

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

Pursuant to Executive Order No. 1(2010), the chapter expiration date is extended from February 9, 2010 until the completion of the review of administrative regulations and rules by the Red Tape Review Group, and until such time as the extended regulation or rule is readopted pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq.

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.

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

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.

"Project rating" means the maximum dollar amount which a contractor shall be allowed to bid on an individual project.

"Special Provisions" means amendments or revisions updating the Standard Specifications.

"Standard Specifications" means the 2001 edition of the book entitled "New Jersey Department of Transportation Standard Specifications for Road and Bridge Construction," as amended and supplemented, incorporated herein by reference.

"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).

Amended by R.1999 d.113, effective April 5, 1999.

See: 31 N.J.R. 29(a), 31 N.J.R. 890(a).

Inserted "Design/Build/Operate/Maintain"; in "Key sheet" substituted "100 meters to the centimeter" for "2000 feet to the inch"; in "Plans", substituted "special provisions" for "supplementary specifications"; and in "Standard specifications", substituted "1996 edition" for "1983 edition", and added ", incorporated herein by reference".

Amended by R.2004 d.342, effective September 7, 2004.

See: 36 N.J.R. 1659(a), 36 N.J.R. 4155(b).

Rewrote the section.

16:44-1.2 Statements under oath

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

1. A financial statement, which 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, and notes to financial statements in complete detail. The financial statements shall be completed by a certified public accountant or public accountant, as established by N.J.S.A. 45:2B-42 et seq., who is independent of, and not an employee of, the contractor for which the financial statements are being provided. The financial statements shall include an independent auditor's report signed by the public accountant or CPA who prepared the documents;

i. The certified audited financial statements shall have an unqualified opinion. All financial statements, whether audited or a CPA review, shall be in conformity with generally accepted accounting principles and shall be for a full one-year accounting cycle;

ii. A CPA review of financial statements will limit the contractor's Maximum Project Rating to \$2,000,000, and limit the Aggregate Rating to the total uncompleted work on hand at the time of the classification, plus \$2,000,000;

iii. A consolidated financial statement 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, and a separate unqualified opinion, that includes a balance sheet, an income and retained earnings statement, and a statement of cash flows, in the name of the subsidiary corporation;

iv. A combined financial statement is not acceptable;

2. A statement as to construction equipment owned, which shall give complete details as to cost, age, condition and book value and outstanding equipment loans. A list of equipment not classified as construction equipment is on file at the Bureau of Construction Services;

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 work record 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 statement shall list, in detail, any liens, stop notices, default notices or claims filed with regard to any project within the previous four years;

ii. The 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, partnership, or limited liability company, a statement setting forth the names and addresses of all stockholders, partners or members owning 10 percent or greater interest in the contractor. If one or more stockholders, partners or members is, itself, a corporation, partnership or limited liability company (LLC), owning a 10 percent or greater interest in the contractor, the statement shall also set forth the names and addresses of all stockholders, partners or members owning a 10 percent or greater interest in that corporation, partnership or limited liability company. Disclosure of the names and addresses of all stockholders, partners or members owning a 10 percent or greater interest shall continue at each level of ownership until all stockholders, partners or members owning a 10 percent or more interest have been disclosed;

10. An 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.

(b) Contractors shall complete the Prequalification Questionnaire in its entirety and must answer all questions and provide all required information. Incomplete submissions will not be processed by the Department.

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(h), 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).

Amended by R.1999 d.113, effective April 5, 1999.

See: 31 N.J.R. 29(a), 31 N.J.R. 890(a).

In (a)1, inserted a reference to separate unqualified opinions in the second sentence of iii, and added iv.

Amended by R.2004 d.342, effective September 7, 2004.

See: 36 N.J.R. 1659(a), 36 N.J.R. 4155(b).

Rewrote the section.

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. Sugner*, 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 or any other submission required in conjunction with a request for classification 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, corporation or limited liability company, pay such fine or undergo imprisonment, not to exceed six months, or both.

(b) All persons convicted under (a) above and any copartnership, association, corporation, or joint stock company of which any convicted person is a partner or officer or director, and any corporation of which the person owns more than 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).
 Amended by R.2004 d.342, effective September 7, 2004.
 See: 36 N.J.R. 1659(a), 36 N.J.R. 4155(b).
 Rewrote the section.

