

May 3, 2016

**NEW JERSEY TRANSIT (NJ TRANSIT) will receive bids for: BID NO. 16-031
PURCHASE OF MATERIAL FOR THE GLADSTONE BRANCH CATENARY POLE
REPLACEMENT PROJECT**

A. This Invitation for Bid (IFB) package contains:

- . Contract (General Provisions and Specifications)
- . Bid Price Form (Exhibit 1)
- . Sample Bid Bond Form (Exhibit 2)
- . Non-Collusion Affidavit (Exhibit 3)
- . Debarment, Suspension and Other Responsibility Matters (Exhibit 4)
- . Contractors Certification of Eligibility (Exhibit 5)
- . Request for Change Form (Exhibit 6)
- . Affirmative Action/EEO Information (Exhibit 7)
- . NJ TRANSIT's Corporation Protest Procedures (Exhibit 8)
- . Buy America Certification (Exhibit 9)
- . Certification for Contracts, Grants, Loans and Cooperative Agreements (Exhibit 10)
- . New Jersey Code of Ethics Affidavit of Compliance (Exhibit 11)
- . Prevention of Drug and Alcohol Abuse in Transit Operations Certification (Exhibit 12)
- . Disclosure of Investment Activities in Iran (Exhibit 13)
- . Ownership Disclosure Form (Exhibit 14)
- . Source Disclosure Certification Form (Exhibit 15) (For Services Procurement Only)
- . NJ TRANSIT Corporation DBE Requirements for Federal Procurement Activities (Exhibit 16)
- . Addenda Acknowledgement Form (Exhibit 17)

B. FORMS TO BE SUBMITTED

1. All bidders shall submit the following with their bid:

- . Bid Price Form (Exhibit 1)
- . Bid Security (Exhibit 2 or other acceptable Bid Security)
- . Non-Collusion Affidavit (Exhibit 3)
- . Debarment, Suspension and Other Responsibility Matters (Exhibit 4)
- . Contractors Certification of Eligibility (Exhibit 5)
- . Buy America Certification (Exhibit 9)
- . Certification for Contracts, Grants, Loans and Cooperative Agreements (Exhibit 10)
- . New Jersey Code of Ethics Affidavit of Compliance (Exhibit 11)

- . Prevention of Drug and Alcohol Abuse in Transit Operations Certification (Exhibit 12)
 - . Disclosure of Investment Activities in Iran (Exhibit 13)
 - . Ownership Disclosure Form (Exhibit 14)
 - . Source Disclosure Certification Form (Exhibit 15) (For Service Procurements Only)
 - . DBE Forms (Exhibit 16) (Within seven (7) days of Bid Opening)
 - . Addenda Acknowledgement Form (Exhibit 17)
2. The bids shall be sealed with the following identification on the outside of the envelope:
- . **Bidder's name and address:**
 - . **Bid No. 16-031**
 - . **Title PURCHASE OF MATERIAL FOR THE GLADSTONE BRANCH CATENARY POLE REPLACEMENT PROJECT**
 - . **Date May 26, 2016 Time: 2:00pm**
3. Bids must be received by **NJ TRANSIT** no later than 2:00 pm on May 26, 2016. **NJ TRANSIT** will not accept any bids received after that time and such bids will be returned unopened. Bids will be publicly opened at the **NJ TRANSIT Headquarters located at One Penn Plaza East, Newark, NJ 07105 at the above time and date.**
4. Bids may be modified or withdrawn in writing up to the bid opening time.
5. Pursuant to N.J.S.A. 27:25-11, bidders shall include Bid Security equal to ten percent (10%) of the total bid price. Bid Security may be in the form of a bid bond, cashier's check, certified check, or letter of credit. Cash shall not be considered an acceptable form of bid security. If multiple or alternate bids are submitted, the security shall be equal to ten percent (10%) of the maximum bid price submitted. The Bidder shall ensure that the Bid Bond is properly completed and furnished by a corporation or corporations authorized to issue surety bonds in the State of New Jersey and listed in the current U.S. Treasury Department Circular 570 as of the date for the receipt of Bids and made payable to New Jersey Transit Corporation.

Whenever the Bid Security accompanying the Bid is a Letter of Credit, it shall be issued by an "insured bank" within the meaning of the Act creating the Federal Deposit Insurance Corporation (12 U.S.C. 1811). When the Bid Security accompanying the Bid is a Cashier's Check or a Certified Check, it shall be drawn on an account with one of the banks identified in this paragraph.

Cashier's Checks, Certified Checks or irrevocable Letters of Credit based on accounts with or guaranteed by persons, corporations or institutions other than those identified in the preceding paragraph shall not be considered acceptable Bid Security and the Bid shall be declared non-responsive.

All forms of Bid Security shall be valid for a minimum of, one hundred and twenty (120) days from the date of Bid opening. If not, the Bid Security shall not be considered acceptable, and the Bid shall be declared non-responsive.

6. 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 State of New Jersey, Department of Treasury, Division of Revenue, prior to the time a contract is awarded or authorized by NJ TRANSIT.

The Bidder must submit its BRC and that of any named Subcontractor prior to the time the contract is awarded. No contract will be awarded without proof of business registration with the Department of Treasury, Division of Revenue.

No contract with a Subcontractor shall be awarded by any Contractor unless the Subcontractor first provides proof of valid business registration.

Any questions in this regard can be directed to the Division of Revenue at (609) 292-1730. The business registration form (Form NJ-REG) can be found on-line at <http://www.state.nj.us/treasury/revenue/busregcert.shtml>.

7. Bidders are required to submit an Ownership Disclosure Form (**Exhibit 13**) with its Bid.
8. (For Services Procurement Only) In accordance with N.J.S.A. 52:34-13.2, Bidders are required to submit a Source Disclosure Certification form (**Exhibit 15**) for all service contracts. If the information is not submitted with the Bid, it shall be submitted within five (5) business days of NJ TRANSIT's request.

Failure to submit the Source Disclosure Certification Form shall preclude award of a contract to the bidder.

9. Pursuant to N.J.S.A. 52:32-55 et seq., a Bidder that, at the time of bid opening, is identified on a list created pursuant to such law by the New Jersey Department of the Treasury as a person or entity engaging in investment activities in Iran as described in such law, shall be ineligible to, and shall not, bid on or enter into a contract with NJ TRANSIT. As required by such law, the Bidder must complete the certification (**Exhibit 13**) with its Bid 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. Failure to complete the certification will render the Bid non-responsive.
10. The Bidder shall certify on (**Exhibit 5**) Contractor's Certification of Eligibility that it is not included on the State of New Jersey, Department of Treasury, Consolidated Debarment Report or on the State of New Jersey, Department of Labor and Workforce Development, Division of Wage and Hour Compliance, Prevailing Wage

Debarment List.

Bidders must also be registered and active with no exclusions with the System for Award Management (S.A.M). To register please go to www.SAM.gov and follow the registration instructions. If the Bidder is included on such report, it may not be eligible for award of Contract.

C. WHERE TO SUBMIT BIDS AND/OR REQUEST ADDITIONAL INFORMATION

1. Bids must be submitted in a sealed envelope and addressed as follows:

**NJ TRANSIT
Office of Procurement - Bid Desk, 6th Floor
One Penn Plaza East
Newark, NJ 07105-2246
Re: Sealed Bid No. 16-031**

All questions and requests for changes or additional information shall be addressed to:

**NJ TRANSIT
Office of Procurement - 6th Floor
One Penn Plaza East
Newark, NJ 07105-2246
Attn: BID DESK**

2. All Bidders are advised that communications with NJ TRANSIT that in any way relate to this project shall be conducted with or through the authorized representative of the Contracting Officer in NJ TRANSIT's Procurement Department. All other contacts are strictly prohibited and are considered improper. Bidders are advised that violation of this prohibition may result in the removal of the firm from consideration for this contract and possible suspension and/or debarment.
3. Bids may be withdrawn at any time prior to the time specified for the opening of Bids by filing a written withdrawal with NJ TRANSIT, duly executed by the Bidder or its authorized representative. The withdrawal of a Bid does not prejudice the right of the Bidder to file a new Bid. Withdrawals received after the time specified for the opening of Bids will not be considered nor may any Bid be withdrawn after that time.
4. Submission of more than one (1) Bid from an individual, firm, partnership, corporation or combination thereof under the same or different names shall be cause for disqualification of the Bids submitted by such entities. Reasonable grounds for believing that any individual, firm, partnership, corporation, or combination thereof, is interested as a principal in more than one Bid for the

procurement contemplated may cause the rejection of all Bids submitted by such individual, firm, partnership, corporation, or combination thereof.

D. PREBID CONFERENCE: *There is no Prebid conference scheduled for this bid.*

E. PREQUALIFICATION REQUIREMENTS: N/A

F. HOW TO REQUEST CHANGES IN THIS IFB

1. Wherever brand names may appear in this IFB, 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. NJ TRANSIT will render the decision on the approved equal at its sole discretion.
2. Bidders must submit requests for approved equals, contract modifications, and clarifications on the Request for Change Form (**Exhibit 6**). Each question or request shall be on a separate sheet. NJ TRANSIT must receive requests in writing, by **May 12, 2016**. Any requests for approved equals must be supported by technical data, test results, or other pertinent information that indicates that the substitute offered is equal to or better than that specified.

All questions and requests for changes or additional information shall be addressed to:

NJ TRANSIT
Office of Procurement - 6th Floor
One Penn Plaza East
Newark, NJ 07105-2246
Attn: Lisa Mihelis
Email: LMihelis@njtransit.com

3. NJ TRANSIT will respond in writing to all Bidders within a reasonable number of days before the bid opening date, and the bid opening may be rescheduled at NJ TRANSIT's option to allow a reasonable amount of time between the response and bid opening. Any response that NJ TRANSIT may choose to make will be by a written Addendum to the IFB and sent to all listed holders of the solicitation. All Addenda will become part of any contract resulting from this IFB.
4. Bidders are required to acknowledge receipt of all Addenda on the Addenda Acknowledgement Form (**Exhibit 17**). Failure to acknowledge receipt of all Addenda may cause the rejection of the Bid as non-responsive.

G. QUANTITY

1. Bidders are required to bid a fixed price for the estimated quantity specified. NJ TRANSIT reserves the right to amend these quantities.

