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Instructions To Bidders For Construction

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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 contains all applicable amendments. NJ TRANSIT has the right to reject Bids that do not contain an acknowledgement of all applicable Addenda to the Schedule of Items to be bid. No response may be made by NJ TRANSIT to inquiries received less than ten (10) calendar days prior to the scheduled Bid opening.

B.3 ACKNOWLEDGMENT OF RECEIPT OF ADDENDA

Bidders are required to 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 an 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 Disadvantage Business Enterprise (DBE) 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 the IFB, 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 DBE 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 the State of New Jersey. To obtain a certificate of authority, a foreign corporation should 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 Contractors, 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 Contractors based on all factors related to Contractor responsibility as set forth in N.J.A.C. 16:72-1.4, and any pertinent information relating to the qualification of Contractors, ("Prequalification Classification and Rating").

A Prequalification Classification and Rating shall be assigned to Contractors based on information submitted by them in response to 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 fully completed Prequalification Questionnaire by that date may result in a denial of Prequalification for the IFB.

The required prequalification character 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 Contractor is past experience with work similar both in nature and in magnitude to the prequalification classification and rating requested by the Contractor. Failure, either in 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 will only be conducted for those Bidders who have subscribed to NJ TRANSIT's electronic bidding service, have downloaded the relevant Bid Documents from NJ TRANSIT's electronic bidding website www.bidx.com, are intending to bid as a prime Contractor or as a member of a joint venture, and have submitted a completed Prequalification Questionnaire.

Firms seeking to submit Bids as Joint Ventures are advised that both firms must submit Prequalification Questionnaires independently, in addition to a Statement of Joint Venture form executed by both firms. A rating and classification shall be assigned to each firm and a determination shall be made as to the Joint Venture's eligibility to submit a Bid in response to this IFB only.

Two or more firms which maintain an ongoing Joint Venture relationship may request Prequalification as a single entity, 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.

C.3. DISADVANTAGED BUSINESS ENTERPRISES("DBE") GOAL ASSIGNMENT

Disadvantaged Business Enterprises, in accordance with the Department of Transportation (DOT) Regulations located at 49 C.F.R. Part 26, shall have the maximum opportunity to participate in the performance of this contract. The DBE subcontracting goals are identified in the Special Provisions for this Project.

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 Contractors shall not Bid on any contract for public work unless the Contractor is 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 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, proof of valid registration shall

be submitted 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 Contractor Registration Certificate for all Subcontractors listed in the Bid in accordance with N.J.S.A. 34:11-56.55. Applications for registration from either the Contractor 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 1.9.2.

C.5 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 10 percent 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%) of 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%) of 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.6 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.7 BUSINESS REGISTRATION NOTICE

Pursuant to N.J.S.A. 52:32-44 (a), "Business registration" means a business registration certificate issued by the Division of Revenue in the Department of the Treasury or such other form of verification or proof of registration as may be approved by the Division that a Contractor or Subcontractor is registered with the Department of the Treasury.

In accordance with N.J.S.A. 52:32-44, the Bidder shall provide NJ TRANSIT with its Business Registration Certificate and that of any named Subcontractor(s) prior to the time a Contract is awarded or authorized. The 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 Contractor unless the Subcontractor first provides proof of valid business registration. In conjunction with the

Subcontractor approval process detailed in General Provision 1.9.2, the Contractor shall provide a copy of the Business Registration Certificate for each Subcontractor.

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

This section is governed by the requirements set forth in 2 C.F.R. Parts 180 and 1200. By signing and submitting a Bid the prospective 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 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.

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.

The prospective lower tier participant agrees by submitting a Bid 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.

The prospective lower tier participant further agrees by submitting a Bid 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 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. 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 fourth 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 prospective lower tier participant certifies by submission of this Bid that neither it nor its principals (as defined at 2 C.F.R. Part 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 prospective lower tier participant is unable to certify to the statements in this certification, such prospective participant shall attach an explanation to this proposal.

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

D.3 STATE DEBARMENT AND SUSPENSION CERTIFICATION

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 is included on such report, the Bidder may not be eligible for Award of Contract.

D.4 LIMITATIONS ON LOBBYING

(APPLICABLE FOR FEDERALLY FUNDED PROJECTS VALUED OVER $100,000)

By signing and submitting a Bid, the prospective lower tier participant, defined as a Contractor or Subcontractor, is providing the signed certification set out below. 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 31 U.S.C. 1352. Any person who fails to file or amend a declaration required to be filed or amended under 31 U.S.C. 1352 shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Bidder 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) At the end of each calendar quarter in which there occurs any event that materially affects the accuracy of the information contained in any declaration previously filed in accordance with D.4.1 or D.4.2 above, Bidders shall file an updated certification or declaration, as appropriate, in accordance with 31 U.S.C. 1352.

(4) The Bidder shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

D.5 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 he has carefully examined the Contract Documents and project site, and has satisfied himself 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 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.

E.4 DBE FORMS AND CERTIFICATION

E.4.1 All Bidders shall refer to NJ TRANSIT's DBE Requirements for Federally Funded Construction Contracts and Subcontracts for the requirements concerning the DBE obligations and mandatory submissions for this Contract. In accordance with those requirements, the apparent low Bidder and the second low Bidder shall identify all DBE and Non-DBE subcontractors and suppliers proposed to participate in or those solicited for this contract, and must complete and submit the mandatory DBE Forms A, A1, A2,

B, and D, if applicable; the New Jersey Unified Certification Program (NJUCP) DBE certificate or letter; and any applicable supplemental forms AA, AA1, AA2 and BB to NJ TRANSIT, in the care of the Contract Specialist, within five (5) calendar days after the date for receipt of Bids. All negotiations between a Bidder and its DBE subcontractors much occur prior to the bid opening date.

The apparent low Bidder and second low Bidder are also required to submit DBE Certificates, as issued by the certifying agency, for each firm or Subcontractor listed on DBE Form A to NJ TRANSIT, in the care of the Contract Specialist, within five (5) calendar days after the date for receipt of Bids. Bidders are strongly encouraged to submit these forms with the Bid to prevent delay of award. Bidders are requested to review forms carefully and complete all forms in their entirety, with no blank fields. Failure to submit all mandatory forms within five (5) calendar days after the Bid opening date shall result in rejection of the Bid as non-responsible.

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 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 may be made by NJ TRANSIT by written request to Bidders. The Bid shall remain valid through the date NJ TRANSIT fully executes the contract.

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 and leave the Bid unopened, 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

A. 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.

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

1. If the Bidder fails to comply with all material EEO/DBE requirements.
2. If the Bidder fails to submit or complete any of the mandatory DBE 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 any expenses incurred 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. 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 statue 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 a party that is an actual or prospective bidder or offeror whose direct economic interest would be affected by the award or failure to award the third party contract at issue.

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 a Bidder 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) A protestor 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 protesting protestor fails to comply with the provisions of this section, such failure may constitute a reasonable basis for NJ TRANSIT to resolve the protest against the protestor submitting the protest. Failure of a protestor to comply expeditiously with a request for information as specified by NJ TRANSIT's Contracting Officer, or designee, may also result in determination of the protest without consideration of the additional information.

(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.