16:44-1.4 Types and amount 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, PO Box 605, Trenton, New Jersey 08625-0605.

(c) Each contractor will be classified for one or more of the types of work requested by that contractor, if qualified, 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 Department. 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 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	20,000,001 to 25,000,000
100,001 to 150,000	25,000,001 to 30,000,000
150,001 to 200,000	30,000,001 to 35,000,000
200,001 to 300,000	35,000,001 to 40,000,000
300,001 to 400,000	40,000,001 to 45,000,000
400,001 to 500,000	45,000,001 to 50,000,000
500,001 to 750,000	50,000,001 to 55,000,000
750,001 to 1,000,000	55,000,001 to 60,000,000
1,000,001 to 2,000,000	60,000,001 to 65,000,000
2,000,001 to 3,000,000	65,000,001 to 70,000,000
3,000,001 to 4,000,000	70,000,001 to 75,000,000
4,000,001 to 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 who does not qualify to bid an amount in the \$50,001 to \$100,000 range, based on its financial statement, will be classified with an Aggregate Rating equal to its calculated capacity.

2. Projects in the "over 99,999,999" range shall be "Unlimited" class projects. A contractor, qualified to bid in excess of \$99,999,999, will be notified when the Department intends to bid a project in the "Unlimited" class. Each contractor that desires to bid upon the "Unlimited" class project shall be required to specifically prequalify to bid on that project, with regard to specific criteria established by the Department based on factors including the dollar amount, and the nature of the project as set forth in the plans and specifications for the project. The contractor must apply for such specific classifications 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).
 Amended by R.1999 d.113, effective April 5, 1999.
 See: 31 N.J.R. 29(a), 31 N.J.R. 890(a).

In (e)2, rewrote the second sentence.
 Amended by R.2004 d.342, effective September 7, 2004.
 See: 36 N.J.R. 1659(a), 36 N.J.R. 4155(b).

In (c), inserted ", if qualified," preceding "and will be rated" and substituted "Department" for "NJDOT"; in (d), deleted "submitted" preceding "or to clarify information"; in (e), rewrote 1 and 2.

16:44-1.5 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, except as provided in (b)2 below. Net working capital is 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 will use the contractor's net worth, as show in the balance sheets, in the place of the contractor's net working capital whenever the contractor's net worth is less than its net working capital, as shown in the balance sheets.

3. The Department will add dollar figures established by use of the multipliers indicated below.

i. For contractors which have had a Department performance rating within the prior four-year period, the resulting figure will be multiplied by the contractor's average performance rating to establish the contractors' aggregate rated capacity.

Contractors with Department 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.

ii. For contractors which have not had a Department performance rating within the prior four-year period, the resulting figure shall be the contractor's aggregate rated capacity.

Contractors without Department past performance:

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

4. A contractor's aggregate rated capacity will be reduced by 15 percent if a contractor 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 shall be the maximum amount for the Dollar Rating Range found in Table I at N.J.A.C. 16:44-1.4(e), within which the aggregate rated capacity, as calculated by (b)3 above, falls.

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 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 and as actually performed by the contractor.

2. When a contractor has never been classified by the Department 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).
Amended by R.1999 d.113, effective April 5, 1999.
See: 31 N.J.R. 29(a), 31 N.J.R. 890(a).

Rewrote (b)2.

Amended by R.2004 d.342, effective September 7, 2004.

See: 36 N.J.R. 1659(a), 36 N.J.R. 4155(b).

Rewrote (b): in (c), inserted "and as actually performed by the contractor" following "performance rating" in 1 and deleted "of Transportation" following "Department" throughout.

16:44-1.6 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 having no work experience with the Department, the contractor will provide 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, Work Experience Evaluation—Quality Points, below.

TABLE II
WORK EXPERIENCE EVALUATION—
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 Department 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 Department work (similar work is deemed to be work for County, City, Township, Municipal, or Utility Authorities):				0.50

(b) A contractor shall receive a quality point score for each of the work evaluation criteria listed in the table, including Supplemental Quality Points when applicable. 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 shall be the maximum amount for the Dollar Rating Range found in Table I at N.J.A.C. 16:44-1.4(e), within which the resulting dollar figure falls.

(c) If the contractor's major work program is evaluated to be equivalent in scope and expertise level to that of Department projects and quality of work 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) A contractor's Project Rating shall not 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. Amended by R.2004 d.342, effective September 7, 2004.