H. CAUSES FOR REJECTION OF BIDS

1. Bids will be considered irregular and shall be rejected for the following reasons:
 - a. If the Bid materially fails to conform to the requirements of the Invitation for Bids.
 - b. If the Bid is not received by the specified date and time.
 - c. If the Bidder fails to furnish satisfactory Bid Security with the Bid.
 - d. If the Bidder takes material exception to any of the Bid requirements, specifications, or Contract Terms.
 - e. If Bid offer is valid for less than one hundred and twenty (120) days for acceptance.
 - f. If Bid includes payment terms requiring payment in less than thirty (30) days.
 - g. If Bid is not signed by the authorized representative of the Bidder.
 - h. If the Bidder fails to complete and deliver the Ownership Disclosure Form as required by N.J.S.A. 52:25-24.2 before receipt of the Bid or with the Bid.
 - i. If the Bidder fails to complete the Disclosure of Investment Activities in Iran certification.
 - j. If the Bidder fails to execute the "Buy America" Certification.
 - k. If the Bidder fails to comply with all material DBE requirements.
2. Bids will be considered irregular and may be rejected for the following reasons:
 - a. If the Bidder fails to complete and submit the Source Disclosure certification (For Services Procurement Only).
 - b. If the Bid is not properly completed.
 - c. If all addenda are not properly acknowledged.
 - d. If the Bid contains prices that are materially unbalanced.
 - e. For other reasons, if NJ TRANSIT deems it advisable to do so in the public interest.
3. NJ TRANSIT, in its sole discretion, reserves the right to reject any and all Bids and to waive informalities and minor irregularities in Bids received, notwithstanding other provisions of the Contract Documents.

I. AWARD PROCEDURES

1. NJ TRANSIT reserves the right to request additional information from any and all Bidders.
2. NJ TRANSIT reserves the right to conduct a pre-award responsibility survey to ensure the successful Bidder has adequate facilities, equipment and staff to perform the contract within the time specified and provide warranty service.
3. NJ TRANSIT intends to award a contract within sixty (60) days of the bid opening, but reserves the right to award within one hundred and twenty (120) days. Accordingly, all Bids must be valid for a minimum of one hundred and

twenty (120) days from the date of bid opening.

4. Prompt payment discounts will not be considered in determining the low Bidder.
5. The award of a firm fixed price contract, if it is awarded, will be to the responsible Bidder whose Bid, conforming to the Invitation for Bid, is lowest in price for each item or for the total amount bid (as indicated in the specifications).
6. Prior to execution of a contract, the successful Bidder will be required to:
 - . Provide appropriate EEO/AA information or certificates as required by P.L. 1975, C.127 (N.J.A.C. 17:27), and described within this IFB in **Exhibit 7**. Submit an Affirmative Action Employee Information Report (AA302).
 - . Provide any required DBE forms (**Exhibit 16**).
 - . Provide its Business Registration Certificate from the State of New Jersey, Department of Treasury, Division of Revenue.
 - . If an out of state corporation, provide a Certificate of Authority to do business in New Jersey in accordance with N.J.S.A. 14A:13-3 and appoint a New Jersey agent for service of process (only for out-of-state corporations).
 - . Provide evidence of adequate levels of insurance as indicated in Section 30 of the General Provisions naming NJ TRANSIT as additional insured and providing for thirty (30) days advance notice of cancellation.
 - . (For Services Procurement only) In accordance with N.J.S.A. 52:34-13.2, submit a Source Disclosure Certification form (**Exhibit 15**) for all services contracts. If the information is not submitted with the Bid, it shall be submitted within five (5) business days of NJ TRANSIT's request.
 - . If specifications so require, submit within ten (10) business days after notification of NJ TRANSIT's intent to award, performance and payment bonds in the amount indicated in the specifications. The surety must comply with all requirements of N.J.S.A. 2A:44-143 (P. L. 1995, c.384).

J. OTHER INFORMATION

1. If only one Bid is received, a cost proposal may be requested of the single Bidder. A cost/price analysis and/or audit may be performed in order to determine if the price is fair and reasonable.
2. NJ TRANSIT is a public agency and exempt from paying Sales and Federal Excise Taxes. Bidders shall not include these taxes in their bid price.

3. DISADVANTAGED BUSINESS ENTERPRISE (DBE) GOAL ASSIGNMENT

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

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

The Contractor shall refer to the DBE Requirements for Federally Funded Procurement Activities (**Exhibit 16**) included in the requirements concerning the DBE obligations and mandatory submissions for this contract. In accordance with those requirements, the Contractor shall identify all DBE and Non-DBE subcontractors and suppliers proposed to participate in and solicited for this contract, and complete and submit the mandatory required forms (A, A1, A2) and any applicable supplemental forms (AA, AA1, AA2) with their bid or within seven (7) calendar days of the bid due date. Contractors are strongly encouraged to submit these forms with the proposal to prevent delay of award. Contractors utilizing DBE firms and/or suppliers to participate in this contract shall also submit the mandatory Forms B and BB if applicable and a NJUCP DBE certification letter for each DBE firm/supplier in accordance with the same time frame indicated above. All forms shall be completed entirely with no blank fields.

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

Ms. Jacquilen Rush Gilbert
Business Development Specialist
973-491-8061
JRush-Gilbert@njtransit.com

4. 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 funded projects. For bid submissions over \$100,000 a signed "Buy America" certificate (**Exhibit 9**) must be included with the bid submission or the bid will be deemed "non-responsive" and will be rejected. Bidders must only sign one of the available signature lines. Bidders who sign as both complying with and not complying with "Buy America" will have their bids be deemed non-responsive and will be

rejected. Note that Buy America certificates cannot be changed after the bid opening date except in very specific instances in which a clerical error has been identified as described in current Buy America Regulations, 49 CFR Part 661. Questions regarding Buy America compliance requirements should be submitted in writing to the authorized representative of the Contracting Officer in NJ TRANSIT's Division of Procurement.

5. This contract will be awarded subject to the availability of funds.
6. In addition, please be cognizant of the following regulation:

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

7. Summary of critical dates:

- . **Date of Invitation for Bid: May 3, 2016**
- . **Pre-bid Meeting: N/A**
- . **Request for Changes Due: May 12, 2016**
- . **Bid Opening: May 26, 2016 @ 2:00pm**

Sincerely,

Lisa Mihelis
Special Assistant
Procurement Department

CONTRACT NO. 16-031

GENERAL PROVISIONS

THIS AGREEMENT (Contract) made as of _____ 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 _____ 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.

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 Exhibit 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) 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) 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 22-75-0050K and the State of New Jersey's State Excise Tax Exemption Number is 21-60000928.

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) working 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 5 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 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 15 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 45 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 shall exclude from the amounts payable to the Contractor under paragraph

(g) of this clause, the fair value as determined by the Contracting Officer, for the loss of NJ TRANSIT property.

(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 90 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 10 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 10 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. 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.

21. Contractor Representatives

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

Name _____
Title _____
Address _____
Phone _____

22. 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.

23. 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) set forth in the State of New Jersey Equal Employment Opportunity Provisions for Goods and Services Contracts, annexed hereto, are hereby made a part of this Agreement as Exhibit 7.

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.

24. 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. If any action or administrative proceeding results in an award of damages against NJ TRANSIT or the State or if NJ TRANSIT or the State incur any expense to cure a violation of the ADA, the 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 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.

25. Utilization of Disadvantaged Business Enterprises

In connection with the performance of this Contract, the Contractor shall cooperate with NJ TRANSIT in meeting its commitments and goals with regard to the maximum utilization of disadvantaged business enterprises and will use its best efforts to insure that disadvantaged business enterprises shall have the maximum practicable opportunity to compete for subcontract work under this Contract.

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.

The Contractor shall fully comply with the requirements and provisions set forth in the New Jersey Transit Corporation DBE Requirements for Procurement Activities, annexed hereto and made a part hereof.

26. Covenant Against Contingent Fees

The Contractor warrants, in accordance with Exhibit 3, 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.

27. 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, 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.

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.

28. 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.

29. 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.

30. Insurance

The Contractor shall maintain the following levels of insurance:

Comprehensive General Liability	\$5,000,000 per occurrence for bodily injury and property damage.
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Comprehensive Automobile damage Liability	\$5,000,000 per occurrence for bodily injury and property
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Workers Compensation	As required by law.
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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) days after written notice thereof to NJ TRANSIT.

31. 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 Contactor 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.

32. 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

33. 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.

34. 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 Bidders 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 Bidder 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 Bidder 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.

35. Disclosure of Investment Activities in Iran

Pursuant to N.J.S.A. 52:32-55 et seq., any person or entity that submits a proposal or otherwise proposes to enter into or renew a contract must complete the certification to attest, under penalty of perjury, that neither the person or entity, nor any of its parents, subsidiaries, or affiliates, is identified on the Department of Treasury's Chapter 25 list as a person or entity engaging in investment activities in Iran. The Chapter 25 list is found on the Division's website at <http://www.state.nj.us/treasury/purchase/pdf/Chapter25List.pdf>. Contractors must review this list prior to completing the Disclosure of Investment Activities In Iran Certification (Exhibit 14). 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.

36. 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 if

the Contractor:

1. Makes any offer or agreement to pay or to make payment of, either directly or indirectly, any fee, commission, compensation, gift, gratuity, or other thing of value of any kind to any NJ TRANSIT Board member, officer, or employee or to any member of the immediate family of such Board member, officer, or employee, or any partnership, firm, or corporation with which they are employed or associated, or in which such Board member, officer, or employee has an interest within the meaning of N.J.S.A. 52:13D-13g;
2. Fails to report to the Attorney General and to the Executive Commission of Ethical Standards in writing forthwith the solicitation of any fee, commission, compensation, gift, gratuity or other thing of value by any NJ TRANSIT Board member, officer, or employee;
3. Undertakes, directly or indirectly, any private business, commercial, or entrepreneurial relationship with, whether or not pursuant to employment, contract or other agreement, express or implied, or sale, directly or indirectly of any interest in such Contractor to, any NJ TRANSIT Board member, officer, or employee having any duties or responsibilities in connection with the purchase, acquisition, or sale of any property or services by or to NJ TRANSIT, or with any person, firm, or entity with which he is employed or associated or in which he has an interest within the meaning of N.J.S.A. 52:13D-13g. Any relationship subject to this provision shall be reported in writing forthwith to the Executive Commission on Ethical Standards, which may grant a waiver of this restriction upon application of the NJ TRANSIT Board member, officer, or employee upon a finding that the present or proposed relationship does not present the potential, actuality, or appearance of a conflict of interest;
4. Influences or attempts to influence or causes to be influenced, any NJ TRANSIT Board member, officer, or employee in his official capacity in any manner which might tend to impair the objectivity or independence of judgment of such Board member, officer, or employee; or
5. Causes or influences or attempts to cause or influence, any NJ TRANSIT Board member, officer, or employee to use, or attempt to use, his official position to secure unwarranted privileges or advantages for the Contractor or any other person.

