

**New Jersey Transit Corporation
Instructions To Bidders For Construction**

Table of Contents

A.	ABBREVIATIONS AND DEFINITIONS	1
A.1	ABBREVIATIONS	1
A.2	DEFINITIONS.....	1
B.	COMMUNICATIONS.....	1
B.1	OBTAINING BID DOCUMENTS	1
B.2	INQUIRIES AND REQUESTS FOR CLARIFICATION	1
B.3	ACKNOWLEDGMENT OF RECEIPT OF ADDENDA.....	2
B.4	IMPROPER COMMUNICATIONS	2
B.5	PRE-BID CONFERENCE	2
C.	REGISTRATIONS, PREQUALIFICATION AND SBE CERTIFICATION	2
C.1	CORPORATE REGISTRATION	2
C.2	PREQUALIFICATION OF BIDDERS	3
C.3.	SMALL BUSINESS ENTERPRISE (“SBE”) GOAL ASSIGNMENT	4
C.4	DEPARTMENT OF LABOR REGISTRATION	5
C.5	CERTIFICATION AND POLITICAL CONTRIBUTION DISCLOSURES	6
P.L. 2005, C.51, EXECUTIVE ORDER 117 (2008), EXECUTIVE ORDER 7 (2010)		6
C.6	OWNERSHIP DISCLOSURE	10
C.7	DISCLOSURE OF POLITICAL CONTRIBUTIONS (N.J.S.A. 19:44A-20.27).....	10
C.8	BUSINESS REGISTRATION NOTICE	11
D.	ETHICAL REQUIREMENTS FOR BIDDERS.....	11
D.1	CODE OF ETHICS FOR BIDDERS	11
D.2	CONTRACTOR’S CERTIFICATION OF ELIGIBILITY	11
D.3	DISCLOSURE OF INVESTMENT ACTIVITIES IN IRAN	12
E.	BID PREPARATION AND SUBMISSION PROCEDURES	12
E.1	EXAMINATION OF CONTRACT DOCUMENTS	12
E.2	BID FORM QUANTITIES	12

**New Jersey Transit Corporation
Instructions To Bidders For Construction**

Table of Contents

E.3	PREPARATION OF THE BID.....	13
E.4	SBE PROGRAM COMPLIANCE REQUIREMENTS.....	13
E.5	BID GUARANTEE	15
E.6	BID VALIDITY	16
E.7	WITHDRAWAL OF BIDS	16
E.8	SUBMISSION OF MULTIPLE BIDS	16
E.9	SUBMISSION OF BIDS	16
F.	<i>BID OPENING</i>	17
F.1	PUBLIC OPENING OF BIDS.....	17
F.2	UNOPENED BIDS	17
F.3	CONDITIONALLY ACCEPTED.....	17
G.	<i>IRREGULAR BIDS</i>	17
G.1	IRREGULARITIES AND NON-CONFORMANCES.....	17
G.2	RIGHT TO REJECT OR WAIVE	18
H.	<i>AWARD AND EXECUTION OF CONTRACT</i>	18
H.1	CALCULATION OF BIDS	18
H.2	SINGLE BIDS	18
H.3	DETERMINATION OF LOW BID.....	19
H.4	AWARD PROCESS.....	19
H.5	CANCELLATION OF AWARD.....	19
H.6	CONTRACT BONDS	19
H.7	EXECUTION OF CONTRACT	20
H.8	FAILURE TO EXECUTE CONTRACT	21
H.9	RELIEF OF BIDDERS	21
H.10	RELEASE OF BID GUARANTEES	21
I.	<i>PROTEST PROCEDURE</i>	21

**New Jersey Transit Corporation
Instructions To Bidders For Construction**

Table of Contents

I.1 PURPOSE 21

I.2 DEFINITIONS..... 21

I.3 PROCEDURE 22

A. ABBREVIATIONS AND DEFINITIONS

A.1 ABBREVIATIONS

See Article 1.1.1 of the General Provisions for Construction.

A.2 DEFINITIONS

See Article 1.1.2 of the General Provisions for Construction.

B. COMMUNICATIONS

B.1 OBTAINING BID DOCUMENTS

This Project is being bid by use of an electronic bidding process. Electronic bidding information is available on NJ TRANSIT's electronic bidding website: www.bidx.com. Registration and a subscription fee are required to access the Bid Documents. The Bidder shall download the bidding software. The Bidder shall not alter or in any way change the software.

The Bidder shall download all bid documents from NJ TRANSIT's electronic bidding website. NJ TRANSIT assumes no responsibility for errors or omissions in the downloaded documents except as specifically provided for in the Contract Documents. The Bidder shall address questions or problems with downloading or using the electronic files, not the requirements of the Contract, to:

NJ TRANSIT Bid Express Administrator

E-Mail: e-bidding@njtransit.com

or

Bid Express Customer Support

Tel: (352) 381-4888

Fax: (352) 381-4444

E-Mail: customer.support@bidx.com

B.2 INQUIRIES AND REQUESTS FOR CLARIFICATION

All inquiries and requests for clarifications regarding the Contract Documents shall be submitted by e-mail to the Contract Specialist identified in the Special Provisions. Such requests shall state the Invitation for Bid (IFB) number and name of Project. Any response that NJ TRANSIT may choose to make will be by a written addendum to the IFB. NJ TRANSIT will not be bound by any informal explanation, clarification, or interpretation, oral or written, by whosoever made, that is not incorporated into an addendum to the IFB. All such Addenda will be posted on the electronic bidding website prior to the opening

of Bids. It is the obligation of the Bidder to check the website for addenda. Certain Addenda will contain Amendments to the IFB. The Bidder shall ensure that the "Schedule of Items" to be bid, as identified on the electronic bidding website and in the electronic bidding file, contains an acknowledgement of all applicable Addenda. The Bidder shall ensure that the Bidder acknowledges and affirms the he/she has obtained, reviewed and applied all addenda issued during the bidding period by selecting Yes or No and input the number of addenda it has received. NJ TRANSIT has the right to reject bids that do not contain a completed Addenda Acknowledgement I. No response may be made by NJ TRANSIT to inquiries received later than the submittal date identified in the Special Provisions.