See: 36 N.J.R. 1659(a), 36 N.J.R. 4155(b).

Rewrote the section.

16:44-1.7 Project Rating for newly formed or inexperienced 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 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 Department of any change in their employment status. Upon notification of a change in the employment of key personnel, the Department may reevaluate the contractor's classifications.

(c) A contractor's Project Rating shall not 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.

Amended by R.2004 d.342, effective September 7, 2004.

See: 36 N.J.R. 1659(a), 36 N.J.R. 4155(b).

In (b), deleted "of Transportation" preceding "will grant" in the first sentence and substituted "Department" for "NJDOT" in the second and third sentences; rewrote (c).

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 Department past performance rating within the previous four years will be evaluated on the basis of the information

and in accordance with the procedures prescribed in N.J.A.C. 16:44-1.6 or 1.7.

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

1. If a contractor's average performance rating, expressed as a percentage and compared to the average of all ratings of all contractors, 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 amount equal to three times the largest successfully completed Department contract, or similar contract performed during the prior four years. A contractor's Project Rating shall be the maximum amount for the Dollar Rating Range found in Table I at N.J.A.C. 16:44-1.4(e), within which the resulting dollar figure falls.

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 Department performance rating within the previous four years, the Department may, in the public interest, 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. 16:44-1.17.

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 Department performance rating within the previous four years, or if the contractor's average rating is 80 or above, the contractor will receive a Project Rating equal to its Aggregate Rating, up to a limit of over \$99,999,999, as referenced in the Dollar Rating Ranges in Table I at N.J.A.C. 16:44-1.4(e).

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 Department performance ratings within the previous four years, or if the contractor's average rating is 80 or above, the contractor will receive a Project Rating equal to its Aggregate Rating up to a limit of over \$99,999,999, as referenced in the Dollar Rating Ranges in Table I at N.J.A.C. 16:44-1.4(e).

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).

Amended by R.2004 d.342, effective September 7, 2004.

See: 36 N.J.R. 1659(a), 36 N.J.R. 4155(b).

In (b), substituted "Department" for "NJDOT" preceding "past performance rating" and substituted "or" for "and/or" following "N.J.A.C. 16:44-1.6"; rewrote (c).

16:44-1.9 Effective date and expiration 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, if the Bureau of Construction Services requires additional information from the contractor, 15 days after receipt of the additional information requested. The expiration date shall be 18 months after the close of business 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).
Amended by R.2004 d.342, effective September 7, 2004.
See: 36 N.J.R. 1659(a), 36 N.J.R. 4155(b).
Rewrote the section.

16:44-1.10 Bidding

(a) Any contractor assigned a classification by the Department may submit a bid on any project within the contractor's classification for a period of 18 months from the date of the close of business shown in its financial statement filed with the Prequalification Questionnaire. No bid will be accepted unless a properly completed Prequalification Questionnaire and all required statements are filed with the Department no less than 15 days before the bid date.

(b) Contractors shall submit a Prequalification Questionnaire as required by N.J.A.C. 16:44-1.2 or this section, or at other times as 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).
Amended by R.2004 d.342, effective September 7, 2004.
See: 36 N.J.R. 1659(a), 36 N.J.R. 4155(b).
Rewrote (a); in (b), substituted "this section, or at other times as deemed necessary" for "this section, or on such other intermediate occasions as may be deemed necessary".

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. No bid will be accepted from a contractor that 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 highly 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 rejected.

(c) Bids will be accepted only if an authorized agent, employee or officer of the contractor has acknowledged receipt of all 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).
Amended by R.2004 d.342, effective September 7, 2004.
See: 36 N.J.R. 1659(a), 36 N.J.R. 4155(b).
Rewrote (a); in (b), substituted "rejected" for "immediately excluded"; in (c), deleted "applicable" preceding "addenda".

16:44-1.12 Certification of current bid capacity

(a) A contractor submitting a bid to the Department must compute and certify its current bid capacity on a Form DC-74B, Contractor's Updated Financial Statement.

(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. In determining the Maximum Rating when the contractor's outstanding work includes DBOM contracts, the current dollar amount of outstanding DBOM work shall include only the dollar amount of the design/build portion of the DBOM contract.

