer may verify the list upon removal of the items, or if stored, within forty-five (45) calendar days from submission of the list, and shall correct the list, as necessary, before final settlement.

(e) After termination, the Contractor shall submit a final termination settlement proposal to the Contracting Officer in the form and with the certification prescribed by the Contracting Officer. The Contractor shall submit the proposal promptly, but no later than 1 year from the effective date of termination, unless extended in writing by the Contracting Officer upon written request of the Contractor within this 1-year period. However, if the Contracting Officer determines that the facts justify it, a termination settlement proposal may be received and acted on after 1 year or any extension. If the Contractor fails to submit the proposal within the time allowed, the Contracting Officer may determine, on the basis of information available, the amount, if any, due the Contractor because of the termination and shall pay the amount determined.

(f) Subject to paragraph (e) of this clause, the Contractor and the Contracting Officer may agree upon the whole or any part of the amount to be paid or remaining to be paid because of the termination. The amount may include a reasonable allowance for profit on work done. However, the agreed amount, whether under this paragraph (f) or paragraph (g) of this clause, exclusive of costs shown in subparagraph (g)(3) of this clause, may not exceed the total contract price as reduced by (1) the amount of payments previously made and (2) the contract price of work not terminated. The contract shall be modified, and the Contractor paid the agreed amount. Paragraph (g) of this clause shall not limit, restrict, or affect the amount that may be agreed upon to be paid under this paragraph.

(g) If the Contractor and the Contracting Officer fail to agree on the whole amount to be paid because of the termination of work, the Contracting Officer shall pay the Contractor the amounts determined by the Contracting Officer as follows, but without duplication of any amounts agreed on under paragraph (f) of this clause:

(1) The contract price for completed supplies or services accepted by NJ TRANSIT (or sold or acquired under subparagraph (b)(9) of this clause) not previously paid for, adjusted for any saving of freight and other charges.

(2) The total of --

(i) The costs incurred in the performance of the work terminated, including initial costs and preparatory expense allocable thereto, but excluding any costs attributable to supplies or services paid or to be paid under subparagraph (g)(1) of this clause;

(ii) The cost of settling and paying termination settlement proposals under terminated subcontracts that are properly chargeable to the terminated portion of the contract if not included in subdivision (g)(2)(i) of this clause; and

(iii) A sum, as profit on subdivision (g)(2)(i) of this clause, determined by the Contracting Officer under 49.202 of the Federal Acquisition Regulation, in effect on the date of this contract, to be fair and reasonable; however, if it appears that the Contractor would have sustained a loss on the entire contract had it been completed, the Contracting Officer shall allow no profit under this subdivision (iii) and shall reduce the settlement to reflect the indicated rate of loss.

(3) The reasonable costs of settlement of the work terminated, including --

(i) Accounting, legal, clerical, and other expenses reasonably necessary for the preparation of termination settlement proposals and supporting data;

(ii) The termination and settlement of subcontracts (excluding the amounts of such settlements); and

(iii) Storage, transportation, and other costs incurred, reasonably necessary for the preservation, protection, or disposition of the termination inventory.

(h) Except for normal spoilage, and except to the extent that NJ TRANSIT expressly assumed the risk of loss, the Contracting Officer will exclude from the amounts payable to the Contractor under paragraph

(g) of this clause, the fair value as determined by the Contracting Officer, of property that is destroyed, lost stolen, or damaged so as to become undeliverable to NJ TRANSIT or to a buyer.

(i) The cost principles and procedures of part 31 of the Federal Acquisition Regulation, in effect on the date of this contract, shall govern all costs claimed, agreed to, or determined under this clause.

(j) The Contractor shall have the right of appeal, under the Disputes clause, from any determination made by the Contracting Officer under paragraph (e), (g), or (l) of this clause, except that if the Contractor failed to submit the termination settlement proposal or request for equitable adjustment within the time provided in paragraph (e) or (l), respectively, and failed to request a time extension, there is no right of appeal.

(k) In arriving at the amount due the Contractor under this clause, there shall be deducted --

(1) All unliquidated advance or other payments to the Contractor under the terminated portion of this contract;

(2) Any claim which NJ TRANSIT has against the Contractor under this contract; and

(3) The agreed price for, or the proceeds of sale of, materials, supplies, or other things acquired by the Contractor or sold under the provisions of this clause and not recovered by or credited to NJ TRANSIT.

(l) If the termination is partial, the Contractor may file a proposal with the Contracting Officer for an equitable adjustment of the price(s) of the continued portion of the contract. The Contracting Officer shall make any equitable adjustment agreed upon. Any proposal by the Contractor for an equitable adjustment under this clause shall be requested within ninety (90) calendar days from the effective date of termination unless extended in writing by the Contracting Officer.

(m) (1) NJ TRANSIT may, under the terms and conditions it prescribes, make partial payments and payments against costs incurred by the Contractor for the terminated portion of the contract, if the Contracting Officer believes the total of these payments will not exceed the amount to which the Contractor will be entitled.

(2) If the total payments exceed the amount finally determined to be due, the Contractor shall repay the

excess to NJ TRANSIT upon demand, together with interest computed at the rate established by the Secretary of the Treasury under 50 U.S.C. App. 1215(b)(2). Interest shall be computed for the period from the date the excess payment is received by the Contractor to the date the excess is repaid. Interest shall not be charged on any excess payment due to a reduction in the Contractor's termination settlement proposal because of retention or other disposition of termination inventory until ten (10) calendar days after the date of the retention or disposition, or a later date determined by the Contracting Officer because of the circumstances.

18. Termination for Default

NJ TRANSIT may, by written notice of default to the Contractor, terminate the whole or any part of this Contract if the Contractor fails to make delivery of the goods or materials or to perform the services within the time specified herein or any extension thereof; or if the Contractor fails to perform any of the other provisions of the Contract, so as to endanger performance of this Contract in accordance with its terms, and in either of these two circumstances does not cure such failure within a period of ten (10) calendar days (or such longer period as the Contracting Officer may authorize in writing) after receipt of notice from the Contracting Officer specifying such failure.

If the Contract is terminated in whole or in part for default, NJ TRANSIT may procure, upon such terms and in such manner as the Contracting Officer may deem appropriate, items similar to those so terminated. The Contractor shall be liable to NJ TRANSIT for any excess costs for such similar goods, materials or services and shall continue the performance of this Contract to the extent not terminated under the provisions of this clause.

Except for the default of Subcontractors, the Contractor shall not be liable for any excess costs if the failure to perform the Contract arises out of causes beyond the control and without the fault or negligence of the Contractor. If the failure to perform is caused by the default of a Subcontractor, and if such default arises out of causes beyond the control of both the Contractor and Subcontractor, and without the fault or negligence of either of them, the Contractor shall not be liable for any excess costs for failure to perform, unless the goods, materials or services to be furnished by the Subcontractor were obtainable from other sources in sufficient time to permit the Contractor to meet the required delivery schedule.

If, after notice of termination of this Contract under the provisions of this clause, it is determined for any reason that the Contractor was not in default under the provisions of this clause, or the default was excusable under provisions of this clause, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to Section 17, "Termination for Convenience".

The rights and remedies of NJ TRANSIT provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Contract.

19. Disputes

Disputes arising in the performance of this Contract 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) calendar days from the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal to the Contracting Officer. In connection with any such appeal, the Contractor 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 Contractor and the Contractor 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 Contractor as a result of NJ TRANSIT's decision.

20. No Third Party Beneficiaries

It is specifically agreed between the parties executing this Contract that it is not intended by any of the provisions of any part of the Contract to create the public or any member thereof a third party beneficiary hereunder, or to authorize anyone not a party to the Contract to maintain a suit for personal injuries or property damage pursuant to the terms or provisions of the Contract.

It is the further intent of NJ TRANSIT and the Contractor in executing this Contract that no individual, firm, corporation or any combination thereof, which supplies materials, labor, services or equipment to the Contractor for the performance of the Work becomes thereby a third party beneficiary of this Contract. NJ TRANSIT and the Contractor understand that such individual, firm, corporation or combination thereof, has no right to bring an action in the courts of this State against the State or NJ TRANSIT, by virtue of this lack of standing and also by virtue of the provisions of the New Jersey Contractual Liability Act, N.J.S.A. 59:13-1, et seq.

21. Personal Liability of Public Officials

In carrying out the provisions of the Contract, or in exercising power or authority granted to them by or within the scope of the Contract, there shall be no liability upon any NJ TRANSIT employee, either personally or as officials of the State, as in all such matters they act solely as agents and representatives of the State.

22 NJ TRANSIT Representatives

The individuals authorized by NJ TRANSIT to order goods, materials or services in the Specification and to act for NJ TRANSIT are the Contracting Officer, and his designee.