B.3 ACKNOWLEDGMENT OF RECEIPT OF ADDENDA

Bidders must acknowledge receipt of all Addenda on the Bid Form in the space provided. Failure to acknowledge receipt of all Addenda may be grounds for the rejection of a Bid as non-responsive.

B.4 IMPROPER COMMUNICATIONS

In accordance with N.J.S.A. 52:34-10.1, Bidders are advised that communications with NJ TRANSIT that in any way relate to this IFB shall only be conducted with the Contract Specialist, the authorized representative of the Contracting Officer in NJ TRANSIT's Procurement Department. All other contacts, with the exception of contacting NJ TRANSIT's Office of Business Development for matters related to Small Business Enterprise (SBE) requirements, are strictly prohibited and are considered improper.

Bidders are advised that violation of this prohibition, as required by N.J.S.A. 52:34-10.1, may result in the rejection of a Bid or the removal of the Bidder from consideration for award of this Contract.

B.5 PRE-BID CONFERENCE

A pre-bid conference may be held with prospective Bidders to review Contract Documents and generally discuss the Project. The time and place will be specified in the Advertisement. Bidders are strongly encouraged to attend.

C. *REGISTRATIONS, PREQUALIFICATION AND SBE CERTIFICATION*

C.1 CORPORATE REGISTRATION

In accordance with N.J.S.A. 14A:13-3, a foreign corporation (i.e., a corporation for profit organized under the laws of a jurisdiction other than New Jersey) that contracts to do

business with NJ TRANSIT must have a certificate of authority to do business in New Jersey. To obtain a certificate contact the New Jersey Business Registration and Commercial Recording Services Line at (609) 292-9292, or go to the State of New Jersey's Business Gateway Registry Services (NJBGS) website at www.state.nj.us/njbgs. The relevant documents, contained in the New Jersey Complete Business Registration Package (NJ-REG), instructions and customer service assistance are available from the above locations. No contract will be entered into by NJ TRANSIT with a Bidder unless the successful Bidder has obtained a certificate of authority to do business in New Jersey. In addition, all foreign companies must have a registered agent in the State of New Jersey upon whom process may be served and such information must be provided to NJ TRANSIT.

C.2 PREQUALIFICATION OF BIDDERS

In accordance with N.J.A.C. 16:72-2.4, prospective Bidders, prior to bidding on capital improvement projects, must be prequalified as to the character and amount of work for which they are permitted to submit bids. Such Prequalification shall be assigned to Bidders based on all factors related to Bidder responsibility as set forth in N.J.A.C. 16:72-1.4, and any pertinent information relating to the qualification of Bidders, ("Prequalification Classification and Rating").

A Prequalification Classification and Rating shall be assigned to Bidders based on information submitted in the Prequalification Questionnaire available through NJ TRANSIT's electronic bidding website. A fully completed Prequalification Questionnaire must be received by NJ TRANSIT no later than the submittal date identified in the Special Provisions. Failure of a prospective Bidder to submit its completed Prequalification Questionnaire by that date may result in a denial of Prequalification for the IFB.

The required prequalification classification for the type of work and suggested minimum rating amount will be identified in the Special Provisions for the IFB. Prospective Bidders are advised that a key consideration in the evaluation, classification and rating of the Bidder is its past experience with work similar both in nature and in magnitude to the Prequalification classification and rating requested by the Bidder. Failure, either in the Prequalification Questionnaire or in any subsequent information provided by the Prequalification Questionnaire or in any subsequent information provided by the prospective Bidder, to demonstrate responsible experience with work of the nature and magnitude of the classification and rating requested, may result in NJ TRANSIT assigning a different classification, lower rating, or both, or a rejection of the Prequalification

request pending the submission of evidence of prior responsible experience. The Prequalification Classification and Rating shall be valid for thirty-six (36) months from the date of the Notice of Classification letter.

Please note that the Prequalification classification process will only be conducted for those Bidders subscribing to NJ TRANSIT's electronic bidding service that have downloaded Bid Documents from NJ TRANSIT's electronic bidding website www.bidx.com, who intend to bid as a prime Contractor or as a member of a joint venture, and have submitted a completed Prequalification Questionnaire.

Bidders seeking to submit bids as Joint Ventures are advised that each Bidder must submit an independent Prequalification Questionnaire, in addition to a Statement of Joint Venture form executed by both Bidders. A rating and classification shall be assigned to each Bidder and a determination will be made as to the Joint Venture's eligibility to submit a bid in response only to this IFB.

Two or more Bidders that maintain an ongoing Joint Venture relationship, may request Prequalification as a single Bidder, provided they can demonstrate a past history of responsible performance as a single entity. In such event, the Prequalification Classification and Rating assigned to the entity shall be valid for thirty-six (36) months.

NJ TRANSIT may reject any Bid at any time prior to the actual award of a contract where there have been developments subsequent to qualification and classification which, in the opinion of NJ TRANSIT would affect the Responsibility of the Bidder. Before taking such action, NJ TRANSIT will notify the Bidder and give such Bidder an opportunity to present additional information.

C.3. SMALL BUSINESS ENTERPRISE ("SBE") GOAL ASSIGNMENT

NJ TRANSIT requires that the successful Bidder take all necessary and responsible steps in accordance with N.J.A.C. 17:14-1.1 et seq. to ensure that Small Business Enterprises (SBE) have the opportunity to participate in the performance of this contract. The SBE subcontracting goals are identified in the Special Provisions for this Project.