(c) If a contractor submits bids on two or more Department projects on the same date and is the 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. The total unsecured lines of credit shall not increase the aggregate rating assigned at the time of prequalification.

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

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).
Amended by R.1999 d.113, effective April 5, 1999.
See: 31 N.J.R. 29(a), 31 N.J.R. 890(a).
In (b), added a third sentence.
Amended by R.2004 d.342, effective September 7, 2004.
See: 36 N.J.R. 1659(a), 36 N.J.R. 4155(b).
In (a), deleted "proposal" following "bid", deleted "of Transportation" following "Department", and deleted "the last sentence"; in (c), rewrote the first sentence and added the last sentence; in (d), substituted "rejected" for "excluded".

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

(a) If 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).
Amended by R.2004 d.342, effective September 7, 2004.
See: 36 N.J.R. 1659(a), 36 N.J.R. 4155(b).

In (a), substituted "If" for "In the event" and amended the N.J.S.A. reference.

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 when 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) Bids 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 of the form 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 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" as found in the bid, that have been included by the Department, unless otherwise directed by Addendum received prior to receipt of bids;
6. If the bidder fails to provide a total price in its bid;
7. If the bid does not include an acceptable updated financial statement (Form DC-74B); or
8. If the Commissioner deems it advisable to do so in the interest of the State.

(c) Pursuant to N.J.S.A. 27:7-32, a bid shall be rejected if it is not accompanied by a satisfactory Proposal Bond.

(d) For 100 percent State-funded projects, bidders must be registered pursuant to the Public Works Contractor Registration Act, N.J.S.A. 34:11-56.28 et seq., with the Department of Labor, Wage & Hour Compliance, at the time of bid. A bid shall be rejected if the bidder fails to have valid, current registration at the time of bid. For Federally-funded projects, the bidder must be registered with the Department of Labor, Wage & Hour Compliance, prior to execution of the contract.

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).
Amended by R.2004 d.342, effective September 7, 2004.
See: 36 N.J.R. 1659(a), 36 N.J.R. 4155(b).
Rewrote the section.

16:44-1.15 Information to accompany bid

(a) In order that the Commissioner of Transportation may have the information necessary to determine the ability of a bidder to satisfactorily complete a project, each contractor must submit with its bid the status of contracts on hand as of the date specified in the Notice of Advertisement, 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 the aggregate rating initially assigned at the time of prequalification and 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).
Amended by R.2004 d.342, effective September 7, 2004.
See: 36 N.J.R. 1659(a), 36 N.J.R. 4155(b).

In (a), substituted "determine" for "pass upon" and substituted "Advertisement" for "Contractors"; in (d), inserted "the aggregate rating initially assigned at the time of prequalification and" preceding "a current capacity".

16:44-1.16 Joint ventures

Two or more contractors holding valid classifications from the Department may file a request to form a joint venture for the purpose of submitting a bid on a specific project. The Aggregate Ratings of the contractors forming the joint venture shall be combined. In order for the Project Ratings of the contractors to be combined, each contractor must have the eligible work type classification required for the 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).
 Amended by R.1999 d.113, effective April 5, 1999.
 See: 31 N.J.R. 29(a), 31 N.J.R. 890(a).

Inserted new second and third sentences.
 Amended by R.2004 d.342, effective September 7, 2004.
 See: 36 N.J.R. 1659(a), 36 N.J.R. 4155(b).

Substituted "more" for "three" following "Two or", deleted "of Transportation" following "Department" and deleted "proposal" preceding "on a specific project".

16:44-1.17 Appeals and enforcement

(a) A contractor dissatisfied with its classification or with the classification of another person or persons may request in writing 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. When the request for a hearing is related to the classification of another person, the applicant for the hearing shall notify such other person by registered mail, of the time and place of hearing, and at the hearing shall present to the Committee satisfactory evidence that such notice was given, before any matters pertaining to the classification of such other person shall be considered.

(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).
 Amended by R.2004 d.342, effective September 7, 2004.
 See: 36 N.J.R. 1659(a), 36 N.J.R. 4155(b).

In (a), rewrote the first sentence and added the last sentence.

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 the Department under contract.

