

CHAPTER 44

CONSTRUCTION SERVICES

Authority

N.J.S.A. 27:1A-5, 27:1A-6, 27:7-2.1, and 27:7-35.2 et seq.

Source and Effective Date

R.1994 d.198, effective March 24, 1994.
See: 25 N.J.R. 4727(a), 26 N.J.R. 1690(b).

Executive Order No. 66(1978) Expiration Date

Chapter 44, Construction Services, expires on March 24, 1999.

Chapter Historical Note

Chapter 44, Construction Services, was adopted as Chapter 65 and was filed and became effective prior to September 1, 1969. Amendments became effective December 30, 1971 as R.1971 d.237. See: 4 N.J.R. 29(e). Subchapter 8 became effective July 1, 1976 as R.1976 d.207. See: 8 N.J.R. 309(b), 8 N.J.R. 404(b).

Pursuant to Executive Order No. 66(1978), Chapter 65 was readopted as R.1983 d.409, effective September 6, 1983. See: 15 N.J.R. 1080(b), 15 N.J.R. 1668(b). Effective October 17, 1983, Chapter 65 was recodified as Chapter 44. See: 15 N.J.R. 1772(a).

Pursuant to Executive Order No. 66(1978), Chapter 44 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 of Chapter 44 was extended by gubernatorial waiver from May 25, 1993 to May 25, 1994. See: 25 N.J.R. 2227(a). Pursuant to Executive Order No. 66(1978), Chapter 44 was readopted as R.1994 d.198. See: Source and Effective Date. See, also, section annotations.

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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 New Jersey Department of Transportation (NJDOT) will allow the contractor to submit bids and the total amount of work which the contractor may undertake.

“Contractor” means an individual, partnership or corporation classified, or requesting classification, to perform work under contract with the department.

“Corporate reorganization” means any change in the structure or organization of a corporation wherein one or more of the following events occur:

1. A change in ownership of more than 5 percent of the stock of the corporation;
2. A transfer of the assets, in whole or in part, from the existing corporation to another or new corporation;
3. Any modification of the corporate name;
4. Any other change, modification, dissolution, transfer of, deletion from or addition to the corporate entity which may affect the operation of the corporation as a contractor; or
5. Any change in operation or function of the corporation, 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, 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 a suspension which denies or revokes a qualification to bid or otherwise engage in NJDOT contracting which has been granted or applied for pursuant to statute, or rules and regulations.

“Key sheet” means the first sheet of a set of plans containing a location map for the project, usually at a scale of 2000 feet to the inch, a brief description of the project and the necessary approvals.

“Maximum Rating” means the 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 NJDOT, other than by virtue of State employment, or to supply anything to or perform any service for private or public persons where the NJDOT 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 same.

“Person” means any natural person, company, firm, association, corporation, or an entity.

“Plans” means construction plans, supplementary specifications and proposal forms.

“Pre-qualification 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 Pre-qualification Committee to sign pre-qualification applications on behalf of the Committee in those circumstances deemed appropriate by the Committee.

“Project Rating” means the maximum dollar amount which a contractor shall be allowed to bid on an individual project.

“Standard Specifications” means the 1983 edition of the book entitled “New Jersey Department of Transportation Standard Specifications for Road and Bridge Construction,” as amended and supplemented.

“Supplementary specifications” means amendments or revisions updating the Standard Specifications.

“Suspension” means an exclusion from NJDOT contracting for a temporary period of time, pending the completion of an investigation or legal proceedings.

“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 any State agency.

Amended by R.1977 d.388, effective October 17, 1977.

See: 9 N.J.R. 44(a), 9 N.J.R. 543(b).

Amended by R.1981 d.72, effective March 4, 1981.

See: 13 N.J.R. 108(c), 13 N.J.R. 243(b).

"Director of Financial Management" was "Director of Accounting and Auditing".

Amended by R.1987 d.499, effective December 7, 1987.

See: 19 N.J.R. 1634(a), 19 N.J.R. 2303(a).

Added definition "pre-qualification committee".

Amended by R.1989 d.530, effective October 16, 1989.

See: 21 N.J.R. 2240(a), 21 N.J.R. 3314(a).

Established new composition of "Pre-qualification Committee" and reflects title changes due to organizational changes within the Department.

Amended by R.1992 d.29, effective January 6, 1992.

See: 23 N.J.R. 3270(a), 24 N.J.R. 115(c).

Added new definitions.

Amended by R.1994 d.198, effective April 18, 1994.

See: 25 N.J.R. 4727(a), 26 N.J.R. 1690(b).

Amended by R.1996 d.541, effective December 2, 1996.

See: 28 N.J.R. 4180(a), 28 N.J.R. 5078(a).

16:44-1.2 Statements under oath

(a) All contractors proposing to bid on NJDOT work shall furnish, on forms provided by the Commissioner of Transportation, a Prequalification Questionnaire including, at a minimum, the following statements:

1. A statement as to financial ability, which statement shall show current assets and current liabilities and shall include verifications of unsecured lines of credit extended by banks. The Prequalification Questionnaire must be accompanied by certified audited financial statements or a CPA review of financial statements. The financial statements shall be complete, with a balance sheet, related statements of income and retained earnings and cash flows. The financial statements shall be completed by a certified public accountant or public accountant, as established by N.J.S.A. 45:2B-29 et seq., who is independent of, and not an employee of, the contractor for which the financial statements are being provided;

i. The certified audited financial statements should have an unqualified opinion. The CPA review of financial statements shall be in conformity with generally accepted accounting principles. Both the audited and CPA review financial statements shall be for a full one year accounting cycle;

ii. Submission of a CPA review of financial statements will limit the contractor's maximum project rating to \$2,000,000. In addition, the aggregate rating will be limited to the total uncompleted work on hand at the time of the classification, plus \$2,000,000;

iii. Submission of a consolidated financial statement is acceptable. It may be submitted with the Prequalification Questionnaire completed in the name of the parent corporation. A consolidated financial statement submitted with a Prequalification Questionnaire and completed in the name of the subsidiary corporation shall include a separate breakdown of the financial statements, that is, balance sheet, income statement,

statement of changes in financial position and cash flows, in the name of the subsidiary corporation;

2. A statement as to plant and equipment, which shall give complete details as to cost, age, condition and book value and outstanding loans;

3. A statement as to organization, which shall show the ability of such organization, including key personnel, to undertake a project in the classification desired;

4. A statement as to prior experience, which shall show the length of time in which the contractor has been engaged in the contracting business. It shall also disclose the nature of the contractor's experience during that period;

5. A statement which shall give an accurate and complete record of work completed in the previous four years and which shall identify the projects undertaken, type of work performed, location, contract price, name and telephone number of the owner's engineer in charge;

i. The work record statement shall list, in detail, any liens, stop notices, default notices or claims filed with regard to any project within the previous four years. The work record statement shall also disclose labor troubles experienced, failures to complete contracts and all penalties imposed by reason of any contract undertaken within the previous four years. The contractor shall explain all such items;

6. A statement setting forth any other pertinent and material facts which will justify the classification and rating desired;

7. A statement disclosing any suspension, debarment, or disqualification of the contractor, its parent company or subsidiary and/or any owner, stockholder, officer, partner or employee of the contractor;

8. A statement that the contractor has adopted an Affirmative Action Program for Equal Employment Opportunity in accordance with State and Federal laws, rules and regulations;

9. If the contractor is a corporation or partnership, a statement setting forth the names and addresses of all stockholders or partners owning 10 percent or greater interest in the contractor. If one or more stockholders or partners is, itself, a corporation or partnership, the statement shall also indicate the stockholders holding 10 percent or more of that corporation's stock or the individual partners owning a 10 percent or greater interest in that partnership. The disclosure shall be continued until the names and addresses of every noncorporate stockholder or partner exceeding the 10 percent ownership criterion has been listed;

10. A prequalification affidavit attesting that all statements contained in the Prequalification Questionnaire are true and accurate; and