All Division of Revenue and Enterprise Services registered/certified SBE firms, including suppliers, in accordance with N.J.S.A. 52:32-17 et seq. and N.J.A.C. 17:14-1.1 et seq. shall have the maximum opportunity to participate in the performance of this Agreement and any subcontract under it. NJ TRANSIT and the Bidder shall take all necessary and

reasonable steps, in accordance with N.J.S.A. 52:32-17 et seq. and N.J.A.C. 17:14-1.1 et seq., and the provisions set forth in the SBE Requirements for State Funded Construction Contracts and Subcontracts with Small Businesses Enterprises, annexed hereto, to ensure that Small Businesses have equal opportunity to participate. Failure by the Bidder to carry out the requirements of this section shall be deemed a material breach of this Agreement.

C.4 DEPARTMENT OF LABOR REGISTRATION

Pursuant to The Public Works Contractor Registration Act (N.J.S.A. 34:11-56.48, et seq.), Bidders are advised that Bidders shall not bid on any contract for public work unless the registered in accordance with N.J.S.A. 34:11-56.51. Public work is defined in N.J.S.A. 34:11-56.26(5). A Bidder can only list a Subcontractor(s) in its Bid proposal if the Subcontractor(s) is registered in accordance with N.J.S.A. 34:11-56.48, et seq. Contractors or Subcontractors, including a Subcontractor not listed in the bid, shall not engage in the performance of any public work subject to the Contract, unless the Contractor or Subcontractor is registered pursuant to the Act.

The Bidder shall possess a valid Public Works Contractor Registration Certificate at time of bid submission. The Bidder is requested to provide its Public Works Registration Certificate number with its bid submission. If requested, Bidder shall submit proof of a valid registration to NJ TRANSIT, in care of the Contract Specialist, within seven (7) calendar days of NJ TRANSIT's request.

The Bidder shall, after the bid is made and prior to the awarding of the contract, submit to NJ TRANSIT the Public Works Registration Certificate for all Subcontractors listed in the bid N.J.S.A. 34:11-56.55. Applications for registration from either the Bidder or any Subcontractor shall not be accepted as a substitute for a certificate of registration.

Registration forms, copies of the Act and other relevant information may be obtained by contacting:

New Jersey Department of Labor and Workforce Development
Division of Wage & Hour Compliance
P.O. Box 389
Trenton, New Jersey 08625-0389
Telephone: (609) 292-9464
Fax: (609) 633-8591

Companies not listed in the bid that quote successfully as Subcontractors at any tier will be required to submit evidence of registration with the Department of Labor as part of the post-award Subcontractor approval process as detailed in General Provisions for Construction Article 1.9.2.

C.5 CERTIFICATION AND POLITICAL CONTRIBUTION DISCLOSURES

P.L. 2005, C.51, EXECUTIVE ORDER 117 (2008), EXECUTIVE ORDER 7 (2010)

In order to safeguard the integrity of State government procurement by imposing restrictions to insulate the award of State contracts from political contributions that pose the risk of improper influence, purchase of access, or the appearance thereof, Executive Order 134 was signed on September 22, 2004 ("EO 134"). EO 134 has been superseded by P.L. 2005, c.51 (the "Act"). Effective November 15, 2008 Executive Order 117 (2008) extends the provisions of P.L. 2005, c.51. Executive Order No. 7, effective January 20, 2010, further extends the provisions of P.L. 2005, c.51. Pursuant to the requirements of P.L. 2005, c.51, the terms and conditions set forth in this section are material terms of any contract resulting from this Invitation for Bid (IFB).

DEFINITIONS

For the purpose of completing the Certification and Disclosure form(s):

a) "Contribution" – means a contribution reportable by the recipient under "The New Jersey Campaign Contributions and Expenditures Reporting Act." P.L. 1973, c. 83 (C.19:44A-1 et seq.), and implementing regulations set forth at N.J.A.C. 19:25-10.1 et seq. Contributions in excess of \$300 are deemed "reportable". In addition to requirements identified previously for EO 134, effective November 15, 2008 reportable contributions (those over \$300.00 in the aggregate) to legislative leadership committees, municipal political party committees, and candidate committees or election funds of any candidate for or holder of the office of Lieutenant Governor are disqualifying contributions in the same manner as reportable contributions to State and county political party

committees and candidate committees or election funds of any candidate for or holder of the office of Governor have been disqualifying contributions under Chapter 51.

b) "Business Entity" – means any natural or legal person, business corporation, professional services corporation, limited liability company, partnership, limited partnership, business trust, association or any other legal commercial entity organized under the laws of New Jersey or any other state or foreign jurisdiction. It also includes (i) all principals who own or control more than ten percent (10%) of the profits or assets of a business entity or ten percent (10%) of the stock in the case of a business entity that is a corporation for profit, as appropriate; (ii) any subsidiaries directly or indirectly controlled by the business entity; (iii) any political organization organized under 26 U.S.C. 527 that is directly or indirectly controlled by the business entity, other than a candidate committee, election fund, or political party committee; and (iv) if a business entity is a natural person, that person's spouse or child, residing in the same household.

Effective November 15, 2008, Executive Order No. 117 revised and expanded the definition of "business entity" so that contributions by the following individuals also are considered contributions attributable to the business entity.

- Shareholders and Officers of corporations and professional services corporations, with the term "officer" being defined in the same manner as in the regulations of the Election Law Enforcement Commission regarding vendor disclosure requirements (N.J.A.C. 19:25-26.1), with the exception of officers of non-profit entities;
- Partners of general partnerships, limited partnerships, and limited liability partnerships and members of limited liability companies (LLCs), with the term "partner" being defined in the same manner as in the regulations of the Election Law Enforcement Commission regarding vendor disclosure requirements (N.J.A.C. 19:25-26.1);
- In the case of a sole proprietorship: the proprietor; and
- In the case of any other form or entity organized under the laws of this State or any other state or foreign jurisdiction: the entity and any principal, officer and partner thereof.