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

(c) When a contractor submits a new or renewal application for classification (Form DC-74A), the contractor shall include with its application the required fee in accordance with N.J.S.A. 27:7-35.3. Payment shall be made as specified on the application. No application will be processed until the required fee is received by 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(u), 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).
 Amended by R.2004 d.342, effective September 7, 2004.
 See: 36 N.J.R. 1659(a), 36 N.J.R. 4155(b).
 In (a), substituted "the Department" for "NJDOT"; added (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).

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

(a) The Bureau of Program Support-Engineering Documents Unit 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 or Commissioner's designee of the departmental unit from which the plans originate 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).

Amended by R.1999 d.113, effective April 5, 1999.

See: 31 N.J.R. 29(a), 31 N.J.R. 890(a).

In (a), substituted "Contract Administration" for "Construction" following "Bureau of" in the introductory paragraph; and in (b), substituted "Capital Program Management" for "Design and Right-of-Way" following "Commissioner of".

Amended by R.2004 d.342, effective September 7, 2004.

See: 36 N.J.R. 1659(a), 36 N.J.R. 4155(b).

In (a), substituted "Program Support-Engineering Documents Unit" for "Contract Administration Services"; rewrote (b).

16:44-2.2 Distribution of free copies

(a) The Bureau of Program Support-Engineering Documents Unit may distribute "Standard Specifications" 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 or designee of the departmental unit from which the plans originate 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).

Amended by R.1999 d.113, effective April 5, 1999.

See: 31 N.J.R. 29(a), 31 N.J.R. 890(a).

In (a), substituted "Contract Administration" for "Construction" following "Bureau of" in the introductory paragraph; and in (b), substituted "Capital Program Management" for "Design and Right-of-Way" following "Commissioner of".

Amended by R.2004 d.342, effective September 7, 2004.

See: 36 N.J.R. 1659(a), 36 N.J.R. 4155(b).

In (a), substituted "Program Support-Engineering Documents Unit" for "Contract Administration Services" and deleted "upon revision and reprinting" in the introductory paragraph; in (b), deleted "of Capital Program Management" following "The Assistant Commissioner" and inserted "of the departmental unit from which the plans originate" following "or designee".

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 SPECIAL PROVISIONS

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 construction plans and special provisions sold by the Engineering Documents Unit, Bureau of Program Support, Division of Quality Management Services which are reproduced from microfilm shall not be numbered.

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

1. Plans and special provisions will be furnished upon a request at a reasonable copying cost.

2. For key sheets, special provisions and any other pertinent documents when the advertised work does not require construction plans: \$10.00.

3. Special provisions unaccompanied by construction plans: \$5.00.

4. For individual sheets of a set of plans: \$1.00 per sheet. The total charge for a request for individual sheets will not exceed the scheduled price for a complete set of black line prints as set forth in (c)1 above.

5. If copies of special provisions 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.

(d) Requests from outside the Department for distribution of plans, or for any portion thereof, or for any individual sheet or sheets, shall be honored during the advertised period.

1. Distribution under such requests will only be made after one of the following:

i. The Department cashier has furnished a receipt indicating that the proper remittance has been submitted; or

ii. The purchaser has indicated that delivery of the plans and special provisions will be accepted on a C.O.D. basis.

2. Individual sheets will be made available only after the receipt of bids.

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).
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).

Amended by R.1999 d.113, effective April 5, 1999.

See: 31 N.J.R. 29(a), 31 N.J.R. 890(a).

Rewrote the section.

Amended by R.2004 d.342, effective September 7, 2004.

See: 36 N.J.R. 1659(a), 36 N.J.R. 4155(b).

Rewrote (b) and (c); in (d), substituted "Department" for "NJDOT" preceding "for distribution of plans" and deleted "therefrom" preceding "shall be honored".

16:44-3.2 Requests for plans

Requests for plans should be sent to the Bureau of Program Support-Engineering Documents Unit, New Jersey Department of Transportation, PO Box 600, 1035 Parkway Avenue, Trenton, New Jersey 08625-0600.

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).

Amended by R.1999 d.113, effective April 5, 1999.

See: 31 N.J.R. 29(a), 31 N.J.R. 890(a).

Substituted a reference to the Bureau of Contract Administration Services, Division of Project Management for a reference to the Bureau of Construction Services, Division of Procurement, and changed the mailing address.

Amended by R.2004 d.342, effective September 7, 2004.

See: 36 N.J.R. 1659(a), 36 N.J.R. 4155(b).