The Chief of Procurement and Support Services, or his designee, shall be the Contracting Officer.

23. Contractor Representatives

The individual(s) authorized by the Contractor to act on its behalf are:

| | |
|---------|-----------------------|
| Name | Patrick Rogers |
| Title | Vice President, Sales |
| Address | 30 Commerce Drive |
| | Hauppauge, NY 11788 |
| Phone | |

24. Communications

Communications shall be in writing and shall be sent personally, or by telex, telegram, or by regular, registered, or certified mail addressed to the representatives of NJ TRANSIT and of the Contractor designated to receive such communications. Telephone calls may be used to expedite communications but shall not be official communications unless confirmed in writing.

Communications shall be considered received at the time actually received by the addressee or designated agent.

25. Equal Employment Opportunity

The parties to this Contract 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 thereto, and the provisions set forth in the Mandatory Equal Employment Opportunity Language for Goods, Professional Service and General Service Contracts attached hereto in Attachment 1, are hereby made a part of this Contract.

In accordance with N.J.S.A. 10:2-1 through 10:2-4 as amended and supplemented and the rules and regulations promulgated pursuant thereto, the Contractor agrees that:

a. In the hiring of persons for the performance of work under this contract or any subcontract hereunder, or for the procurement, manufacture, assembling or furnishing of any such materials, equipment, supplies or services to be acquired under this contract, no contractor, nor any person acting on behalf of such contractor or subcontractor, 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 contractor, subcontractor, nor any person on his behalf shall, in any manner, discriminate against or intimidate any employee engaged in the performance of work under this contract or any subcontract hereunder, or engaged in the procurement, manufacture, assembling or furnishing of any such materials, equipment, supplies or services to be acquired under such contract, on account of race, creed, color, national origin, ancestry, marital status, gender identity or expression, affectional or sexual orientation or sex;

c. There may be deducted from the amount payable to the contractor by the contracting public agency, under this contract, a penalty of \$50.00 for each person for each calendar day during which such person is discriminated against or intimidated in violation of the provisions of the contract; and

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

26. Equal Opportunity For Individuals with Disabilities

The Contractor 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 Contract. In providing any aid, benefit, or service on behalf of NJ TRANSIT pursuant to this Contract, the Contractor agrees that the performance shall be in strict compliance with the Act. In the event that the Contractor, its agents, servants, employees, or subcontractors violate or are alleged to have violated the Act during the performance of this Contract, the Contractor shall defend NJ TRANSIT and the State of New Jersey in any action or administrative proceeding commenced pursuant to this Act. The Contractor 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 Contractor shall, at its own expense, appear, defend, and pay any and all charges for legal services and any and all costs and other expenses arising from such action or administrative proceeding or incurred in connection therewith. In any and all complaints brought pursuant to the owner's grievance procedure, the Consultant agrees to abide by any decision of the owner which is rendered pursuant to such said grievance procedure. If any action or administrative proceeding results in an award of damages against NJ TRANSIT or the State or if NJ TRANSIT or the State incur any

expense to cure a violation of the Act which has been brought pursuant to its grievance procedure, the Contractor 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 Contractor 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 or have forwarded to the Contractor 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 Contractor pursuant to this Contract will not relieve the Contractor of the obligation to comply with the Act and to defend, indemnify, protect, and save harmless NJ TRANSIT pursuant to this paragraph.

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

27. Utilization of Disadvantaged Business Enterprises

As an aid in meeting the commitment of its Disadvantaged Business Enterprise Program, NJ TRANSIT has assigned a Race Neutral (RN) DBE goal on the gross sum amount of the bid or contract for DBE subcontracting participation. All NJ Unified Certification Program (NJUCP) certified DBE firms, including suppliers, are eligible to participate in this contract. NJ TRANSIT's DBE Program is accorded the same priority as compliance with all other legal obligations required by the USDOT. Contractors shall comply with the DBE Program requirements in the award and administration of NJ TRANSIT contracts, annexed hereto as Attachment 2, annexed hereto. Failure by the Contractor to carry out these requirements shall constitute a breach of the Contract, which may result in the termination of the Contract or other such remedy, as NJ TRANSIT deems appropriate.

The term "disadvantaged business enterprise," means a business enterprise that is owned and controlled by one or more socially or economically disadvantaged persons. Such disadvantage may arise from cultural, racial, chronic economic circumstances or background or other similar cause. Such persons would include, but not be limited to, Blacks (not of Hispanic origin); Hispanics; Asians or Pacific Islanders; American Indians or Alaskan Natives; and women, regardless of race or ethnicity.

28. Covenant Against Contingent Fees

The Contractor warrants, in accordance with the Non Collusion Affidavit attached hereto in Attachment 1, that no person or selling agency has been employed or retained to solicit or secure this Contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty NJ TRANSIT shall have the right to annul this Contract without liability or at its discretion, to deduct from the Contract price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage or contingent fee.

29. Audit, Inspection and Record Retention

Pursuant to N.J.S.A. 52:15C-14(d) the Contractor and all subcontractors and suppliers shall maintain and retain all records, data, documents, reports, and materials relating to the Contract and contract

work and shall permit authorized representatives of NJ TRANSIT, the Comptroller General of the United States, the U.S. Department of Transportation, the FTA, the State of New Jersey and the Office of the State Comptroller and their duly authorized representatives, upon request to inspect, audit and photocopy all project work, materials, payroll, and all data and records of the Contractor relating to products, transactions or services provided under its performance and its subcontracts and assignees, if any, under this Contract from the effective date hereof through and until the expiration of five (5) years after completion of and final payment for the Contract Work.

NJ TRANSIT, the State of New Jersey, the USDOT, the FTA and the Comptroller General of the United States and their duly authorized representatives also shall have the right to examine all aspects of the products, transactions and services and specifically the right to conduct interviews, on-site visits, surveillance, field activities and head counts and to perform financial audits and operational reviews as deemed necessary to prevent, remediate or mitigate fraud, waste and abuse. Any inspection, audit or review or lack thereof shall not relieve the Contractor of responsibility for satisfactory performance of the Scope of Services. Contractor shall maintain a true and correct set of records for all financial and operational data in sufficient detail to permit reasonable verification or correction of charges and performance in accordance with this Contract.

The Contractor further agrees to include in all its subcontracts hereunder a provision to the effect that the subcontractor agrees that it will keep all Contract records and that NJ TRANSIT, the Comptroller General of the United States, the U.S. Department of Transportation, the FTA the State of New Jersey and the Office of the State Comptroller, or any of their duly authorized representatives, shall, until the expiration of five (5) years after payment under the subcontract, have access to and the right to examine any books, documents, and other records related to the subcontractor's performance under the subcontract.

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 the Comptroller General of the United States, the U.S. Department of Transportation 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.

30. Interest of Members of Congress

No member of, or delegate to, the Congress of the United States shall be admitted to any share or part of this Contract or to any benefit arising therefrom.

31. Prohibited Interest

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

32. Insurance

The Contractor shall maintain the following levels of insurance:

| | |
|---------------------------------|---|
| Comprehensive General Liability | \$5,000,000 per occurrence for bodily injury and property damage. |
|---------------------------------|---|

Comprehensive Automobile
Liability

\$5,000,000 per occurrence for bodily injury and property damage

Workers Compensation

As required by law.

Prior to execution of this Contract by NJ TRANSIT and before commencing any performance here under, the Contractor shall provide NJ TRANSIT with the required proof(s) of insurance naming NJ TRANSIT as an additional insured party. The policies evidencing required insurance shall contain an endorsement to the effect that cancellation or any material change in the policies adversely affecting the interests of NJ TRANSIT in such insurance shall not be effective for less than thirty (30) calendar days after written notice thereof to NJ TRANSIT.

33. **Business Registration Notice**

In accordance with N.J.S.A. 52:32-44, all New Jersey and out of State business organizations must obtain a Business Registration Certificate (BRC) from the Department of Treasury, Division of Revenue, prior to a contract being awarded or authorized by NJ TRANSIT.

The Contractor shall maintain a list of the names of any subcontractors and their current addresses, updated as necessary during the course of the contract performance. The Contractor shall submit a complete and accurate list to NJ TRANSIT before final payment is made for goods or services rendered under the Contract. The Contractor shall not enter into any contract with a Subcontractor unless the Subcontractor first provides proof of valid business registration.

If the Contractor fails to provide a copy of a business registration as required pursuant to N.J.S.A. 52:32-44 or that provides false information of business registration under the requirements of that section, pursuant to N.J.S.A. 54:49-4.1 it shall be liable for a penalty of \$25 for each day of violation, not to exceed \$50,000 for each business registration copy not properly provided to NJ TRANSIT.

