

**CHAPTER 44
CONSTRUCTION SERVICES**

Authority

N.J.S.A. 27:1A-5, 27:1A-6, 27:7-21 and 27:7-35.1 et seq.

Source and Effective Date

R.2004 d.342, effective August 13, 2004.
See: 36 N.J.R. 1659(a), 36 N.J.R. 4155(b).

Chapter Expiration Date

In accordance with N.J.S.A. 52:14B-5.1c, Chapter 44, Construction Services, expires on February 9, 2010. See: 41 N.J.R. 3387(a).

Chapter Historical Note

Chapter 44, Construction Services, was originally codified in Title 16 as Chapter 65. Chapter 65 was adopted and became effective prior to September 1, 1969.

Subchapter 8, Debarment, Suspension and Disqualification of Person(s), was adopted as R.1976 d.207, effective July 1, 1976. See: 8 N.J.R. 309(b), 8 N.J.R. 404(b).

Pursuant to Executive Order No. 66(1978), Chapter 65, Construction Services, was readopted as R.1983 d.409, effective September 6, 1983. See: 15 N.J.R. 1080(b), 15 N.J.R. 1668(b).

Chapter 65, Construction Services, was recodified as N.J.A.C. 16:44, effective October 17, 1983. See: 15 N.J.R. 1772(a).

Pursuant to Executive Order No. 66(1978), Chapter 44, Construction Services, was readopted as R.1988 d.279, effective May 25, 1988. See: 20 N.J.R. 889(a), 20 N.J.R. 1467(a).

The Executive Order No. 66(1978) expiration date for Chapter 44, Construction Services, was extended by gubernatorial directive from May 25, 1993 to May 25, 1994. See: 25 N.J.R. 2227(a).

Pursuant to Executive Order No. 66(1978), Chapter 44, Construction Services, was readopted as R.1994 d.198, effective March 24, 1994. See: 25 N.J.R. 4727(a), 26 N.J.R. 1690(b).

Pursuant to Executive Order No. 66(1978), Chapter 44, Construction Services, was readopted as R.1999 d.113, effective March 11, 1999. See: 31 N.J.R. 29(a), 31 N.J.R. 890(a).

Chapter 44, Construction Services, was readopted as R.2004 d.342, effective August 13, 2004. See: Source and Effective Date. See, also, section annotations.

CHAPTER TABLE OF CONTENTS

SUBCHAPTER 1. CLASSIFICATION OF CONTRACTORS AND PROSPECTIVE BIDDERS

- 16:44-1.1 Definitions
- 16:44-1.2 Statements under oath
- 16:44-1.3 Penalties for false statements
- 16:44-1.4 Types and amount of work
- 16:44-1.5 Rating system
- 16:44-1.6 Project Rating for contractors with verifiable work experience, but no Department of Transportation past performance rating
- 16:44-1.7 Project Rating for newly formed or inexperienced contractors
- 16:44-1.8 Renewal of classification ratings
- 16:44-1.9 Effective date and expiration date of classification
- 16:44-1.10 Bidding
- 16:44-1.11 Exclusion of bids

- 16:44-1.12 Certification of current bid capacity
- 16:44-1.13 Bidding by out-of-State corporations
- 16:44-1.14 Rejection of bids
- 16:44-1.15 Information to accompany bid
- 16:44-1.16 Joint ventures
- 16:44-1.17 Appeals and enforcement
- 16:44-1.18 Requirements
- 16:44-1.19 Notice of classification

SUBCHAPTER 2. DISTRIBUTION OF STANDARD SPECIFICATIONS

- 16:44-2.1 Requirements
- 16:44-2.2 Distribution of free copies
- 16:44-2.3 through 16:44-2.4 (Reserved)

SUBCHAPTER 3. DISTRIBUTION AND SALE OF CONSTRUCTION PLANS AND SPECIAL PROVISIONS

- 16:44-3.1 Requirements
- 16:44-3.2 Requests for plans
- 16:44-3.3 Nondepartmental distribution and sale
- 16:44-3.4 Departmental distribution

SUBCHAPTER 4. ADVERTISING FOR BIDS

- 16:44-4.1 Requirements
- 16:44-4.2 (Reserved)

SUBCHAPTER 5. RECEIPT OF BIDS

- 16:44-5.1 Procedures
- 16:44-5.2 Multiple bids
- 16:44-5.3 Withdrawal
- 16:44-5.4 through 16:44-5.5 (Reserved)

SUBCHAPTER 6. CONTRACTS

- 16:44-6.1 Contracts
- 16:44-6.2 through 16:44-6.4 (Reserved)