Substituted "Program Support-Engineering Documents Unit" for "Contract Administration Services, Division of Project Management".

16:44-3.3 Nondepartmental distribution and sale

(a) The Bureau of Program Support-Engineering Documents Unit shall issue plans and special provisions in the quantities indicated without cost to the following:

1. The successful low bidder will receive copies of plans specified in the Table below and five additional free copies of special provisions, without charge, upon award of the contract if requested. The successful low bidder shall receive the number of sets of plans associated with the contract dollar range within which the bidder's contract dollar amount falls.

TABLE III

PLANS FURNISHED WITHOUT CHARGE

Contract Dollar Ranges

From	To	Sets of Plans
0	500,000	1
500,001	1,000,000	2
1,000,001	5,000,000	3
5,000,001	10,000,000	4
over 10,000,000	—	5

Additional copies of plans and special provisions will be furnished, upon request, at a reasonable copying cost.

2. One copy of the plans and special provisions to each utility specifically listed in the plans or special provisions as having an interest in the work to be performed.

3. One copy of the plans and special provisions to each railroad company listed in the plans or special provisions as having an interest in the work to be performed.

4. One copy of the plans and special provisions to the county engineer wherein any part of the work on a given project is located.

5. One copy of the plans and special provisions 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 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 special provisions 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).

Amended by R.1999 d.113, effective April 5, 1999.

See: 31 N.J.R. 29(a), 31 N.J.R. 890(a).

In (a), substituted references to special provisions for references to supplementary specifications throughout, substituted a reference to the Bureau of Contract Administration Services for a reference to the Bureau of Construction Services in the introductory paragraph, and substituted "One copy" for "Two (2) copies" at the beginning of 3. Amended by R.2004 d.342, effective September 7, 2004.
See: 36 N.J.R. 1659(a), 36 N.J.R. 4155(b).

Rewrote the section.

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 review these plans and specifications. The three Design Field Offices are located in:

1. Mt. Arlington;
2. Freehold; and
3. 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).

Amended by R.1999 d.113, effective April 5, 1999.

See: 31 N.J.R. 29(a), 31 N.J.R. 890(a).

In (a), changed a reference to the number of Design Field Offices in the introductory paragraph, substituted a reference to Mt. Arlington for a reference to Parsippany-Troy Hills in 1, deleted a former 2, and recodified former 3 and 4 as 2 and 3.

Amended by R.2004 d.342, effective September 7, 2004.

See: 36 N.J.R. 1659(a), 36 N.J.R. 4155(b).

Deleted "make a" preceding "review" and deleted "of" preceding "these plans".

from contractors currently classified 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 bids to be submitted. The presiding officer will then declare the bidding closed. No bids will be accepted after the bidding has been closed.

(c) Each bid will be opened and reviewed for acceptability. The total bid price as submitted by the bidder will be read. Failure by the bidder to provide a total bid price shall cause rejection of the bid.

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

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

2. Proposal 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 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. The principal and sureties must execute the obligations jointly and severally.

4. Reinsurance shall be prohibited on Department proposal bonds.

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

(f) All bids will be microfilmed or copied exactly using other appropriate methods at the bid session by Department, 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 and bid prices certified. 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.

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) Bids will be received at the hour, date and place specified in the advertisement. Bids will only be accepted

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".

Amended by R.2004 d.342, effective September 7, 2004.

See: 36 N.J.R. 1659(a), 36 N.J.R. 4155(b).

Rewrote the section.

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 by filing a Department "Request for Withdrawal of Bid" form prior to the opening of any bid on the subject project.

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).

Amended by R.2004 d.342, effective September 7, 2004.

See: 36 N.J.R. 1659(a), 36 N.J.R. 4155(b).

Rewrote the section.

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 Department 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 price 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 Department 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. If the penal sum of the bond is \$3.5 million or greater and the surety company has been operational for a period in excess of five years, the surety company issuing the bond shall be rated in one of the three highest categories by an independent, nationally recognized United States rating company as set forth in N.J.A.C. 11:1-41. The contractor shall submit proof of the surety company's current rating with the bonds.

4. The contractor shall submit a surety disclosure statement and certification which complies with the requirements of N.J.S.A. 2A:44-143 with the bonds.

5. Two or more surety 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. The principal and sureties must execute the obligations jointly and severally.