11. A statement identifying the types of work for which the contractor is seeking classification.

Amended by R.1977 d.388, effective October 17, 1977.
 See: 9 N.J.R. 444(a), 9 N.J.R. 543(b).
 Amended by R.1979 d.223, effective June 6, 1979.
 See: 11 N.J.R. 262(a), 11 N.J.R. 357(c).
 Amended by R.1986 d.29, effective February 18, 1986.
 See: 17 N.J.R. 2746(a), 18 N.J.R. 427(a).
 Class R amended; Class S through W new.
 Amended by R.1988 d.175, effective April 18, 1988.
 See: 20 N.J.R. 380(b), 20 N.J.R. 913(b).
 Added text to (c) "The types of . . . New Jersey 08625."
 Amended by R.1989 d.88, effective February 6, 1989.
 See: 20 N.J.R. 3004(a), 21 N.J.R. 309(a).
 Subsections (d) and (n) substantially amended.
 Emergency amendment, R.1989 d.226, effective March 30, 1989, (expires May 29, 1989).
 See: 21 N.J.R. 1023(a).
 Changes bidding period from 15 to 18 months.
 Adopted concurrent proposal, R.1989 d.346, effective July 3, 1989.
 See: 21 N.J.R. 1023(a), 21 N.J.R. 1833(a).
 Provisions of emergency amendment R.1989 d.226 readopted without change.
 Repeal and New Rule, R.1992 d.29, effective January 6, 1992.
 See: 23 N.J.R. 3270(a), 24 N.J.R. 115(c).
 Section was "Classification of prospective bidders."
 Amended by R.1994 d.198, effective April 18, 1994.
 See: 25 N.J.R. 4727(a), 26 N.J.R. 1690(b).

Case Notes

Supplier to general contractor's state contract would not be precluded from being "subcontractor." *Unadilla Silo Co., Inc. v. Hess Bros., Inc.*, 123 N.J. 268, 586 A.2d 226 (1991).

Decision to reject contractor's bid, where proper schedule was hand-delivered to Department on bid opening date with explanation that schedule omission from bid was inadvertent, remanded to Commissioner to consider waiver of bid deviation in light of public policy favoring awards to lowest possible bidder as long as fair competition in bidding is not impaired (citing former N.J.A.C. 16:65-1.2). In re Contract for Route 280 Section 7U Exit Project, 179 N.J.Super. 280, 431 A.2d 848 (App.Div.1981) appeal dismissed 89 N.J. 1, 444 A.2d 51 (1982).

Prospective bidder held not entitled to a detailed recitation of acts and omissions which would support the Commissioner's finding of lack of moral responsibility; bidder held entitled to be forewarned of theory upon which Commissioner was proceeding and a reasonable opportunity to confront assertions against it (citing former N.J.A.C. 16:65-1.2): bidding disqualification reversed due to Commissioner's error in giving determinative weight to proposition that the corporation lacked moral responsibility because of past deeds of individuals no longer associated with it. *Trap Rock Industries, Inc. v. Sagner*, 133 N.J.Super. 99, 335 A.2d 574 (App.Div.1975) affirmed per curiam 69 N.J. 599, 355 A.2d 636 (1976).

16:44-1.3 Penalties for false statements

(a) Any person who makes, or causes to be made, a false, deceptive or fraudulent statement in the Prequalification Questionnaire required to be submitted, or in the course of any hearing pertaining to an application for prequalification, shall be guilty of a misdemeanor, and upon conviction shall be sentenced to pay a fine of not less than \$100.00, nor more than \$1,000; or in the case of an individual or the officer or employee charged with the duty of making such questionnaire for a person, firm, copartnership, association or corporation, to pay such fine or undergo imprisonment, not to exceed six months, or both.

(b) All such persons and any copartnership, association, corporation, or joint stock company of which any such person is a partner or officer or director, and any corporation of which such person owns 25 percent of the stock, shall, for five years from the date of such conviction, be disqualified from bidding on all public work in this State.

New Rule, R.1992 d.29, effective January 6, 1992.
 See: 23 N.J.R. 3270(a), 24 N.J.R. 115(c).
 Old section "Requirements" was recodified to 16:44-1.17.
 Amended by R.1994 d.198, effective April 18, 1994.
 See: 25 N.J.R. 4727(a), 26 N.J.R. 1690(b).

16:44-1.4 Types of work

(a) Contractors will be classified according to the type of work and the amount of work on which they may bid.

(b) The types of work for which contractors may seek classification are on file at the Department of Transportation, Bureau of Construction Services, 1035 Parkway Avenue, CN 605, Trenton, New Jersey 08625.

(c) Each contractor will be classified for one or more of the types of work requested by that contractor and will be rated in accordance with its financial ability, adequacy of plant and equipment, organization, record of construction and any other factors deemed pertinent by the NJDOT. The contractor will be assigned a classification, designating the types and dollar values of work upon which it shall be eligible to bid.

(d) The Commissioner of Transportation will notify a contractor of its classification by first class mail within 15 days of the Department's receipt of a complete Prequalification Questionnaire. If the Department requests from the contractor additional information needed to complete the Prequalification Questionnaire submitted or to clarify information contained in the Prequalification Questionnaire, the contractor will be notified of its classification by first class mail within 15 days of the Department's receipt of the specified information. Any contractor which fails to submit a complete Prequalification Questionnaire, as determined by the Department, will be denied classification.

(e) The dollar rating ranges within which contractors may be entitled to bid are as set forth in Table I below.

TABLE I
 Dollar Rating Ranges

50,001 to 100,000	100,000	20,000,001 to 25,000,000
100,001 to 150,000	150,000	25,000,001 to 30,000,000
150,001 to 200,000	200,000	30,000,001 to 35,000,000
200,001 to 300,000	300,000	35,000,001 to 40,000,000
300,001 to 400,000	400,000	40,000,001 to 45,000,000
400,001 to 500,000	500,000	45,000,001 to 50,000,000
500,001 to 750,000	750,000	50,000,001 to 55,000,000
750,001 to 1,000,000	1,000,000	55,000,001 to 60,000,000
1,000,001 to 2,000,000	2,000,000	60,000,001 to 65,000,000
2,000,001 to 3,000,000	3,000,000	65,000,001 to 70,000,000
3,000,001 to 4,000,000	4,000,000	70,000,001 to 75,000,000
4,000,001 to 6,000,000	6,000,000	75,000,001 to 80,000,000

6,000,001 to 8,000,000	80,000,001 to 85,000,000
8,000,001 to 10,000,000	85,000,001 to 90,000,000
10,000,001 to 15,000,000	90,000,001 to 95,000,000
15,000,001 to 20,000,000	95,000,001 to 99,999,999
	over 99,999,999

1. A contractor whose statements do not qualify the contractor to bid an amount in the \$50,001 to \$100,000 range will be classified with an Aggregate Rating equal to its calculated capacity.

2. A contractor, qualified to bid in excess of \$99,999,999, will be notified when the Department of Transportation intends to put out for bid a project in the "Unlimited" class. Each such contractor that desires to bid the "Unlimited" class project shall be required to specifically prequalify to bid upon that project. The contractor must apply for such specific classification at least 20 days before the date set for the receipt of bids on the "Unlimited" class project.

New Rule, R.1992 d.29, effective January 6, 1992.
See: 23 N.J.R. 3270(a), 24 N.J.R. 115(c).

Old section "Effective date of classification" was recodified to 1.18.
Amended by R.1994 d.198, effective April 18, 1994.
See: 25 N.J.R. 4727(a), 26 N.J.R. 1690(b).

16:44-1.5 Classification rating system

(a) Each contractor will be assigned both an Aggregate Rating and a Project Rating. The dollar limits of these ratings will be related to the work type classifications for which the contractor, its officers and key personnel have demonstrated sufficient experience of acceptable quality to be granted a rating.

(b) Aggregate Ratings will be established as follows:

1. The Aggregate Rating will be based on the contractor's net working capital. Net working capital is represented by the excess of current assets over current liabilities and identifies the relatively liquid portion of total enterprise capital which constitutes a margin for meeting obligations within the ordinary operating cycle of the business. A contractor's net working capital can be supplemented by unsecured lines of credit and the net book value of construction equipment. The contractor's allowed assets will be multiplied in accordance with (b)3 below.