37. 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 30 days of such notice under the procedures for protests established

under N.J.S.A. 54:49-18, but no request for conference, protest, or subsequent appeal to the Tax Court from any protest under this section shall stay the collection of the indebtedness. No payment shall be made to the taxpayer, the provider of goods or services or the contractor or subcontractor of construction projects pending resolution of the indebtedness. Interest that may be payable by the State pursuant to N.J.S.A.C. 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.

38. Contractors 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 is currently registered and active with no exclusions on the consolidated U.S. Government, System for Award Management (SAM) database.

39. Air Pollution

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

40. Buy America

Pursuant to Section 165 of the Surface Transportation Assistance Act of 1982 (P.L. 97-424) and the regulations found at 49 CFR 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 25 percent.

41. Fly America Requirements

The Contractor agrees to comply with 49 U.S.C. 40118 (the "Fly America" Act) in accordance with the General Services Administration's regulations at 41 CFR Part 301-10, which provide that recipients and subrecipients of Federal funds and their contractors are required to use U.S. Flag air carriers for U.S. Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of

necessity, as defined by the Fly America Act. The Contractor shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a U.S. flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements. The Contractor agrees to include the requirements of this section in all subcontracts that may involve international air transportation.

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

The Contractor agrees to utilize privately owned United States-flag commercial vessels to ship at least 50 percent 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 CFR 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 20 working days following the date of loading for shipments originating within the United States, or within 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.

43. Clean Water And Clean Air Acts

If this Agreement shall be in an amount greater than \$100,000, the Contractor shall comply with Section 306 of the Clean Air Act (42 USC 1857(h)), Section 508 of the Clean Water Act (33 USC 1368), Executive Order 11738, Environmental Protection Agency Regulations (40 CFR Part 15), and any other applicable standard, order or requirement issued pursuant to Federal statute or regulation. The Contractor shall report violations to NJ TRANSIT, FTA and to the USEPA Assistant Administrator for Enforcement.

44. 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.).

45. 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.

46. 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.

47. 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 CFR Part 1200 and 2 CFR Part 180.

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

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

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

Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and

information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

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

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

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

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

48. Limitations on Lobbying

The 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.

49. **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 \$10 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 49, "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 49.

50. New Jersey Prevailing Wage Act

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 bidder'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.

51. 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.

52. 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)(2) by refraining from using exclusionary or discriminatory specifications in the performance of the work.

53. 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.

54. False or Fraudulent Statements and Claims

The Contractor recognizes that the requirements of the Program Fraud Civil Remedies Act of 1986, as amended, 49 USC § 3801 *et seq.* and USDOT regulations, "Program Fraud Civil Remedies," 49 CFR Part 31, apply to its actions pertaining to the Project. Accordingly, by signing the 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 § 5307, 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.

55. 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 CFR parts 653 and 654.

The Contractor shall certify its compliance by completing Exhibit 13, Prevention of Drug and Alcohol Abuse in Transit Operations Certification.

Signature

Signature

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

Robert Lougy
Acting Attorney General of New Jersey

By: _____
Deputy Attorney General

IFB NO. 16-031
SPECIFICATIONS

**INVITATION FOR BID (IFB) NO. 16-031
PURCHASE OF MATERIAL FOR THE GLADSTONE BRANCH CATENARY POLE
REPLACEMENT PROJECT**

SPECIFICATIONS

I. SCOPE

This Invitation for Bid is for the purchase and delivery of materials for the Gladstone Branch Catenary Pole Replacement Project.

II. APPLICABLE SPECIFICATIONS

Materials must strictly adhere to applicable industry standards, including but not limited to the following; ASTM, UL, NEC, IEEE, OSHA Acceptable.

III. PRODUCTS TO BE SUPPLIED

Listed brand names 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 requirements for requesting approval of an "approved equal" are provided in Section F of the Instruction to Bidders.

Materials

	Manufacturer	Item
1	Hubbell Power Systems Inc	Insulator Suspension (VLS) catalog # 405003-1400
2	Hubbell Power Systems Inc	Hold Down Shackle, catalog # 880152000
3	Hubbell Power Systems Inc	PDI Type Dead End Insulator, catalog #4010150215
4	Hubbell Power Systems Inc	Short Shank Nylon Threaded Insulator Pin, catalog # PS893P
5	Hubbell Power Systems Inc	46Kv Linepost Insulator VLLP, catalog # 80S0460209
6	Hubbell Power Systems Inc	Aluminum Quadrant Strain DeadendClamp, catalog # SD112N
7	Hubbell Power Systems Inc	Anchor Shackle, catalog # AS50
8	Hubbell Power Systems Inc	Straight Line Strain Clamp catalog # MDE40N
9	Hubbell Power Systems Inc	Type C Polymer Standard Cutout, 100 amp catalog # CP10112-P
10	Hubbell Power Systems Inc	Hi Lite XL Suspension Insulator, 50k SML, catalog # 513003-1000
11	MacLean Power Systems	5/8" Anchor Shackle catalog # ASH-55

	Manufacturer	Item
12	Hubbell Power Systems Inc	Clevis Clevis Hardware fitting catalog # CCC309055
13	Hubbell Power Systems Inc	Clevis Eye Hardware fitting catalog # CA06
14	Hubbell Power Systems Inc	Clevis Eye Hardware fitting catalog # CE03404
15	LAPP	Vertical Clamp top Line Post Insulator, Catalog # 4255-70
16	LAPP	Line Post Mounting Studs, catalog #301614
17	LAPP	Clamp Top Clamps for 336 ACSR, catalog # 47113
18	LAPP	Ground Wire Bracket for Clamp Top Clamps catalog # 57111
19	McMaster- Carr	Open Wedge Sockets for 3/8 wire rope, catalog # 3484T71
20	McMaster- Carr	Type 302 3/8" 7x19 Stainless Steel Wire Rope, catalog # 3458T85
21	McMaster- Carr	3/8" Wire Rope Thimbles, catalog # 3495T46
22	McMaster- Carr	Tin Plated Oval Compression Sleeve , catalog # 3883T71
23	Hendrix	Vise Top Pin Insulators, catalog # HPI-15VT
24	AFL Telecommunications	Trolley Shoe for 336.400 Figure 9 catalog # FTDEW35T-9
25	AFL Telecommunications	1/4" Hanger Rod, 12' lengths, catalog # EVR 25-12
26	AFL Telecommunications	1/2" Hanger Rod, 12' lengths, catalog # EVR 50-12
27	AFL Telecommunications	Clip .821 to 1/4, catalog # DMC 50-1/4
28	AFL Telecommunications	Clip 1/2 to 1/4, catalog # DMC 13-1/4
29	AFL Telecommunications	Hinge, catalog # HLPI 63
30	AFL Telecommunications	Auxillary Wire clamp, catalog # AWC-13
31	AFL Telecommunications	Trolley Contact Clamp catalog # JBC 13-21T-200
32	AFL Telecommunications	Contact Wire Tap catalog # POTC 25-63
33	AFL Telecommunications	Ground Clamp, catalog # GF25
34	AFL Telecommunications	5/8 x 1 1/4" Type EB Everdur Bolts catalog # EB62125
35	AFL Telecommunications	5/8 x 1 3/4" Type EB Everdur Bolts catalog # EB62175
36	AFL Telecommunications	Everdur spring type lockwasher catalog # ELW62
37	Burndy	Universal Servit type catalog # KSU26

38	VanTran 10 KVA Transformer	2400v primary/120v sec. 100 cycle oil filled, two 3kv LA
39	Steel Z	2" Ridgid Galvanized steel conduit 10' lengths
40	Unistrut	1-5/8" UC-142 catalog # P1000T
41	Unistrut	Channel Nuts catalog # P1008 HG
42	Unistrut	2" Conduit Straps catalog # P1117AS-HG
43	Grainger	Bolt 3/8"-16 x 1 1/2" catalog # 2CB37
44	Grainger	3/8" Flat Washer, Galvanized catalog # 1KA15
45	Grainger	3/8" Split Lock Washer catalog # 6DYV1
46	Dottie	2" Metal Entrance Caps catalog # EC200
47	Carlon	2" PVC Schedule 80 Conduit catalog # 49411-010
48	Carlon	2" PVC End Bell catalog # E997J
49	Carlon	2" PVC Elbow catalog # UB9AJ
50	Carlon	2" PVC Coupling catalog # E941J
51	Carlon	2" PVC Adapter PVC catalog # E943J
52	Hubbell Power Systems Inc	12" x 12" gasketed Enclosure catalog # PC1212BG12
53	Permatex	PVC Cement catalog # 705
54	Permatex	PVC Primer catalog # C90
55	Service Wire	#1/0 Black 600v Insulated catalog # USE-1BK
6	General Electric	GE 100A-NEMA3R 100/2 NEMA 3R 22K AIC Bkr. Disc. # GE100A
57	General Electric	GE Rain Tight Hub catalog # GE Hub-2
58	OZ-Gedney	3/8" Thread 1" Jaw catalog # IS-502
59	Service Wire	Two-1000' Reels of 1/0 Bare 7 Strand Hard Drawn Copper Wire catalog # BST7S1/0

IV. DELIVERY

Material must be delivered within four weeks after receipt of NJ TRANSIT Purchase Order.

Material shall be shipped FOB Destination to:

NJ TRANSIT
Denville Catenary Department
231 Route 53
Denville, NJ 07834
Attn: Glenn Leuis

V. CONDITIONS

Material shall be new and in its original packaging where applicable. Contractor shall call Tom Romaine at 973-625-6339 at least 48 hours prior to delivery for instructions.