6. Reinsurance shall be prohibited on Department payment and performance bonds.

(c) Pursuant to N.J.S.A. 52:32-44, proof of the contractor's valid State of New Jersey Business Registration issued by the Department of Treasury, Division of Revenue, must be provided prior to execution of the contract.

(d) If the contractor fails to return the executed contract, bonds and other required documents as set forth in the specifications within the time specified by the Department, the Department will take whatever action is appropriate and authorized by law and specification.

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

(f) For Federally funded projects, the contractor must provide proof of current registration with the Department of Labor, Wage & Hour Compliance, pursuant to N.J.S.A. 34:11-56.48 et seq., prior to execution of the contract.

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".

Amended by R.1999 d.113, effective April 5, 1999.
See: 31 N.J.R. 29(a), 31 N.J.R. 890(a).

In (b), inserted new 3 and 4, recodified former 3 and 4 as 5 and 6.
Amended by R.2004 d.342, effective September 7, 2004.
See: 36 N.J.R. 1659(a), 36 N.J.R. 4155(b).
Rewrote the section.

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. PARTIAL AND DEFERRED PAYMENTS TO CONTRACTORS

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 the deferred 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).
Amended by R.2004 d.342, effective September 7, 2004.
See: 36 N.J.R. 1659(a), 36 N.J.R. 4155(b).
Substituted "the deferred" for "said" following "the value of".

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

(a) Any money withheld from contract payments as provided 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, 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.

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).
Amended by R.2004 d.342, effective September 7, 2004.
See: 36 N.J.R. 1659(a), 36 N.J.R. 4155(b).

In (a), deleted "heretofore or hereinafter" preceding "withheld" and deleted "for" following "payments as provided"; in (b), deleted the last sentence.

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

(a) Upon delivery of the negotiable bonds, the bank shall certify to the Department that the bonds meet the terms of acceptability defined herein and furnish a receipt to the contractor and send a copy to the Department. 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 the negotiable bonds as escrow agent for and on behalf of the Department 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 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 all interest due on the bonds and pay interest to the contractor.

(e) The bank shall release the 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).
Amended by R.2004 d.342, effective September 7, 2004.
See: 36 N.J.R. 1659(a), 36 N.J.R. 4155(b).

Rewrote (d); substituted "the" for "said" preceding "negotiable bonds" and deleted "of Transportation" following "Department" throughout.

16:44-7.6 Deposit of additional bonds

(a) If 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 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 place sufficient additional bonds on deposit with the bank.

(c) The contractor shall replace any of the bonds held in the escrow account whose value was used in the computation of the amount of the 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 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).
Amended by R.2004 d.342, effective September 7, 2004.
See: 36 N.J.R. 1659(a), 36 N.J.R. 4155(b).

In (a), substituted "If" for "In the event" preceding "additional bonds"; in (b), deleted "elect, at his discretion, to" following "The contractor may"; in (c), deleted "be required to" following "The contractor shall"; deleted "of Transportation" following "Department" throughout.

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 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 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).
Amended by R.2004 d.342, effective September 7, 2004.
See: 36 N.J.R. 1659(a), 36 N.J.R. 4155(b).

In (a), deleted "of Transportation" following "Department"; in (c), deleted "elect, at his discretion, to" following "The contractor may".

16:44-7.8 Default

If the contractor defaults or the contractor otherwise is deemed owing the Department under a contract between the Department and the contractor, the Commissioner of Transportation shall promptly notify the bank in writing of such default or obligation. Following written notification, 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).

Amended by R.1999 d.113, effective April 5, 1999.

See: 31 N.J.R. 29(a), 31 N.J.R. 890(a).

Inserted "or the contractor otherwise is deemed owing the Department" following "occur" and added "or obligation" at the end of the first sentence, and deleted "of default" following "notification" in the second sentence.

Amended by R.2004 d.342, effective September 7, 2004.

See: 36 N.J.R. 1659(a), 36 N.J.R. 4155(b).

Substituted "If the contractor defaults" for "In the event a default shall occur".

16:44-7.9 Payment of service charges

The contractor shall pay 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).

Amended by R.2004 d.342, effective September 7, 2004.

See: 36 N.J.R. 1659(a), 36 N.J.R. 4155(b).

Deleted "any and" preceding "all charges".