Spouses, civil union partners, and resident children of officers, shareholders, partners,

LLC members, sole proprietors, and persons owning or controlling ten percent (10%) or more of a corporation's stock are included within the new definition, except for contributions by spouses, civil union partners, or resident children to a candidate for whom the contributor is eligible to vote or to a political party committee within whose jurisdiction the contributor resides.

Executive Order No. 7, effective January 20, 2010, expands the definition of "business entity" further to encompass any Labor Union or Labor Organization which enters into contracts with the State of New Jersey and its instrumentalities or with other New Jersey public entities, including any political committee formed by any such Labor Union or Labor Organization for which one of the purposes of such political committee is to make political contributions.

References to "Bidder" include, but are not limited to, all entities which contemplate entering into a contractual relationship with the State, including vendors, potential vendors, contractors, consultants, sellers.

BREACH OF TERMS OF EXECUTIVE ORDERS DEEMED BREACH OF CONTRACT

It shall be a breach of the terms of the Contract for the Business Entity to (i) make or solicit a contribution in violation of the Act, (ii) knowingly conceal or misrepresent a contribution given or received; (iii) make or solicit contributions through intermediaries for the purpose of concealing or misrepresenting the source of the contribution; (iv) make or solicit any contribution on the condition or with the agreement that it will be contributed to a campaign committee or any candidate for or holder of the public office of Governor or Lieutenant Governor, to any legislative leadership committee, or to any State, county or municipal political party committee; (v) engage or employ a lobbyist or consultant with the intent or understanding that such lobbyist or consultant would make or solicit any contribution, which if made or solicited by the business entity itself, would subject that entity to the restrictions of the Act; (vi) fund contributions made by third parties, including consultants, attorneys, family members, and employees; (vii) engage in any exchange of contributions to circumvent the intent of the Act; or (viii) directly or indirectly through or by any other person or means, do any act which would subject that entity to the restrictions of the Act.

CERTIFICATION AND DISCLOSURE REQUIREMENTS

a) NJ TRANSIT shall not enter into a contract to procure from any Business Entity services or any material, supplies or equipment, or to acquire, sell or lease any land or building,

where the value of the transaction exceeds \$17,500, if that Business Entity has solicited or made any contribution of money, or pledge of contribution, including in-kind contributions to a candidate committee or election fund of any candidate for or holder of the public office of Governor or of Lieutenant Governor, to any legislative leadership committee, or to any State, county, or municipal political party committee during certain specified time periods. Accordingly, the Business Entity is requested to submit the Chapter 51 / Executive Order 117 Certification and Disclosure with its Bid Proposal, certifying that no contributions prohibited by the Act have been made by the Business Entity. A separate Certification and Disclosure Form is required for each person or organization defined above as a Business Entity.

b) Prior to awarding any contract or agreement to any Business Entity, the Business Entity proposed as the intended awardee of the contract shall report all contributions the Business Entity made during the preceding four years to any political organization organized under 26 U.S.C. 527 of the Internal Revenue Code that also meets the definition of a "continuing political committee" within the meaning of N.J.S.A. 19:44A-3(n) and N.J.A.C. 19:25-1.7, in the form of the disclosures available through NJ TRANSIT's electronic bidding website. A separate Disclosure is required for each person or organization defined above as a Business Entity.

c) Further, the Contractor is required, on a continuing basis, to report any contributions it makes during the term of the contract, and any extension(s) thereof, at the time any such contribution is made. Any change in the vendor's ownership status and/or political contributions during the two-year period will require the submission of new Chapter 51/EO117/EO7 forms to the State Review Unit. **Please note that it is the contract awardee's responsibility to file new forms with the State should these changes occur.** Such disclosures are to be submitted using the standard Certification and Disclosure forms, which are available for download from the State of New Jersey Division of Purchase and Property's website. A separate Disclosure is required for each person or organization defined above as a Business Entity.

STATE TREASURER REVIEW

The State Treasurer or his designee shall review the Disclosures submitted pursuant to this section, as well as any other pertinent information concerning the contributions or reports thereof by the intended awardee, prior to award, or during the term of the contract, by the contractor. If the State Treasurer determines that any contribution or

action by the contractor constitutes a breach of contract that poses a conflict of interest in the awarding of the contract under this solicitation, the State Treasurer shall disqualify the Business Entity from award of such contract.

C.6 OWNERSHIP DISCLOSURE

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

To comply with this requirement, a Bidder with any direct or indirect parent entity which is publicly traded may submit the name and address of each publicly traded entity and the name and address of each person that holds a ten percent (10%) or greater beneficial interest in the publicly traded entity as of the last annual filing with the Securities and Exchange Commission, and, if there is any person that holds a ten percent (10%) or greater beneficial interest, also shall submit links to the websites containing the last annual filings with the federal Securities and Exchange Commission or the foreign equivalent and the relevant page numbers of the filings that contain the information on each person that holds a ten percent (10%) or greater beneficial interest.

Failure to submit the form will result in the rejection of the Bid.

C.7 DISCLOSURE OF POLITICAL CONTRIBUTIONS (N.J.S.A. 19:44A-20.27)

The Bidder is advised of its responsibility to file an annual disclosure statement of any political contributions with the New Jersey Election Law Enforcement Commission (ELEC), pursuant to N.J.S.A. 19:44A-20.27 if the Bidder receives \$50,000 or more in the aggregate through agreements or contracts with a public entity in a calendar year. It is the Bidder's responsibility to determine if filing is necessary. Failure to so file can result

in the imposition of financial penalties by ELEC. Additional information about this requirement is available from ELEC at 888-313-3532 or at www.elec.state.nj.us.

