

**CHAPTER 72**

**NEW JERSEY TRANSIT PROCUREMENT POLICIES AND PROCEDURES**

**Authority**  
N.J.S.A. 27:25-5(e)

**Source and Effective Date**  
R.1996 d.239, effective May 20, 1996.  
See: 28 N.J.R. 1358(b), 28 N.J.R. 2566(b).

**Executive Order No. 66 (1978) Expiration Date**  
Chapter 72, New Jersey Transit Procurement Policies and Procedures, expires on May 20, 2001.

**Chapter Historical Note**  
All provisions of Chapter 72, New Jersey Transit Procurement Policies and Procedures, became effective June 4, 1981 as R.1981 d.176. See: 13 N.J.R. 158(a), 13 N.J.R. 374(d). Pursuant to Executive Order No. 66(1978), Chapter 72 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 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: Source and Effective Date. See, also, section annotations.

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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.

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).

**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).

### 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) Procurement 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.

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 EEO/DBE 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).

#### 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.<sup>4</sup>

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

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.

#### 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. 16:72-1.6(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.

#### 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 clearly in the public 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.