2. The Department of Transportation reserves the right to use the contractor's net worth, as shown in the balance sheets, as the basis of the firm's net working capital when review and analysis of the financial transactions undertaken by the contractor so require.

3. The NJDOT will add dollar figures established by use of the multipliers indicated below. For contractors which have not had a NJDOT performance rating within the prior four year period, the resulting figure shall be the contractor's aggregate rated capacity. For contractors which have had a NJDOT performance rating within the prior four year period, the resulting figure will be multi-

plied by the contractor's average performance rating to establish the contractor's aggregate rated capacity.

Contractors without NJDOT past performance

Aggregate rated capacity = (Net working capital x 9) + (net book value of equipment x 9) + (unsecured lines of credit x 4).

Contractors with NJDOT past performance

Aggregate rated capacity = ((net working capital x 15) + (net book value of equipment x 15) + (unsecured lines of credit x 7)) x the contractor's average past performance rating.

4. A contractor's aggregate rated capacity will be reduced by 15 percent if it neither owns nor leases, on a continuing basis, the equipment necessary to perform the work within its work category.

5. A contractor's Aggregate Rating will be established by application of its aggregate rated capacity to Table I at N.J.A.C. 16:44-1.4(e).

6. A contractor will not be permitted to bid beyond its aggregate rating.

(c) Project Ratings, based on an evaluation of contractor's verifiable work experience and the experience profile of its officers and other key personnel, will be established as follows:

1. When a contractor has performed work for the Department of Transportation and received a performance rating within the previous four years, its Project Rating will be based on its performance rating, as applied in N.J.A.C. 16:44-1.8, for the classification work types associated with the performance rating.

2. When a contractor has never been classified by the Department of Transportation or when a contractor has not received a performance rating from the Department within the previous four years, past work experience and experience of officers and key personnel will be evaluated through the use of work experience verification letters and/or personal contacts. Recently formed contractors, with limited or no work history will be evaluated by the use of detailed individual experience profiles.

New Rule, R.1992 d.29, effective January 6, 1992.
See: 23 N.J.R. 3270(a), 24 N.J.R. 115(c).

Old section "Notice of classification" was recodified to 1.19.
Amended by R.1994 d.198, effective April 18, 1994.
See: 25 N.J.R. 4727(a), 26 N.J.R. 1690(b).

16:44-1.6 Determination of Project Rating for contractors with verifiable work experience, but no Department of Transportation past performance rating

(a) In order to evaluate the work experience of a contractor, the Department of Transportation will obtain information from public and private owners for whom the contractor has performed work. The information will be reviewed

and evaluated in the manner set forth in Table II, Quality Points, below.

TABLE II
QUALITY POINTS

Rating	Excellent	Good	Fair	Poor
Quality of Work (Grading, Paving, Bridge, etc.)	1.00	0.80	0.50	0
Completion of Work per Required Schedule	0.50	0.40	0.25	0
Supervision	Used for General Information			
Adequacy of Equipment	Used for General Information			
Supplemental Quality Points (Only A or B Applies)				
A. For work experience determined to be equivalent to NJDOT work (Equivalent work is deemed to be work for other DOT's, U.S. Army Corps of Engineers, New Jersey Turnpike Authority, New Jersey Highway Authority, etc.):				1.00
B. For work experience determined to be similar to NJDOT work (similar work is deemed to be work for County, City, Township, Municipal, or Utility Authorities):				0.50

(b) The average, to the nearest 0.1 point, of the quality points calculated for each individual work evaluation will be multiplied by the dollar value of the largest successfully completed project for which an evaluation was performed and in which the contractor engaged in the work types for which classification is being sought. A contractor's Project Rating will be established by locating the resulting dollar figure on Table I at N.J.A.C. 16:44-1.4(e).

(c) If the contractor's major work program is evaluated to be equivalent in scope and expertise level to that of NJDOT projects and work quality is evaluated to be good or excellent, the contractor's Project Rating will be set equal to its Aggregate Rating, up to \$99,999,999.

(d) In no event shall a contractor's Project Rating be allowed to exceed its Aggregate Rating.

New Rule, R.1992 d.29, effective January 6, 1992.

See: 23 N.J.R. 3270(a), 24 N.J.R. 115(c).

Old section "Equal employment opportunity" was recodified to 1.20.

16:44-1.7 Determination of Project Rating for newly formed contractors

(a) A contractor without any verifiable past contracting work experience or a contractor with limited or no work experience of the type required for the classification being sought will be evaluated on the basis of detailed individual experience resumes. Officers and key personnel must submit individual experience resumes detailing those experiences applicable to the work type classifications for which the contractor is applying.

(b) Upon verification of acceptable work experience, the Department of Transportation will grant a Project Rating corresponding to the level and quality of past experience demonstrated by the officers and key personnel of the contractor. If the key personnel to be evaluated are not officers or stockholders of the contractor, the contractor shall submit an affidavit, stating that these individuals are currently full-time employees of the contractor and that the contractor will immediately notify the NJDOT of any change in their employment status. Upon notification of a change in the employment of key personnel, the NJDOT may reevaluate the contractor's classification.

(c) In no event shall a contractor's Project Rating be allowed to exceed its Aggregate Rating.

New Rule, R.1992 d.29, effective January 6, 1992.

See: 23 N.J.R. 3270(a), 24 N.J.R. 115(c).

Old section "Wage rate administration" was recodified to 1.21.

16:44-1.8 Renewal of classification ratings

(a) Upon renewal of classification, a contractor's Aggregate Rating will be established in accordance with the procedure set forth in N.J.A.C. 16:44-1.5.

(b) Upon renewal of classification, contractors without a NJDOT past performance rating within the previous four years will be evaluated on the basis of the information and in accordance with the procedures described in N.J.A.C. 16:44-1.6 and/or 1.7.

(c) Upon renewal of classification, contractors with a NJDOT past performance rating within the previous four years will be evaluated on the basis of their average performance rating and a Project Rating will be established in the following manner:

1. If a contractor's average performance rating does not meet the criteria of (c)2, 3, or 4 below, the contractor's average past performance rating will be multiplied by a dollar level equal to three times the largest successfully completed NJDOT or similar contract performed during the prior four years. The contractor's Project Rating will be determined by applying the resulting dollar figure to Table I at N.J.A.C. 16:44-1.4(e).

2. If a contractor's average performance rating is 15 points or more below the average performance rating of all contractors that have received a NJDOT performance rating within the previous four years, the Department of Transportation may, in the public interest, determine to deny the contractor classification or assign a limited Project Rating instead of assigning a Project Rating pursuant to N.J.A.C. 16:44-1.8. If denied classification or assigned a limited project rating, the contractor will be accorded a hearing pursuant to N.J.A.C. 16:44-1.16.

3. If the two most recent performance ratings assigned a contractor during the prior four year period average five points or more above the average performance rating of all contractors that have received a NJDOT performance rating within the previous four years, or if the contractor's average rating is 80 or above, the contractor will be entitled to a Project Rating equal to its Aggregate Rating, up to a limit of Over \$99,999,999.

4. If the four most recent performance ratings assigned a contractor during the prior four years are at least equal to the average performance rating of all contractors that have received NJDOT performance ratings within the previous four years, or if the contractor's average rating is 80 or above, the contractor will be entitled to a Project Rating equal to its Aggregate Rating up to a limit of Over \$99,999,999.

New Rule, R.1992 d.29, effective January 6, 1992.

See: 23 N.J.R. 3270(a), 24 N.J.R. 115(c).

Amended by R.1992 d.271, effective July 6, 1992.

See: 24 N.J.R. 703(a), 24 N.J.R. 2464(a).

Revised (c)1.

Amended by R.1994 d.198, effective April 18, 1994.

See: 25 N.J.R. 4727(a), 26 N.J.R. 1690(b).

