

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

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

**Source and Effective Date**

R.1991 d.206, effective March 20, 1991.  
See: 23 N.J.R. 290(a), 23 N.J.R. 1148(b).

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

Chapter 72, New Jersey Transit Procurement Policies and Procedures, expires on March 20, 1996.

**Chapter Historical Note**

All provisions of this chapter 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. See: Source and Effective Date.

See section annotations for specific rulemaking activity.

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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 a deposit consisting of a cashier's check, certified check or 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 TRAN-

SIT, 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).

### 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 for an amount greater than \$2,500 but 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 after quotes have been obtained from at least two qualified and responsible prospective contractors. Written quotations shall be submitted for purchases in excess of \$7,500.

(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; and

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.

(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).

#### 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 (proposal) 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).

**16:72-2.3 Performance and payment bonds**

(a) In accordance with N.J.S.A. 2A:44-143 et seq., performance bond equal to 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.

(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 et seq., payment bond equal to 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 materials to the contractor/subcontractor for the performance of work provided for in the contract.

(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%.

**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 pre-qualification 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 before the Pre-Qualification Committee to present additional information to justify a different classification. After hearing the additional evidence, the Pre-Qualification Committee 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).

**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 Director.

(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.

**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).

#### 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.

#### 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.

#### 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.

#### 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 a bid bond 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.

#### 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.

#### 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.

#### 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.

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.

#### 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 consist of separately bound technical and cost proposals to be sealed and delivered to NJ TRANSIT no later than the deadline specified in the Request for Proposal (RFP).

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.

#### 16:72-3.3 Amendment of request for proposals

(a) If after issuance of a request for proposal, but before the time of opening, 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.

#### 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.

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.

#### 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**

Sealed technical proposals shall be opened, evaluated and ranked prior to the opening of the separate cost proposals consistent with State and Federal law. General evaluation criteria 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.

**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, will be most advantageous 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).

Text on debriefing recodified to section 3.11; text on award recodified from section 3.13.

**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.

## SUBCHAPTER 4. DEBARMENT, SUSPENSION AND DISQUALIFICATION OF PERSONS

**16:72-4.1 Causes for debarment of a person(s)**

(a) In the public interest, NJ TRANSIT shall debar a person for any of the following causes:

1. Commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract, or subcontract thereunder, or in the performance of such contract or subcontract;
2. Violation of the Federal Organized Crime Control Act of 1970, or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, perjury, false swearing, receiving stolen property, obstruction of justice, or any other offense indicating a lack of business integrity or honesty;
3. Violation of the Federal or State antitrust statutes, or of the Federal Anti-Kickback Act (18 U.S.C. 874, 40 U.S.C. 276b, c);
4. Violations of any of the laws governing the conduct of elections of the Federal government, State of New Jersey or of its political subdivisions;

5. Violation of the "Law Against Discrimination" (P.L.1945, c.169, N.J.S.A. 10:5-1 et seq., as supplemented by P.L. 1975, c.127), or of the act banning discrimination in public works employment (N.J.S.A. 10:2-1 et seq.) or of the act prohibiting discrimination by industries engaged in defense work in the employment of persons therein (P.L. 1942, c.114, N.J.S.A. 10:1-10 et seq.);

6. Violations of any laws governing hours of labor, minimum wage standards, prevailing wage standards, discrimination in wages, or child labor;

7. Violations of any laws governing the conduct of occupations or professions or regulated industries;

8. Violations of any other laws which may bear upon a lack of responsibility or moral integrity;

9. Willful failure to perform in accordance with contract specifications or within contractual time limits;

10. A record of failure to perform or of unsatisfactory performance in accordance with the terms of one or more contracts, provided that such failure or unsatisfactory performance has occurred within a reasonable time preceding the determination to debar and was caused by acts within the control of the person debarred;

11. Violation of contractual or statutory provisions regulating contingent fees;

12. Any other cause affecting responsibility as a State contractor of such serious and compelling nature as may be determined by NJ TRANSIT to warrant debarment, including such conduct as may be proscribed by the laws or contracts enumerated in this paragraph even if such conduct has not been or may not be prosecuted as violations of such laws or contracts;

13. Debarment by some other department or agency in the executive branch.

14. Any offer or agreement by a vendor to pay or to make payment of, either directly or indirectly, any fee, commission, compensation, gift, gratuity, or other thing of value of any kind to any State officer or employee or special State officer or employee as defined by N.J.S.A. 52:13D-13b and e, in the Department of the Treasury or any other agency with which such vendor transacts or offers or proposes to transact business, or to any member of the immediate family, as defined by N.J.S.A. 52:13D-13i, of any such officer or employee, or any partnership, firm, or corporation with which they are employed or associated, or in which such officer or employee has an interest within the meaning of N.J.S.A. 52:13D-13g;