All prices shall be full truckload, delivered to NJ Transit, Denville Catenary Headquarters, 231 Route 53, Denville, NJ 07834 with ownership of material not transferred until delivered and accepted by NJ TRANSIT.

VI. WARRANTY

The Contractor warrants to the buyer that the product will be free from defects in material and workmanship and will meet the specifications for a period of one year after acceptance. NJ TRANSIT reserves the right to inspect the product at the destination. Where NJ TRANSIT has reasonably determined that shipments or partial shipments fail to meet the specifications or are defective in any other way, these shipments or partial shipments shall be rejected and shall be removed and replaced in a timely fashion by the Contractor or his representative at no cost to NJ TRANSIT.

VII. QUALITY CONTROL/QUALITY ASSURANCE

The Contractor shall establish and maintain a formal and documented quality assurance program as follows:

Contractors who are involved with the design and/or development, production, installation, servicing, final inspection and testing of the product (to include manufacturers, manufacturer's representatives or distributors) shall establish and maintain a formal documented quality assurance program in compliance with the latest revision of ANSI/ASQ/ISO 9001, AAR M-1003 or an approved equal quality assurance program. The Contractor's quality assurance program will be subject to NJ TRANSIT verification at any time. Verification will include but not be limited to: audit of quality assurance programs; surveillance of operations to determine that practice methods and procedures of the program are being properly implemented; inspection to measure the quality of items offered for acceptance; and inspection of items prior to release for shipment to ensure compliance with requirements of the contract.

The Contractor's quality assurance program shall ensure compliance with the requirements of the contract and its documents, and shall include provisions ensuring compliance by subcontractors (and suppliers, where applicable) should any portion of the work be subcontracted. The Contractor shall ensure the appropriate formal and documented quality assurance programs of its subcontractors. NJ TRANSIT reserves the right to audit the quality assurance program of any subcontractors should the need arise.

Failure by the Contractor to promptly correct deficiencies discovered by either the Contractor or NJ TRANSIT may be cause for suspension of the contract until corrective action has been taken, or until conformance of the work to prescribed

criteria has been demonstrated to and approved by NJ TRANSIT. As a result of such suspension, no adjustment will be made with respect to increases in the cost or time of performance of this contract.

VIII. ORDER OF PRECEDENCE

In the event of any inconsistency between provisions of this solicitation, the inconsistency shall be resolved by giving precedence in the following order:

1. Contract Modification/Change Order
2. Addenda, if any
3. General Provisions
4. Specifications
5. Invitation for Bid Package

IX. NOTICE OF EXECUTIVE ORDER 125 REQUIREMENT FOR POSTING OF WINNING PROPOSAL AND CONTRACT DOCUMENTS

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

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

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

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

IFB NO. 16-031

EXHIBITS AND FORMS

EXHIBIT 1**BID PRICE FORM****BID NO. 16-031**

Bidders shall use this form to provide their unit and extended prices. The Total Amount Bid is the total of the item prices.

VENDOR NAME: _____

Item		Estimated	Unit	Extended
No.	Material/Services to be supplied	Quantity	Price	Price

Manufacturer		Item	QTY	UNIT	EACH	TOTAL
Hubbell Power Systems Inc	Equivalent	Insulator Suspension (VLS) catalog # 405003-1400	175	Each		
Hubbell Power Systems Inc	Equivalent	Hold Down Shackle, catalog # 880152000	165	Each		
Hubbell Power Systems Inc	Equivalent	PDI Type Dead End Insulator, catalog #4010150215	76	Each		
Hubbell Power Systems Inc	Equivalent	Short Shank Nylon Threaded Insulator Pin, catalog # PS893P	350	Each		
Hubbell Power Systems Inc	Equivalent	46Kv Linepost Insulator VLLP, catalog # 80S0460209	200	Each		
Hubbell Power Systems Inc	Equivalent	Aluminum Quadrant Strain DeadendClamp, catalog # SD112N	12	Each		
Hubbell Power Systems Inc	Equivalent	Anchor Shackle, catalog # AS50	310	Each		
Hubbell Power Systems Inc	Equivalent	Straight Line Strain Clamp catalog # MDE40N	76	Each		
Hubbell Power Systems Inc	Equivalent	Type C Polymer Standard Cutout, 100 amp catalog # CP10112-P	12	Each		
Hubbell Power Systems Inc	Equivalent	Hi Lite XL Suspension Insulator, 50k SML, catalog # 513003-1000	12	Each		
MacLean Power Systems	Equivalent	5/8" Anchor Shackle catalog # ASH-55	175	Each		
Hubbell Power Systems Inc	Equivalent	Clevis Clevis Hardware fitting catalog # CCC309055	100	Each		
Hubbell Power Systems Inc	Equivalent	Clevis Eye Hardware fitting catalog # CA06	100	Each		
Hubbell Power Systems Inc	Equivalent	Clevis Eye Hardware fitting catalog # CE03404	100	Each		
LAPP	Equivalent	Vertical Clamp top Line Post Insulator, Catalog # 4255-70	175	Each		
LAPP	Equivalent	Line Post Mounting Studs, catalog #301614	375	Each		
LAPP	Equivalent	Clamp Top Clamps for 336 ACSR, catalog # 47113	375	Each		
LAPP	Equivalent	Ground Wire Bracket for Clamp Top Clamps catalog # 57111	175	Each		
McMaster- Carr	Equivalent	Open Wedge Sockets for 3/8 wire rope, catalog # 3484T71	160	Each		
McMaster- Carr	Equivalent	Type 302 3/8" 7x19 Stainless Steel Wire Rope, catalog # 3458T85	1000	Each		
McMaster- Carr	Equivalent	3/8" Wire Rope Thimbles, catalog # 3495T46	600	Each		
McMaster- Carr	Equivalent	Tin Plated Oval Compression Sleeve , catalog # 3883T71	600	Each		
Hendrix	Equivalent	Vise Top Pin Insulators, catalog # HPI-15VT	350	Each		

Manufacturer		Item	QTY	UNIT	EACH	TOTAL
AFL Telecommunications	Equivalent	Trolley Shoe for 336.400 Figure 9 catalog # FTDEW35T-9	6	Each		
AFL Telecommunications	Equivalent	1/4" Hanger Rod, 12' lengths, catalog # EVR 25-12	250	Each		
AFL Telecommunications	Equivalent	1/2" Hanger Rod, 12' lengths, catalog # EVR 50-12	12	Each		
AFL Telecommunications	Equivalent	Clip .821 to 1/4, catalog # DMC 50-1/4	750	Each		
AFL Telecommunications	Equivalent	Clip 1/2 to 1/4, catalog # DMC 13-1/4	750	Each		
AFL Telecommunications	Equivalent	Hinge, catalog # HLP1 63	175	Each		
AFL Telecommunications	Equivalent	Auxillary Wire clamp, catalog # AWC-13	175	Each		
AFL Telecommunications	Equivalent	Trolley Contact Clamp catalog # JBC 13-21T-200	500	Each		
AFL Telecommunications	Equivalent	Contact Wire Tap catalog # POTC 25-63	200	Each		
AFL Telecommunications	Equivalent	Ground Clamp, catalog # GF25	175	Each		
AFL Telecommunications	Equivalent	5/8 x 1 1/4" Type EB Everdur Bolts catalog # EB62125	100	Each		
AFL Telecommunications	Equivalent	5/8 x 1 3/4" Type EB Everdur Bolts catalog # EB62175	100	Each		
AFL Telecommunications	Equivalent	Everdur spring type lockwasher catalog # ELW62	200	Each		
Burndy	Equivalent	Universal Servit type catalog # KSU26	30	Each		
VanTran 10 KVA Transformer	Equivalent	2400v primary/120v sec. 100 cycle oil filled, two 3kv LA	15	Each		
Steel Z	Equivalent	2" Ridgid Galvanized steel conduit 10' lengths	450	LF		
Unistrut	Equivalent	1-5/8" UC-142 catalog # P1000T	150	LF		
Unistrut	Equivalent	Channel Nuts catalog # P1008 HG	100	Each		
Unistrut	Equivalent	2" Conduit Straps catalog # P1117AS-HG	100	Each		
Grainger	Equivalent	Bolt 3/8"-16 x 1 1/2" catalog # 2CB37	200	Each		
Grainger	Equivalent	3/8" Flat Washer, Galvanized catalog # 1KA15	200	Each		
Grainger	Equivalent	3/8" Split Lock Washer catalog # 6DYV1	200	Each		
Dottie	Equivalent	2" Metal Entrance Caps catalog # EC200	15	Each		
Carlson	Equivalent	2" PVC Schedule 80 Conduit catalog # 49411-010	300	LF		
Carlson	Equivalent	2" PVC End Bell catalog # E997J	15	Each		
Carlson	Equivalent	2" PVC Elbow catalog # UB9AJ	30	Each		
Carlson	Equivalent	2" PVC Coupling catalog # E941J	75	Each		
Carlson	Equivalent	2" PVC Adapter PVC catalog # E943J	30	Each		
Hubbell Power Systems Inc	Equivalent	12" x 12" gasketed Enclosure catalog # PC1212BG12	15	Each		
Permatex	Equivalent	PVC Cement catalog # 705	3	Each		
Permatex	Equivalent	PVC Primer catalog # C90	3	Each		
Service Wire	Equivalent	#1/0 Black 600v Insulated catalog # USE-1BK	1000	LF		
General Electric	Equivalent	GE 100A-NEMA3R 100/2 NEMA 3R 22K AIC Bkr. Disc. # GE100A	15	Each		
General Electric	Equivalent	GE Rain Tight Hub catalog # GE Hub-2	15	Each		
OZ- Gedney	Equivalent	3/8" Thread 1" Jaw catalog # IS-502	180	Each		
Service Wire	Equivalent	1000' Reels of 1/0 Bare 7 Strand Hard Drawn Copper Wire catalog # BST7S1/0	2	Each		

Bidders shall use this form to provide their unit and extended prices. The Total Amount Bid is the total of the item prices.

BASIS OF AWARD: An award, if any, will be made to the lowest responsive, responsible bidder for each item or the total amount bid as indicated in the specifications.

The Bidder, by completion of this form, certifies that he/she has reviewed the Invitation for Bid and the enclosed Contract and agrees the above total amount bid is the cost for supplying the goods/materials/services as specified therein, and also certifies he/she is authorized to obligate his/her firm to provide the goods/materials/services as specified in the enclosed Contract.