The Contractor and any subcontractor 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.

34. **Out-of-State Corporations**

If the Contractor is a corporation organized under laws of a state other than New Jersey, the Contractor 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 Contractor 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, NJ 08625
www.state.nj.us/njbgs

35. Restriction of Gifts

The Contractor, its officers, representatives, agents, Subcontractors and employees agree not to give any present nor make any gift of money or any other gift or gratuity in any form whatsoever to any director, officer, or employee of NJ TRANSIT, his or her relatives or agents.

36. Source Disclosure Requirements (For Services Procurement Only)

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 Contractor or Subcontractor within the United States and the certification is approved by the Executive Director of NJ TRANSIT.

All Contractors 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 Contractor 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 Contractor 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.

If, during the term of the Contract, the Contractor or Subcontractor, 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 Contractor shall be deemed to be in breach of its Contract, which Contract shall be subject to termination for default pursuant to Section 18, unless previously approved by the Contracting Officer and the Executive Director. During the contract term, the Contractor shall submit a subsequent Source Disclosure Certification within five (5) calendar days of NJ TRANSIT's request.

37. Disclosure of Investment Activities in Iran

Pursuant to N.J.S.A. 52:32-55., any person or entity that submits a proposal or otherwise proposes to enter into or renew a contract must complete the certification to attest, under penalty of perjury, that neither the person or entity, nor any of its parents, subsidiaries, or affiliates, is identified on the Department of Treasury's Chapter 25 list as a person or entity engaging in investment activities in Iran. The Chapter 25 list is found on the Division's website at <http://www.state.nj.us/treasury/purchase/pdf/Chapter25List.pdf>. Contractors must review this list prior to completing the Disclosure of Investment Activities In Iran Certification attached hereto in Attachment 1. If NJ TRANSIT finds a person or entity to be in violation of law, NJ TRANSIT shall take action as may be appropriate and provided by law, rule or contract, including but not limited to, imposing sanctions, seeking compliance, recovering damages, declaring the party in default and seeking debarment or suspension of the party.

38. NJ TRANSIT's Code of Ethics For Vendors

- a) No vendor may employ any NJ TRANSIT officer or employee in the business of the vendor or in professional activity in which the vendor is involved with the NJ TRANSIT officer or employee.

No vendor may offer or provide any interest, financial or otherwise, direct or indirect, to any NJ TRANSIT officer or employee, in the business of the vendor or professional activity in which the vendor is involved with the NJ TRANSIT officer or employee.

No vendor may cause or influence, or attempt to cause or influence, any NJ TRANSIT officer or employee 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.

No vendor may 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 vendor or for any other person.

No vendor may 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 would be construed as having more than nominal value.

NOTE: NJ TRANSIT employees and officers may accept food or refreshments of relatively low monetary value provided during the course of a meeting, conference or other occasion where the employee is properly in attendance (for example, coffee, tea, danish or soda served during a conference break). Acceptance of unsolicited advertising or promotional materials of nominal value (such as inexpensive pens, pencils, or calendars) is also permitted.

- b) In accordance with N.J.A.C. 16:72-4.1, the Contractor may be suspended and/or debarred for any of the following causes:
1. Any offer or agreement by a vendor 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 State officer or employee or special State officer or employee as defined by N.J.S.A. 52:13D-13b and e, in the Department of the Treasury or any other agency with which such vendor transacts or offers or proposes to transact business, or to any member of the immediate family, as defined by N.J.S.A. 52:13D-13i, of any such officer or employee, or any partnership, firm, or corporation with which they are employed or associated, or in which such officer or employee has an interest within the meaning of N.J.S.A. 52:13D-13g;
 2. Failure by a vendor to report to the Attorney General and to the State Ethics Commission in writing forthwith the solicitation of any fee, commission, compensation, gift, gratuity, or other thing of value by any State officer or employee or special State officer or employee;
 3. The undertaking, directly or indirectly, of any private business, commercial or entrepreneurial relationship with, whether or not pursuant to employment, contract or other

agreement, express or implied, or sale, directly or indirectly of any interest in such vendor to, any State officer or employee or special State officer or employee or special State officer or employee having any duties or responsibilities in connection with the purchase, acquisition, or sale of any property or services by or to any State agency or any instrumentality thereof, or with any person, firm or entity with which he is employed or associated or in which he has an interest within the meaning of N.J.S.A. 52:13D-13g. Any relationship subject to this provision shall be reported in writing forthwith to the State Ethics Commission, which may grant a waiver of this restriction upon application of the State officer or employee or special State officer or employee upon a finding that the present or proposed relationship does not present the potential, actuality, or appearance of a conflict of interest;

4. Influence or attempt to influence or cause to be influenced, any State officer or employee or special State officer or employee in his or her official capacity in any manner which might tend to impair the objectivity or independence of judgment of said officer or employee; or
5. Cause or influence or attempt to cause or influence, any State officer or employee or special State officer or employee to use, or attempt to use, his or her official position to secure unwarranted privileges or advantages for the vendor or any other person.

39. Setting Off Tax Arrears Against Sums Owed

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

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

40. Contractor's Certification of Eligibility

The Contractor certifies that it is not listed on the State of New Jersey, Department of Labor and Workforce Development, Division of Wage and Hour Compliance, Prevailing Wage Debarment List or on the State of New Jersey, Department of Treasury, Consolidated Debarment Report.

The Contractor also certifies that it has no exclusions on the consolidated U.S. Government, System for Award Management (SAM) database.

41. Air Pollution

The Contractor and its suppliers must comply with all governing air pollution criteria required by the Federal Transit Administration.

42. Buy America

Pursuant to Section 165 of the Surface Transportation Assistance Act of 1982 (P.L. 97-424) and the regulations found at 49 C.F.R. Part 661, the Contractor agrees that all steel, iron and manufactured products purchased or used as a result of this Contract must be domestic manufacture or origin unless a waiver of these provisions is granted by the FTA.

There are four exemptions to this otherwise universal mandate:

- a. That their application would be inconsistent with the public interest;
- b. That such materials and products are not produced in the United States in sufficient and reasonable available quantities and of a satisfactory quality;
- c. In the case of the procurement of bus and other rolling stock (including train control, communication and traction power equipment) under the Federal Transit Act of 1964, that (A) the cost of components and subcomponents which are produced in the United States is more than 60 percent of the cost of all components of the vehicle or equipment described in this paragraph, and (B) final assembly of the vehicle or equipment described in this paragraph has taken place in the United States;
- d. That inclusion of domestic material will increase the cost of the overall project/contract by more than twenty-five percent (25%).

43. 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 C.F.R. 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.

44. Cargo Preference-Use of U.S. Flag Vessel

The Contractor agrees to utilize privately owned United States-flag commercial vessels to ship at least fifty percent (50%) of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, materials, or commodities pursuant to 46 C.F.R. Part 381, to the extent such vessels are available at fair and reasonable rates for United States-flag commercial vessels.

The Contractor further agrees to furnish within twenty (20) working days following the date of loading for shipments originating within the United States, or within thirty (30) working days following

the date of loading for shipment originating outside the United States, a legible copy of a rated "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described in the Paragraph above to NJ TRANSIT (through the prime Contractor in the case of subcontractor bills-of-lading) and to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, D.C. 20590, marked with appropriate identification of the Project.

The Contractor further agrees to insert the substance of the provisions of this clause in all subcontracts issued pursuant to this Contract.

45. Clean Water and Clean Air Acts

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

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

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

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

45.3 The Contractor agrees to include both the Clean Water and Clean Air requirements in each subcontract exceeding \$150,000. The \$150,000 limit includes indefinite quantities where the amount is expected to exceed \$150,000 in any year.

46. Energy Conservation

The Contractor 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.).

47. Civil Rights

During the performance of this Contract, the Contractor, for itself, its assignees and successors in interest and its subcontractor at every tier (hereinafter referred to as the "Contractor") agrees as follows:

(a) Compliance with Regulations

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

(b) Nondiscrimination

In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with

Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, religion, national origin, sex, age, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

(c) Equal Employment Opportunity

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

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

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

(2) Age

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

(3) Disabilities

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

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

(e) Information and Reports

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

(f) Sanctions for Noncompliance

In the event of the Contractor's noncompliance with the nondiscrimination provisions of this

Contract, NJ TRANSIT shall impose such contract sanctions as it or the FTA may determine to be appropriate, including but not limited to:

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

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

48. Contract Cost Principles and Procedures

Part 31 of the Federal Acquisition Regulations entitled "Contract Cost Principles and Procedures" is incorporated by reference in this Contract.

49. Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tier Covered Transaction

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

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

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

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

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

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

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

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

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

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

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

The lower tier participant shall also have no exclusions on the U.S. Government System for Award Management (SAM) database.

50. Limitations on Lobbying

The Contractor and its subcontractors 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 Contractor and any subcontractor 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 Contractor or subcontractor, as applicable, has not made, and will not make, any payment prohibited by paragraph A.) of this Article.

c.) Any Contractor and any subcontractor 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 Contractor or subcontractor 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 Contractor or subcontractor or to a person, other than an officer or employee of a Contractor or subcontractor, if the payment is for professional or technical services rendered directly in the preparation, submission or negotiation of any bid, proposal or application for a Federal contract, grant, loan or cooperative agreement.

51. Contract Work Hours and Safety Standards

1. Nonconstruction Contracts

The following requirements are applicable to any Contract subject to the overtime provisions of the Contract Work Hours and Safety Standards Act and not to any of the other statutes cited in 29 C.F.R. Paragraph 5.1. The Contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the Contract for all laborers and mechanics, including guards and watchmen, working on the Contract. 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. The records to be maintained under this clause shall be made available by the Contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the FTA, the U.S. DOT, or the Department of Labor, and the Contractor or subcontractor will permit such representatives to interview employees during working hours on the job.

a. Overtime Requirements. No Contractor or subcontractor contracting for any part of the Contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any work week in which he or she is employed on such work to work in excess of forty hours in such work week unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such work week.

b. Violation: Liability For Unpaid Wages: Liquidated Damages. In the event of any violation of the requirements of 29 C.F.R. Paragraph 5.5(b)(1), the Contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States (in the case of 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 29 C.F.R. Paragraph 5.5(b)(1) in the sum of \$25 for each calendar day on which such individual was required or permitted to work in excess of the standard work week of forty hours without payment of the overtime wages required by 29 C.F.R. Paragraph 5.5(b)(1).

c. Withholding For Unpaid Wages And Liquidated Damages. The FTA or NJ TRANSIT shall upon its own action or upon written request of any authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or Subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other Federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or Subcontractor for unpaid wages and liquidated damages as provided in the clause set forth at 29 C.F.R. Paragraph 5.5(b)(2).

2. Nonconstruction Subcontracts.

The Contractor or Subcontractor shall insert in any subcontracts the clauses set forth in Section 51,

"Labor Provisions for Nonconstruction Contracts" 1(a) through 1 and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in Section 51.

52. New Jersey Prevailing Wage Act (For Construction Procurements Only)

If applicable, the Contractor and each subcontractor shall comply with the New Jersey Prevailing Wage Act, N.J.S.A. 34:11-56.25 et seq., and this Act is hereby made a part of this Contract. All workers shall be paid not less than the prevailing wage rate as designated by the Commissioner of Labor and Industry or the Commissioner's duly authorized deputy or representative.

In the event it is found that any worker has been paid a rate of wages less than the prevailing wage required to be paid by this Contract, the Contracting Officer may terminate the Contractor's or Subcontractor's right to proceed with the work, or such part of the work as to which there has been a failure to pay required wages, and take such action the Contracting Officer deems necessary, including prosecuting the work to completion to the account of the Contractor.

NJ TRANSIT shall furnish as part of the Contract a copy of the prevailing minimum wage rates which shall be paid to the workers employed in the performance of the Contract.

Nothing contained in the Prevailing Wage Act shall prohibit the payment of more than the prevailing wage rate to any worker employed on the project.

The Contractor and each Subcontractor performing work for NJ TRANSIT who is subject to the provisions of the Prevailing Wage Act shall post the prevailing wage rates for each craft and classification involved, including the effective date of any changes thereof, in prominent and easily accessible places at the site of the work or at such place or places as are used by them to pay workers their wages.

The Contractor's signature on the proposal is its guarantee that neither it nor any Subcontractor it intends to contract with is currently listed by or on record with the Commissioner of Labor and Industry as one who failed to pay the prevailing wages according to the Prevailing Wage Act.

The Contractor and all of its Subcontractors performing work at the site must prepare their bids as to labor costs in accordance with the prevailing wage (valid for the date the bids are to be submitted) for the geographical area of the project site.

53. Employee Protections-Construction Activities (For Construction Procurements Only)

If applicable, the Contractor agrees to comply, and assures the compliance by each subcontractor at any tier, with the following employee protection requirements for construction employees:

1. Davis-Bacon Act, as amended, 49 U.S.C. § 5333(a), the Davis-Bacon Act, 40 U.S.C. §§ 276a-276a(7), and U.S. DOL regulations, "Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction", 29 C.F.R. Part 5, and 29 C.F.R. Parts 1 & 3.

2. Contract Work Hours and Safety Standards Act, as amended, in particular with the requirements of section 102 of the Act, 40 U.S.C. §§ 327-332; and U.S. DOL regulations, "Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction", 29 C.F.R. Part 5; and with section 107 of the Act, 40 U.S.C. § 333, and U.S. DOL regulations, "Safety and Health Regulations for Construction", 29 C.F.R. Part 1926;

3. Copeland "Anti-Kickback" Act, as amended, 18 U.S.C. § 874 and 40 U.S.C. § 276c, and U.S. DOL regulations, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in part by Loans or Grants from the United States", 29 C.F.R. Part 3.

54. Incorporation of Federal Transit Administration (FTA) Terms

This Contract is funded in whole or in part by the United States Government and is subject to all Federal laws and regulations governing Federally-financed projects.

(a) Changes to Federal Requirements

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

(b) Incorporation of FTA Terms

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

55. Exclusionary or Discriminatory Specifications

Except where otherwise required by Federal statute or regulations, the Contractor agrees that it will comply with the requirements of 49 USC 5323(h)(3) by refraining from using exclusionary or discriminatory specifications in the performance of the work.

56. No Federal Government Obligations to Third Parties

The Contractor agrees that, absent the Federal Government's express written consent, the Federal Government shall not be subject to any obligations or liabilities to the Contractor in connection with the performance of the Project. Notwithstanding any concurrence provided by the Federal Government in or approval of the Contract, the Federal Government continues to have no obligations or liabilities to the Contractor. The Contractor further agrees to include this clause in each subcontract financed in whole or in part with Federal assistance provided by the FTA.

57. False or Fraudulent Statements and Claims

The Contractor recognizes that the requirements of the Program Fraud Civil Remedies Act of 1986, as amended, 31 USC 3801 et seq. and USDOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to the Project. Accordingly, by signing the Contract, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, or it may make pertaining to the Contract. In addition to other penalties that may be applicable, the Contractor 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 Contractor to the extent the Federal Government deems appropriate.

The Contractor 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 chapter 53,, the Government reserves the right to impose on the Contractor the penalties of 18 USC 1001 and 49 USC 5307(n)(1), to the extent the Federal Government deems appropriate. The Contractor further agrees to include this clause in each subcontract financed in whole or in part with Federal assistance provided by the FTA.

58. Prevention of Drug and Alcohol Abuse in Transit

If the Contractor is supporting NJ TRANSIT Bus Operations equipment maintenance, including engine, revenue vehicle, and parts rebuilding and overhaul, it shall establish and implement a drug and alcohol misuse prevention program in compliance with 49 C.F.R. parts 653 and 655

The Contractor shall certify its compliance by completing the Prevention of Drug and Alcohol Abuse in Transit Operations Certification attached hereto in Attachment 1.

59. Transition

In the event that a new Contract has not been awarded prior to the expiration date of this Contract, including any extensions exercised, and the Contracting Officer elects to exercise this Contract transition, the Contractor shall continue the Contract under the same terms, conditions, and pricing until a new Contract can be completely operational. At no time shall this transition period extend more than 365 calendar days beyond the expiration date of this Contract, including any extensions exercised.

60. Extension

If, in the opinion of the Contracting Officer, it is in the best interest of NJ TRANSIT to extend the Contract, the Contractor shall be so notified of the Contracting Officer's intent at least thirty (30) calendar days prior to the expiration date of the existing Contract. The Contractor shall have fifteen (15) calendar days to respond to the Contractor Officer's request to extend the term and period of performance of the Contract. If the Contractor agrees to the extension, all terms and conditions including pricing of the original Contract shall apply unless more favorable terms for NJ TRANSIT have been negotiated.

61. Use of Recovered Materials

The Contractor agrees to provide a preference for those products and services that conserve natural resources, protect the environment, and are energy efficient by complying with and facilitating compliance with Section 6002 of the Resource Conservation and Recovery Act, as amended, 42 U.S.C. § 6962, and U.S. Environmental Protection Agency (U.S. EPA), "Comprehensive Procurement Guideline for Products Containing Recovered Materials," 40 C.F.R. part 247.