C.8 BUSINESS REGISTRATION NOTICE

In accordance with N.J.S.A. 52:32-44, all New Jersey and out of State business organizations must obtain a Business Registration Certificate (BRC) from the Department of the Treasury Division of Revenue, prior to conducting business with NJ TRANSIT. The Bidder shall possess a valid Business Registration Certificate prior to the time of contract award. Bidder is requested to provide its Business Registration Certificate number and Taxpayer Identification (FEIN) with bid submission. The business registration form (Form NJ-REG) can be found online at <http://www.state.nj.us/treasury/revenue/busregcert.shtml>.

No contract with a Subcontractor shall be entered into by any Bidder unless the Subcontractor first provides proof of valid business registration. After award, in conjunction with the Subcontractor approval process as detailed in General Provisions for Construction Article 1.9.2, the Bidder/Contractor shall provide a copy of the Business Registration Certificate for each Subcontractor at that time.

D. ETHICAL REQUIREMENTS FOR BIDDERS

D.1 CODE OF ETHICS FOR BIDDERS

Bidders are informed that it is NJ TRANSIT policy that Bidders who do or may do business with NJ TRANSIT must avoid all situations where proprietary or financial interest, or the opportunity for financial gain, could lead a NJ TRANSIT officer or employee to secure favored treatment for any organization or individual.

Bidders must also avoid circumstances and conduct which may not constitute actual wrongdoing, or conflict of interest, but might nevertheless appear questionable to the general public, thus compromising the integrity of NJ TRANSIT. All Bidders must comply with NJ TRANSIT's Code of Ethics as set forth in Article 10.4 of the General Provisions for Construction.

D.2 BIDDER'S CERTIFICATION OF ELIGIBILITY

The Bidder shall certify that neither it nor its principals are included on the State of New Jersey, Department of the Treasury, Consolidated Debarment Report or on the State of New Jersey, Department of Labor and Workforce Development, Division of Wage and Hour

Compliance, Prevailing Wage Debarment List. If the Bidder, or its principals, are included on such report, the Bidder may not be eligible for Award of Contract.

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, the Bidder may not be eligible for award of Contract.

D.3 DISCLOSURE OF INVESTMENT ACTIVITIES IN IRAN

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 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 and shall result in a rejection of the Bid.

E. BID PREPARATION AND SUBMISSION PROCEDURES

E.1 EXAMINATION OF CONTRACT DOCUMENTS

The Bidder shall examine carefully the Contract Documents, project site and conditions affecting the procurement. By submitting a Bid, the Bidder acknowledges that it has carefully examined the Contract Documents and project site, and has satisfied itself as to the conditions affecting the procurement. NJ TRANSIT assumes no responsibility for any conclusions or interpretations made by the Bidder on the basis of the information made available by NJ TRANSIT.

E.2 BID FORM QUANTITIES

E.2.1 The quantities stipulated are approximate and are given only as a basis for the comparison of bids. NJ TRANSIT does not expressly, or by implication, represent that the actual amount of work will correspond to the estimated quantities stipulated in the Bid Form.

NJ TRANSIT reserves the right to increase or decrease the amount of any class or portion of the Work or omit portions of the Work.

E.2.2 The Bid Form may include Pay Items that have been designated as Allowances. Such items may or may not be shown on the Contract Drawings. NJ TRANSIT, in its sole discretion, may or may not incorporate Allowances into the Project.

E.3 PREPARATION OF THE BID

E.3.1 The Bidder shall ensure that all Addenda, including Amendments to the Bid Form, are applied to the Bid in the electronic bidding file and properly acknowledged. The Bidder shall insert the price for each Pay Item in the appropriate box provided under the column designated "Unit Price". The only entries permitted in the Bid Form will be the lump sum prices or unit prices for items that shall be bid. The software will perform all extensions of the unit prices and calculate the total bid amounts.

E.3.2 Prices shall be provided for all items called for on the Bid Form. All bid prices must be quoted in numeric form. When the Bidder intends to bid zero dollars (\$0.00) for a Pay Item, the Bidder shall insert a "0" in the appropriate box under the "Unit Price" column. Where no figure is provided by the Bidder in the "Unit Price" column for one or more Contract Items, the Bid will be considered to be nonconforming and shall be rejected.

E.3.4 Alternate bids for any item will not be considered unless specifically requested in the Bid.

E.3.4 The Bidder shall check the Bid before submission using the software. The Bidder shall select "tools" and then select "check bid" and ensure there are no errors prior to submitting the electronic bid. For bids submitted by Joint Ventures select "tools" from the software menu and mark the electronic bid as "Joint Bid." The Bidder may print a completed Proposal Form for their records after completing the bid. Bidders are advised that the "check bid" function does not determine responsiveness of the Bid.

E.4 SBE PROGRAM COMPLIANCE REQUIREMENTS

E.4.1 The Bidder shall refer to NJ TRANSIT's "SBE Requirements for State Funded Construction Contracts and Subcontracts with Small Businesses Enterprises," available for download with the electronic bidding documents, for instructions, guidance, and explanations for the SBE program obligations under this Contract.

For this Contract, the apparent low Bidder and the second low Bidder shall identify all SBE and non-SBE Subcontractors, Subconsultant and suppliers proposed to participate in and those solicited for Contract and shall complete and submit to NJ TRANSIT, in care of the Contract Specialist, the mandatory SBE Form A-Schedule of SBE Participation, SBE Form

A1–Contractor Participation and Bidder Solicitation, SBE Form A2–Non-SBE Subcontractor Utilization and SBE Form B–Intent to Perform as a SBE Subcontractor. The apparent low Bidder and the second low Bidder must also submit a valid State of New Jersey Division and Revenue and Enterprise Services certificate for all SBE firms identified to perform under this Contract. Additionally, the Bidder shall submit any applicable supplemental forms (Form D). All SBE forms and certificates shall be submitted to NJ TRANSIT, in care of the Contract Specialist with the Bid or within five (5) calendar days after the bid opening date. However, Bidders are strongly encouraged to submit all mandatory documents with the Bid to prevent delay of the Contract award. Bidders are requested to review carefully and complete the forms entirely, with no blank fields.

