

CHAPTER 72**NEW JERSEY TRANSIT PROCUREMENT
POLICIES AND PROCEDURES****Authority**

N.J.S.A. 2A:44-143, 27:25-5(e) and 27:25-11;
49 U.S.C. §§5301 et seq.; and 49 CFR Part 18.

Source and Effective Date

R.2006 d.208, effective May 10, 2006.
See: 37 N.J.R. 4902(a), 38 N.J.R. 2511(a).

Chapter Expiration Date

In accordance with N.J.S.A. 52:14B-5.1c, Chapter 72, New Jersey Transit Procurement Policies and Procedures, expires on November 6, 2013. See: 43 N.J.R. 1322(b).

Chapter Historical Note

Chapter 72, New Jersey Transit Procurement Policies and Procedures, was adopted as R.1981 d.176, effective June 4, 1981. See: 13 N.J.R. 158(a), 13 N.J.R. 374(d).

Pursuant to Executive Order No. 66(1978), Chapter 72, New Jersey Transit Procurement Policies and Procedures, was readopted as R.1986 d.134, effective March 31, 1986. See: 18 N.J.R. 404(a), 18 N.J.R. 847(c).

Pursuant to Executive Order No. 66(1978), Chapter 72, New Jersey Transit Procurement Policies and Procedures, was readopted as R.1991 d.206, effective March 20, 1991. See: 23 N.J.R. 290(a), 23 N.J.R. 1148(b).

Pursuant to Executive Order No. 66(1978), Chapter 72, New Jersey Transit Procurement Policies and Procedures, expired on March 20, 1996.

Chapter 72, New Jersey Transit Procurement Policies and Procedures, was adopted as new rules by R.1996 d.239, effective May 20, 1996. See: 28 N.J.R. 1358(b), 28 N.J.R. 2566(b).

Pursuant to Executive Order No. 66(1978), Chapter 72, New Jersey Transit Procurement Policies and Procedures, was readopted as R.2001 d.191, effective May 14, 2001. See: 33 N.J.R. 987(a), 33 N.J.R. 1924(b).

Chapter 72, New Jersey Transit Procurement Policies and Procedures, was readopted by R.2006 d.208, effective May 10, 2006. See: Source and Effective Date. See, also, section annotations.

In accordance with N.J.S.A. 52:14B-5.1b, Chapter 72, New Jersey Transit Procurement Policies and Procedures, was scheduled to expire on May 10, 2013. See: 43 N.J.R. 1203(a).

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SUBCHAPTER 1. GENERAL PROVISIONS**16:72-1.1 Source for public information**

The public may receive information concerning NJ TRANSIT's procurement program by contacting the Procurement Department, NJ TRANSIT, One Penn Plaza East, Newark, New Jersey 07105-2246 or www.njtransit.com/db_pr.shtml.

Amended by R.1990 d.539, effective January 7, 1991.
See: 22 N.J.R. 2460(a), 23 N.J.R. 119(b).

Text on description of organization deleted; text on source for public information recodified from section 1.2.

Amended by R.1994 d.211, effective May 2, 1994.

See: 26 N.J.R. 908(b), 26 N.J.R. 1842(a).

Amended by R.2006 d.208, effective June 5, 2006.

See: 37 N.J.R. 4902(a), 38 N.J.R. 2511(a).

Inserted "or www.njtransit.com/db_pr.shtml".

16:72-1.2 Definitions

The following words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise:

"Affiliates" means persons having an overt or covert relationship such that any one of them directly or indirectly controls or has the power to control another.

"Bid security" means a guarantee, in the form of a bond or deposit consisting of a cashier's check, certified check or irrevocable letter of credit that the bidder, if selected, will accept the contract as bid; otherwise, the bidder or its guarantor will be liable for the amount of the loss suffered by NJ TRANSIT, which loss may be partially or completely recovered by NJ TRANSIT in exercising its rights against the bond or deposit.

"Contracting" means any arrangement giving rise to an obligation to supply anything or perform any service for NJ TRANSIT, other than by virtue of employment, or to supply anything to or perform any service for a private or public person where NJ TRANSIT provides substantial financial assistance and retains the right to approve or disapprove the nature or quality of the goods or services or the persons who may supply or perform the same.

"Days" means calendar days unless otherwise specified.

"Debarment" means an exclusion from NJ TRANSIT contracting, on the basis of a lack of responsibility evidenced by an offense, failure or inadequacy of performance, for a reasonable period of time commensurate with the seriousness of the offense, failure or inadequacy of performance.

"Disqualification" means a debarment or suspension which denies or revokes a qualification to bid or otherwise engage in NJ TRANSIT contracting which has been granted or applied for pursuant to statute, or rules and regulations.

"Line item" means a procurement item specified in the Invitation for Bids for which the bidder is asked to give individual pricing information.

"NJ TRANSIT means the New Jersey Transit Corporation which was established by N.J.S.A. 27:25-1 et seq. and its subsidiaries.

"Payment bond" means a guarantee in the form of a bond that the vendor will pay all of its obligations to its subcontractors and suppliers and that NJ TRANSIT subcontractors and suppliers will be protected from loss in the event that the vendor fails to make payment as agreed.

"Performance bond" means a guarantee, provided prior to execution of a contract, in the form of a bond that the successful bidder will complete the contract as agreed and that NJ TRANSIT will be protected from loss in the event the vendor fails to complete the contract as agreed.

"Person" means any natural person, company, firm, association, corporation, or other entity.

"Procurement" means the awarding of contracts for construction, alterations, supplies, equipment, repairs or maintenance, or for rendering any services to NJ TRANSIT.