16:44-1.9 Effective date of classification

The effective date of a classification shall be 15 days after the Prequalification Questionnaire is received in the Bureau of Construction Services or 15 days after receipt of any additional information requested by the Bureau of Construction Services. The expiration date shall be 18 months after the date of the financial statement accompanying the Prequalification Questionnaire.

New Rule, R.1994 d.198, effective April 18, 1994.

See: 25 N.J.R. 4727(a), 26 N.J.R. 1690(b).

16:44-1.10 Bidding

(a) Any contractor assigned a classification by the Department of Transportation may submit a bid proposal on any project within its classification for a period of 18 months from the date of the close of business shown in its Prequalification Questionnaire. However, no bid will be received from any contractor on any given date unless a complete Prequalification Questionnaire showing a close of business date less than 18 months before the bid date has been filed with the Department at least fifteen days before such bid date.

(b) Contractors shall submit a Prequalification Questionnaire as required by N.J.A.C. 16:44-1.2 or this section, or on such other intermediate occasions as may be deemed necessary by the Commissioner of Transportation.

New Rule, R.1992 d.29, effective January 6, 1992.

See: 23 N.J.R. 3270(a), 24 N.J.R. 115(c).

Recodified from 16:44-1.9 by R.1994 d.198, effective April 18, 1994.

See: 25 N.J.R. 4727(a), 26 N.J.R. 1690(b).

16:44-1.11 Exclusion of bids

(a) Bids will be accepted only from a contractor which has been assigned a classification by the Department of Transportation. In no event will a bid be accepted from a contractor which is not currently classified or for work different in type or greater in amount than that to which the contractor's classification applies.

(b) When there exists a doubt as to whether a bid is within the classification for which the contractor is qualified the bid will be opened provisionally and if the bid is, in fact, within a higher classification than that for which the prospective bidder is classified, the bid will be immediately excluded.

(c) Bids will be accepted only if an authorized agent, employee or officer of the contractor has acknowledged receipt of all applicable addenda.

New Rule, R.1992 d.29, effective January 6, 1992.

See: 23 N.J.R. 3270(a), 24 N.J.R. 115(c).

Recodified from 16:44-1.10 by R.1994 d.198, effective April 18, 1994.

See: 25 N.J.R. 4727(a), 26 N.J.R. 1690(b).

16:44-1.12 Certification of current bid capacity

(a) A contractor submitting a bid proposal to the Department of Transportation must compute and certify its current bid capacity on a Form DC-74B, Contractor's Updated Financial Statement. A contractor's bid shall not be considered responsive if it does not include the required computation and certification.

(b) A contractor's Current Bid Capacity is the lesser of the contractor's Project Rating or its Maximum Rating. The contractor's Maximum Rating is the dollar figure established by subtracting the contractor's current dollar amount of outstanding work from its Aggregate Rating.

(c) In the event that a contractor submits bid proposals on two or more Department of Transportation projects on the same date and is apparent low bidder on more than one project, the contractor must have current bid capacity greater than or equal to the combined amount of its successful bids. An unsecured line of credit, in addition to any unsecured line of credit provided at the time of prequalification, may be submitted with the contractor's bids and added into the computation of Current Bid Capacity.

(d) A contractor shall not bid more than its current bid capacity. Any bid in excess of the current bid capacity will be excluded.

New Rule, R.1992 d.29, effective January 6, 1992.

See: 23 N.J.R. 3270(a), 24 N.J.R. 115(c).

Recodified from 16:44-1.11 by R.1994 d.198, effective April 18, 1994.

See: 25 N.J.R. 4727(a), 26 N.J.R. 1690(b).

16:44-1.13 Bidding by out-of-State corporations

(a) In the event a corporation not incorporated in the State of New Jersey is the lowest bidder on a project, it

must be authorized to do business in New Jersey, pursuant to N.J.S.A. 14A:15-1 et seq., before the contract will be executed by the Commissioner of Transportation.

(b) Each corporation, partnership or individual residing in a state other than New Jersey shall designate a resident of New Jersey to accept service of any legal process before the Commissioner of Transportation will execute a contract with such corporation, partnership or individual.

New Rule, R.1992 d.29, effective January 6, 1992.
See: 23 N.J.R. 3270(a), 24 N.J.R. 115(c).
Recodified from 16:44-1.12 by R.1994 d.198, effective April 18, 1994.
See: 25 N.J.R. 4727(a), 26 N.J.R. 1690(b).

16:44-1.14 Rejection of bids

(a) The Commissioner of Transportation may disqualify any contractor and reject its bid at any time prior to the actual award of a contract where there have been developments subsequent to qualification and classification which, in the opinion of the Commissioner, would affect the responsibility of the bidder. Before taking such action, the Commissioner will notify the bidder and give it an opportunity to present additional information in support of its responsibility.

(b) Proposals may be rejected for the following reasons:

1. If the proposal is on a form other than that furnished by the Department; or if the form is altered or any part thereof is detached or incomplete;

2. If the proposal is not properly signed;

3. If there are unauthorized additions, conditional or alternate bids, or irregularities of any kind which may tend to make the proposal incomplete, indefinite, or ambiguous as to its meaning;

4. If the bidder adds any provisions reserving the right to accept or reject an award, or to enter into a contract pursuant to an award;

i. The only exception permitted shall be a reservation limiting the maximum gross amount of awards acceptable to any one bidder at any one bid letting. However, the Commissioner will make the selection of which contract or contracts are to be awarded to such bidder within the maximum gross amount reserved;

5. If the bidder makes an alteration of the "Unit Prices" or "Amounts" that have been included by the Department, unless otherwise directed by Addendum received prior to receipt of bids;

6. If the proposal is not accompanied by an acceptable updated financial statement (Form DC-74B); or

7. If the Commissioner deems it advisable to do so in the interest of the State.

(c) Pursuant to N.J.S.A. 27:7-7.32, a proposal shall be rejected if it is not accompanied by a satisfactory Proposal Bond.

New Rule, R.1992 d.29, effective January 6, 1992.
See: 23 N.J.R. 3270(a), 24 N.J.R. 115(c).
Recodified from 16:44-1.13 by R.1994 d.198, effective April 18, 1994.
See: 25 N.J.R. 4727(a), 26 N.J.R. 1690(b).

16:44-1.15 Information to accompany bid

(a) In order that the Commissioner of Transportation may have the information necessary to pass upon the ability of a bidder to satisfactorily complete a project, each contractor must submit with its bid on each proposal the status of contracts on hand as of the date specified in the Notice of Contractors, a certification of Current Bid Capacity and the proposal affidavit.

(b) Updated financial statements (Form DC-74B) submitted with bids originally advertised for receipt of bids between the 1st and 15th of the month must include information accurate as of the close of business at the end of the second month preceding that during which bids are being received.

(c) Updated financial statements (Form DC-74B) submitted with bids originally advertised for receipt of bids between the 16th and the end of the month must include information accurate as of the close of business at the end of the month preceding that during which bids are being received.

(d) A contractor may submit with its bid a new unsecured line of credit, in addition to the available unsecured line of credit submitted at the time of classification, in order to maintain a current bid capacity sufficient to cover the total amount bid.

New Rule, R.1992 d.29, effective January 6, 1992.
See: 23 N.J.R. 3270(a), 24 N.J.R. 115(c).
Recodified from 16:44-1.14 by R.1994 d.198, effective April 18, 1994.
See: 25 N.J.R. 4727(a), 26 N.J.R. 1690(b).

16:44-1.16 Joint ventures

Two or three contractors holding valid classifications from the Department of Transportation may file a request to form a joint venture for the purpose of submitting a bid proposal on a specific project. A Joint Venture Statement must be filed with the Bureau of Construction Services at least five days prior to the date set for the receipt of bids on the project.

New Rule, R.1992 d.29, effective January 6, 1992.
See: 23 N.J.R. 3270(a), 24 N.J.R. 115(c).
Recodified from 16:44-1.15 by R.1994 d.198, effective April 18, 1994.
See: 25 N.J.R. 4727(a), 26 N.J.R. 1690(b).