Notwithstanding the date of submission of the mandatory SBE forms, all negotiations between a Bidder and any potential SBE Subcontractor, Subconsultant, or supplier shall be completed prior to the bid opening date. All SBE forms are included in the “SBE Requirements for State Funded Construction Contracts and Subcontracts with Small Businesses Enterprises,” available for download with the electronic bidding documents.

Failure to submit any and all mandatory material SBE documentation within five (5) calendar days after the Bid Opening shall result in a rejection of a Bid as non-responsible.

Any questions regarding the SBE requirements or the mandatory required forms for this Contract should be directed to the Office of Business Development Specialist identified in the Special Provisions.

- E.4.2 If the procurement has been designated a 100% SBE Set-Aside, Bidder shall certify with its bid submission that it is currently registered as an SBE with the State of New Jersey. In addition, the apparent low Bidder and second low Bidder are required to submit proof of registration in the form of the SBE Certificate issued by the State of New Jersey Division and Revenue and Enterprise Services and SBE Form A - Schedule of SBE Participation, SBE Form A1– Contractor Participation and Bidder Solicitation, SBE Form A2 – Non-SBE Subcontractor Utilization, SBE Form B– Intent to Perform as a SBE Subcontractor, SBE Form C – Affidavit of SBE Certification/Approval and SBE Form D– SBE Firms Unavailability Certification, if appropriate, to NJ TRANSIT in care of the Contract Specialist within five (5) calendar days after the date for receipt of bids.

E.5 BID GUARANTEE

E.5.1 Bids shall be accompanied by Bid Security, as defined in N.J.A.C. 16:72-1.2, in the form of a Bid Bond, Cashier's Check, Certified Check or irrevocable Letter of Credit drawn to the order of NJ TRANSIT, to serve as a guarantee that the Bidder will, upon NJ TRANSIT's acceptance of its Bid, execute contractual documents as may be required. Cash is not considered an acceptable form of security.

E.5.2 Whenever the Bid Security accompanying the Bid is a Bid Bond in electronic form, the Bidder shall complete the electronic bond form. 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 the New Jersey Transit Corporation.

Whenever the Bid Security accompanying the Bid is a Bid Bond in non-electronic form, 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 the New Jersey Transit Corporation. The Bid Bond shall be delivered to NJ TRANSIT's Bid Desk located at One Penn Plaza East, 6th Floor, Newark, New Jersey prior to the time and date set for the opening of bids. Failure to deliver such Bid Bond to NJ TRANSIT's Bid Desk prior to the time set for the opening of bids shall result in rejection of the bid as non-responsive.

E.5.3 Pursuant to N.J.A.C. 16:72-2.2, whenever the Bid Security is a Letter of Credit, it shall be issued by a Federally "insured financial institution " 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 also be drawn on an account with an "insured bank" within the meaning of the Act creating the Federal Deposit Insurance Corporation (12 U.S.C. 1811).

The Letter of Credit, Cashier's Check or Certified Check shall be delivered to NJ TRANSIT's Bid Desk located at One Penn Plaza East, 6th Floor, Newark, New Jersey prior to the time and date set for the opening of bids. Failure to deliver such Cashier's Check, Certified Check or irrevocable Letter of Credit to NJ TRANSIT's Bid Desk prior to the time set for the opening of bids shall result in rejection of the bid as non-responsive.

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 and will result in a rejection of the Bid.

E.5.4 The amount of the Bid Security shall equal at least ten percent (10%) of the total amount bid. A Bid shall be rejected as non-responsive if it is not accompanied by satisfactory Bid Security.

E.6 BID VALIDITY

NJ TRANSIT reserves the right to issue a Notice of Award to the successful Bidder, as determined by NJ TRANSIT, at any time for a period of one hundred-twenty (120) calendar days following the date of bid opening. If necessary, requests for extensions of the date for issuance of the notice of award or contract execution may be made by NJ TRANSIT by written request to Bidders.

E.7 WITHDRAWAL OF BIDS

Bids may be withdrawn at any time prior to the time specified for the opening of Bids by using the "Tools" feature of the software, selecting "View Submitted Bids" and then selecting "Withdraw Bid." 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 are subject to N.J.A.C. 16:72-2.19.

E.8 SUBMISSION OF MULTIPLE BIDS

Submission of more than one 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.

E.9 SUBMISSION OF BIDS

E.9.1 Once the Bidder has completed its bid, the Bidder shall submit the electronically signed bid via the Internet. The Bidder shall ensure delivery of its bid with all required components and attachments.

- E.9.2 The Bidder is solely responsible for any and all errors and for timely submission of the bid, all components thereof, and all attachments thereto, through the electronic bidding system; NJ TRANSIT assumes no responsibility for any claim arising from the failure of any Bidder or of the electronic delivery system to cause any bid, bid component, or attachment to not be delivered to NJ TRANSIT on or before the time set for bid opening.

F. BID OPENING

F.1 PUBLIC OPENING OF BIDS

Bids will be publicly opened and read aloud at the advertised time and place set for such Bid opening, unless NJ TRANSIT extends the time for opening of Bids. NJ TRANSIT reserves the right at its sole discretion to extend the time for opening of Bids at any time prior to the opening of the Bids. Their contents will be made public for the information of Bidders and other interested parties.

F.2 UNOPENED BIDS

NJ TRANSIT may reject a bid, if the Bidder has not been prequalified in accordance with Paragraph C.2, above, or for other material violations of NJ TRANSIT's bidding requirements.

F.3 CONDITIONALLY ACCEPTED

All Bids opened by NJ TRANSIT shall be considered conditionally accepted pending NJ TRANSIT's detailed review and examination of the Bids.