"Suspension" means an exclusion from NJ TRANSIT contracting for a temporary period of time, pending the completion of an investigation or legal proceedings.

"Term contract" means a contract in which a source or sources of supply are established for a specified period of time, usually characterized by an estimated or definite minimum quantity, with the possibility of additional requirements beyond the minimum, all at a predetermined unit price.

"Vendor" means any person, firm, corporation, or other entity which provides or offers or proposes to provide goods or services to or perform any contract for NJ TRANSIT.

Amended by R.1990 d.539, effective January 7, 1991.

See: 22 N.J.R. 2460(a), 23 N.J.R. 119(b).

Text on source for public information recodified to section 1.1; definitions recodified from section 1.3, with "Director" and "Division" deleted and "Payment bond" and "Vendor" added.

Amended by R.1994 d.211, effective May 2, 1994.

See: 26 N.J.R. 908(b), 26 N.J.R. 1842(a).

Amended by R.1996 d.239, effective May 20, 1996.

See: 28 N.J.R. 1358(b), 28 N.J.R. 2566(b).

Amended by R.2006 d.208, effective June 5, 2006.

See: 37 N.J.R. 4902(a), 38 N.J.R. 2511(a).

In the definition of "Debarment" deleted the commas following both occurrences of "failure".

16:72-1.3 Competition

All purchases, whether by formal advertising or otherwise, shall be made on a competitive basis to the maximum practicable extent.

Amended by R.1990 d.539, effective January 7, 1991.

See: 22 N.J.R. 2460(a), 23 N.J.R. 119(b).

Definitions recodified to section 1.2; text on competition recodified from section 1.4.

16:72-1.4 Responsible contractors

(a) Procurements shall be made from, and contracts shall be awarded to, responsible contractors only. A responsible contractor is one who meets the following standards:

1. Has adequate financial resources, or the presently certifiable ability to obtain such resources, as required during the performance of the contract, if adequate security is not otherwise furnished;
2. Is able to comply with the required or proposed delivery or performance schedule;

3. Has a satisfactory record of performance or the equivalent;

4. Has a satisfactory record or reputation of integrity;

5. Is otherwise qualified and eligible to receive an award under applicable laws and regulations;

6. Has the necessary organization, experience, operational controls and technical skills, or the ability to obtain them; and

7. Has the necessary production, construction and technical equipment and facilities, or the ability to obtain them.

(b) NJ TRANSIT shall establish procedures for determining whether a prospective contractor has met the standards of a responsible contractor.

(c) A prospective contractor shall be deemed not responsible with respect to a specific matter for which bids are solicited when NJ TRANSIT has previously held it in default on a contract for that matter.

(d) All contractors must be authorized to do business in the State of New Jersey.

(e) Disclosure shall be made by all prospective contractors of names and addresses of all stockholders and/or partners holding 10 percent or more interest in the firm.

Amended by R.1990 d.539, effective January 7, 1991.
See: 22 N.J.R. 2460(a), 23 N.J.R. 119(b).

Text on competition recodified to section 1.3; text on responsible contractors recodified from section 1.5.

Amended by R.2006 d.208, effective June 5, 2006.

See: 37 N.J.R. 4902(a), 38 N.J.R. 2511(a).

In (a), substituted "Procurements" for "Procurement" and inserted a comma following "resources" in (a)1.

16:72-1.5 Methods of procurement

(a) Invitation for bid: Except as provided in (c) and (d) below, the formal advertising procedures contained in N.J.A.C. 16:72-2 shall be followed for all purchases or contracts in excess of the amounts determined pursuant to Section 2 of P.L. 1954, c.48 (N.J.S.A. 52:34-7).

(b) Quotation: Except as provided in (c) and (d) below, purchases or contracts not in excess of the amounts determined pursuant to Section 2 of P.L. 1954, c.48 (N.J.S.A. 52:34-7) shall be made:

1. For purchases up to and including \$5,000—minimum of one quote;

2. For purchases from \$5,001 up to and including \$15,000—minimum of two verbal quotes; and

3. For purchases from \$15,001 up to the amount determined in (a) above – minimum of two written quotes.

(c) Request for proposals/negotiations: The procurement of professional and technical services in excess of the amounts determined pursuant to Section 2 of P.L. 1954, c.48 (N.J.S.A. 52:34-7) shall be accomplished through the is-

suance of a request for proposal to a minimum of three vendors and subsequent negotiation, except where determined by the Executive Director or his or her designee, in writing, that an alternative method of procurement is in NJ TRANSIT's best interest.

(d) Procurement-by-exception: The requirements of (a), (b) and (c) above may be waived under the following circumstances and the purchase or contract made in such manner as the Executive Director, or his or her designee, may determine is in the best interest of NJ TRANSIT:

1. The acquisition of public or private entities engaged in the provision of public transportation service, used public transportation equipment or existing public transportation facilities or rights of way;

2. The purchase of perishable foods or subsistence supplies;

3. The leasing of such office space, office machinery, specialized equipment, buildings or real property as may be required for the conduct of NJ TRANSIT's business;

4. The acquisition of any real property by gift, grant, purchase or any other lawful manner in the name of and for the use of NJ TRANSIT for the purpose of the administration of NJ TRANSIT's business in accordance with appropriations made therefor when moneys are required for the acquisition;

5. The procurement of supplies or services for which the bid prices after advertising therefor are not reasonable or have not been independently arrived at in open competition, provided that no negotiated purchase, contract, or agreement may be entered into under this paragraph after the rejection of all bids received unless:

i. Notification of the intention to negotiate and reasonable opportunity to negotiate shall have been given by NJ TRANSIT to each responsible bidder;

ii. The negotiated price is lower than the lowest rejected bid price of a responsible bidder; and

iii. Such negotiated price is the lowest negotiated price offered by any responsible supplier.