16:44-1.17 Appeals and enforcement

(a) A contractor dissatisfied with its classification may request a hearing before the Prequalification Committee and at the hearing may present further evidence to justify a different classification. A change in classification will only be effective for an advertised project if the contractor has provided to the Prequalification Committee all information necessary to support the change request at least 15 days prior to the date on which bids are received.

(b) Except where specifically and expressly permitted, no deviation from this subchapter will be allowed.

New Rule, R.1992 d.29, effective January 6, 1992.
See: 23 N.J.R. 3270(a), 24 N.J.R. 115(c).
Recodified from 16:44-1.16 by R.1994 d.198, effective April 18, 1994.
See: 25 N.J.R. 4727(a), 26 N.J.R. 1690(b).

16:44-1.18 Requirements

(a) The Bureau of Construction Services will provide a Prequalification Questionnaire and Past Performance Record (Form DC 74A) to any contractor that desires to be classified to perform work for NJDOT under contract.

(b) Completed questionnaires shall be submitted to the Bureau of Construction Services.

Recodified from 16:44-1.3, R.1992 d.29, effective January 6, 1992.
See: 23 N.J.R. 3270(a), 24 N.J.R. 115(c).
Recodified from 16:44-1.17 and amended by R.1994 d.198, effective April 18, 1994.
See: 25 N.J.R. 4727(a), 26 N.J.R. 1690(b).
Former text at 16:44-1.18, Effective date of classification, repealed.
Prior revisions to that text:
Amended by R.1980 d.108, eff. March 14, 1980.
See: 12 N.J.R. 94(a), 12 N.J.R. 214(a).
Emergency amendment, effective March 30, 1989, (expires May 29, 1989).
See: 21 N.J.R. 1023(a).
Expiration date changed from 15 to 18 months.
Adopted concurrent proposal, R.1989 d.346, effective July 3, 1989.
See: 21 N.J.R. 1023(a), 21 N.J.R. 1833(a).
Provisions of emergency amendment R.1989 d.226 readopted without change.
Recodified from 16:44-1.4, R.1992 d.29, effective January 6, 1992.
See: 23 N.J.R. 3270(a), 24 N.J.R. 115(c).

16:44-1.19 Notice of classification

A "Notice of Classification" form shall be prepared in triplicate by the Bureau of Construction Services. The original shall be signed and mailed to the applicant by First Class mail.

Recodified from 16:44-1.5, R.1992 d.29, effective January 6, 1992.
See: 23 N.J.R. 3270(a), 24 N.J.R. 115(c).
Amended by R.1994 d.198, effective April 18, 1994.
See: 25 N.J.R. 4727(a), 26 N.J.R. 1690(b).

16:44-1.20 Equal employment opportunity**Authority**

N.J.S.A. 18:25-1 and Executive Order No. 21 dated June 24, 1965.
Recodified from 16:44-1.6, R.1992 d.29, effective January 6, 1992.
See: 23 N.J.R. 3270(a), 24 N.J.R. 115(c).

16:44-1.21 Wage rate administration**Authority**

N.J.S.A. 40:32-3.
Recodified from 16:44-1.7, R.1992 d.29, effective January 6, 1992.
See: 23 N.J.R. 3270(a), 24 N.J.R. 115(c).

SUBCHAPTER 2. DISTRIBUTION OF STANDARD SPECIFICATIONS**16:44-2.1 Requirements**

(a) The Bureau of Construction Services shall:

1. Distribute copies of "Standard Specifications"; and
2. Establish a reasonable selling price for the current "Standard Specifications."

(b) Approval of the Assistant Commissioner of Design and Right-of-Way or designee is required for nondepartmental distribution without charge.

Amended by R.1975 d.195, effective July 2, 1975.
See: 7 N.J.R. 279(a), 7 N.J.R. 387(a).
Recodified from 16:44-2.2 and amended by R.1994 d.198, effective April 18, 1994.
See: 25 N.J.R. 4727(a), 26 N.J.R. 1690(b).
Former text at 16:44-2.1, Definition, repealed. Previously amended by R.1975 d.195. See: 7 N.J.R. 387(a).

16:44-2.2 Distribution of free copies

(a) The Bureau of Construction Services is authorized to distribute "Standard Specifications" upon revision and re-printing, without charge, to the following:

1. New Jersey county engineer's office (one copy each);
2. Chief engineer of other state transportation departments (one copy);
3. American Association of State Highway and Transportation officials (three copies);
4. Each successful bidder may receive one free copy upon request, upon award of the contract; provided that not more than one copy of the current "Standard Specifications" will be furnished to any contractor, regardless of its number of awarded contracts, except upon payment of the established selling price per copy.

(b) No other free copies shall be provided. The Assistant Commissioner of Design and Right-of-Way or designee may, however, make exceptions to this rule on a case-by-case basis.

Amended by R.1975 d.195, effective July 2, 1975.
See: 7 N.J.R. 279(a), 7 N.J.R. 387(a).
Recodified from 16:44-2.3 and amended by R.1994 d.198, effective April 18, 1994.
See: 25 N.J.R. 4727(a), 26 N.J.R. 1690(b).

16:44-2.3 (Reserved)

16:44-2.4 (Reserved)

Amended by R.1975 d.195, effective July 2, 1975.
 See: 7 N.J.R. 279(a), 7 N.J.R. 387(a).
 Repealed by R.1994 d.198, effective April 18, 1994.
 See: 25 N.J.R. 4727(a), 26 N.J.R. 1690(b).
 Section was "Excerpts".

SUBCHAPTER 3. DISTRIBUTION AND SALE OF CONSTRUCTION PLANS AND SUPPLEMENTARY SPECIFICATIONS

16:44-3.1 Requirements

(a) Sets of construction plans shall be serially numbered by the supplier prior to delivery to the Department.

(b) Sets of supplementary specifications shall be consecutively numbered by the respective originating bureau, division, or unit, prior to issuance.

(c) Sets of construction plans and supplementary specifications sold by Regional Offices which are reproduced from microfilm shall not be numbered.

(d) A charge shall be made for each set of black line plans and supplemental specifications pursuant to requests from outside of the NJDOT in accordance with the following, except as otherwise authorized herein:

1. Plans and supplemental specifications will be furnished upon request at a charge in accordance with reasonable copying expenses.
2. For the key sheets, supplementary specifications and any other pertinent documents in instances where the advertised work does not require construction plans: \$10.00.
3. Supplementary specifications unaccompanied by construction plans: \$5.00.
4. For individual sheets of a set of plans, a charge of \$1.00 per sheet will be imposed but the total charge for request for individual sheets will not exceed the scheduled price for a complete set of black line prints as set forth in (d)1 above.
5. If copies of the supplementary specifications are not available subsequent to the award of the contract, photocopies shall be made at first to 10th page, \$0.75 per page; 11th to 20th page, \$0.50 per page; and all pages over 20, \$0.25 per page.

(e) Requests from outside the NJDOT for distribution of plans, or for any portion thereof, or for any individual sheet or sheets therefrom, shall be honored during the advertised period. However, distribution under such requests will only be made after one of the following:

1. The Department cashier has furnished a receipt indicating that the proper remittance has been submitted; or
2. The purchaser has indicated that delivery of the plans and supplementary specifications will be accepted on a C.O.D. basis;
3. Individual sheets, therefrom, can only be made available after the project has been bid.