SUBCHAPTER 7. PARTIAL AND DEFERRED PAYMENTS TO CONTRACTORS

- 16:44-7.1 Partial payments to contractors
- 16:44-7.2 Per centum withheld pending completion of contract
- 16:44-7.3 Per centum withheld for deferred work
- 16:44-7.4 Pledge of approved bonds by contractor in lieu of retained percentages
- 16:44-7.5 Responsibilities of bank designated and appointed as escrow agent
- 16:44-7.6 Deposit of additional bonds
- 16:44-7.7 Called or matured bonds
- 16:44-7.8 Default
- 16:44-7.9 Payment of service charges

SUBCHAPTER 8. DEBARMENT, SUSPENSION AND DISQUALIFICATION

- 16:44-8.1 Causes for debarment
- 16:44-8.2 Conditions affecting debarment
- 16:44-8.3 Procedures, period of debarment, and scope of debarment
- 16:44-8.4 Causes for suspension
- 16:44-8.5 Conditions for suspension
- 16:44-8.6 Procedures, period of suspension and scope of suspension
- 16:44-8.7 Disqualification
- 16:44-8.8 Extent of debarment, suspension or disqualification
- 16:44-8.9 Prior notice
- 16:44-8.10 List of debarred, suspended or disqualified persons
- 16:44-8.11 Discretion

SUBCHAPTER 9. REORGANIZATION OF CONTRACTORS

- 16:44-9.1 Purpose
16:44-9.2 Requirements

SUBCHAPTER 1. CLASSIFICATION OF CONTRACTORS AND PROSPECTIVE BIDDERS

16:44-1.1 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 a relationship such that any one of them directly or indirectly controls or has the power to control another.

“Aggregate Rating” means the dollar limit of contract work that a contractor will be allowed to have outstanding at any given time, and includes the dollar value of all work in progress.

“Bond value” means par value or market value of the bond, whichever is lower.

“Classification” means the rating given a contractor that denotes the type of contracts on which the Department will allow the contractor to submit bids, the total amount of work which the contractor may undertake, and the maximum dollar amount which a contractor shall be allowed to bid on an individual project.

“Contractor” means a person that is classified, or requesting classification, to perform work under contract with the Department.

“Corporate or LLC reorganization” means any change in the structure or organization of a corporation or limited liability company (LLC) when one or more of the following events occur:

1. A change in ownership of more than five percent;
2. A transfer of the assets, in whole or in part, from the existing corporation or LLC to another or new corporation or LLC;
3. Any modification of the entity’s name;
4. Any other change, modification, dissolution, transfer of, deletion from or addition to the entity which may affect the operation of the corporation or LLC as a contractor; or
5. Any change in operation or function of the corporation or LLC, such as a change in classification or industry.

“Current Bid Capacity” means the lesser of a contractor’s Project Rating or Maximum Rating.

“Debarment” means an exclusion from NJDOT contracting.

“Department” and “NJDOT” means the New Jersey Department of Transportation.

“Design/Build/Operate/Maintain” and “DBOM” means a single contract where the contractor is responsible for the design, and construction, as well as the operation and maintenance of a project.

“Disqualification” means a debarment or a suspension which denies or revokes a qualification to bid or otherwise engage in NJDOT contracting.

“Key sheet” means the first sheet of a set of plans containing a location map for the project, a brief description of the project and the necessary approvals.

“Maximum Rating” means that dollar figure established by subtracting the contractor’s current dollar amount of outstanding work from its Aggregate Rating.

“NJDOT contracting” means any arrangement giving rise to an obligation to supply anything to or perform any service for the Department, other than by virtue of State employment, or to supply anything to or perform any service for private or public persons where the Department provides substantial financial assistance or retains the right to approve or disapprove the nature or quality of the goods or service or the persons who may supply or perform the goods or service.

“Performance rating” means the numerical rating calculated by the Department’s resident engineer, based upon criteria as found in the “Contractor’s Performance Report” (form DC-83).

“Person” means any individual, company, firm, sole proprietorship, partnership, association, corporation, joint stock company, limited liability company, or other business entity, and their lessees, trustees, assignees or receivers.

“Plans” means construction plans, special provisions and proposal forms.

“Prequalification Committee” means a committee appointed by the Commissioner of Transportation to perform the duties indicated in this chapter. The Committee shall be comprised of five voting members, selected at the discretion of the Commissioner of Transportation. The Manager, Bureau of Construction Services, Procurement Division, shall serve as a non-voting member and Secretary to the Committee, and may be granted authority by the Prequalification Committee to sign prequalification applications on behalf of the Committee in those circumstances deemed appropriate by the Committee.