6. The purchase is to be made from, or the contract to be made with, the Federal or any State government or any agency or political subdivision thereof;

7. The public exigency requires the immediate delivery of the articles or performance of the service;

8. Only one source of supply is available;

9. More favorable terms can be obtained from a primary source of supply;

10. Articles of wearing apparel are to be purchased which are styled or seasonal in character;

11. Commodities traded on a national commodity exchange are to be purchased and fluctuations of the market require immediate action;

12. The equipment to be purchased is of a technical nature and the procurement thereof without advertising is necessary in order to assure standardization of equipment and interchangeability of parts in the public interest;

13. The procurement of services to be performed by the contractor personally under the supervision of the Executive Director, or his or her designee, and paid for on a time basis; and

14. To acquire or overhaul motorbuses, light rail vehicles, rail cars, locomotives, signal systems or fare collection systems.

(e) Authority for procurement-by-exception: The authority for procurement under the circumstances listed above rests with the Executive Director for procurement transactions not in excess of the amounts determined pursuant to Section 2 of P.L. 1954, c.48 (N.J.S.A. 52:34-7). Transactions in excess of the amounts determined pursuant to Section 2 of P.L. 1954, c.48 (N.J.S.A. 52:34-7) will require approval as may be set forth in the By-Laws of NJ TRANSIT.

(f) Fragmentation of requirements: NJ TRANSIT's purchase requirements shall not be split into parts for the purpose of avoiding the provisions of (a), (b), or (c).

Amended by R.1986 d.2, effective February 3, 1986.
See: 17 N.J.R. 2867(a), 18 N.J.R. 308(c).

(b): "\$500.00" changed to "\$2,000" and "\$2,000" changed to "\$5,000."
Amended by R.1990 d.539, effective January 7, 1991.
See: 22 N.J.R. 2460(a), 23 N.J.R. 119(b).

Text on responsible contractors recodified to section 1.4; text on methods of procurement recodified from section 1.6; with alternative procurement provisions added.

Amended by R.1994 d.211, effective May 2, 1994.

See: 26 N.J.R. 908(b), 26 N.J.R. 1842(a).

Amended by R.1996 d.546, effective December 2, 1996.

See: 28 N.J.R. 4181(a), 28 N.J.R. 5078(b).

Amended by R.2001 d.38, effective January 16, 2001.

See: 32 N.J.R. 3751(a), 33 N.J.R. 285(a).

Rewrote (b).

Amended by R.2006 d.208, effective June 5, 2006.

See: 37 N.J.R. 4902(a), 38 N.J.R. 2511(a).

Substituted "the amount determined in (a) above" for "\$25,000" in (b)3; in (d), inserted "and the purchase or contract made in such manner as the Executive Director, or his or her designee, may determine is in the best interest of NJ TRANSIT".

16:72-1.6 Records of procurement actions

In all procurement actions, each purchase order or contract file shall be supported by documentation of actions taken with respect to the procurement, including final disposition, sufficient to constitute a full history of the transactions. Records on bids and proposals shall be maintained for a period of seven years.

Recodified by R.1991 d.539, effective January 7, 1991.

See: 22 N.J.R. 2460(a), 23 N.J.R. 119(b).

Text on methods of procurement recodified to section 1.5; text on records of procurement actions recodified from section 1.7.

16:72-1.7 Execution of contracts

Any contract or instrument shall be deemed properly executed when signed by the Executive Director of NJ

TRANSIT or his designee. No contract or purchase order shall be entered into unless all applicable requirements of law and these regulations have been met, and the approval of the Board of NJ TRANSIT obtained when required.

Recodified by R.1991 d.539, effective January 7, 1991.

See: 22 N.J.R. 2460(a), 23 N.J.R. 119(b).

Text on records of procurement actions recodified to section 1.6; text on execution of contracts recodified from section 1.8.

16:72-1.8 Specifications

Plans, drawings, or specifications shall state only the actual minimum needs of NJ TRANSIT and describe the work to be performed in a manner which encourages maximum competition and eliminates, insofar as possible, any restrictive features which might limit acceptable offers to a relatively few bidders. Specifications, plans and drawings without reference to brand names or items manufactured by a single company shall be used to the maximum extent possible.

Amended by R.1990 d.539, effective January 7, 1991.

See: 22 N.J.R. 2460(a), 23 N.J.R. 119(b).

Text on specifications recodified from section 1.9, with stylistic changes.

16:72-1.9 Purchase descriptions

(a) A purchase description may be used in lieu of a specification, where the use of a specification is not feasible.

1. A purchase description should set forth the essential characteristics and functions of the item or materials required.

2. Purchase descriptions shall not be written so as to specify a product, or a particular feature of a product, peculiar to one manufacturer, unless it is determined that the particular feature is essential to NJ TRANSIT's requirements, and that similar products of other companies lacking the particular feature would not meet the minimum requirements for the item.

3. Generally, the minimum acceptable purchase description is the identification of a requirement by use of a brand name followed by the words "or equal".

i. Where a "brand name or equal" purchase description is used, prospective contractors must be given the opportunity to offer products other than those specifically referenced by brand name if such other products will meet the needs of NJ TRANSIT in essentially the same manner as those referenced.

Amended by R.1990 d.539, effective January 7, 1991.

See: 22 N.J.R. 2460(a), 23 N.J.R. 119(b).

Text on specifications recodified to section 1.8; text on purchase descriptions recodified from section 1.10.