Amended by R.1978 d.164, effective May 22, 1978.
 See: 10 N.J.R. 171(d), 10 N.J.R. 264(a).
 Amended by R.1979 d.388, effective October 1, 1979.
 See: 11 N.J.R. 409(c), 11 N.J.R. 588(b).
 Amended by R.1984 d.70, effective March 19, 1984.
 See: 15 N.J.R. 1930(a), 16 N.J.R. 554(a).
 This rule was recently recodified from 16:65. See the October 17, 1983 Register at 15 N.J.R. 1772(a).
 Amended by R.1985 d.6, effective February 4, 1985.
 See: 16 N.J.R. 2515(a), 17 N.J.R. 319(a).
 Delete (f).
 Amended by R.1987 d.218, effective May 18, 1987.
 See: 19 N.J.R. 181(b), 19 N.J.R. 883(a).
 Deleted (d)1 and chart and inserted (d)1 "Plans and supplemental ..."
 Amended by R.1990 d.500, effective October 15, 1990.
 See: 22 N.J.R. 2247(a), 22 N.J.R. 3238(a).
 Fees increased at (d).
 Recodified from 16:44-3.2 by R.1994 d.198, effective April 18, 1994.
 See: 25 N.J.R. 4727(a), 26 N.J.R. 1690(b).
 Former text at 16:44-3.1, Definitions, repealed. Previously amended by R.1979 d.388 and R.1990 d.500. See: 11 N.J.R. 588(b) and 22 N.J.R. 3238(a).
 Amended by R.1996 d.541, effective December 2, 1996.
 See: 28 N.J.R. 4180(a), 28 N.J.R. 5078(a).

16:44-3.2 Requisitioning of plans

Requests for plans should be sent to the Bureau of Construction Services, Division of Procurement, New Jersey Department of Transportation, CN605, 1035 Parkway Avenue, Trenton, New Jersey 08625-0605.

Amended by R.1978 d.164, effective May 22, 1978.
 See: 10 N.J.R. 171(d), 10 N.J.R. 264(a).
 Amended by R.1990 d.500, effective October 15, 1990.
 See: 22 N.J.R. 2247(a), 22 N.J.R. 3238(a).
 Administrative change reflected.
 Recodified from 16:44-3.3 and amended by R.1994 d.198, effective April 18, 1994.
 See: 25 N.J.R. 4727(a), 26 N.J.R. 1690(b).

16:44-3.3 Nondepartmental distribution and sale

(a) The Bureau of Construction Services shall issue plans and supplementary specifications in the quantities indicated without cost to the following:

1. The successful low bidder will receive copies of plans specified below and five additional free copies of supplementary specifications, without charge, upon award of the contract if requested.

TABLE OF PLANS FURNISHED WITHOUT CHARGE

From More Than	To And Including	Sets Of Plans Furnished
0	500,000	1
500,000	1,000,000	2
1,000,000	5,000,000	3
5,000,000	10,000,000	4
10,000,000	—	5

Additional copies of plans and supplementary specifications will be furnished, upon request, at a charge commensurate with reasonable copying costs.

2. One (1) copy of the plans and supplementary specifications to each utility specifically listed in the plans or supplementary specifications as having an interest in the work to be performed.

3. Two (2) copies of the plans and supplementary specifications to each railroad company listed in the plans or supplementary specifications as having an interest in the work to be performed.

4. One (1) copy of the plans and supplementary specifications to the county engineer when any part of such work is located within the county.

5. One (1) copy of the plans and supplementary specifications to the township, borough, or municipal engineer of each township, borough, or municipality wherein any part of the work on a given project is located, and one (1) copy to the engineering official of any other governmental body involved in the project site.

6. The Bureau, Division, or Unit in which the plans originate shall make distribution to those who are to receive complimentary plans and supplementary specifications as indicated in (a)2, 3, 4 and 5 above.

Amended by R.1978 d.164, effective May 22, 1978.

See: 10 N.J.R. 171(d), 10 N.J.R. 264(a).

Amended by R.1987 d.218, effective May 18, 1987.

See: 19 N.J.R. 181(b), 19 N.J.R. 883(a).

Added "Table of Plans" in (a)1.

Amended by R.1990 d.500, effective October 15, 1990.

See: 22 N.J.R. 2247(a), 22 N.J.R. 3238(a).

Administrative change reflected.

Recodified from 16:44-3.4 and amended by R.1994 d.198, effective April 18, 1994.

See: 25 N.J.R. 4727(a), 26 N.J.R. 1690(b).

16:44-3.4 Departmental distribution

(a) The division or bureau of origination shall provide construction plans and specifications on each advertised project to the Design Field Offices in the State to enable the contractor organizations to make a review of these plans and specifications. The four (4) Design Field Offices are located in:

1. Parsippany-Troy Hills;
2. Newark;
3. Freehold;
4. Mt. Laurel.

R.1978 d.164, effective May 22, 1978.

See: 10 N.J.R. 171(d), 10 N.J.R. 264(a).

Amended by R.1990 d.500, effective October 15, 1990.

See: 22 N.J.R. 2247(a), 22 N.J.R. 3238(a).

Recodified from 16:44-3.5 and amended by R.1994 d.198, effective April 18, 1994.

See: 25 N.J.R. 4727(a), 26 N.J.R. 1690(b).

SUBCHAPTER 4. ADVERTISING FOR BIDS

16:44-4.1 Requirements

Projects shall be advertised as required by N.J.S.A. 27:7-29.

Repeal and New Rule, R.1994 d.198, effective April 18, 1994.

See: 25 N.J.R. 4727(a), 26 N.J.R. 1690(b).

16:44-4.2 (Reserved)

Amended by R.1977 d.388, effective October 17, 1977.

See: 9 N.J.R. 444(a), 9 N.J.R. 543(b).

Repealed by R.1994 d.198, effective April 18, 1994.

See: 25 N.J.R. 4727(a), 26 N.J.R. 1690(b).

Section was "Processing".

SUBCHAPTER 5. RECEIPT OF BIDS

16:44-5.1 Procedures

(a) Bid proposals will be received at the hour, date and place specified in the advertisement. Bids will only be accepted from contractors currently classified, in accordance with N.J.A.C. 16:44-1 for the project advertised.

(b) The presiding officer will open each bid session as near to the hour specified in the advertisement as is practical. The presiding officer will announce the projects on which bids are being received during that bid session and ask if there are any additional bid proposals to be submitted. The presiding officer will then declare the bidding closed. No bids will be accepted after the bidding has been closed.

(c) The bid proposals will be opened and reviewed for acceptability and total bid prices will be read.

(d) Each bid shall be accompanied by a proposal bond in an amount equal to or greater than 50 percent of the bid price. Each proposal bond shall reference the project to which it applies.

i. Proposal bonds shall comply with the requirements of this chapter and relevant State statutes. Proposal bonds covering NJDOT projects shall be issued only by companies listed in the current United States Treasury Department Circular 570, which Circular will establish the underwriting limitation for any one risk.

ii. Proposal bonds shall be issued only by companies authorized to transact business in the State of New Jersey.

iii. Two or more companies may underwrite the proposal bond on a project if the aggregate of their underwriting limitations, as established by United States Treasury Department Circular 570, is not exceeded by the penal sum of the proposal bond. Each company may limit its liability, upon the face of the bond or power of attorney form, to a definite specified amount within its underwriting limitation. Such obligation shall be executed by the principal and sureties jointly and severally.

iv. Reinsurance shall be prohibited on NJDOT proposal bonds.

(e) The NJDOT shall examine all bid documents for completeness, conformity with requirements and mathematical accuracy. Adjustments will be made by the Bureau of Construction Services where necessary to establish the correct total bid amount.

(f) All proposals will be microfilmed at the bid session by NJDOT, or other State agency staff. The proposal bonds and the contractor's Updated Financial Statement (Form DC-74B) of all but the two lowest bidders will be returned after the processed microfilm has been deemed acceptable. The proposal bond and the contractor's Updated Financial Statement (Form DC-74B) of the second lowest bidder will be retained until a contract with the low bidder has been executed by the Commissioner of Transportation.

Amended by R.1977 d.388, effective October 17, 1977.

See: 9 N.J.R. 444(a), 9 N.J.R. 543(b).

Amended by R.1990 d.31, effective January 16, 1990.

See: 21 N.J.R. 3437(b), 22 N.J.R. 245(b).

In (a): deleted (a)5 listing a deputy attorney general and re-numbered old (a) to new (a)5.

In (j): revised text by adding "within two working days" and deleted language regarding specific bid procedures after review.

Repeal and New Rule, R.1994 d.198, effective April 18, 1994.

See: 25 N.J.R. 4727(a), 26 N.J.R. 1690(b).

Section was "Requirements".