15. Failure by a vendor to report to the Attorney General and to the Executive Commission on Ethical Standards in writing forthwith the solicitation of any fee, commission, compensation, gift, gratuity or other thing of value by any State officer or employee or special State officer or employee;

16. The undertaking, directly or indirectly, of any private business, commercial or entrepreneurial relationship with, whether or not pursuant to employment, contract or other agreement, express or implied, or sale, directly or indirectly of any interest in such vendor to, any State officer or employee or special State officer or employee or special State officer or employee having any duties or responsibilities in connection with the purchase, acquisition or sale of any property or services by or to any State agency or any instrumentality thereof, or with any person, firm or entity with which he is employed or associated or in which he has an interest within the meaning of N.J.S.A. 52:13D-13g. Any relationship subject to this provision shall be reported in writing forthwith to the executive Commission on Ethical Standards, which may grant a waiver of this restriction upon application of the State officer or employee or special State officer or employee upon a finding that the present or proposed relationship does not present the potential, actuality, or appearance of a conflict of interest;

17. Influence or attempt to influence or cause to be influenced, any State officer or employee or special State officer or employee in his official capacity in any manner which might tend to impair the objectivity or independence of judgment of said officer or employee;

18. Cause or influence or attempt to cause or influence, any State officer or employee or special State officer or employee to use, or attempt to use, his official position to secure unwarranted privileges or advantages for the vendor or any other person.

(b) The provisions set forth in N.J.A.C. 16:72-4.1(a)14 through 18 above shall be included in all Invitations for Bids and RFPs issued by or on behalf 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).

Conflict of interest requirements added at (a)14-18 and (b).

#### **16:72-4.2 Conditions affecting the debarment of a person(s)**

(a) The following conditions shall apply concerning debarment:

1. Debarment shall be made only upon approval of the Executive Director, except as otherwise provided by law.

2. The existence of any of the causes set forth in N.J.A.C. 16:72-4.1 shall not necessarily require that a person be debarred. In each instance, the decision to debar shall be made within the discretion of the Executive Director, unless otherwise required by law, and shall be rendered in the best interests of the State.

3. All mitigating factors shall be considered in determining the seriousness of the offense, failure or inadequacy of performance and in deciding whether debarment is warranted.

4. The existence of a cause set forth in N.J.A.C. 16:72-4.1(a)1 through 8 shall be established upon the rendering of a final judgment or conviction, including a guilty plea or a plea of nolo contendere by a court of competent jurisdiction or by an administrative agency empowered to render such judgment. In the event an appeal taken from such judgment or conviction results in reversal thereof, the debarment shall be removed upon the request of the debarred person unless other cause for debarment exists.

5. The existence of a cause set forth in N.J.A.C. 16:72-4.1(a)9 through 18 shall be established by evidence which NJ TRANSIT determines to be clear and convincing in nature.

6. Debarment for the cause set forth in N.J.A.C. 16:72-4.1(a)13 shall be proper, provided that one of the causes set forth in N.J.A.C. 16:72-4.1(a)1 through 18 was the basis for debarment by the original debarring agency. Such debarment may be based entirely on the record of facts obtained by the original debarring agency, or upon a combination of such facts and additional facts.

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

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

Citations corrected.

#### **16:72-4.3 Procedures, period of debarment, and scope**

(a) The procedures, the period of debarment, and the scope of debarment to be followed by NJ TRANSIT are explained below:

1. NJ TRANSIT, when seeking to debar a person or his affiliates shall furnish such party with a written notice stating that debarment is being considered, setting forth the reasons for the proposed debarment, and indicating that such party will be afforded an opportunity for a hearing if he so requests within a stated period of time. All such hearings shall be conducted in accordance with the provisions of the Administrative Procedures Act. However, where another department or agency has imposed debarment upon a party, NJ TRANSIT may also impose a similar debarment without affording an opportunity for a hearing, provided that NJ TRANSIT furnishes notice of the proposed similar debarment to that party, and affords that party an opportunity to present information in its behalf to explain why the proposed similar debarment should not be imposed in whole or in part.

2. Debarment shall be for a reasonable, definitely stated period of time, which as a general rule shall not exceed five years. Debarment for an additional period shall be permitted provided that notice thereof is furnished and the party is afforded an opportunity to present information in its behalf to explain why the additional period of debarment should not be imposed.

3. Except as otherwise provided by law, a debarment may be removed or the period thereof may be reduced in the discretion of NJ TRANSIT upon the submission of a good faith application under oath, supported by documentary evidence, setting forth substantial and appropriate grounds for the granting of relief, such as newly discovered material evidence, reversal of a conviction or judgment, actual change of ownership, management or control, or the elimination of the causes for which the debarment was imposed.

