

**CHAPTER 45**

**CONTRACTUAL CLAIM RESOLUTION PROCESS AND SUBSTANTIAL COMPLETION**

**Authority**

N.J.S.A. 27:1A-5, 27:1A-6 and 27:2-1 et seq.

**Source and Effective Date**

R.2008 d.209, effective June 26, 2008.  
See: 40 N.J.R. 866(a), 40 N.J.R. 4332(a).

**Chapter Expiration Date**

Chapter 45, Contractual Claim Resolution Process and Substantial Completion, expires on June 26, 2013.

**Chapter Historical Note**

Chapter 45, Construction Control, was adopted as R.1989 d.505, effective September 18, 1989. See: 21 N.J.R. 1972(c), 21 N.J.R. 3020(b).

Pursuant to Executive Order No. 66(1978), Chapter 45, Construction Control, was readopted as R.1994 d.454, effective August 12, 1994, and Subchapter 1, General Provisions, and Subchapter 4, Claims Review Board, were adopted as new rules and Subchapter 1, Claims Committee, and Subchapter 2, Substantial Competition, were recodified Subchapters 2 and 3 by R.1994 d.454, effective September 6, 1994. See: 26 N.J.R. 2547(b), 26 N.J.R. 3740(c).

Pursuant to Executive Order No. 66(1978), Chapter 45, Construction Control, was readopted as R.1999 d.246, effective July 9, 1999, and Subchapter 3, Substantial Completion, was recodified as Subchapter 5 by R.1999 d.246, effective August 2, 1999. See: 31 N.J.R. 1295(a), 31 N.J.R. 2236(a).

Chapter 45, Construction Control, was readopted as R.2003 d.66, effective January 10, 2003. See: 34 N.J.R. 2537(a), 35 N.J.R. 622(a).

Chapter 45, Construction Control, was readopted as R.2008 d.209, effective June 26, 2008. As part of R.2008 d.209, Chapter 45 was renamed Contractual Claim Resolution Process and Substantial Completion; former Subchapter 2, Claims Committee, was repealed and Subchapter 2, Notice Requirements and the Contractual Claim Resolution Process, was adopted as new rules; Subchapter 3, Steps I, II, and III of the Contractual Claim Resolution Process: The RE, The Dispute Review Board, and The Claims Committee, was adopted as new rules; and Subchapter 4, Non-Binding Mediation, was renamed Step IV of the Contractual Claim Resolution Process: Non-Binding Mediation, effective July 21, 2008. See: Source and Effective Date. See, also, section annotations.

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**SUBCHAPTER 1. GENERAL PROVISIONS**

**16:45-1.1 Scope and purpose**

This chapter describes and provides the procedures for the Department’s contractual claim resolution process. The contractual claim resolution process is available to contractors whose claims meet the requirements for review contained in contracts administered by the Department. Participation by a contractor in the process is voluntary. The Department has established this process for the purpose of reviewing liability and damages claims at the same time and facilitating the resolution of contract disputes. This chapter also defines the term “substantial completion” as required by the Legislature pursuant to N.J.S.A. 27:7-34.

Amended by R.1999 d.246, effective August 2, 1999. See: 31 N.J.R. 1295(a), 31 N.J.R. 2236(a).

Rewrote the section.

Amended by R.2003 d.66, effective February 3, 2003. See: 34 N.J.R. 2537(a), 35 N.J.R. 622(a).

Rewrote the section.

Amended by R.2008 d.209, effective July 21, 2008. See: 40 N.J.R. 866(a), 40 N.J.R. 4332(a).

Rewrote the section.

**16:45-1.2 Definitions**

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

“Commissioner” means the Commissioner of New Jersey Department of Transportation.

“Contract” means the written integrated agreement between the Department and the contractor setting forth the obligations of the parties, including, but not limited to, the performance of the work and the basis for payment. The contract includes the advertisement for proposal; the proposal; certification as to publication and notice of advertisement for proposal; appointment of agent by non-resident contractors; resolution of award of contract; executed form of contract; performance and payment bonds; specifications; plans; right-of-way plans; permits; boring logs; pavement

core records; addenda; change orders; and field orders, all of which are to be treated as one instrument whether or not set forth at length in the form of contract. Other information mailed or otherwise made available to the prospective bidders before the receipt of bids is not part of the contract unless specified as such.