Firm

Signature

Printed or Typed Name

Title

Address

Phone

Date

PAYMENT TERMS: NJ Transit' standard payment terms are Net 30 days. Prompt payment discounts may be offered and must be a minimum of 10 days.

Discount: Maximum time period _____
Percentage _____

NOTE: Although prompt payment discounts will not be considered in determining low bid, NJ TRANSIT reserves the right to take advantage of any such discounts offered.

EXHIBIT 2

SAMPLE BID BOND

KNOW ALL MEN BY THESE PRESENTS, that we, the undersigned _____ As PRINCIPAL, and a corporation organized and existing under the laws of the State of _____ and duly authorized to do business in the State of New Jersey, as SURETY, are held and firmly bound unto NJ Transit Corporation in the penal sum of ten percent (10%) of the amount bid for the project listed below, for the payment of which will and truly to be made, we hereby jointly and severally bind ourselves, our heirs, executors, administrators, successors and assigns.

Signed, sealed, and dated this _____ day of _____ two thousand

The condition of the above obligation is such that whereas the principal is herewith submitting a bid for:

NOW, THEREFORE, THE CONDITION OF THE ABOVE OBLIGATION IS SUCH, that if the said principal shall execute a contract and give bond for the faithful performance thereof within ten (10) NJ Transit business days after being notified in writing of the award of such contract to principal, or if the principal or surety shall pay the obligee the sum, not exceeding the penalty hereof, by which the amount of the contract, covering the said proposal, properly and lawfully executed by and between the obligee and some third party, may exceed the amount bid by principal, then this obligation shall be void; otherwise, it shall remain in full force and effect.

Witness or Attest:

Witness or Attest:

(Principal)

(Surety)

Certification to the authority of the attorney in fact to commit the Surety Company must accompany this Bond, and true and correct statement of the financial condition of said surety company.

EXHIBIT 3

NON-COLLUSION AFFIDAVIT

STATE OF _____:

COUNTY OF _____:

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

I am _____ of the firm of _____ the Bidder making the Bid for the above-named project, and that I executed the said Bid with full authority so to do; that said Bidder has not, directly, entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free, competitive bidding in connection with the above-named project; and that all statements contained in said Bid and in this affidavit are true and correct; and made with full knowledge that NJ Transit Corp. relies upon the truth of the statements contained in said Bid and in the statements contained in this affidavit in awarding the Contract for the said project.

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

(Name of Contractor)

Signature

Type or Print Name

Subscribed and sworn to before me this

_____ day of _____, 20____.

Notary Public of

My commission expires _____, 20____.

EXHIBIT 4

CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

Required for Contracts Over \$25,000

Instructions for Certification

1. By signing and submitting this bid or proposal, the prospective lower tier participant* is providing the signed certification set out below.
2. 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 prospective 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.
3. The prospective lower tier participant shall provide immediate written notice to NJ TRANSIT if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
4. The terms "covered transaction", "debarment", "suspended", "ineligible", "lower tier covered transaction", "participant", "persons", "lower tier covered transaction", "principal", "proposal", and "voluntarily excluded", as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549 [49 CFR Part 20]. You may contact NJ TRANSIT for assistance in obtaining a copy of those regulations.
5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, 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.
6. The prospective lower tier participant further agrees by submitting this proposal 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 and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective 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. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List issued by U.S. General Service Administration.
8. Nothing contained in the foregoing shall be construed to require establishment of 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
9. Except for transactions authorized under Paragraph 5 of these instructions, 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.

Exclusion - Lower Tier Covered Transaction

- (1) The prospective lower tier participant certifies by submission of this bid or proposal, that neither it nor its principals [as defined at 49 CFR 29.105(p)] is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
- (2) When the prospective lower tier participant is unable to certify to the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Signature

Print Name & Title

EXHIBIT 5

CONTRACTOR'S CERTIFICATION OF ELIGIBILITY

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

_____ (Insert Name of Company) is currently registered and active with no exclusion on the consolidated U.S. Government, System for Award Management (SAM) database.

Type or Print Name

Title

Date: _____

EXHIBIT 6

REQUEST FOR CHANGE FORM

BID NO. _____

Company Name: _____

Date: _____

**Page
& Paragraph:** _____

Request:

EXHIBIT 7

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

I. BID REQUIREMENTS

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

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

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

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

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

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

II. SUBCONTRACTS; EQUAL EMPLOYMENT GOALS

The contractor agrees to incorporate these State of New Jersey EEO Provisions for Procurement, Professional and Service Contracts in its subcontracts for services.

In accordance with N.J.A.C. 17:27, Contractors and subcontractors are required to make a good faith effort to provide equal employment opportunity for minorities and women. Failure to make good faith efforts to provide equal employment opportunity for minorities

and women may result in sanctions including fines/penalties, withholding of payment, termination of the contract, suspension/debarment or such other action as provided by law.

III. MANDATORY CONTRACT LANGUAGE

MANDATORY EQUAL EMPLOYMENT OPPORTUNITY LANGUAGE

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

N.J.A.C. 17:27

GOODS, PROFESSIONAL SERVICE AND GENERAL SERVICE CONTRACTS

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

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

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

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

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

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

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

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

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

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

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

Letter of Federal Affirmative Action Plan Approval

Certificate of Employee Information Report

Employee Information Report Form AA302 (electronically provided by the Division and distributed to the public agency through the Division's website at www.state.nj.us/treasury/contract_compliance)

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

EXHIBIT 8

NEW JERSEY TRANSIT CORPORATION PROTEST PROCEDURE

I. PURPOSE

This section describes the policies and procedures governing the receipt and resolution of vendor protests in connection with an Invitation for Bid (IFB) or Request for Proposal (RFP).

II. POLICY

A. Parties

Only an interested party may file a protest.

B. Types of Protests/Time Limits

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

C. Where to File

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

D. The Protest

1. The protest must contain the following information:

- A. The name, address, and telephone number of the protestor.
- B. Identity of the IFB or RFP (by number and description).
- C. A statement of the specific grounds for protest and any supporting

documentation. Additional materials in support of the protest will only be considered if filed within the time limits set in Section B.

D. An indication of the ruling or relief desired from NJ TRANSIT.

2. If the protest is filed before contract award, the potential contractor will be advised by NJ TRANSIT of the pending protest.
3. If deemed appropriate by NJ TRANSIT, an informal conference on the merits of the protest may be conducted with all interested parties allowed to attend.

E. Confidentiality of Protest

Material submitted by a protestor will not be withheld from any interested party, except to the extent that the withholding of information is permitted or required by law or regulation. If the protestor considers that the protest contains proprietary material which should be withheld, a statement advising of this fact must be affixed to the front page of the protest documents and the alleged proprietary information must be so identified wherever it appears.

F. Response to the Protest

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

G. Rebuttal to NJ TRANSIT's Response

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

H. Request for Additional Information

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

I. Request for Reconsideration

If data becomes available that were not previously known, or there has been an

error of law, a protestor may submit a request for reconsideration of the protest. NJ TRANSIT's Contracting Officer will again review the protest considering all currently available information. The Contracting Officer's determination will be made within a reasonable period of time, and his decision will be considered final.

J. Procurement Process Status

Upon timely receipt of a protest, NJ TRANSIT will delay the opening of bids until after resolution of the protest for protests filed prior to the bid opening date, or withhold award until after resolution of the protest for protests filed after bid opening. However, NJ TRANSIT may open bids or award a contract whenever NJ TRANSIT, at its sole discretion, determines that:

- a. The items or work to be procured are urgently required; or
- b. Delivery or performance will be unduly delayed by failure to make the award promptly; or
- c. Failure to make prompt award will otherwise cause undue harm to NJ TRANSIT or the Federal Government.

K. Federal Transit Administration (FTA) Involvement

Where procurements are funded by the FTA, the protestor may protest to the FTA only where the protest alleges that NJ TRANSIT failed to have or to adhere to its protest procedures, failed to review a complaint or protest, or alleges a violation of a Federal law or regulation. Any protest to the FTA must be filed in accordance with FTA Circular 4220.1F.

L. Definitions

1. "Days" means working days.
2. "File or Submit" means date of receipt by NJ TRANSIT's Contracting Officer.
3. "Federal Law or Regulation" means any valid requirement imposed by Federal statute or regulation governing contracts awarded pursuant to the grant agreement. This includes the requirements as stated in FTA Circular 4220.1F.
4. "Contracting Officer" means the Chief of Procurement and Support Services or his designee as indicated in the solicitation document.
5. "Interested Party" means all bidders/offerors. It may also include a subcontractor or supplier provided they have a substantial economic interest in a portion of the IFB or RFP.

6. **"Potential Contractor" means the bidder that is in line for award of the contract in the event that the protest is denied.**

**EXHIBIT 9
BUY AMERICA CERTIFICATION**

Required for Contracts Over \$100,000

**REQUIREMENT FOR PROCUREMENT OF STEEL, IRON, OR
MANUFACTURED PRODUCTS (NON-ROLLING STOCK)**

Certificate of Compliance with 49 U.S.C. 5323(j)(1)

The bidder or offeror hereby certifies that it will comply with the requirements of 49 U.S.C. 5323(j)(1) and the applicable regulations in 49 CFR Part 661.

Date _____

Signature _____

Company Name _____

Title _____

Certificate of Non-Compliance with 49 U.S.C. 5323(j)(1)

The bidder or offeror hereby certifies that it cannot comply with the requirements of 49 U.S.C. 5323(j)(1) and 49 C.F.R. 661.5, but it may qualify for an exception to the requirement pursuant to 49 U.S.C. 5323(j)(2)(A), 5323(j)(2)(B), or 5323(j)(2)(D) as amended, and the applicable regulations in 49 C.F.R. 661.7.

Date _____

Signature _____

Company Name _____

Title _____

Only one Buy America Certification may be executed and submitted with your bid! Your firm shall either comply or not comply with the requirements of 49 U.S.C. 5323(j)(1) and 49 C.F.R. Part 661. If both or neither Certifications are submitted, THE BID WILL BE REJECTED!