Case Notes

Bids put on electronic bulletin board shortly after they were opened; failure to total bid items and announce bid totals warranted rejection. *Statewide Hi-Way Safety, Inc. v. New Jersey Dept. of Transp.*, 283 N.J.Super. 223, 661 A.2d 826 (A.D.1995).

16:44-5.2 Multiple bids

If a bidder submits bids on two or more projects at the same bid session, that bidder must have a current bid capacity greater than or equal to the combined amount of its bids, unless a reservation has been placed in each bid limiting the maximum gross amount of awards acceptable to the bidder at that particular bid letting. If such reservations are placed in the bids, the Commissioner will select which contract or contracts are to be awarded to such bidder within the maximum gross amount reserved.

Repeal and New Rule, R.1994 d.198, effective April 18, 1994.

See: 25 N.J.R. 4727(a), 26 N.J.R. 1690(b).

16:44-5.3 Withdrawal

A bidder may withdraw a bid proposal by executing an NJDOT "Request for Withdrawal of Bid" form prior to the opening of any bid on the project that is the subject of such proposal.

Repeal and New Rule, R.1994 d.198, effective April 18, 1994.

See: 25 N.J.R. 4727(a), 26 N.J.R. 1690(b).

16:44-5.4 (Reserved)

Repealed by R.1994 d.198, effective April 18, 1994.

See: 25 N.J.R. 4727(a), 26 N.J.R. 1690(b).

Section was "Actions prior to close of meeting".

16:44-5.5 (Reserved)

Amended by R.1977 d.388, effective October 17, 1977.

See: 9 N.J.R. 444(a), 9 N.J.R. 543(b).

Amended by R.1989 d.529, effective October 16, 1989.

See: 21 N.J.R. 2239(a), 21 N.J.R. 3314(b).

Bid proposal verification functions changed from Bureau of Contract Administration to The Office of Construction Services, Procurement Division.

Repealed by R.1994 d.198, effective April 18, 1994.

See: 25 N.J.R. 4727(a), 26 N.J.R. 1690(b).

Section was "Verification".

SUBCHAPTER 6. CONTRACTS

16:44-6.1 Contracts

(a) The NJDOT will forward the contract and surety corporation payment and performance bond forms to the contractor for signature and specify the time within which the executed contract and bond forms must be returned.

(b) Each payment and performance bond must be in an amount at least equal to the total contract price less the lump sum bid for the pay item "Performance Bond and Payment Bond."

1. Payment and performance bonds must comply with the requirements of this chapter and relevant State statutes. Bonds covering NJDOT projects must be issued by companies listed in the current United States Treasury Department Circular 570, which Circular will establish the underwriting limitation for any one risk.

2. Bonds shall be issued only by companies authorized to transact business in the State of New Jersey.

3. Two or more companies may underwrite the payment and performance bonds on a project if the aggregate of their underwriting limitations, as established by United States Treasury Department Circular 570, is not exceeded by the penal sum of the bonds. Each company may limit its liability, upon the face of the bond or power of attorney form, to a definite specified amount within its underwriting limitation. Such obligations must be executed by the principal and sureties jointly and severally.

4. Reinsurance shall be prohibited on NJDOT payment and performance bonds.

(c) If the contractor fails to return the executed contract and bond within the time specified by the NJDOT, the NJDOT will take whatever action is appropriate and authorized by law and specification.

(d) After execution by the Commissioner of Transportation, a copy of the signed contract will be sent to the contractor.

Repeal and New Rule, R.1994 d.198, effective April 18, 1994.
See: 25 N.J.R. 4727(a), 26 N.J.R. 1690(b).
Section was "Requirements".

16:44-6.2 (Reserved)

Amended by R.1977 d.388, effective October 17, 1977.
See: 9 N.J.R. 444(a), 9 N.J.R. 543(b).
Repealed by R.1994 d.198, effective April 18, 1994.
See: 25 N.J.R. 4727(a), 26 N.J.R. 1690(b).
Section was "Preparation".

16:44-6.3 (Reserved)

Repealed by R.1994 d.198, effective April 18, 1994.
See: 25 N.J.R. 4727(a), 26 N.J.R. 1690(b).
Section was "Execution".

16:44-6.4 (Reserved)

R.1971 d.237, effective December 30, 1971.
See: 4 N.J.R. 29(e).
Repealed by R.1994 d.198, effective April 18, 1994.
See: 25 N.J.R. 4727(a), 26 N.J.R. 1690(b).
Section was "Distribution".

SUBCHAPTER 7. DEFERRED PAYMENTS TO CONTRACTORS FOR MATERIALS SUPPLIED AND WORK PERFORMED IN THE CONSTRUCTION OF STATE HIGHWAYS AND RELATED PROJECTS

16:44-7.1 Partial payments to contractors

(a) Contracts may provide for partial payments to contractors at least once each month or from time to time as the work progresses on work of construction or maintenance of State highways or related projects.

(b) Contracts may also provide for partial payments to contractors at least once each month or from time to time as the work progresses on all materials placed along or upon the site which are suitable for the use and execution of the contract, provided the contractor furnishes releases of liens for all materials furnished at the time each estimate of work is submitted for payment, but the amount of the partial payment may not exceed 85 percent of the bid price for the pay item into which the materials are to be incorporated.

Amended by R.1990 d.500, effective October 15, 1990.

See: 22 N.J.R. 2247(a), 22 N.J.R. 3238(a).

Partial payment not to exceed 85 percent of bid price.
Recodified from 16:44-7.2 by R.1994 d.198, effective April 18, 1994.
See: 25 N.J.R. 4727(a), 26 N.J.R. 1690(b).
Former text at 16:44-7.1, Definitions, repealed.

16:44-7.2 Per centum withheld pending completion of contract

Five per centum of the amount due on partial payments on the first 50 percent of the total adjusted contract price will be deducted and retained by the Department pending substantial completion. On the remaining 50 percent of the total adjusted contract price, no percentage of the partial payments will be withheld as retainages.

Amended by R.1990 d.500, effective October 15, 1990.

See: 22 N.J.R. 2247(a), 22 N.J.R. 3238(a).
Amount withheld changed from ten percent to five percent.
Recodified from 16:44-7.3 by R.1994 d.198, effective April 18, 1994.
See: 25 N.J.R. 4727(a), 26 N.J.R. 1690(b).

16:44-7.3 Per centum withheld for deferred work

When the contract provides that a portion of the work may be deferred with the approval of the Commissioner, the sum withheld from the contractor may not be less than 25 percent of the value of said work.

Recodified from 16:44-7.4 by R.1994 d.198, effective April 18, 1994.
See: 25 N.J.R. 4727(a), 26 N.J.R. 1690(b).

16:44-7.4 Pledge of approved bonds by contractor in lieu of retained percentages

(a) Any money heretofore or hereafter withheld from contract payments as provided for in this Subchapter shall be paid by the State to any contractor entitled thereto who shall deposit certain negotiable bonds with a bank in the State of New Jersey, which is an approved depository of the State of New Jersey, having a trust department, and which is willing to complete the escrow agreement between the Department of Transportation, the contractor, and the bank.

(b) The bonds deposited by the contractor must be issued by the State of New Jersey or any of its political subdivisions, having a rating of at least "Baa" by Moody's Investor Service and/or "BBB" by Standard and Poors Corporation, and must have a value at least equal to the amount of money to be released to the contractor. As used in this subsection and hereafter, the value of a bond is the lesser of current market value or par value of such bonds.

Amended by R.1987 d.218, effective May 18, 1987.

See: 19 N.J.R. 181(b), 19 N.J.R. 883(a).
Added text in (b).
Recodified from 16:44-7.5 by R.1994 d.198, effective April 18, 1994.
See: 25 N.J.R. 4727(a), 26 N.J.R. 1690(b).

16:44-7.5 Responsibilities of bank designated and appointed as escrow agent

(a) Upon delivery of said negotiable bonds, the bank shall determine and certify to the Department of Transport-

tation that the bonds meet the terms of acceptability defined herein and furnish a receipt to the contractor and send a copy to the Department of Transportation. The receipt shall contain:

1. Description of negotiable bonds on deposit by official name;
2. The rating of each issue of bonds;
3. Maturity date;
4. Coupon rate;
5. Par value and current market value of each issue.