62. Attachments and/or Exhibits

The following Attachments and/or Exhibits are incorporated into this Contract:

Attachment 1:

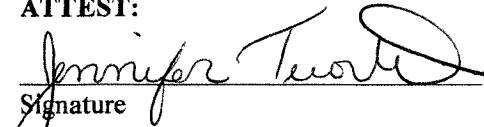
- Bid Price Form
- Non-Collusion Affidavit
- Certification Regarding Debarment, Suspension and Other Responsibility Matters
- Contractors Certification of Eligibility
- Mandatory Equal Employment Opportunity (EEO) Language
- Buy America Certification
- Certification for Contracts, Grants, Loans and Cooperative Agreements
- Affidavit of Compliance/ NJ TRANSIT's Code of Ethics for Vendors
- Prevention of Drug and Alcohol Abuse in Transit Operations Certification
- Ownership Disclosure Form
- Source Disclosure Certification Form (For Service Procurements Only)
- Disclosure of Investment Activities in Iran
- Addenda Acknowledgement Form

Attachment 2: NJ TRANSIT Corporations DBE Requirements and Forms

IN WITNESS WHEREOF, the parties have caused this Contract to be executed effective the date set forth above. The representative signing on behalf of the Contractor shall have the authority to contractually bind the Contractor.

CONTRACTOR

ATTEST:

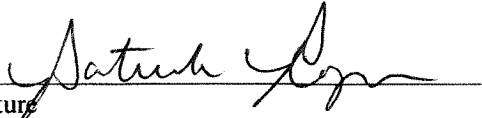

Signature

Jennifer Tuorto

Typed Name

Sales Specialist

Typed Title

By: 
Signature

Patrick Rogers


Typed Name

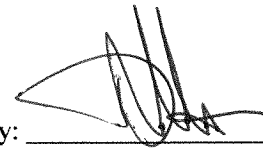
Vice President, Sales

Typed Title

NEW JERSEY TRANSIT CORPORATION

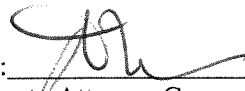
ATTEST:

 1-15-2020
Signature

By:  15 Jan 2020
Signature

This Contract has been reviewed and approved as to form by the Office of the Attorney General of New Jersey.

Gurbir S. Grewal
Attorney General of New Jersey

By:  1/10/20
Deputy Attorney General

NJ TRANSIT CORPORATION

MANDATORY EQUAL EMPLOYMENT OPPORTUNITY LANGUAGE

N.J.S.A. 10:5-31 et seq. (P.L. 1975, C. 127)

N.J.A.C. 17:27

GOODS, PROFESSIONAL SERVICE AND GENERAL SERVICE CONTRACTS

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

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

The contractor or subcontractor, where applicable will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex.

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

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

The contractor or subcontractor agrees to make good faith efforts to meet targeted county employment goals established in accordance with N.J.A.C. 17:27-5.2.

The contractor or subcontractor agrees to inform in writing its appropriate recruitment agencies including, but not limited to, employment agencies, placement bureaus, colleges, universities, and labor unions, that it does not discriminate on the basis of age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex, and that it will discontinue the use of any recruitment agency which engages in direct or indirect discriminatory practices.

The contractor or subcontractor agrees to revise any of its testing procedures, if necessary, to assure that all personnel testing conforms with the principles of job-related testing, as established by the statutes

and court decisions of the State of New Jersey and as established by applicable Federal law and applicable Federal court decisions.

In conforming with the targeted employment goals, the contractor or subcontractor agrees to review all procedures relating to transfer, upgrading, downgrading and layoff to ensure that all such actions are taken without regard to age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex, consistent with the statutes and court decisions of the State of New Jersey, and applicable Federal law and applicable Federal court decisions.

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

Letter of Federal Affirmative Action Plan Approval;

Certificate of Employee Information Report; or

Employee Information Report Form AA-302 (electronically provided by the Division and distributed to the public agency through the Division's website at www.state.nj.us/treasury/contract_compliance).

The contractor and its subcontractors shall furnish such reports or other documents to the Division of Purchase & Property, CCAU, EEO Monitoring Program as may be requested by the office from time to time in order to carry out the purposes of these regulations, and public agencies shall furnish such information as may be requested by the Division of Purchase & Property, CCAU, EEO Monitoring Program for conducting a compliance investigation pursuant to Subchapter 10 of the Administrative Code at N.J.A.C. 17:27-1.1 et seq.

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

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

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

TO ALL NJ TRANSIT EMPLOYEES AND THE CONTRACTING COMMUNITY:

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

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

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


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

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

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

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

Date: *August 7, 2018*



Kevin S. Corbett
Executive Director

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

TABLE OF CONTENTS

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

NEW JERSEY TRANSIT CORPORATION

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

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

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

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

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

A list of certified DBE firms may be found in the NJ Unified Certification Program (NJUCP) Directory at <https://njucp.dbesystem.com>. **Note: Use of this list does not relieve the Bidder/Proposer/Prime contractor/consultant of responsibility to seek DBE participation from other sources. The list is updated daily and must be checked periodically, as firms are certified and decertified daily.**

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

1.1 POLICY

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

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

1.2 ASSURANCE

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

1.3 DBE GOAL FOR THIS PROJECT

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

1.4 GUIDANCE TO BIDDER/PROPOSERS/PRIMES

- 1.4.1 Failure by a Bidder/Proposer/Prime to comply with any of the requirements contained herein shall result in breach of contract and it shall be subject to the appropriate penalties, remedies, or liquidated damage(s). **Refer to articles 5.6-5.7**
- 1.4.2 All required forms, including the supplemental section (**see articles 2.3-2.4**) must be submitted in accordance with the requirements. **Firms must be certified under the NJUCP at the time of contract award in order to obtain DBE credit toward the goal.** Firms pending certification will not count toward meeting the contract goal.
- 1.4.3 Price alone is not an acceptable basis for rejecting a DBE subcontractor/subconsultant's bid.
- 1.4.4 The Bidder/Proposer/Prime shall, at a minimum, seek DBEs in the same geographic area in which it generally seeks subcontractors/subconsultants. However, the Bidder/Proposer/Prime may be required to expand its search under specific circumstances as determined by OBD. **Refer to article 2.0**
- 1.4.5 Agreements between a Bidder/Proposer/Prime and a DBE in which the DBE promises not to provide subcontracting quotations to other Bidder/Proposers are prohibited.
- 1.4.6 The desire of a Bidder/Proposer/Prime to self-perform the work of a contract with its own organization is not

an acceptable basis to not meet the goal or demonstrate a good faith effort to do so.

- 1.4.7 The Bidder/Proposer/Prime is responsible for verifying that the DBE is certified under the appropriate NAICS code for the scope of work identified. DBE credit shall be given only for work performed in the NAICS code(s) under which the DBE is certified.
- 1.4.8 A DBE firm listed on the First-Tier DBE Utilization Form (Form A) shall constitute a binding representation to NJT, by the Bidder/Proposer/Prime, that the DBE firm is qualified, available, and certified under the appropriate and required NAICS code to perform the scope of work identified. **Refer to article 2.5a**

1.5 TRANSIT VEHICLE MANUFACTURERS (TVM)

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

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

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

1.6 RESPONSIBLE BID/PROPOSAL CRITERIA

1.6.1 As a matter of responsibility, the two lowest Bidders or two highest ranked Proposers must submit the required forms, including the supplemental section (if applicable), with the bid/proposal or within five (5) calendar days after the bid opening or proposal/cost due date. Notwithstanding the date of submission of the mandatory DBE forms, **all negotiations between a Bidder and any potential DBE subcontractor, subconsultant, or supplier shall be completed prior to the bid opening or proposal/cost due date.**

Bidders/Proposers shall identify all DBE and non-DBE subcontractors, subconsultants, and suppliers proposed to participate in and those solicited for this Contract, and shall complete and submit the mandatory DBE Forms A, A1, A2, and B. The two lowest Bidders or two highest ranked Proposers must also submit NJ Unified Certification Program (NJUCP) certificate or letter for all potential DBE subcontractors. Additionally, the two lowest Bidders or two highest ranked Proposers shall submit any applicable supplemental forms (AA, AA1, AA2, BB, and D). All DBE forms and NJUCP certificates or letters shall be submitted with the Bid or within five (5) calendar days of the bid opening date. However, Bidders are strongly encouraged to submit all mandatory documents with the Bid to prevent delay of the Contract award.

1.6.2 Bidders are requested to review carefully and complete the forms entirely, with no blank fields. Failure to satisfactorily complete or submit all required documentation and/or demonstrate documented evidence of good faith effort **within five (5) calendar days after the bid opening or proposal/cost due date** shall result in rejection of a Bid as non-responsible.