G. IRREGULAR BIDS

G.1 IRREGULARITIES AND NON-CONFORMANCES

Bids will be considered irregular and shall be rejected for the following reasons:

1. If the Bid materially fails to conform to the requirements of the Invitation for Bids.
2. If the Bid is received from a firm which is not adequately prequalified or is otherwise determined to be not responsible.
3. If the Bid is not received by the specified date and time.
4. If the Bidder fails to furnish Bid Security in accordance with Paragraph E.5.
5. If the Bidder takes material exception to any of the Bid requirements.
6. If the Bid is not digitally signed by the authorized representative of the Bidder
7. If the Bidder fails to deliver before receipt of the bid or with the bid, the Ownership Disclosure Form as required by N.J.S.A. 52:25-24.2.
8. If the Bidder fails to complete the Disclosure of Investment Activities in Iran certification.

9. If the Bidder or any named Subcontractor is not registered pursuant to the Public Works Contractor Registration Act, N.J.S.A. 34:11-56.48 et seq., at the time the bid is made.

Bids will be considered irregular and may be rejected for the following reasons:

1. If the Bidder fails to comply with all material EEO/SBE requirements.
2. If the Bidder fails to submit or complete any of the mandatory SBE forms.
3. Subject to Paragraph G.2, if the Bid is not properly completed.
4. If all addenda are not properly acknowledged by the Bidder.
5. If the Bid contains prices that are materially unbalanced.
6. For other reasons, if NJ TRANSIT deems it advisable to do so in the public interest.

G.2 RIGHT TO REJECT OR WAIVE

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.

H. AWARD AND EXECUTION OF CONTRACT

H.1 CALCULATION OF BIDS

H.1.1 After the Bids are opened and read, they will be compared on the basis of the correctly determined summation of the correctly determined products of all the quantities for Contract Items shown in the Bid multiplied by the unit prices bid. The results of such comparisons will be made available to the public. Award will be made on the basis of the correct total Contract price.

H.1.2 In the event an error is encountered with the software and a discrepancy exists between the unit price bid for any Contract Item and the extension shown for that item under the column of the Bid designated "Extension," the unit price shall govern.

H.2 SINGLE BIDS

If only one Bid is received in response to the Invitation for Bids, a detailed cost proposal may be requested of the single Bidder. A cost/price analysis and evaluation and/or audit may be performed of the cost proposal in order to determine if the price is fair and reasonable.

H.3 DETERMINATION OF LOW BID

The award of the firm-fixed-price Contract, if it is awarded, will be to that responsible Bidder whose bid, conforming to the Invitation for Bids, is lowest in price.

H.4 AWARD PROCESS

Contract Award is a process initiated by NJ TRANSIT when it issues the Notice of Award, includes the period when the Contractor executes and returns the Contract, and is completed when NJ TRANSIT executes the Contract.

H.5 CANCELLATION OF AWARD

NJ TRANSIT reserves the right to cancel the Award of any Contract before execution of the Contract by NJ TRANSIT, even if it has been executed by the Contractor, if NJ TRANSIT deems such cancellation to be in its best interests. In no event will NJ TRANSIT have any liability for the cancellation of such award. The Contractor assumes sole risk and responsibility for expenses prior to execution of the Contract and shall not commence work until receipt of the written Notice to Proceed.

H.6 CONTRACT BONDS

Pursuant to N.J.S.A. 2A:44-143 through 147, as amended, and N.J.A.C. 16:72-2.3 the Bidder to whom the Contract is awarded shall furnish the following bonds in a form substantially similar to that provided by NJ TRANSIT.

H.6.1 A Performance Bond equal to one-hundred percent (100%) of the Contract price to secure fulfillment of the Contractor's obligations specified in the Contract.

H.6.2 A Payment Bond equal to one-hundred percent (100%) of the Contract price to protect firms or persons supplying labor or materials to the Contractor for the performance of work provided for in the Contract.

H.6.3 Performance and Payment Bonds must be executed by surety companies licensed to do business in the State of New Jersey and listed in the U.S. Treasury Department Circular 570 as of the date for receipt of Bids.

H.6.4 Provisions of the Performance and Payment Bonds shall not limit any liability of the Contractor to NJ TRANSIT.

- H.6.5 The Performance and Payment Bonds shall continue in full force and effect until receipt by NJ TRANSIT of Contractor affidavits of payments, debts, claims and until final Acceptance of the Work.
- H.6.6 All alterations, extensions of time, extra and additional work, and other changes authorized by the Contract Documents may be made without securing the consent of the Surety or Sureties on the Performance Bond and Payment Bond.
- H.6.7 The Performance and Payment Bonds will be paid for at the lump sum price bid therefore or at the actual cost of the Bonds to the Contractor, whichever price may be lower. Payment for the Bonds will be made only upon delivery to the Engineer of a receipted bill for the Bonds.
- H.6.8 If any Surety upon any Bond furnished in connection with this Contract becomes unacceptable to NJ TRANSIT, the Contractor shall promptly furnish such additional security as may be required from time to time to protect the interests of NJ TRANSIT and of persons supplying labor or materials in the prosecution of the Work contemplated by the Contract.

H.7 EXECUTION OF CONTRACT

Within ten (10) calendar days of receipt of a Notice of Award, the Bidder to whom the Contract is awarded shall deliver to NJ TRANSIT the Bonds, specified certificates and policies of insurance, and other specified documents required herein by NJ TRANSIT and shall properly execute two (2) copies of the Contract by signing the Contract Execution Form, as shown in Appendix C of the General Provisions for Construction. NJ TRANSIT will execute both copies of the Contract and will return one (1) copy to the Contractor.

- H.7.1 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 Bidder agrees to comply with the following:

At the time the signed contract is returned to NJ TRANSIT, the Bidder that has been awarded the Contract shall submit to NJ TRANSIT and the New Jersey Department of Treasury, Division of Public Contracts Equal Employment Opportunity Compliance and Initial Project Workforce Report (Form AA-201) consisting of forms provided by NJ TRANSIT and completed by the Contractor in accordance with Subchapter 7 of the regulations promulgated by the Treasurer pursuant to P.L. 1975, c.127. Contractors shall

comply with NJ TRANSIT's General Provisions for Construction, Article 11.2 entitled "Equal Opportunity."