16:72-1.10 Out-of-State vendors

All out-of-State corporations that wish to do business with NJ TRANSIT shall be afforded seven days to register with the Secretary of State of New Jersey, after notification by NJ TRANSIT of the intent to award that out-of-State firm a

contract. Failure to provide either certification or notification of filing with the Secretary of State within the seven-day period may constitute cause for rejection of that firm's bid or proposal.

Recodified by R.1991 d.539, effective January 7, 1991.
See: 22 N.J.R. 2460(a), 23 N.J.R. 119(b).

Text on purchase descriptions recodified to section 1.9; text on out-of-State vendors recodified from section 1.11.

16:72-1.11 (Reserved)

Recodified by R.1991 d.539, effective January 7, 1991.
See: 22 N.J.R. 2460(a), 23 N.J.R. 119(b).

Text on out-of-State vendors recodified to section 1.10.

SUBCHAPTER 2. BIDDING PROCEDURES

16:72-2.1 Advertising of bids

The advertisement for bids shall be placed in such newspaper or newspapers selected by NJ TRANSIT that will give best notice thereof to bidders. Advertisements shall be made a minimum of 20 calendar days in advance of the bid opening. The advertisement shall designate the time and place, when and where sealed bids shall be received and publicly opened and read, and such other terms as NJ TRANSIT may deem proper.

Amended by R.1990 d.539, effective January 7, 1991.
See: 22 N.J.R. 2460(a), 23 N.J.R. 119(b).

Deposit with bid deleted, unless specified.

16:72-2.2 Bid bonds

A bid bond or a deposit consisting of a cashier's check, certified check or irrevocable letter of credit drawn to the order of NJ TRANSIT in an amount to be determined by NJ TRANSIT, but not exceeding 50 percent of the bid, shall accompany all bids to serve as a guarantee that the bidder will, upon acceptance of its bid, execute such contractual documents as may be required within 10 working days after issuance of a notice of intent to award. Any bonds submitted pursuant to this section must be executed by surety companies licensed to do business in the State of New Jersey. Any letters of credit shall be issued by Federally insured financial institutions.

Amended by R.1990 d.539, effective January 7, 1991.
See: 22 N.J.R. 2460(a), 23 N.J.R. 119(b).

Stylistic changes.

Amended by R.1994 d.211, effective May 2, 1994.

See: 26 N.J.R. 908(b), 26 N.J.R. 1842(a).

Amended by R.2006 d.208, effective June 5, 2006.

See: 37 N.J.R. 4902(a), 38 N.J.R. 2511(a).

Deleted "(proposal)" following the first occurrence of "bid" in the first sentence and substituted "Any" for "any" at the beginning of the second sentence.

16:72-2.3 Performance and payment bonds

(a) In accordance with N.J.S.A. 2A:44-143 as amended, a performance bond not to exceed 100 percent of the contract

price shall be required of the successful bidder when a contract for public buildings, or other public works or improvements is awarded to secure fulfillment of the contractor's obligations specified in the contract. The bond percentage required, based upon NJ TRANSIT's assessment of the risks presented to the State by the type of contract and other relevant factors, shall be identified in the bid documents prior to the contract bidding date. NJ TRANSIT may waive the bond requirement entirely if the contract is for a sum not exceeding \$200,000. In determining whether to waive the bond requirement, NJ TRANSIT shall consider the following:

1. The nature and extent of the work to be performed;
2. The availability of potential bidders to perform the work; and
3. The financial and other capabilities of the potential bidders.

(b) A performance bond of less than 100 percent of the contract or some other form of security as set forth in the bid specifications prior to bid opening may be required, at NJ TRANSIT's sole discretion, of the successful bidder when a contract for other procurements is awarded to secure fulfillment of the contractor's obligation specified in the contract.

(c) In accordance with N.J.S.A. 2A:44-143 as amended, a payment bond not to exceed 100 percent of the contract price shall be required of the successful bidder when a contract for public buildings, or other public works or improvements is awarded to protect firms or persons supplying labor or materials to the contractor/subcontractor for the performance of work provided for in the contract. The bond percentage required, based upon NJ TRANSIT's assessment of the risks presented to the State by the type of contract and other relevant factors, shall be identified in the bid documents prior to the contract bidding date. NJ TRANSIT may waive the bond requirement entirely if the contract is for a sum not exceeding \$200,000. In determining whether to waive the bond requirement, NJ TRANSIT shall consider the following:

1. The nature and extent of the work to be performed;
2. The availability of potential bidders to perform the work; and
3. The financial and other capabilities of the potential bidders.

(d) A payment bond of less than 100 percent of the contract or some other form of security as set forth in the bid specifications prior to bid opening may be required, at NJ TRANSIT's sole discretion, of the successful bidder when a contract for other procurements is awarded to protect firms or persons supplying labor or materials to the contractor/subcontractor for the performance of work provided for in the contract.

(e) Performance and payment bonds must be executed by surety companies licensed to do business in the State of New Jersey.

Amended by R.1990 d.539, effective January 7, 1991.
See: 22 N.J.R. 2460(a), 23 N.J.R. 119(b).

Payment bond of 100% changed to performance bond of less than 100%.

Amended by R.1995 d.570, effective November 6, 1995.

See: 27 N.J.R. 2375(a), 27 N.J.R. 4445(a).

Amended by R.2006 d.208, effective June 5, 2006.

See: 37 N.J.R. 4902(a), 38 N.J.R. 2511(a).

Inserted the last occurrence of "or" in the first sentence.

16:72-2.4 Pre-qualification of firms for capital projects

(a) Prospective contractors, prior to bidding on improvements to capital facilities and equipment, must be pre-qualified as to the character or amount of work or both for which they are permitted to submit bids. Such prequalification shall be based on all factors relating to contractor responsibility as set forth in N.J.A.C. 16:72-1.4, and any pertinent information relating to the qualifications of contractors.