EXHIBIT 10

CERTIFICATION FOR CONTRACTS, GRANTS, LOANS AND COOPERATIVE AGREEMENTS

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal Contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal Contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal Contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit "Disclosure of Lobbying Activities," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Signature

Title of Authorized Official

EXHIBIT 11a

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

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

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

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

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

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

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

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

(Print Name of Contractor)

(Signature of Authorized Principal or Officer)

(Print Name and Title of Signator)

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



EXHIBIT 11b
IMPORTANT NOTICE
TO
ALL CONTRACTORS AND CONSULTANTS

NJ TRANSIT is an instrumentality of the State of New Jersey and its employees and officers, including members of the NJ TRANSIT Board of Directors, are public servants. NJ TRANSIT, its employees and officers are governed by a number of civil and criminal laws which control how NJ TRANSIT and its personnel do business with contractors and consultants. These provisions include the Conflicts of Interest Law, N.J.S.A. 52:13D-12 and contain unequivocal and stringent restrictions relating to gifts and gratuities.

Be advised that the law prohibits the receipt of gifts and gratuities by any NJ TRANSIT employee or officer from any person, company or entity doing business - or wanting to do business - with NJ TRANSIT. Concomitantly, NJ TRANSIT's own Code of Ethics and Code of Ethics for Vendors, prohibits NJ TRANSIT employees from accepting gifts and prohibits you, the contractors and consultants, from offering any gifts to any NJ TRANSIT employee.

The term "gift" is broadly and widely defined. It includes all things and objects, tangible or intangible, including services, gratuities, meals, entertainment, tickets to events, access to membership clubs, travel costs, and lodging. Simply put, a "gift" is anything of value.

Do not, under any circumstance, tempt or put an NJ TRANSIT employee in the awkward position of having to refuse a gift or return a gift, no matter how well intentioned or innocuous the gift may be in your eyes.

The bright line rule for you and your staff in doing business with NJ TRANSIT is simple: Offer nothing and give nothing to any NJ TRANSIT employee or officer. It is your responsibility to circulate this Notice in your company and educate accordingly all personnel who do business with NJ TRANSIT.

52:13D-24. Solicitation, receipt or agreement to receive, thing of value for service related to official duties; exceptions

a. No State officer or employee, special State officer or employee, or member of the Legislature shall solicit, receive or agree to receive, whether directly or indirectly, any compensation, reward, employment, gift, honorarium, out-of-State travel or subsistence expense or other thing of value from any source other than the State of New Jersey, for any service, advice, assistance, appearance, speech or other matter related to the officer, employee, or member's official duties, except as authorized in this section.

b. A State officer or employee, special State officer or employee, or member of the Legislature may, in connection with any service, advice, assistance, appearance, speech or other matter related to the officer, employee, or member's official duties, solicit, receive or agree to receive, whether directly or indirectly, from sources other than the State, the following:

(1) reasonable fees for published books on matters within the officer, employee, or member's official duties;

(2) reimbursement or payment of actual and reasonable expenditures for travel or subsistence and allowable entertainment expenses associated with attending an event in New Jersey if expenditures for travel or subsistence and entertainment expenses are not paid for by the State of New Jersey;

(3) reimbursement or payment of actual and reasonable expenditures for travel or subsistence outside New Jersey, not to exceed \$500.00 per trip, if expenditures for travel or subsistence and entertainment expenses are not paid for by the State of New Jersey. The \$500 per trip limitation shall not apply if the reimbursement or payment is made by (a) a nonprofit organization of which the officer, employee, or member is, at the time of reimbursement or payment, an active member as a result of the payment of a fee or charge for membership to the organization by the State or the Legislature in the case of a member of the Legislature; or (b) a nonprofit organization that does not contract with the State to provide goods, materials, equipment, or services.

Members of the Legislature shall obtain the approval of the presiding officer of the member's House before accepting any reimbursement or payment of expenditures for travel or subsistence outside New Jersey.

As used in this subsection, "reasonable expenditures for travel or subsistence" means commercial travel rates directly to and from an event and food and lodging expenses which are moderate and neither elaborate nor excessive; and "allowable entertainment expenses" means the costs for a guest speaker, incidental music and other ancillary entertainment at any meal at an event, provided they are moderate and not elaborate or excessive, but does not include the costs of personal recreation, such as being a spectator at or engaging in a sporting or athletic activity which may occur as part of that event.

c. This section shall not apply to the solicitation or acceptance of contributions to the campaign of an announced candidate for elective public office, except that campaign contributions may not be accepted if they are known to be given in lieu of a payment prohibited pursuant to this section.

d. (1) Notwithstanding any other provision of law, a designated State officer as defined in paragraph (2) of this subsection shall not solicit, receive or agree to receive, whether directly or indirectly, any compensation, salary, honorarium, fee, or other form of income from any source, other than the compensation paid or reimbursed to him or her by the State for the performance of official duties, for any service, advice, assistance, appearance, speech or other matter, except for investment income from stocks, mutual funds, bonds, bank accounts, notes, a beneficial interest in a trust, financial compensation received as a result of prior employment or contractual relationships, and income from the disposition or rental of real property, or any other similar financial instrument and except for reimbursement for travel as authorized in subsections (2) and (3) of paragraph b. of this section. To receive such income, a designated State officer shall first seek review and approval by the Executive Commission on Ethical Standards to ensure that the receipt of such income does not violate the "New Jersey Conflicts of Interest Law," P.L.1971, c. 182 (C.52:13D-12 et seq.) or any applicable code of ethics, and does not undermine the full and diligent performance of the designated State officer's duties.

(2) For the purposes of this subsection, "designated State officer" shall include: the Governor, the Adjutant General, the Secretary of Agriculture, the Attorney General, the Commissioner of Banking and Insurance, the Secretary and Chief Executive Officer of the Commerce and Economic Growth Commission, the Commissioner of Community Affairs, the Commissioner of Corrections, the Commissioner of Education, the Commissioner of Environmental Protection, the Commissioner of Health and Senior Services, the Commissioner of Human Services, the Commissioner of Labor, the Commissioner of Personnel, the President of the State Board of Public Utilities, the Secretary of State, the Superintendent of State Police, the Commissioner of Transportation, the State Treasurer, the head of any other department in the Executive Branch, and the following members of the staff of the Office of the Governor: Chief of Staff, Chief of Management and Operations, Chief of Policy and Communications, Chief Counsel to the Governor, Director of Communications, Policy Counselor to the Governor, and any deputy or principal administrative assistant to any of the aforementioned members of the staff of the Office of the Governor listed in this subsection.

e. A violation of this section shall not constitute a crime or offense under the laws of this State.

52:13D-14. State officer or employee or member of legislature; acceptance of thing of value to influence public duties

No State officer or employee, special State officer or employee, or member of the Legislature shall accept from any person, whether directly or indirectly and whether by himself or through his spouse or any member of his family or through any partner or associate, any gift, favor, service, employment or offer of employment or any other thing of value which he knows or has reason to believe is offered to him with intent to influence him in the performance of his public duties and responsibilities. This section shall not apply to the acceptance of contributions to the campaign of an announced candidate for elective public office.

EXHIBIT 12

PREVENTION OF DRUG AND ALCOHOL ABUSE IN TRANSIT OPERATIONS CERTIFICATION

_____ certifies that it has established and
(Company Name)

implemented a Drug and Alcohol Misuse Prevention Program in accordance with
the terms of 49 CFR Parts 653 and 654.

By: _____
(Signature of Authorized Official)

(Official's Title) (Date)

BIDDERS PLEASE NOTE:

**This Certification is required only for contractors supporting NJ TRANSIT
Bus Operations Equipment Maintenance, including contractors engaged in
Engine, Revenue Service Vehicle, and Parts Rebuilding and Overhaul.**

EXHIBIT 13
DISCLOSURE OF INVESTMENT ACTIVITIES IN IRAN

IFB No.: _____ Bidder: _____

PART 1: CERTIFICATION

BIDDERS MUST COMPLETE PART 1 BY CHECKING EITHER BOX.

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

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

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

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

PLEASE CHECK THE APPROPRIATE BOX:

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

OR

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

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

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

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

Name _____	Relationship to Bidder/Offeror _____
Description of Activities _____ _____	
Duration of Engagement _____	Anticipated Cessation Date _____
Bidder/Offeror Contact Name _____	Contact Phone Number _____

Name _____	Relationship to Bidder/Offeror _____
Description of Activities _____ _____	
Duration of Engagement _____	Anticipated Cessation Date _____
Bidder/Offeror Contact Name _____	Contact Phone Number _____

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

Full Name (Print): _____ Signature: _____

Title: _____ Date: _____

Exhibit 14

OWNERSHIP DISCLOSURE FORM

	NUMBER : OPEN DATE : T-NUMBER : BIDDER :	PAGE
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INSTRUCTIONS: Provide below the names, home addresses, dates of birth, offices held and any ownership interest of all officers of the firm named above. If additional space is necessary, provide on an attached sheet.

NAME	HOME ADDRESS	DATE OF BIRTH	OFFICE HELD	OWNERSHIP INTEREST (Shares Owned or % of Partnership)

INSTRUCTIONS: Provide below the names, home addresses, dates of birth, and ownership interest of all individuals not listed above, and any partnerships, corporations and any other owner having a 10% or greater interest in the firm named above. If a listed owner is a corporation or partnership, provide below the same information for the holders of 10% or more interest in that corporation or partnership. If additional space is necessary, provide that information on an attached sheet. Complete the certification at the bottom of this form. If this form has previously been submitted to the Purchase Bureau in connection with another bid, indicate changes, if any, where appropriate, and complete the certification below.