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

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

2. GUIDANCE ON A GOOD FAITH EFFORT

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

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

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

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

2.2 A GOOD FAITH EFFORT

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

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

2.3 REQUIRED FORMS

- (a) **Form A - First Tier DBE Utilization:** Lists all First Tier DBE firms scheduled to participate on this contract.

- (b) **Form A1 - Bidder/Proposer Solicitation and Contractor Information:** Lists all DBE and Non-DBE sub contractor/subconsultants, including suppliers, solicited for, **and** participating on this contract.
- (c) **Form A2- Non-DBE Sub Utilization:** Lists all **DBE and Non-DBE** subcontractors/ subconsultants, including suppliers, participating on this contract.
- (d) **Form B - Intent to Perform as a DBE Sub:** Identifies the work the 1st Tier DBE intends to perform including scope of work, subcontract dollar value, etc.
- (e) **DBE Good Faith Effort Form (if applicable):** Identifies any DBE subcontractor invited to quote, but declined to do so for any reason.
- (f) **Trucking Commitment Agreement (if applicable):** Identifies all trucking firms (DBE and Non-DBE) participating on this contract, **at any tier**.
- (g) **NJ UCP DBE Certification & NAICS Code Verification:** Confirms the DBE status and NAICS code(s) of each First Tier DBE subcontractor/subconsultant.
- (h) ***Form E - Contractor's Monthly DBE Payment Report & Payment Certification Voucher (Post-Award):** Records monthly payments issued to each DBE subcontractor/subconsultant/supplier and monthly payments issued by NJ TRANSIT to the Prime. Certifies that DBE subs have been paid for previous month's invoices.
- (i) **Form E2 – DBE's Monthly Payment Report (Post-Award):** Records monthly invoices submitted by the DBE, payments owed to the DBE on past due invoices and payments received from the prime by each DBE subcontractor/subconsultant.
- (j) **Form E1- DBE Prime's Monthly Payment Report (For DBE Prime Only):** Records monthly payments issued to each DBE Prime by NJ TRANSIT to.

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

2.4 SUPPLEMENTAL REQUIRED FORMS (IF APPLICABLE)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- (1) The Bidder/Proposer/Prime must provide interested DBEs with a copy of appropriate plans, specifications, and requirements of the contract in a timely manner to allow the DBE to prepare an appropriate price quote and submit on time.
- (2) First Tier DBEs must perform at least 51% of the total dollar value of its subcontract, with its own forces. The firm must indicate the percentage of the total portion of work to be subcontracted to DBE and non-DBE firms. The non-DBE percentage of work is not counted toward the assigned goal.
- (3) The OBD encourages DBE-to-DBE subcontracting in order to preserve DBE participation credit.
See article 3.0
- (4) The DBE must provide a detailed scope of work; one-word descriptions are not acceptable. Descriptions should include: *type of services provided, total number of units, price per unit, total cost, etc.*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2.6 INSTRUCTIONS FOR COMPLETING SUPPLEMENTAL REQUIRED FORMS:

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

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

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

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

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

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

DBE sub-Primes are required to report and submit all dollars committed to non-DBEs. The non-DBE portion DBE Requirements for Federal Procurement Activities

Feb 15, 2015 upddd 12.11.17

of work is not counted toward DBE participation credit. **Refer to article 3.0**

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

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

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

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

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

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

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

3.0 GUIDANCE ON COUNTING DBE PARTICIPATION

- 3.1 If a firm is not currently certified as a DBE in accordance with 49 CFR part 26 at the time of the execution of the contract, the firm's participation will not count toward the DBE goal.
- 3.1.1 A DBE performing less than 51% of its subcontract will not count toward the assigned goal and should not be listed on any forms.
- 3.1.2 When a DBE subcontracts part of the work of its contract to another firm, the value of the subcontracted work may be counted toward DBE goals only if the DBEs subcontractor/subconsultant is a DBE.
- (a)** Work that a DBE subcontracts to a **non-DBE** firm does not count toward the DBE contract goal.
- (b)** When a DBE performs as a participant in a **joint venture with a Non-DBE**, count the portion of the total dollar value of the contract equal to the distinct, clearly defined portion of the work of the contract that the DBE performs with its own forces toward DBE goals.
- (c)** A DBE performs a *commercially useful function* when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing and supervising the work involved.

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

3.2 COUNTING DBE PARTICIPATION

- 3.2.1 When a DBE participates in a contract, only the value of the work actually performed by the DBE is counted toward DBE goals.
 - (a)** The entire amount of that portion of a contract that is performed by the DBE's own forces is counted. This
- DBE Requirements for Federal Procurement Activities Feb 15, 2015 updt'd 12.11.17

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 that leases trucks equipped with drivers from a non-DBE is entitled to credit for the total value of transportation services provided by non-DBE leased trucks equipped with drivers not to exceed the value of transportation services on the contract provided by DBE-owned trucks or leased trucks with DBE employee
- DBE Requirements for Federal Procurement Activities Feb 15, 2015 upddd 12.11.17

drivers.

- (b) The DBE may lease trucks without drivers from a non-DBE truck leasing company. If the DBE leases trucks from a non-DBE truck leasing company and uses its own employees as drivers, it is entitled to credit for the total value of these hauling services

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

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

3.6 COUNTING MATERIALS AND SUPPLIES

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

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

4.0 TERMINATION OF DBE(s)

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

- 4.1 The Bidder/Proposer/Prime shall not terminate a DBE sub listed in response to Article 1.6 (or an approved substitute DBE firm) for convenience, or any other reason without NJT/OBD's prior written consent. This includes, but is not limited to, instances in which a Bidder/Proposer/Prime seeks to perform work originally designated for a DBE sub with its own forces or those of an affiliate, a non-DBE firm, or with another DBE firm. **See Article 4.3.**

(A) The Bidder/Proposer/ Prime shall utilize the specific DBEs listed to perform the work and supply the materials for which each is listed unless you obtain OBD's written consent as provided in this paragraph (4.1); and

(B) That, unless (OBD's) consent is provided under this paragraph (4.1), the Bidder/Proposer/Prime shall not be entitled to any payment for work or material unless it is performed or supplied by the listed DBE.

(C) Before transmitting to you OBD its request to terminate and/or substitute a DBE sub, the Bidder/Proposer/Prime must give notice in writing to the DBE sub, with a copy to OBD, of its intent to request to terminate and/or substitute, and the reason for the request.

(D) The prime contractor must give the DBE five (5) days to respond to the prime contractor's notice and advise OBD and the Prime of the reasons, if any, why it objects to the proposed termination of its subcontract and why OBD should not approve the Prime's action.

(E) When a DBE subcontractor is terminated as provided in paragraph Article 4.1, or fails to complete its work on the contract for any reason, the Bidder/Proposer/Prime is required to make good faith efforts to find another DBE subcontractor to substitute for the original DBE. These good faith efforts shall be directed at finding another DBE to perform at least the same amount of work under the contract as the DBE that was terminated, to the extent needed to meet the contract goal established for the procurement. The good faith efforts shall be documented by the Bidder/Proposer/Prime and submitted within seven (7) days of NJT's request, which may be extended for an additional seven (7) days if necessary at the request of the contractor, and OBD shall provide a written determination to the contractor stating whether or not good faith efforts have been demonstrated.

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

4.2 ADDITION OF DBE(s)

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

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

4.3 REPLACEMENT OR REMOVAL OF DBE(s)

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

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

- 1) The DBE materially fails to successfully perform the contract tasks.
- 2) Under unusual situations referenced in article 4.3.8.

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

- (a) Written communications (over a period) from the Prime and/or NJT's PM/CM team to the DBE, notifying the DBE of its poor performance must be provided to the OBD.
- (b) **The OBD will arrange a meeting with the DBE, the Prime, and a representative from Procurement and project management to discuss the specifics of the performance issue.**
- (c) The DBE must provide a written plan identifying the efforts it will make to correct the deficiencies.
- (d) The Prime must provide the DBE with a minimum of 30 calendar days from acceptance of its plan to improve its performance. Throughout the 30-day window, the Prime and/or NJT PM/CM team must provide written communication to the DBE of any additional/continued performance issues, with a copy to the OBD.

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

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

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

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

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

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

- (a) Failure to qualify as a DBE, or maintain DBE certification status.
- (b) Death or physical disability of a key individual.
- (c) Dissolution, if a corporation or partnership.
- (d) Bankruptcy of the subcontractor/subconsultant, subject to applicable bankruptcy law, and only in instances

where the bankruptcy affects the subcontractor/subconsultant's ability to perform.