(b) Such pre-qualification, as noted in (a) above, shall be assigned contractors based on information submitted by them in response to a questionnaire provided by NJ TRANSIT. A prospective contractor dissatisfied with its pre-qualification classification may request an informal hearing to present additional information to justify a different classification. After hearing the additional evidence, NJ Transit may, in its discretion, change or modify the bidder's classification.

Amended by R.1990 d.539, effective January 7, 1991.
See: 22 N.J.R. 2460(a), 23 N.J.R. 119(b).

Stylistic changes.

Amended by R.1994 d.211, effective May 2, 1994.

See: 26 N.J.R. 908(b), 26 N.J.R. 1842(a).

Amended by R.1996 d.239, effective May 20, 1996.

See: 28 N.J.R. 1358(b), 28 N.J.R. 2566(b).

16:72-2.5 Amendment of Invitation for Bids

(a) If, after issuance of an Invitation for Bids, but before the time for bid opening, it becomes necessary to make changes in quantity, specifications, delivery schedules, opening dates, etc., or to correct a defective or ambiguous Invitation, such changes shall be accomplished by issuance of an amendment to the Invitation for Bids.

1. The amendment shall be sent to everyone to whom Invitations have been furnished.

2. The amendment shall be issued a reasonable time before the scheduled bid opening. If necessary the bid opening will be rescheduled at the discretion of the Contracting Officer.

(b) Any information given to a prospective bidder concerning an Invitation for Bids shall be furnished promptly to all other prospective bidders, as an amendment to the Invitation, if such information is necessary to the bidders in

submitting bids on the Invitation or if the lack of such information would be prejudicial to uninformed bidders.

Amended by R.1990 d.539, effective January 7, 1991.

See: 22 N.J.R. 2460(a), 23 N.J.R. 119(b).

Amendment issuance and display requirements deleted.

Amended by R.1996 d.239, effective May 20, 1996.

See: 28 N.J.R. 1358(b), 28 N.J.R. 2566(b).

16:72-2.6 Cancellation of Invitations before opening

(a) Invitations for Bids should not be cancelled unless cancellation is in NJ TRANSIT's interest, such as where there is no longer a requirement for the supplies or services or where amendments to the Invitation would be of such magnitude that a new Invitation is desirable.

(b) Where an Invitation is cancelled, bids which have been received shall be returned unopened to the bidders and a notice of cancellation shall be sent to all prospective bidders to whom Invitations for Bids were issued.

Amended by R.1990 d.539, effective January 7, 1991.

See: 22 N.J.R. 2460(a), 23 N.J.R. 119(b).

Certain notice requirements deleted at (b).

Amended by R.2006 d.208, effective June 5, 2006.

See: 37 N.J.R. 4902(a), 38 N.J.R. 2511(a).

Substituted "NJ TRANSIT's" for "NJ TRANSIT'S" in (a).

16:72-2.7 Time of bid submission

Bids shall be submitted so as to be received in the office designated in the Invitation for Bids not later than the exact time set for opening of bids.

Case Notes

Late submission of bid, which occurred after bidder was directed by building security guard to wrong office, was not material violation of public bidding law and procedures; New Jersey Transit was entitled to waive defect. *Turner Const. Co. v. New Jersey Transit Corp.*, 296 N.J.Super. 530, 687 A.2d 323 (A.D.1997).

16:72-2.8 Receipt and safeguarding of bids

(a) All bids received prior to the time of opening shall be kept secure, and, except as provided in (b) below, unopened. If an Invitation for Bids is cancelled, or if a bidder effectively withdraws his bid prior to the time set for opening of bids, all bids, or the withdrawn bid, as the case may be, shall be returned to the bidders.

(b) Unidentified bids may be opened solely for the purpose of identification and then immediately resealed. A record of this event shall be kept in the bid file.

Amended by R.1990 d.539, effective January 7, 1991.

See: 22 N.J.R. 2460(a), 23 N.J.R. 119(b).

Record requirement added at (b).

16:72-2.9 Bid opening

All bids shall be publicly opened and, when practicable, read aloud. An abstract of all bids shall be prepared.

16:72-2.10 Late bids

Bids not received prior to or at the time designated for formal bid opening shall not be considered and shall be returned to the bidder unopened.

Case Notes

Late submission of bid, which occurred after bidder was directed by building security guard to wrong office, was not material violation of public bidding law and procedures; New Jersey Transit was entitled to waive defect. *Turner Const. Co. v. New Jersey Transit Corp.*, 296 N.J.Super. 530, 687 A.2d 323 (A.D.1997).

16:72-2.11 Responsive bids

To be considered for award, a bid must comply in all material respects with the Invitation for Bids so that, both as to the method and timeliness of submission and as to the substance of any resulting contract, all bidders may stand on an equal footing and the integrity of the formal advertising system may be maintained.

Amended by R.1990 d.539, effective January 7, 1991.
See: 22 N.J.R. 2460(a), 23 N.J.R. 119(b).
Title of rule changed.

Case Notes

Late submission of bid, which occurred after bidder was directed by building security guard to wrong office, was not material violation of public bidding law and procedures; New Jersey Transit was entitled to waive defect. *Turner Const. Co. v. New Jersey Transit Corp.*, 296 N.J.Super. 530, 687 A.2d 323 (A.D.1997).

