

**CHAPTER 72**

**NEW JERSEY TRANSIT PROCUREMENT POLICIES AND PROCEDURES**

**Authority**

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

**Source and Effective Date**

R.2001 d.191, effective May 14, 2001.  
See: 33 N.J.R. 987(a), 33 N.J.R. 1924(b).

**Executive Order No. 66 (1978) Expiration Date**

Chapter 72, New Jersey Transit Procurement Policies and Procedures, expires on May 14, 2006.

**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: 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.

(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.

**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 \$25,000—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 issuance 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:

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).

#### 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.