“Contract time” means the number of working days allowed to complete the work for a milestone or the date by which work must be completed, as provided in the contract and as modified by change order. When interim completion and completion requirements are specified as a specific date instead of the number of working days, the contractor must achieve interim completion or completion on or before that date.

“Contractor” means the individual, firm, partnership, corporation or any acceptable combination thereof contracting with the Department for performance of the contract; for the purpose of carrying out the contract, it also means the contractor’s representative.

“Department” means the New Jersey Department of Transportation.

“Project” means the specific work to be accomplished under the contract. The project may include work performed by others under separate contracts, which are not the particular contract under which the contractor is asserting a claim.

“RE” means the Department’s field representative having direct supervision of the administration of the contract.

“Specifications” means the compilation of provisions and requirements for the performance of prescribed work contained in the standard specifications, special provisions, and electrical materials specifications as modified by addenda.

Repeal and New Rule, R.2008 d.209, effective July 21, 2008.  
See: 40 N.J.R. 866(a), 40 N.J.R. 4332(a).  
Section was “Definitions”.

### 16:45-1.3 Litigation of claims by contractor

Exhaustion of the contractual claims resolution process, as set forth under the terms of the contract under which the contractor is asserting a claim and this chapter, shall not be a prerequisite to the filing of a legal action against the Department. The contractor, however, must fully comply with the New Jersey Contractual Liability Act, N.J.S.A. 59:13-1 et seq., before commencing a legal action against the Department. If a contractor brings a legal action against the Department or any agents, officers or employees thereof, allegedly arising out of or related to claims filed against the Department, any pending contractual claims resolution process at any step shall terminate as to those claims and as to related claims being litigated, whether or not the review has been completed at a particular step. The Department will, thereafter, resolve such claims under the legal action, subject

to the provisions of the New Jersey Contractual Liability Act, N.J.S.A. 59:13-1 et seq. The contractor may submit to the Department, for processing through the contractual claim resolution process, any claim that is unrelated to pending legal action, subject to the terms of the contract under which the contractor is asserting a claim and the New Jersey Contractual Liability Act, N.J.S.A. 59:13-1 et seq.

New Rule, R.2003 d.66, effective February 3, 2003.  
See: 34 N.J.R. 2537(a), 35 N.J.R. 622(a).  
Amended by R.2008 d.209, effective July 21, 2008.  
See: 40 N.J.R. 866(a), 40 N.J.R. 4332(a).  
Rewrote the section.

## SUBCHAPTER 2. NOTICE REQUIREMENTS AND THE CONTRACTUAL CLAIM RESOLUTION PROCESS

### 16:45-2.1 Notice requirements

(a) If the contractor has provided the RE notice of change that complies with the requirements contained in the contract under which the contractor is asserting a claim, the RE and the contractor may negotiate a resolution, even if the full impact has not been determined. If a notice of change has not been resolved, the contractor may initiate the contractual claims resolution process.

(b) To initiate the contractual claims resolution process, the contractor must submit to the RE a Contractual Notice Form for the claim. The form is available from the RE or may be obtained on the Department’s website at: <http://www.state.nj.us/transportation/eng/forms/docs/construction/dc161.rtf>. At a minimum, the contractor must include the following information with the Contractual Notice Form:

1. A detailed factual statement of the claim providing all necessary dates, locations, and items affected by the claim;
2. The date on which facts arose that gave rise to the claim;
3. A copy of notice given to the Department pursuant to any other subsection of the contract that relates to the matter giving rise to the claim;
4. The name, function, and activity of each individual involved in or knowledgeable about the claim;
5. The specific provisions of the contract that support the claim and a statement of the reasons why the provisions support the claim;
6. A detailed factual statement of the actions taken by the contractor to mitigate the claim;
7. If the claim relates to a decision of the Department that the contract leaves to the Department’s discretion or which the contract provides that the Department’s decision is final, the contractor shall set out in detail the facts