16:72-2.12 Rejection of all bids

(a) Invitations for Bids may be cancelled after opening but prior to award and all bids rejected, where NJ TRANSIT determines that:

1. Inadequate or ambiguous specifications were given in the Invitation;
2. The supplies or services being purchased are no longer required;
3. The Invitation for Bids did not provide for consideration of all factors of cost to NJ TRANSIT;
4. Bids received indicate that the needs of NJ TRANSIT can be satisfied by a less expensive item differing from that for which bids were solicited;
5. All otherwise acceptable bids received are at unreasonable prices;
6. Bids were not independently arrived at in open competition, were collusive, or were submitted in bad faith; or
7. For other reasons, cancellation is in the best interests of NJ TRANSIT.

(b) A record of the cancellation of Invitations for Bids shall be kept in the bid file.

Amended by R.1990 d.539, effective January 7, 1991.
See: 22 N.J.R. 2460(a), 23 N.J.R. 119(b).
Record requirement added at (b).

16:72-2.13 Rejection of individual bids

(a) Any bid which materially fails to conform to the requirements of the Invitation for Bids shall be rejected.

(b) Any bid which imposes conditions which would modify requirements of the Invitations for Bids or limit the bidder's liability to NJ TRANSIT shall be rejected.

(c) Bids received from firms determined to be not responsible shall be rejected.

(d) Where a bidder fails to furnish bid security in accordance with the material requirements of the Invitation for Bids, the bid shall be rejected.

(e) Where a bid fails to comply with all material Equal Employment Opportunity (EEO), Disadvantaged Business Enterprise (DBE), and Small Business Enterprise (SBE) requirements expressed in an Invitation for Bids, the bid shall be rejected.

Amended by R.1990 d.539, effective January 7, 1991.
See: 22 N.J.R. 2460(a), 23 N.J.R. 119(b).

Delivery schedule requirement deleted.
Amended by R.1996 d.239, effective May 20, 1996.
See: 28 N.J.R. 1358(b), 28 N.J.R. 2566(b).
Amended by R.2006 d.208, effective June 5, 2006.
See: 37 N.J.R. 4902(a), 38 N.J.R. 2511(a).

Substituted "Equal Employment Opportunity (EEO), Disadvantaged Business Enterprise (DBE), and Small Business Enterprise (SBE)" for "EEO/DBE" in (e).

16:72-2.14 By-pass of low bidders

If the low bidder is by-passed, a memorandum stating the justification shall be prepared for the file and a letter explaining the decision shall be forwarded to the bidder.

Amended by R.1990 d.539, effective January 7, 1991.
See: 22 N.J.R. 2460(a), 23 N.J.R. 119(b).
Stylistic changes.

16:72-2.15 Mathematical calculations

(a) After the bids are opened and read, they shall be compared on the basis of the correctly determined summation of the correctly determined products of all the quantities for contract line items shown in the bid multiplied by the unit prices bid. The results of such comparisons shall be made available to the public. Award shall be made on the basis of the correct total contract price.

(b) In the event of a discrepancy between the unit price bid for any contract line item and the extension shown for that item under the column of the bid designated "Amount", the unit price shall govern.

1. Where a unit price is bid for a contract line item, but no extension is provided, NJ TRANSIT shall provide the

extension based on the unit price bid and the estimated quantity for that contract item.

2. Where an extension is provided by the bidder in the "Amount" column, but no unit price appears in the "Unit Price" column of the bid, NJ TRANSIT shall provide the unit price by dividing the "Amount" figure provided by the bidder by the estimated quantity.

3. Where no figure is provided by the bidder in both the "Unit Price" and "Amount" columns for one or more contract line items or where no figure is provided in the "Amount" column for one or more "Lump Sum" contract line items, the bid shall be considered to be non-responsive and shall be rejected.

Amended by R.1990 d.539, effective January 7, 1991.
See: 22 N.J.R. 2460(a), 23 N.J.R. 119(b).
Stylistic changes.

16:72-2.16 Initialing of price changes

Price changes in bids shall be initialed by the vendor in the bid submitted to NJ TRANSIT.

Amended by R.1990 d.539, effective January 7, 1991.
See: 22 N.J.R. 2460(a), 23 N.J.R. 119(b).
Stylistic changes.

Case Notes

Failure of successful bidder for public contract with New Jersey Transit to initial cross-out for item in lump-sum bid price was minor deficiency. *Turner Const. Co. v. New Jersey Transit Corp.*, 296 N.J.Super. 530, 687 A.2d 323 (A.D.1997).

16:72-2.17 Waiver of minor informalities or irregularities in bids

(a) NJ TRANSIT reserves the right to waive any minor informalities or irregularities in a bid not in compliance with the specifications, terms and conditions of the Invitation for Bids.

1. A minor informality or irregularity is one which is merely a matter of form or is some immaterial variation from the exact requirements of the Invitation for Bids, having no effect on quality, quantity or delivery of the supplies or performance of work being procured, and the correction or waiver of which would not affect the relative standing of, or be otherwise prejudicial to, other bidders.

2. NJ TRANSIT may give the bidder the opportunity to cure any deficiency resulting from a minor informality or irregularity in a bid, or may waive any such deficiency where it is to the advantage of NJ TRANSIT.

Amended by R.1990 d.539, effective January 7, 1991.
See: 22 N.J.R. 2460(a), 23 N.J.R. 119(b).
Stylistic changes.

Case Notes

Failure of successful bidder for public contract with New Jersey Transit to initial cross-out for item in lump-sum bid price was minor

deficiency. *Turner Const. Co. v. New Jersey Transit Corp.*, 296 N.J.Super. 530, 687 A.2d 323 (A.D.1997).

16:72-2.18 Tie bids

(a) In the event that the correct total contract prices submitted by two or more vendors are identical, NJ TRANSIT shall award the contract based on a relative comparison of the following factors:

1. Delivery advantage, considering time, distance, convenience and facilities of vendor;
2. History of vendor's performance.