(b) The bank shall hold said negotiable bonds as escrow agent for and on behalf of the Department of Transportation and the contractor in accordance with the terms of the escrow agreement and this Subchapter.

(c) The bank shall provide a monthly report to the Department of Transportation and a copy to the contractor which shall contain:

1. Description of negotiable bonds on deposit by official name;
2. The rating of each issue of bonds;
3. Maturity date;
4. Coupon rate;
5. Par value and current market value of each issue;
6. Total market value of all bonds deposited by the contractor.

(d) The bank shall promptly collect any and all interest due on said bonds and pay such interest to the contractor.

(e) The bank shall release said negotiable bonds to the contractor only upon receipt of written authorization from the Commissioner of Transportation.

Amended by R.1987 d.218, effective May 18, 1987.
See: 19 N.J.R. 181(b), 19 N.J.R. 883(a).

(a) and (c) substantially amended.
Recodified from 16:44-7.6 by R.1994 d.198, effective April 18, 1994.
See: 25 N.J.R. 4727(a), 26 N.J.R. 1690(b).

16:44-7.6 Deposit of additional bonds

(a) In the event additional bonds are required due to a decline in market value of those bonds on deposit with the bank or the value of the bonds on deposit less than the total retainage requirement, the Department of Transportation shall deduct from current payments, amounts sufficient so that the total bond value on deposit plus retainage withheld will equal the total retainage requirement on all contracts.

(b) The contractor may elect, at his discretion, to place sufficient additional bonds on deposit with the bank.

(c) The contractor shall be required to replace any of the bonds held in the escrow account whose value was used in the computation of the amount of retainage released to the contractor at any time those bonds decline in rating below the rating required for bonds to be acceptable. The contractor is required to replace the unacceptable bonds with acceptable bonds. The Department of Transportation shall withhold from future payments cash equal to the amount of retainage previously released to the contractor which was based upon the value of the now unacceptable bonds should the contractor fail to replace the unacceptable bonds with acceptable bonds.

Amended by R.1987 d.218, effective May 18, 1987.
See: 19 N.J.R. 181(b), 19 N.J.R. 883(a).

(c) added.
Recodified from 16:44-7.7 by R.1994 d.198, effective April 18, 1994.
See: 25 N.J.R. 4727(a), 26 N.J.R. 1690(b).

16:44-7.7 Called or matured bonds

(a) The bank acting as escrow agent shall process called or matured bonds for collection and notify the contractor and the Department of Transportation of such action.

(b) Proceeds of called or matured bonds whose value was used in the computation of the amount of retainage released to the contractor may be released by the bank upon delivery by the contractor of acceptable bonds with current value equal to or greater than the amount of the proceeds of the called or matured bonds.

(c) The contractor may elect, at his discretion, to substitute acceptable new bonds for those bonds in the escrow account that were called or matured.

Amended by R.1987 d.218, effective May 18, 1987.
See: 19 N.J.R. 181(b), 19 N.J.R. 883(a).

Old text in (b) repealed and new text substituted; (d) deleted.
Recodified from 16:44-7.8 by R.1994 d.198, effective April 18, 1994.
See: 25 N.J.R. 4727(a), 26 N.J.R. 1690(b).

16:44-7.8 Default

In the event a default shall occur under the contract between the Department and the contractor, the Commissioner of Transportation shall promptly notify the bank in writing of such default. Following written notification of default the bank shall not dispose of, release or compromise any bond or the proceeds of called or matured bonds, without written instructions from the Commissioner. If directed by the Commissioner, the bank shall sell any bonds in the escrow account and pay proceeds of such sale and/or the proceeds held in the account from called or matured bonds to the Department or to any payee designated by the Commissioner. A copy of the instructions to sell shall be sent to the contractor by certified mail.

Amended by R.1987 d.218, effective May 18, 1987.
See: 19 N.J.R. 181(b), 19 N.J.R. 883(a).

Deleted "together with instructions . . . Department of Transportation" and added "Following written notification . . ."
Recodified from 16:44-7.9 by R.1994 d.198, effective April 18, 1994.

See: 25 N.J.R. 4727(a), 26 N.J.R. 1690(b).

16:44-7.9 Payment of service charges

The contractor shall pay any and all charges of the bank for services rendered in accordance with the terms and conditions of the escrow agreement and this subchapter.

Recodified from 16:44-7.10 by R.1994 d.198, effective April 18, 1994. See: 25 N.J.R. 4727(a), 26 N.J.R. 1690(b).

SUBCHAPTER 8. DEBARMENT, SUSPENSION AND DISQUALIFICATION OF A PERSON(S)

16:44-8.1 Causes for debarment of a person(s)

(a) In the public interest, the NJDOT 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 Organization 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. 276 b, 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 (C.114, L.1942, 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 the NJDOT to warrant debarment, including such conduct as may be prescribed 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.

(b) In the public interest, the New Jersey Department of Transportation shall debar a vendor for violation of any of the following prohibitions on vendor activities or for breach of any of the following affirmative obligations:

1. No vendor shall pay, offer to pay, or agree to pay, 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 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.
2. 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 from any State vendor shall be reported in writing forthwith by the vendor to the Attorney General and the Executive Commission on Ethical Standards.
3. No vendor may, directly or indirectly, undertake any private business, commercial or entrepreneurial relationship with, whether or not pursuant to employment, contract or other agreement, express or implied, or sell any interest in such vendor to, any 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.
4. Any relationship subject to the provisions of (b)3 above 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.

5. No vendor shall influence, or attempt to influence or cause to be influenced, any State officer or employee or special State officer or employee in his or her official capacity in any manner which might tend to impair the objectivity or independence of judgment of said officer or employee.

6. No vendor shall 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 or her official position to secure unwarranted privileges or advantages for the vendor or any other person.

7. The provisions cited in (b)1 through 6 above shall not be construed to prohibit a State officer or employee or special State officer or employee from receiving gifts from or contracting with vendors under the same terms and conditions as are offered or made available to members of the general public subject to any guidelines promulgated by the Executive Commission on Ethical Standards.

Amended by R.1990 d.429, effective September 4, 1990.

See: 22 N.J.R. 1898(a), 22 N.J.R. 2750(a).

Debarment requirements added at (b).

Recodified from 16:44-8.2 by R.1994 d.198, effective April 18, 1994.

See: 25 N.J.R. 4727(a), 26 N.J.R. 1690(b).

Former text at 16:44-8.1, Definitions, repealed. Previously amended by R.1990 d.429. See: 22 N.J.R. 2750(a).

16:44-8.2 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 Commissioner of Transportation, except as otherwise provided by law.

2. The existence of any of the causes set forth in section 2 of this subchapter shall not necessarily require that a person be debarred. In each instance, the decision to debar shall be made within the discretion of the Commissioner of Transportation, 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. This existence of a cause set forth in section 2(a)1 through 8 of this subchapter 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. 16:44-8.2(a)9 through 12 and (b) of this subchapter shall be established by evidence which the NJDOT determines to be clear and convincing in nature.

6. Debarment for the cause set forth in section 2(a)13 of this subchapter shall be proper, provided that one of the causes set forth in 2(a)1 through 12 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.429, effective September 4, 1990.

See: 22 N.J.R. 1898(a), 22 N.J.R. 2750(a).

Citation corrected at (a)5.

Recodified from 16:44-8.3 by R.1994 d.198, effective April 18, 1994.

See: 25 N.J.R. 4727(a), 26 N.J.R. 1690(b).

16:44-8.3 Procedures, period of debarment, and scope of debarment affecting the debarment of a person(s)

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

1. The NJDOT 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, the NJDOT may also impose a similar debarment without affording an opportunity for a hearing, provided that the NJDOT furnishes notice of the proposed similar debarment to that party, and affords that party an opportunity to present information in his 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 his 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 the NJDOT 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.