- (e) Inability to obtain, or loss of, a license necessary for the performance of the particular category of work.
- (f) Failure or inability to comply with a requirement of law applicable to Primes or, subcontractors/subconsultants.

4.4 WITHDRAWN DBE(s)

4.4.1 When a DBE is unable to complete a subcontract (withdraws), for any reason, NJT will require a Bidder/Proposer/Prime to make a good faith effort to replace a withdrawn DBE at least to the extent needed to ensure that the Prime contractor is able to meet the contract goal established by NJT for the procurement. **These good faith efforts shall be directed at finding another DBE to perform at least the same amount of work under the contract as the removed DBE.**

4.4.2 The Bidder/Proposer/Prime is required to make a good faith effort to seek other DBE subcontractors/subconsultants in substitution of the original DBE. The good faith efforts described in **article 2** are required in finding another DBE to perform at least the same amount of work under the contract as the DBE that was terminated, to the extent needed to meet the contract goal established for the procurement.

4.5 DECERTIFIED DBE(S)

4.5.1 If the Prime has reason to doubt that a proposed DBE is still eligible due to change in ownership, management, or size, the Prime shall, within 10 days of learning this information, notify NJT of that fact in writing.

4.5.2 If the subcontract has not been executed before the DBE's ineligibility occurs, the Prime will not receive credit toward the contract goal for the ineligible DBE. The Prime may continue to use the ineligible DBE, however, DBE participation credit will not be granted.

(a) To the extent necessary to meet the assigned contract goal, the Prime will make a good faith effort to replace the ineligible DBE within 10 days after notification by the OBD. The OBD will support the Prime in its efforts to replace with an eligible DBE firm in order to meet the contract goal.

4.5.3 If the contract has been executed before the firm has been notified of its ineligibility, the Prime may continue to use the firm on the contract and receive credit toward its DBE goal for the duration of that particular phase of or option in the contract. This may not apply to future phases or options, which will be handled on a case-by-case basis at the sole discretion of the OBD.

4.5.4 **Exception:** If the DBEs ineligibility is caused solely by its having exceeded the size standard during the performance of the contract the Prime may continue to count its participation on that contract only toward the contract goals. This may not apply to future phases or options and will be subject to determination by the OBD.

5.0 AWARD OBLIGATIONS

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

5.1.1 If at any point during the contract's life, the Prime's DBE participation falls below the assigned goal, the Prime must identify additional work or new work items for which it will subcontract to DBEs to the extent necessary

to meet the assigned goal. Any new scope of work issued to the Prime shall still be subject to the assigned goal.

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

5.2 POST AWARD DELIVERABLES

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

Failure to submit this report on a monthly basis may result in breach of the contract and be subject to the appropriate remedies, penalties or liquidated damages as indicated in articles 5.6-5.7.
- 5.2.5 **Form E1 (DBE Prime's Monthly Payment Report) (For DBE Prime Only)** - **submit** monthly to the Manager of the OBD.
- 5.2.6 **Form E2 (DBE's Monthly Payment Report) – Refer to article 2.5j**
 - (a) Forms E/E1 and E2 will be reviewed monthly to determine compliance with the assigned DBE goal, the subcontractor prompt payment regulation, and the DBE Program.
 - (b) Attainment of goals will be monitored and based upon actual payments received by the DBE. Failure to submit Form E/E1 may result in suspension of payments or such other remedies as provided in **article 5.6**. *If at any time, NJT has reason to believe that any person or firm has willfully and knowingly provided incorrect information or made false statements, it shall refer the matter to the USDOT for inquiry.*

5.3 PROMPT PAYMENT OF INVOICES TO SUBCONTRACTORS

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

5.4 SUBCONTRACTOR PAYMENT DISPUTE RESOLUTION

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

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

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

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

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

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

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

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

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

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

5.6 REMEDIES AND PENALTIES

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

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

5.7 LIQUIDATED DAMAGES

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

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

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

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

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

APPENDIX I

GLOSSARY

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

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

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

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

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

DBE Sub-Prime - means any 1st Tier DBE subcontractor/subconsultant listed on the Form A that will subcontract any portion of its subcontract/scope of work to a DBE(s) and/or non-DBE(s) firm(s).

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

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

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

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

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

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

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

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

Feb 15, 2015 updt'd 12.11.17

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.

Rev 9/15/10
Updated 1.6.1 JGold 7/10/17
Updated 3.53(a)(b); (4.1) LMC 8/1/18

REQUIRED FORMS

ENCLOSED FOR COMPLETION (MANDATORY):

- **Form A; A1; A2; B; D & Trucking Commitment Schedule**

TO BE OBTAINED AND SUBMITTED (MANDATORY):

- **Copy of NJUCP DBE and NAICS Code Certification**

Consult DBE Program Requirements for further guidance.

Bidders Checklist (Federal Contracts)

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

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

Required Forms

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

Supplemental Forms (if applicable)

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

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



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

The New Jersey Unified Certification Program (NJUCP) DBE

Directory is getting an Upgrade!

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

at <https://njucp.dbesystem.com>

Please update your bookmarks

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

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

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

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

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

FORM A (Fed)

NJT Contract No: _____

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 <u>Detailed</u> Scope of Work to be Performed (Identify all suppliers) | Dollar Value of Subcontract/Sub- consultant Work (\$) Awarded | Percentage of Subcontract Work (%) |
|--|---|--|---|
| | | | % |
| | | | % |
| | | | % |
| | | | % |
| | | | % |
| | TOTALS | \$ | % |
| <small>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.</small> | | | |

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.

Authorized Signature: _____

Print Name: _____

Title: _____

Prime Contractor's DBE Liaison Officer: _____

Date Signed: _____

MANDATORY FORM: COMPLETE ENTIRELY

Form A1 (Fed)

BIDDER SOLICITATION & CONTRACTOR INFORMATION - FORM A1

Project Title: _____

Date: _____

Prime Contractor/Consultant: _____ NJT Contract #: _____

Telephone #: _____

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

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

MANDATORY FORM: COMPLETE ENTIRELY

Form A1 (Fed)

BIDDER SOLICITATION & CONTRACTOR INFORMATION - FORM A1

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

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

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

MANDATORY FORM FOR BIDDER/PROPOSER/PRIME: COMPLETE ENTIRELY

FORM A2 (Fed)

NON-DBE SUBCONTRACTOR UTILIZATION - FORM A2

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

Bidder/Proposer Prime Name: _____ Project Title: _____

Date: _____ Prime Contract Value: _____

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

INTENT TO PERFORM AS A 1ST TIER DBE - FORM B

The Bidder/Proposer/Prime is prohibited from completing any portion of this form and directing the DBE to sign a blank form.

DIRECTIONS: DBE(s) listed on the Form A must complete all information on this form.

Name of Bidder/Proposer/Prime:

Name of DBE Firm:

Project/Contract Name: _____

IFB/RFP Contract Number: _____

Does the undersigned DBE (Answer Accordingly):

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

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

Circle one. (Yes or No)

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

At what percent? _____ %

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

Circle one. (Yes or No)

If yes, must complete and submit Form AA2.

At what percent? _____ %

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

Dollar Value of DBE Subcontract: \$ _____

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

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

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

DBE Contract Start Date: _____ DBE Contract Completion Date _____

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

Signature of 1st Tier DBE

Date

Title

Print Name

Telephone #:

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

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 1st Tier DBE subs. DBE sub-primes must provide required forms under Supplemental section to their 2nd Tier DBE/Non-DBE subs, if applicable. Please contact the compliance officer identified for this contract at the pre-bid/proposal conference for guidance on completing any of these forms.

DBE GOOD FAITH EFFORT– FORM D

IFB/RFP Number: _____

Project Title: _____

Bidder/Proposer/Prime Name: _____

Address: _____

Phone: _____

Email: _____

Date Signed: _____

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

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

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

DBE GOOD FAITH EFFORT– FORM D

IFB/RFP Number: _____ Project Title _____

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

I, _____
Name Titleof _____
Bidder/Proposer/Prime

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

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

Method of Contact: Phone Fax Mail Email

Date Contacted: _____

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

No response

Not interested: Indicate Reason(s) _____

Unacceptable Sub Bid: Indicate Reason(s) _____

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

Signature of Bidder/Proposer/Prime_____
Date

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

Signature of DBE Firm

Date

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

DBE TRUCKING COMMITMENT

AGREEMENT

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

Please read DBE Requirement Language for details.