(b) When none of the distinguishable characteristics in (a) above are available, NJ TRANSIT shall, if practicable, provide for contract award by splitting the award. If splitting the award is not practicable, award will be made by a single toss of a coin.

Amended by R.1990 d.539, effective January 7, 1991.
See: 22 N.J.R. 2460(a), 23 N.J.R. 119(b).
Coin toss added to (b).

16:72-2.19 Bid errors

(a) While bidders normally shall be expected to be bound by their bids, circumstances exist where correction or withdrawal of bids is permitted.

1. A bidder shall not be permitted to correct a bid mistake after bid opening that would cause the bidder to have the low bid unless the mistake is clearly evident from examining the bid document, e.g., clerical errors in extensions and additions.

2. The apparent low bidder shall be permitted to correct a material mistake of fact in its bid, including price, when the intended bid is obvious from the bid document. Such bidder shall not be permitted to correct a bid for mistakes or errors in judgment.

3. In lieu of bid correction, NJ TRANSIT may permit a low bidder alleging a material mistake of fact to withdraw its bid when there is reasonable proof that a mistake was made and the intended bid cannot be ascertained with reasonable certainty. Such bidder shall not be permitted to withdraw its bid for mistakes or errors in judgment.

4. An otherwise low bidder shall not be permitted to withdraw material exceptions to the bid conditions or specifications; however, such bidder may be permitted the opportunity to furnish other information called for by the Invitation for Bids and not supplied due to oversight, so long as it does not affect responsiveness.

5. Correction of bid mistakes after bid award shall be subject to the same proof as corrections before award and after bid opening, with the further requirement that no correction shall be permitted that would cause the contract price to exceed the next low bid.

Amended by R.1996 d.239, effective May 20, 1996.
See: 28 N.J.R. 1358(b), 28 N.J.R. 2566(b).

16:72-2.20 Award

(a) Unless all bids are rejected, award shall be made by NJ TRANSIT within the time for acceptance specified in the bid or extension thereof, to that responsible bidder whose bid, conforming to the Invitation for Bids, will be most advantageous to NJ TRANSIT, price and other factors considered, for contracts other than contracts for the construction or improvement of capital facilities.

(b) Unless all bids are rejected, award shall be made by NJ TRANSIT within the time for acceptance specified in the bid or extension thereof to the lowest responsible bidder for contracts for the construction or improvement of capital facilities. This provision shall not apply to design, build or design, build, maintain and operate projects, or affect NJ TRANSIT's minority and women business enterprise, equal employment opportunity or affirmative action programs or limit NJ TRANSIT's right to extend, add or resume work on any project.

Amended by R.2001 d.191, effective June 4, 2001.
See: 33 N.J.R. 987(a), 33 N.J.R. 1924(b).
Rewrote the section.

16:72-2.21 Procedures and forms

NJ TRANSIT shall develop such procedures, forms and directives as may be necessary to carry out these regulations.

SUBCHAPTER 3. REQUESTS FOR PROPOSALS

16:72-3.1 Solicitation of proposals

Proposals for professional and technical services shall be solicited in a manner which maximizes the opportunity for competition unless otherwise provided in N.J.A.C. 16:72-1.5(c).

Amended by R.1990 d.539, effective January 7, 1991.
See: 22 N.J.R. 2460(a), 23 N.J.R. 119(b).
Reference to section 1.6 added.
Amended by R.2006 d.208, effective June 5, 2006.
See: 37 N.J.R. 4902(a), 38 N.J.R. 2511(a).
Substituted "N.J.A.C. 16:72-1.5(c)" for "N.J.A.C. 16:72-1.6(c)".

Case Notes

Procedures used to determine route operations did not violate statutes, regulations, or Transit Board policies. *Academy Bus Tours, Inc. v. New Jersey Transit Corp.*, 263 N.J.Super. 353, 622 A.2d 1335 (A.D.1993), certification denied 134 N.J. 485, 634 A.2d 531.

Adequacy of Transit Board of Directors contracting-out program. *Academy Bus Tours, Inc. v. New Jersey Transit Corp.*, 263 N.J.Super. 353, 622 A.2d 1335 (A.D.1993), certification denied 134 N.J. 485, 634 A.2d 531.

State agency must consider Board's policy before court would determine whether it complied with federal requirements. *Academy Bus*

Tours, Inc. v. New Jersey Transit Corp., 263 N.J.Super. 353, 622 A.2d 1335 (A.D.1993), certification denied 134 N.J. 485, 634 A.2d 531.

16:72-3.2 Form of proposal

Proposals shall be delivered to NJ TRANSIT in accordance with the RFP instructions.

Amended by R.1990 d.539, effective January 7, 1991.
See: 22 N.J.R. 2460(a), 23 N.J.R. 119(b).
Stylistic changes.
Amended by R.1996 d.239, effective May 20, 1996.
See: 28 N.J.R. 1358(b), 28 N.J.R. 2566(b).

16:72-3.3 Amendment of request for proposals

(a) If after issuance of a request for proposal, but before the time of receipt, it becomes necessary to make changes in scope, delivery deadline, closing dates, or any other part of the proposal or to correct a defective or ambiguous RFP, such changes shall be accomplished by issuance of an amendment of the RFP. The amendment shall be sent to everyone to whom RFPs have been furnished.

(b) Any information given to a prospective proposer concerning an RFP shall be furnished promptly to all other prospective proposers as an amendment to the RFP if such information is necessary to the proposers in submitting proposals on the RFP or if the lack of such information would be prejudicial to uninformed proposers.

Amended by R.1990 d.539, effective January 7, 1991.
See: 22 N.J.R. 2460(a), 23 N.J.R. 119(b).
Amendments include any part of proposal.
Amended by R.1996 d.239, effective May 20, 1996.
See: 28 N.J.R. 1358(b), 28 N.J.R. 2566(b).