NAME	HOME ADDRESS	DATE OF BIRTH	OFFICE HELD	OWNERSHIP INTEREST (Shares Owned or % of Partnership)

COMPLETE ALL QUESTIONS BELOW

	YES	NO
1. Within the past five years has another company or corporation had a 10% or greater interest in the firm identified above? <i>(If yes, complete and attach a separate disclosure form reflecting previous ownership interests.)</i>	_____	_____
2. Has any person or entity listed in this form or its attachments ever been arrested, charged, indicted or convicted in a criminal or disorderly persons matter by the State of New Jersey, any other state or the U.S. Government? <i>(If yes, attach a detailed explanation for each instance.)</i>	_____	_____
3. Has any person or entity listed in this form or its attachments ever been suspended, debarred or otherwise declared ineligible by any agency of government from bidding or contracting to provide services, labor, material or supplies? <i>(If yes, attach a detailed explanation for each instance.)</i>	_____	_____
4. Are there now any criminal matters or debarment proceedings pending in which the firm and/or its officers and/or managers are involved? <i>(If yes, attach a detailed explanation for each instance.)</i>	_____	_____
5. Has any federal, state or local license, permit or other similar authorization, necessary to perform the work applied for herein and held or applied for by any person or entity listed in this form, been suspended or revoked, or been the subject of any pending proceedings specifically seeking or litigating the issue of suspension or revocation? <i>(If yes to any part of this question, attach a detailed explanation for each instance.)</i>	_____	_____

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

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

COMPANY NAME: _____		_____ (Signature)
ADDRESS: _____	PRINT OR TYPE	_____ (Name)
		_____ (Title)
FEIN/SSN#: _____	Date: _____	

EXHIBIT 15
(FOR SERVICES PROCUREMENT ONLY)

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

SOURCE DISCLOSURE CERTIFICATION FORM

Bidder: _____

Solicitation Number _____

I hereby certify and say:

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

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

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

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

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

I understand that, after award of a contract to the Contractor, it is determined that the Contractor has shifted services declared above to be provided within the United States to sources outside the United States prior to a written determination by the Contracting Officer, that the services can not be performed in the United States, the Contractor shall be deemed in breach of contract, which contract will be subject to termination for default pursuant to Article 17 of the Goods and Services General Provisions.

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

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

Contractor: _____
[Name of Organization or Entity]

By: _____

Title _____

Print Name: _____

Date _____

EXHIBIT 16

**NJ TRANSIT CORPORATION DBE REQUIREMENTS FOR FEDERAL
PROCUREMENT ACTIVITIES**

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

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

The following pages provide Bidders/Proposers/Primes on federal contracts with New Jersey Transit (NJT), information about NJT's Disadvantaged Business Enterprise (DBE) Program, administered by the Office of Business Development (OBD). Prospective Bidders/Proposers/Primes will have an opportunity to ask questions regarding the directives contained in the DBE specifications at the pre-bid/pre-proposal conference(s). Further clarification of the DBE specifications, along with assistance in completing the forms, can be obtained by calling (973) 491-7593.

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

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

1.1 POLICY

As defined in the U.S. Department of Transportation (USDOT) Regulation 49 CFR Part 26, it is the policy of NJT that Disadvantaged Business Enterprises shall have the opportunity to compete for and participate in the performance of contracts financed in whole or in part with federal funds. Each subcontract a Prime signs with a subcontractor/subconsultant must include the following assurance referenced in article 1.2.

1.2 ASSURANCE

1.2.1 The Prime contractor/consultant, or subcontractor/subconsultant shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Prime contractor/consultant shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor/consultant to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy, as the recipient deems appropriate (49 CFR 26.13).

1.2.2 This language is included to comply with relevant Federal law and to ensure that all persons who enter

into any direct or indirect form of contractual agreement with NJT are aware of their responsibilities and the commitment of NJT to see that NJT's DBE Policy is carried out in all instances.

1.3 DBE GOAL FOR THIS PROJECT

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

1.4 GUIDANCE TO BIDDER/PROPOSERS/PRIMES

- 1.4.1 Failure by a Bidder/Proposer/Prime to comply with any of the requirements contained herein shall result in breach of contract and it shall be subject to the appropriate penalties, remedies, or liquidated damage(s). Refer to articles 5.6-5.7
- 1.4.2 All required forms, including the supplemental section (see articles 2.3-2.4) must be submitted in accordance with the requirements. Firms must be certified under the NJUCP at the time of contract award in order to obtain DBE credit toward the goal.
- 1.4.3 Price alone is not an acceptable basis for rejecting a DBE subcontractor/subconsultant's bid.
- 1.4.4 The Bidder/Proposer/Prime shall, at a minimum, seek DBEs in the same geographic area in which it generally seeks subcontractors/subconsultants. However, the Bidder/Proposer/Prime may be required to expand its search under specific circumstances as determined by OBD. Refer to article 2.0
- 1.4.5 Agreements between a Bidder/Proposer/Prime and a DBE in which the DBE promises not to provide subcontracting quotations to other Bidder/Proposers are prohibited.
- 1.4.6 The desire of a Bidder/Proposer/Prime to self-perform the work of a contract with its own organization is not an acceptable basis to not meet the goal or demonstrate a good faith effort to do so.
- 1.4.7 The Bidder/Proposer/Prime is responsible for verifying that the DBE is certified under the appropriate NAICS code for the scope of work identified. DBE credit shall be given only for work performed in the NAICS code(s) under which the DBE is certified.
- 1.4.8 A DBE firm listed on the First-Tier DBE Utilization Form (Form A) shall constitute a binding representation to NJT, by the Bidder/Proposer/Prime, that the DBE firm is qualified, available, and certified under the appropriate and required NAICS code to perform the scope of work identified. Refer to article 2.5a

1.5 TRANSIT VEHICLE MANUFACTURERS (TVM)

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

- (a) As a condition of being authorized to bid or propose on FTA assisted transit vehicle procurements, the Bidder/Proposer must complete and submit the TVM Certification form with the bid/proposal certifying

that it has complied with the requirements of 49 CFR 26.49.

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

1.6 RESPONSIBLE BID/PROPOSAL CRITERIA

- 1.6.1 As a matter of responsibility, the two lowest Bidders or two highest ranked Proposers must submit the required forms, including the supplemental section (if applicable), with the bid/proposal or within seven (7) days after the bid opening or proposal due date. *NJT may grant a formal written request to extend this 7-day requirement at its sole discretion on a case-by-case basis.*
- 1.6.2 Failure to satisfactorily complete or submit all required forms when due may result in determination by NJT that the Bidder/Proposer is non-responsible and may cause rejection of the bid or proposal.
- 1.6.3 If the two lowest Bidders/highest ranked Proposers submit the DBE forms, but fail to meet the DBE goal, the OBD will consider the efforts made to determine if a Bidder/Proposer/Prime has in fact, demonstrated a good faith effort. See article 2.0
- 1.6.4 If it is determined that efforts were made to include DBE participation on the contract, however these efforts did not result in meeting the goal, NJT may request that additional efforts be made within 10 business days of the request. If at this time the Bidder/Proposer fails to demonstrate a good faith effort to achieve the goal, NJT shall consider awarding the contract to the next lowest bidder or highest ranked proposer who offers a reasonable price and meets the DBE goal or demonstrates a good faith effort and other bid requirements or requirements of 49 CFR Part 26.

2. GUIDANCE ON A GOOD FAITH EFFORT

- 2.1 To demonstrate a good faith effort to meet the DBE goal, a Bidder/Proposer/Prime shall provide written documentation in addition to Form D (article 2.3e), of the steps it has taken, prior to the bid opening/proposal due date, or during the life of the contract to obtain DBE participation. The Bidder/Proposer/Prime can meet this requirement in either of two ways:
- (1) The Bidder/ Proposer/Prime can meet the goal.
 - (2) The Bidder/Proposer/Prime shall exhaust the available options referenced in article 2.2 in making a continuous good faith effort to meet the assigned contract goal for the life of the contract.
- (a) The efforts employed by the bidder should be those that one could reasonably expect a bidder to take if the bidder were actively and aggressively trying to obtain DBE participation sufficient to meet the contract goal.
- (b) In determining a good faith effort, the OBD will consider the quality, quantity, and intensity of the different kinds of efforts that the Bidder/Proposer/Prime has made. Mere *pro forma* efforts will not be considered as demonstration of good faith effort to meet the DBE contract requirements.
- (c) The Bidder/Proposer/Prime shall use good business judgment and consider a number of factors in negotiating with subcontractors/subconsultants, including DBE subcontractors/ subconsultants, and

should take a firm's price and capabilities as well as contract goals into consideration. The fact that there may be some additional costs involved in finding and using DBEs is not in itself sufficient reason for a Bidder's/Proposer's failure to meet the contract DBE goal, as long as such costs are reasonable as determined by NJT. Primes are not, however, required to accept higher quotes from DBEs if the price difference is excessive or unreasonable.

- (d) The Bidder/Proposer/Prime's ability or desire to perform the work of a contract with its own organization (self-performance) does not relieve the Bidder/Proposer/Prime of the responsibility to meet the goal or demonstrate a good faith effort.
- (e) The Bidder/Proposer/Prime shall not reject DBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities. The Bidder/Proposer/Prime's standing within its industry, membership in specific groups, organizations, or associations and political or social affiliations (for example, union vs. non-union employee status) are not legitimate causes for the rejection or non-solicitation of bids in the Bidder/Proposer/Prime's efforts to meet the assigned project goal.
- (f) The OBD will support the Bidder/Proposer/Prime in indentifying ways to meet the assigned contract goal.

2.2 A GOOD FAITH EFFORT

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

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

the Bidder/Proposer's responsibility to make a portion of the work available to DBE subcontractors/subconsultants and suppliers and to select those portions of the work or material needs consistent with the available DBE Primes and suppliers, so as to facilitate DBE participation.

(1) Evidence of such negotiation includes: the names, addresses, and telephone numbers of DBEs that were considered; a description of the information provided regarding the plans and specifications for the work selected for subcontracting; and evidence as to why additional agreements could not be reached for DBEs to perform the work.

- (e) The Bidder/Proposer/Prime shall make efforts to assist interested DBEs in obtaining bonding, lines of credit, or insurance as required by NJT or the Prime contractor.
- (f) The Bidder/Proposer/Prime shall make efforts to assist interested DBEs in obtaining necessary equipment, supplies, materials, or related assistance or services.
- (g) The Bidder/Proposer/Prime shall effectively use the services of available minority/women community organizations; minority/women Prime contractors groups; local, State and Federal minority/women business assistance offices; and other organizations as allowed on a case-by-case basis to provide assistance in the recruitment and placement of DBEs.

2.3 REQUIRED FORMS

- (a) Form A - First Tier DBE Utilization: Lists all First Tier DBE firms scheduled to participate on this contract.
- (b) Form A1 - Bidder/Proposer Solicitation and Contractor Information: Lists all DBE and Non-DBE sub contractor/subconsultants, including suppliers, solicited for, and participating on this contract.
- (c) Form A2- Non-DBE Sub Utilization: Lists all DBE and Non-DBE subcontractors/ subconsultants, including suppliers, participating on this contract.
- (d) Form B - Intent to Perform as a DBE Sub: Identifies the work the 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 www.njucp.net and www.census.gov/eos/www/naics/.