H.8 FAILURE TO EXECUTE CONTRACT

Failure of a Bidder to whom the Contract is awarded to execute the Contract or to file acceptable bonds or certificates and policies of insurance, as provided herein, shall be just cause for the annulment of the award and the forfeiture of such Bidder's Bid Security.

H.9 RELIEF OF BIDDERS

No Bidder shall be relieved of his Bid, nor shall any change be made in his Bid, because of a mistake, except as provided under applicable New Jersey Statutes and Administrative Codes.

H.10 RELEASE OF BID GUARANTEES

Within thirty (30) calendar days of Bid opening, NJ TRANSIT will release or return, as appropriate, the Bid Security of all but the two lowest responsible Bidders. The Bid Security of the two lowest Bidders shall be released or returned upon execution and delivery of the Contract and Performance and Payment Bonds by the Bidder to whom the Contract has been awarded as required by H.6.

I. PROTEST PROCEDURE

I.1 PURPOSE

This section describes the policies and procedures governing the receipt and resolution of bid protests in connection with an Invitation for Bid (IFB).

I.2 DEFINITIONS

Definitions Applicable to Instructions to Bidders, Section I, entitled "Protest Procedure"

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

I.3 PROCEDURE

I.3.1 Parties

Only an Interested Party may file a protest.

I.3.2 Types of Protests/Time Limits

- a. Protests based upon a challenge to the specifications or alleged improprieties in NJ TRANSIT's procurement process must be filed no later than fourteen (14) calendar days prior to the Bid opening date.
- b. Protests based upon alleged improprieties of a Bid submission shall be filed no later than five (5) business days after the apparent Bid results are posted to the Bid Express website.
- c. Protests based upon the rejection of a Bid shall be filed no later than five (5) business days after the protestor receives notification of rejection from NJ TRANSIT.
- d. Protests based upon the award of a contract shall be filed no later than five (5) business days after receipt of NJ TRANSIT's Notice of Intent to Award.
- e. All protests must be filed in writing. Oral protests will not be accepted.

I.3.3 Where To File

Protests must be filed directly with NJ TRANSIT's Contracting Officer at the address below and identifying the IFB Number.

Contracting Officer
NJ TRANSIT
One Penn Plaza East, Sixth Floor
Newark, NJ 07105

IFB NO.: _____

I.3.4 The Protest

- a. The protest must contain the following information:
 - (i) The name, address and telephone number of the protestor.
 - (ii) Identity of the IFB (by number and description).
 - (iii) A statement of the specific grounds for protest and any supporting documentation. Additional materials in support of the protest will only be considered if filed within the time limits set in Paragraph I.3.2.
 - (iv) An indication of the ruling or relief desired from NJ TRANSIT.

I.3.5 Confidentiality of Protest

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

I.3.6 Protest Procedures for I.3.2A: Challenges to a Specification

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

I.3.7 Protest Procedures for I.3.2 (b), (c), and (d): Challenges to a Bid Submission, Bid Rejection or Contract Award.

- (a) An Interested Party who finds cause to protest in accordance with Section I.3.2 (b), (c), or (d), as set forth above, may submit a written protest to NJ TRANSIT's Contracting Officer setting forth in detail the grounds for such protest. All written protests must conform to the time requirements as set forth above. Failure to timely submit a protest may result in the disregard of a protest.
- (b) The written protest shall contain the following information:
 - (i) Identification of the IFB number;
 - (ii) The specific grounds for the protest, including all arguments materials and/or other documentation that may support the protestor's position;
 - (iii) A statement as to whether the protestor requests an opportunity for an in-person presentation and the reason(s) for the request. The opportunity for in-person presentation is at the sole discretion of the NJ TRANSIT Contracting Officer and subject to the terms of I.3.6(c)(i) set forth below.
 - (iv) Failure by a protestor to include all required information may result in disregard of the protest.
- (c) Protests accepted by NJ TRANSIT shall be resolved in writing on the basis of NJ TRANSIT's review of the record, including, but not limited to, the written protest, the terms, conditions and requirements of the IFB, pertinent administrative rules, statutes, and case law, and any associated documentation NJ TRANSIT deems appropriate. In cases where no in-person hearing is held, the written record shall, in and of itself, constitute a hearing. The determination by NJ TRANSIT shall be a final agency decision.
 - (i) NJ TRANSIT has the sole discretion to determine if an in-person presentation by the protestor is necessary to reach an informed decision on the matter(s) of the protest. In-person presentations are for the benefit of NJ TRANSIT. NJ TRANSIT also has the discretion to limit attendance at an in-person presentation, when granted.
 - (ii) NJ TRANSIT's decision will address only the issues raised originally by the protestor.

I.3.8 Request for Additional Information

- (a) NJ TRANSIT's Contracting Officer, or designee, is entitled to request, receive, and review copies of any and all records and documents deemed appropriate and relevant to the issues and arguments set forth in the protest. Upon receipt of a request by NJ TRANSIT's Contracting Officer, or designee, the protestor shall

promptly provide the requested records and documents free of charge within the time frame specified by NJ TRANSIT.

- (b) If the protestor fails to comply with the provisions of this section, such failure may constitute a reasonable basis for NJ TRANSIT to resolve the protest against the protestor. Failure of a protestor to comply expeditiously with a request for information as specified by NJ TRANSIT's Contracting Officer, or designee, may also result in determination of the protest without consideration of the additional information.
- (c) NJ TRANSIT's Contracting Officer, or designee, may also consider relevant information requested and received from other parties deemed appropriate by NJ TRANSIT.

I.3.9 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, 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.

I.3.10 Federal Transit Administration (FTA) Involvement

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