- DBEs must provide information for all DBE/Non-DBE trucking firms it will lease from or subcontract to.
 - *Subcontracting to a Non-DBE trucker means that the Non-DBE will perform a portion of the DBE firm's subcontract.*
 - *2nd Tier DBE trucking firms must perform 100% of their total subcontract value.*
- For Non-DBE leased trucks, credit will only be given for the fee/commission that is received for arranging the transportation services.
 - *All DBE-leased trucks are required to reflect the DBE firm's company name and identification number.*

Copies of the following items must be attached for ALL trucks owned by the DBE:

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

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

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

MANDATORY FORM

DBE TRUCKING FIRM COMMITMENT AGREEMENT

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

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

Dollar Value of DBE Subcontract: \$_____

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

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

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

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

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

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

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

[illegible]

MANDATORY FORM

| | | | | | |
|--|-------------|-------------|--------------|---|---|
| Non-DBE Trucking Firm | | | | | |
| # Of Trucks Leased From non-DBE Trucking Firm | | | | | |
| VIN # | MAKE | YEAR | MODEL | (Indicate Yes/No/NA) HAZ WASTE DOC | (Indicate T/F/ I/R/A/L) OWNERSHIP DOCS |
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |
| DBE Trucking Firm | | | | | |
| # Of Trucks Leased From DBE Trucking Firm | | | | | |
| VIN # | MAKE | YEAR | MODEL | (Indicate Yes/No/NA) HAZ WASTE DOC | (Indicate T/F/I/R/A/L) OWNERSHIP DOCS |
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |

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

1st Tier DBE Signature: _____

Date: _____

Print Name: _____

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 %: _____

| Name of DBE Subcontractor | Work Task Performed | Original Contract Amount \$ | Change Order Amount \$ (+/-) | Amount of Invoice Received this Month (\$) | Date of Invoice Received in this Month | Payment(s) Made to DBE in this Month in \$ (Itemize) | Date(s) Payment Made This Month | Total DBE Payments made to Date in (\$) | % Overall Work Finished | Final Pmt (Y/N) |
|---------------------------|---------------------|-----------------------------|------------------------------|--|--|--|---------------------------------|---|-------------------------|-----------------|
| | | | | | | | | | | |
| | | | | | | | | | | |
| | | | | | | | | | | |
| | | | | | | | | | | |
| | | | | | | | | | | |
| | | | | | | | | | | |
| | | | | | | | | | | |
| | | | | | | | | | | |
| Total(s) → | | \$ | \$ | \$ | Total(s) | \$ | Total(s) | \$ | | |

Itemize payments/invoices and dates if paid/received more than one payment/invoice between the 1st and 31st of THIS Month.

Prime Contractor Information:

Prime Firm Name: _____ Project Director Name: _____

Address: _____ Project Director Signature: _____

Telephone #: _____ Date: _____ Federal TIN #: _____

Prime's Past Due Invoice Information: List any invoice more than 40 days past due from the date **submitted** to NJT at the time you complete this form.

| Invoice # | Invoice Date | Invoice Amount (\$) | Number of Days Past Due | Comments: |
|-----------|--------------|---------------------|-------------------------|-----------|
| | | | | |
| | | | | |

This form is not to be altered in any way.

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

Form E - Prime Contractor's DBE Payment Certification

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

€ If yes, skip the next section and go to number 3.

€ If no, please complete fields in box below. (Use additional paper, if needed)

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

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

€ If yes, provide a copy of written notification to the DBE subcontractor with this form, indicating the date of notification.

€ If no, lack of prior written notification to the DBE(s) that you are withholding payment violates the prompt payment clause guidelines. **Please contact the DBE immediately, and submit a copy of written notification to the subcontractor with this form.**

€ If Not Applicable, check this box.

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:

NU TRANSIT
Office of Business Development
One Penn Plaza East, 6th Fl
Newark, New Jersey 07105-2246

This form is not to be altered in any way.

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

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 1st and 31st of THIS Month.

| Work Task Performed | Original Subcontract Amount \$ | Change Order Amount (+/-) | Invoice #(s) Submitted in this month | Dollar Amount of Each Invoice Submitted in this Month | Date of Invoice(s) Submitted 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 Date | Final Payment? Y or N |
|---------------------|--------------------------------|---------------------------|--------------------------------------|---|--|---|--|---|----------------------|-----------------------|
| | | | | | | | | | | |
| | | | | | | | | | | |
| | | | | | | | | | | |
| | | | | | | | | | | |
| TOTALS → | \$ | \$ | TOTALS → | \$ | TOTALS → | \$ | TOTALS → | \$ | | |

Is retainage held on your subcontract? **Yes** or **No** (circle one) If yes, how much? \$ _____. Did your final payment include retainage? **Yes** or **No** (circle one)**Past Due Invoice(s) Information: List any invoice more than 40 days past due from date submitted to prime at the time you complete this form.**

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

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

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

THIS FORM IS DUE ON THE 7TH OF EACH MONTH IMMEDIATELY FOLLOWING DBE's SUBCONTRACT START DATE. EVEN IF PAYMENT NOT RECEIVED.**Please mail this form to:**NJ TRANSIT, Office of Business Development, One Penn Plaza East, 6th Fl, Newark, New Jersey 07105-2246**Do not alter this form in any way.**

If you need assistance completing this form please call 973-491-7977, 7539, 8061, 8614, 7530, 8941.

SUPPLEMENTAL SECTION REQUIRED FORMS

ENCLOSED FOR COMPLETION (IF APPLICABLE):

- **Form AA; AA1; AA2; BB; & Trucking Commitment Schedule**

TO BE OBTAINED AND SUBMITTED (IF APPLICABLE):

- **Copy of NJUCP DBE and NAICS Code Certification**

Consult DBE Program Requirements for further guidance.

SECOND TIER DBE UTILIZATION—FORM AA

Project Name: _____

NJT Contract No: _____

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

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

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

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

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

DBE Sub-Prime Firm: _____

Authorized Signature: _____

Company Address: _____

Print Name: _____

Title: _____

Federal Tax ID #: _____

Sub-Prime's DBE Liaison Officer: _____

Company Tel #: _____

Date Signed: _____

BIDDER SOLICITATION & CONTRACTOR INFORMATION - FORM AA1

NJT Contract No: _____

DBE Sub-Prime: _____

Date: _____

Project Title: _____

Telephone #: _____

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

| | Sub Prime | 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 BY DBE SUB-PRIME: COMPLETE ENTIRELY

FORM AA2 (Fed)

NON-DBE SECOND TIER SUBCONTRACTOR UTILIZATION - FORM AA2

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

NJ Transit Contract No: _____ Date: _____

DBE Sub-Prime Contract Value: _____

DBE Sub-Prime Contractor Name: _____

Project Title: _____

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

INTENT TO PERFORM AS A SECOND TIER DBE - FORM BB

The Bidder is prohibited from completing any portion of this form and directing the DBE to sign a blank form.

DIRECTIONS: DBE(s) listed on the Form AA must complete all information on this form and must complete Form AA2 for any Non-DBE subcontractor performing a portion of its subcontract.

Name of First Tier DBE/Sub-Prime:

Name of Second Tier DBE Firm:

Project/Contract Name: _____

IFB/RFP Contract Number: _____

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

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

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

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

Dollar Value of DBE Subcontract: \$ _____

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

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

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

DBE Contract Start Date: _____ DBE Contract Completion Date _____

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

Signature of Second Tier DBE

Date

Title

Print Name

Telephone #:

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

DBE TRUCKING COMMITMENT

AGREEMENT

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

Please read DBE Requirement Language for details.

- DBEs must provide information for all DBE/Non-DBE trucking firms it will lease from or subcontract to.
 - *Subcontracting to a Non-DBE trucker means that the Non-DBE will perform a portion of the DBE firm's subcontract.*
 - *2nd Tier DBE trucking firms must perform 100% of their total subcontract value.*
- For Non-DBE leased trucks, credit will only be given for the fee/commission that is received for arranging the transportation services.
 - *All DBE-leased trucks are required to reflect the DBE firm's company name and identification number.*

Copies of the following items must be attached for ALL trucks owned by the DBE:

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

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

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

MANDATORY FORM

DBE TRUCKING FIRM COMMITMENT AGREEMENT

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

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

Dollar Value of DBE Subcontract: \$ _____

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

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

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

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

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

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

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

| | | | | | |
|--|-------------|---|--------------|---|---|
| 1st Tier DBE Trucking Firm | | <i>*(T= Title, F=Finance Agreement, I=Insurance Card, R=Registration, A=Apportioned Cab Card, L= Lease Agreement)</i> | | | |
| # Of Trucks Owned | | | | | |
| VIN # | MAKE | YEAR | MODEL | (Indicate Yes/No/NA) HAZ WASTE DOC | *(Indicate T/F/I/R/A/L) OWNERSHIP DOCS |
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |

MANDATORY FORM

[illegible]

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

1st Tier DBE Signature: _____

Date: _____

Print Name: _____