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

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

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

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

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

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

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

This report is due even if there is no payment activity. This form must be completed and submitted to the

OBD by the 7th of each month to the attention of the OBD's Manager of Contract Compliance.

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

The Prime must provide a copy of the Form E2 to each DBE subcontractor/subconsultant/ supplier(s). Beginning the subsequent month following the DBE's execution date, the DBE firm must report its monthly payment activity.

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

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

2.6 INSTRUCTIONS FOR COMPLETING SUPPLEMENTAL REQUIRED FORMS:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) Work that a DBE subcontracts to a non-DBE firm does not count toward the DBE contract goal.

(b) When a DBE performs as a participant in a joint venture with a Non-DBE, count the portion of the total dollar value of the contract equal to the distinct, clearly defined portion of the work of the contract that the DBE performs with its own forces toward DBE goals.

(c) A DBE performs a *commercially useful function* when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing and supervising the work involved.

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

3.2 COUNTING DBE PARTICIPATION

3.2.1 When a DBE participates in a contract, only the value of the work actually performed by the DBE is counted toward DBE goals.

(a) The entire amount of that portion of a contract that is performed by the DBE's own forces is counted. This includes the cost of supplies and materials obtained by the DBE for the work of the contract, as well as supplies purchased or equipment leased by the DBE (*except supplies and equipment the DBE subcontractor/subconsultant purchases or leases from the Prime contractor or its affiliate*).

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

3.3 DBE PRIME CONTRACTOR GUIDANCE

3.3.1 If a DBE Prime, expenditures are counted toward DBE goals only if the DBE is performing a commercially

useful function on that contract.

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

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

3.4 DBE TRUCKING FIRMS GUIDANCE

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

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

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

3.5 LEASING TRUCKS

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

3.5.2 The DBE may lease trucks from another DBE firm, including an owner-operator that is certified as a DBE. The DBE who leases trucks from another DBE receives credit for the total value of the transportation services the lessee DBE provides on the contract.

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

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

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

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

3.6 COUNTING MATERIALS AND SUPPLIES

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

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

4.0 TERMINATION OF DBE(s)

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

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

4.2 ADDITION OF DBE(s)

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

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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 DBE's 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-neutral includes gender-neutrality.

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

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

The firm must engage in, as its principal business, and in its own name, the purchase and sale of products in question.

Bulk items such as steel, cement and petroleum products need not be stocked, if the dealer owns or operates distribution equipment.

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

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

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

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

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

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

Bidders Checklist (for federal contracts)

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

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

Required Forms

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

Supplemental Forms (if applicable)

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

REQUIRED FORMS

ENCLOSED FOR COMPLETION (MANDATORY):

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

TO BE OBTAINED AND SUBMITTED (MANDATORY):

- **Copy of a valid NJUCP DBE Certificate (Provided by 1st Tier DBEs.)**

Consult DBE Program Requirements for further guidance.

BIDDER SOLICITATION & CONTRACTOR INFORMATION - FORM A1

NJT Contract No: _____

Project Title: _____

Prime Contractor: _____

Telephone #: _____

Date: _____

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

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

BIDDER SOLICITATION & CONTRACTOR INFORMATION - FORM A1

NJT Contract No: _____
 Prime Contractor: _____
 Date: _____

Project Title: _____
 Telephone #: _____

Complete the information below for "all" subcontractors/subconsultants solicited for or participating on this project.

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

NON-DBE SUBCONTRACTOR UTILIZATION - FORM A2

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

NJ Transit Contract No: _____

Date: _____

Prime Contract Value: _____

Bidder/Proposer Prime Name: _____ Project Title: _____

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

INTENT TO PERFORM AS A 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. NJ Transit's Office of Business Diversity will make a fair and reasonable judgment as to whether the bidder made adequate Good Faith Efforts.

Bidders/proposers/primes are required to read the DBE Program Requirements and the guidelines/ instructions of all forms; and required to submit all forms in the Addendum (mandatory) and Supplemental Section (if applicable) with the bid/proposal or within seven (7) days after bid/proposal submission.

Guidelines to Bidder/Proposer/Prime:

- FORM D outlines actions that may be considered good faith efforts though it is not a mandatory checklist, nor is it intended to be exclusive or exhaustive. Please read DBE Program Requirements for further guidance.
- Bidder/Proposer/Prime must complete FORM D if and when it fails to meet the DBE goal.
- FORM D must be completed in this instance for any DBE firms which were solicited but declined to quote for the project.
- DBE firm must sign Page 2 of FORM D. If DBE declines to do so, submit completed form with bidder/proposer/prime signature only and the Office of Business Diversity will verify information with DBE.
- If/when the contract goal is not met, the fact that there may be some additional costs involved in finding and using DBEs is not in itself sufficient reason for a bidder's failure to meet the contract DBE goal, as long as such costs are reasonable. Prime contractors are not, however, required to accept higher quotes from DBEs if the price difference is excessive or unreasonable.
 - o In short, unless the price difference is excessive or unreasonable, incurring additional costs in using and finding a DBE is not sufficient reason to reject the DBE quote or not to meet the contract goal.

Instructions:

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

Fed Form E (Page 1 of 2)

Name of Project: _____

Prime Original Contract Value: _____

Change Orders (Overall Inc/Dec.): _____

Total Contract Amount to Date: _____

Total Payments Received from NJT Date: _____

NJT Contract #: _____

Report for the Month of: _____

Notice to Proceed Date: _____

NJT Project Mgr Name: _____

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: _____
Address: _____
Telephone #: _____
Date: _____

Project Director Name: _____
Project Director Signature: _____
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.

Form E - Prime Contractor's DBE Payment Certification

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

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

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

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

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

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

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

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

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

PROJECT DIRECTOR NAME (PRINT)

PROJECT DIRECTOR (SIGNATURE)

_____/_____/_____
DATE

Additional Reasons/Comments for Withholding Payment:

DO NOT WRITE BELOW. DEPARTMENTAL USE ONLY.

☐ Approved

☐ Denied

THIS FORM IS DUE ON THE 7TH OF EACH MONTH Please forward to:

Office of Civil Rights and Diversity Programs

Business Development

NJ TRANSIT

One Penn Plaza East, 6th Fl

Newark, New Jersey 07105-2246

This form is not to be altered in any way.

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

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

DATE CONTRACT EXECUTED: _____ CONTRACT NUMBER: _____ REPORT FOR THE MONTH OF: _____ YEAR _____

ORIGINAL CONTRACT AMOUNT: _____ FED TAX ID #: _____

CHANGE ORDERS (OVERALL INC/DEC.): _____ PURCHASE ORDER #: _____

TOTAL CONTRACT AMOUNT TO DATE: _____ NAME OF PROJECT: _____

Original Contract Value	Change Order Amount +/-	Date of Change Order	New Contract Value	Payments Received This Month	Total Payments Received to Date	% Work Completed To Date	Final Pmt Y/N
TOTALS:							

PRIME INVOICE 30 DAYS PAST DUE FROM NJT:

NJ TRANSIT

Invoice Date _____ Reference # _____ No. Days Past Due Amount _____

Project Manager (Name): _____

Telephone #: _____

PRIME CONTRACTOR INFORMATION

Firm Name: _____

Compliance Officer (Name): _____

Date: _____ Telephone #: _____

FORM IS DUE ON THE 7TH OF EACH MONTH.

PLEASE FORWARD TO:

NJ TRANSIT

Manager, Contract Compliance

Office of Business Diversity - 6TH FL

One Penn Plaza East

Newark, New Jersey 07105-2246

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

Fed - Form E-1 rev12/9/08

DBE SUBCONTRACTOR Monthly Payment Report - Form E2

Name of DBE Firm: _____

Report for the Month of: _____

DBE's FEIN#: _____

Contract Number: _____

DBE Address: _____

Contract Name: _____

DBE Telephone #: _____

DBE Contract Start Date: _____

Prime Contractor's Information:

Name of Prime: _____ Address: _____

Telephone #: _____

DBE PAYMENT INFO: Itemize payments/invoices and dates if received/submitted more than one payment/invoice between the 1st and 31st of THIS Month.

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

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 973-491-7539, 8058, 8768, 8069, or 8941.

Rev Fed Form E2 - Sept 2010

SUPPLEMENTAL SECTION REQUIRED FORMS

ENCLOSED FOR COMPLETION (IF APPLICABLE):

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

TO BE OBTAINED AND SUBMITTED (IF APPLICABLE):

- **Copy of a valid NJUCP DBE Certificate (Provided by 2nd Tier DBEs.)**

Consult DBE Program Requirements for further guidance.

SECOND TIER DBE UTILIZATION— FORM AA

Project Name: _____ NJT Contract No: _____

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

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

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

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

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

DBE Sub-Prime Firm: _____ Authorized Signature: _____

Company Address: _____ Print Name: _____

Title: _____

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

Company Tel #: _____ Date Signed: _____

BIDDER SOLICITATION & CONTRACTOR INFORMATION - FORM AA1

JT Contract No: _____ Project Title: _____
 BE Sub-Prime: _____ Telephone #: _____
 ate: _____

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

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

NON-DBE SECOND TIER SUBCONTRACTOR UTILIZATION - FORM AA2

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

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

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

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

INTENT TO PERFORM AS A SECOND TIER DBE - FORM BB

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

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

Name of First Tier DBE/Sub-Prime:

Name of Second Tier DBE Firm:

Project/Contract Name:

IFB/RFP Contract Number:

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

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

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

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

Dollar Value of DBE Subcontract: \$ _____

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

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

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

DBE Contract Start Date: _____ DBE Contract Completion Date _____

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

Signature of Second Tier DBE

Date

Title

Print Name

Telephone #:

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

DBE TRUCKING COMMITMENT

AGREEMENT

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

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

[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: _____

EXHIBIT 17

IFB NO. _____ ACKNOWLEDGMENT OF RECEIPT OF ADDENDA

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

The undersigned acknowledges receipt of the following addenda.

<u>Addendum Number</u>	<u>Date</u>
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

By:

Signature of Company Official

Official's Title

Company Name