16:72-3.4 Cancellation of requests before opening

(a) Requests for Proposals should not be cancelled unless cancellation is in NJ TRANSIT's interest, such as where there is no longer a requirement for the services or where amendments to the RFP would be of such magnitude that a new RFP is desirable.

1. Where an RFP is cancelled, proposals which have been received shall be returned unopened to the proposers and a notice of cancellation shall be sent to all prospective proposers to whom RFPs were issued. The notice of cancellation shall identify the RFP and briefly explain the reason the RFP is being cancelled.

Amended by R.1990 d.539, effective January 7, 1991.
See: 22 N.J.R. 2460(a), 23 N.J.R. 119(b).
Stylistic changes.
Amended by R.2006 d.208, effective June 5, 2006.
See: 37 N.J.R. 4902(a), 38 N.J.R. 2511(a).
In (a), deleted "clearly" and substituted "NJ TRANSIT's" for "the public".

16:72-3.5 Receipt and safeguarding of proposals

(a) All proposals received prior to the time of opening shall be kept secure, and except as provided in (b) below, unopened. If an RFP is cancelled, or if a proposer effectively

withdraws its proposal, all proposals, or the withdrawn proposal, as the case may be, shall be returned to the proposers.

(b) Unidentified proposals may be opened solely for the purpose of identification and then immediately resealed. A record of this event shall be kept in the RFP file.

Amended by R.1990 d.539, effective January 7, 1991.
See: 22 N.J.R. 2460(a), 23 N.J.R. 119(b).
Record requirement added to (b).

16:72-3.6 Late proposals

Proposals not received prior to or at the time designated for formal receipt shall not be considered. Late proposals shall be returned to the proposer unopened.

16:72-3.7 Evaluation of proposals

Proposals shall be opened, evaluated and ranked consistent with State and/or Federal law. General evaluation criteria established by NJ TRANSIT shall be outlined in the RFP.

Amended by R.1990 d.539, effective January 7, 1991.
See: 22 N.J.R. 2460(a), 23 N.J.R. 119(b).
Reference to statutes added.
Amended by R.1996 d.239, effective May 20, 1996.
See: 28 N.J.R. 1358(b), 28 N.J.R. 2566(b).
Amended by R.2006 d.208, effective June 5, 2006.
See: 37 N.J.R. 4902(a), 38 N.J.R. 2511(a).
Inserted "established by NJ TRANSIT".

16:72-3.8 Negotiations

Negotiations may be conducted with proposers whose proposals are considered to be competitive in accordance with State and Federal law.

Amended by R.1990 d.539, effective January 7, 1991.
See: 22 N.J.R. 2460(a), 23 N.J.R. 119(b).
Reference to statutes added.

16:72-3.9 Rejection of all proposals

(a) Requests for proposals may be cancelled after opening but prior to award and all proposals rejected, where NJ TRANSIT determines in writing that:

1. Inadequate or ambiguous specifications were given in the RFP;
2. The services being purchased are no longer required;
3. The RFP did not provide for consideration of all factors of cost to NJ TRANSIT.
4. All otherwise acceptable proposals received were at unreasonable prices;
5. Proposals were not independently arrived at in open competition, were collusive, or were submitted in bad faith; or

6. For other reasons, cancellation is in the best interest of NJ TRANSIT.

Amended by R.1990 d.539, effective January 7, 1991.
See: 22 N.J.R. 2460(a), 23 N.J.R. 119(b).
Text on consultant selection committee deleted; text on rejection of all proposals recodified from section 3.10.

16:72-3.10 Rejection of individual proposals

(a) Any proposal which materially fails to conform to the requirements of the RFP's shall be rejected.

(b) Proposals received from firms determined to be not responsible shall be rejected.

Amended by R.1990 d.539, effective January 7, 1991.
See: 22 N.J.R. 2460(a), 23 N.J.R. 119(b).
Text on rejection of all proposals recodified to section 3.9; text on rejection of individual proposals recodified from section 3.11.

16:72-3.11 Debriefing

Upon written request, unsuccessful offerors shall be informed in general terms, through a debriefing, only of reasons for non-acceptance of their proposals without disclosing other offerors' proprietary data.

Amended by R.1990 d.539, effective January 7, 1991.
See: 22 N.J.R. 2460(a), 23 N.J.R. 119(b).
Text on rejection of individual proposals recodified to section 3.10; text on debriefing recodified from section 3.12.

16:72-3.12 Award

Unless all proposals are rejected, award shall be made to that responsible proposer whose proposal, conforming to the Request for Proposals, is in the best interest of NJ TRANSIT.

Amended by R.1990 d.539, effective January 7, 1991.
See: 22 N.J.R. 2460(a), 23 N.J.R. 119(b).
Text on debriefing recodified to section 3.11; text on award recodified from section 3.13.
Amended by R.2006 d.208, effective June 5, 2006.
See: 37 N.J.R. 4902(a), 38 N.J.R. 2511(a).
Substituted "is in the best interest of" for "will be most advantageous to".

16:72-3.13 Procedures and forms

NJ TRANSIT shall develop such procedures, forms and directives as may be necessary to carry out these regulations.

Amended by R.1990 d.539, effective January 7, 1991.
See: 22 N.J.R. 2460(a), 23 N.J.R. 119(b).
Text on award recodified to section 3.12; text on procedures and forms recodified from section 3.14.

16:72-3.14 (Reserved)

Recodified by R.1990 d.539, effective January 7, 1991.
See: 22 N.J.R. 2460(a), 23 N.J.R. 119(b).
Recodified to section 3.13.