4. A debarment may include all known affiliates of a person, provided that each decision to include an affiliate is made on a case by case basis after giving due regard to all relevant facts and circumstances. The offense, failure or inadequacy of performance of an individual may be imputed to a person with whom he is affiliated, where such conduct was accomplished within the course of his official duty or was affected by him with the knowledge or approval of such person.

#### **16:72-4.4 Causes for suspension of a person(s)**

In the public interest, NJ TRANSIT shall suspend a person for any cause specified in N.J.A.C. 16:72-4.1 or upon reasonable suspicion that such cause exists.

#### **16:72-4.5 Conditions for suspension of a person(s)**

(a) The following conditions concerning suspension are to be adhered to:

1. Suspension shall be imposed only upon approval of the Executive Director and upon approval of the Attorney General, except as otherwise provided by law.

2. The existence of any cause for suspension shall not require that a suspension be imposed, and a decision to suspend shall be made at the discretion of the Executive Director and of the Attorney General, and shall be rendered in the best interest of the State.

3. Suspension shall not be based upon unsupported accusation, but upon adequate evidence that cause exists or upon evidence adequate to create a reasonable suspicion that cause exists.

4. In assessing whether adequate evidence exists, consideration shall be given to the amount of credible evidence which is available, to the existence or absence of corroboration as to important allegations, and to inferences which may properly be drawn from the existence or absence of affirmative facts.

5. Reasonable suspicion of the existence of a cause described in N.J.A.C. 16:72-4.1(a)1 through 8 may be established by the rendering of a final judgment or conviction by a court or administrative agency of competent jurisdiction, by grand jury indictment, or by evidence that such violations of civil or criminal law did in fact occur.

6. A suspension invoked by another agency for any of the causes described in N.J.A.C. 16:72-4.1 may be the basis for the imposition of a concurrent suspension by NJ TRANSIT which may impose such suspension without the approval of the Attorney General.

#### **16:72-4.6 Procedures, period of suspension and scope of suspension affecting the suspension of a person(s)**

(a) The following provisions regarding procedures, period of suspension and scope of suspension shall be adhered to by NJ TRANSIT.

1. NJ TRANSIT may suspend a person or his affiliates, provided that within 10 days after the effective date of the suspension, NJ TRANSIT provides such party with a written notice stating that a suspension has been imposed and its effective date; setting forth the reasons for the suspension to the extent that the Attorney General determines that such reasons may be properly disclosed; stating that the suspension is for a temporary period pending the completion of an investigation and such legal proceedings as may ensue; and indicating that, if such legal proceedings are not commenced or the suspension removed within 60 days of the date of such notice, the party will be given either a statement of the reasons for the suspension and an opportunity for an informal hearing if he so requests, or a statement declining to give such reasons and setting forth NJ TRANSIT's position regarding the continuation of the suspension. Where a suspension by another agency has been the basis for suspension by NJ TRANSIT, the latter shall note that fact as a reason for its suspension.

2. A suspension shall not continue beyond 18 months from its effective date unless civil or criminal action regarding the alleged violation shall have been initiated within that period, or unless debarment action has been commenced. Whenever prosecution of debarment action has been initiated, the suspension may continue until the legal proceedings are completed.

3. A suspension may include all known affiliates of a person, provided that each decision to include an affiliate is made on a case-by-case basis after giving due regard to all relevant facts and circumstances. The offense, failure or inadequacy of performance of an individual may be imputed to a person with whom he is affiliated, where such conduct was accomplished within the course of his official duty or was effectuated by him with the knowledge or approval of such person.

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.

#### **16:72-4.7 Disqualification of a person(s)**

The disqualification of a person shall conform to N.J.S.A. 27:25-1 et seq. and N.J.A.C. 16:72-1.1 et seq.

#### **16:72-4.8 Extent of debarment, suspension or disqualification**

The exclusion from NJ TRANSIT contracting by virtue of debarment, suspension, or disqualification shall extend to all contracting and subcontracting within the control or jurisdiction of NJ TRANSIT, including any contracts which utilize State funds. When it is determined by the Executive Director to be essential to the public interest, and upon filing of a finding thereof with the Attorney General, an exception from total exclusion may be made with respect to a particular NJ TRANSIT contract.

#### **16:72-4.9 Prior notice by NJ TRANSIT**

Insofar as practicable, prior notice of any proposed debarment or suspension shall be given to the Attorney General and the State Treasurer.

#### **16:72-4.10 List of debarred, suspended, or disqualified persons**

NJ TRANSIT shall supply to the State Treasurer a list of all persons having been debarred, suspended, or disqualified in accordance with the procedures prescribed herein. Such list shall at all times be available for public inspection.

#### **16:72-4.11 Discretion**

Nothing contained herein shall be construed to limit the authority of NJ TRANSIT to refrain from contracting within the discretion allowed by law.