SUBCHAPTER 8. DEBARMENT, SUSPENSION AND DISQUALIFICATION

16:44-8.1 Causes for debarment

(a) In the public interest, the Department may debar 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. Civil or criminal violation of the Federal Organization Crime Control Act of 1970 or the New Jersey Racketeer Influenced and Corrupt Organizations Act, N.J.S.A. 2C:41-1 et seq., 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 for honesty;
3. Violation of the Federal, State of New Jersey, or any state antitrust statutes, or of the Federal Anti-Kick-back Act (18 U.S.C. § 874, 40 U.S.C. § 276b, c);
4. Violation of any of the laws governing the conduct of elections of the Federal government, State of New Jersey, or any state or of its political subdivisions;
5. Violation of the "Law Against Discrimination" (P.L. 1945, c.169, N.J.S.A. 10:5-1 et seq., as supplemented by P.L. 1975, c.127), or of the act banning discrimination in public works employment (N.J.S.A. 10:2-1 et seq.) or

of the act prohibiting discrimination by industries engaged in defense work in the employment of persons therein (P.L. 1942, c.114, N.J.S.A. 10:1-10 et seq.);

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

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

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

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

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

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

12. Any other cause affecting responsibility as a State contractor of such serious and compelling nature as may be determined by the Department 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; and

13. Debarment or disqualification by any other agency of government.

(b) In the public interest, the Department may debar a vendor for violation of any of the following prohibitions on vendor activities or for breach of any of the following 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).

Amended by R.2004 d.342, effective September 7, 2004.

See: 36 N.J.R. 1659(a), 36 N.J.R. 4155(b).

Rewrote the section.

16:44-8.2 Conditions affecting debarment

(a) Debarment shall be made only upon approval of the Commissioner of Transportation, except as otherwise provided by law.

(b) Any of the causes set forth in N.J.A.C. 16:44-8.1 shall not necessarily require that a person be debarred. In each instance, the decision to debar shall be made within the discretion of the Commissioner of Transportation, unless otherwise required by law, and shall be rendered in the best interests of the State.

(c) 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.

(d) A cause set forth in N.J.A.C. 16:44-8.1(a)1 through 8 shall be established upon the rendering of a final judgment or conviction, including a guilty plea or a plea of nolo contendere by a court of competent jurisdiction or by an administrative agency empowered to render such judgment. If an appeal taken from such judgment or conviction results in reversal of the judgment or conviction, the debarment shall be removed upon the written request of the debarred person unless other cause for debarment exists.

(e) A cause set forth in N.J.A.C. 16:44-8.1(a)9 through 12 and (b) shall be established by clear and convincing evidence as determined by the Department.

(f) Debarment for the cause set forth in N.J.A.C. 16:44-8.1(a)13 shall be proper, provided that one of the causes set forth in N.J.A.C. 16:44-8.1(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).

Amended by R.2004 d.342, effective September 7, 2004.

See: 36 N.J.R. 1659(a), 36 N.J.R. 4155(b).

Rewrote the section.

16:44-8.3 Procedures, period of debarment, and scope of debarment

(a) The Department seeking to debar a person or a person's 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 Department may also impose a similar debarment without affording an opportunity for a hearing, provided that the Department furnishes notice of the proposed similar debarment to that party, and affords that party an opportunity to present information to explain why the proposed similar debarment should not be imposed in whole or in part.

(b) 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 of the additional period is furnished and the party is afforded an opportunity to present information to explain why the additional period of debarment should not be imposed.

(c) Except as otherwise provided by law, a debarment may be removed or the period of debarment may be reduced in the discretion of the Department 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.

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

Recodified from 16:44-8.4 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.2004 d.342, effective September 7, 2004.
See: 36 N.J.R. 1659(a), 36 N.J.R. 4155(b).
Rewrote the section.

16:44-8.4 Causes for suspension

In the public interest, the Department may suspend a person for any cause specified in N.J.A.C. 16:44-8.1 or upon reasonable suspicion that such cause exists.

Recodified from 16:44-8.5 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.2004 d.342, effective September 7, 2004.
See: 36 N.J.R. 1659(a), 36 N.J.R. 4155(b).
Substituted "Department may" for "NJDOT shall" and substituted the N.J.A.C. reference for "section 2 of this subchapter".

16:44-8.5 Conditions for suspension

(a) Suspension shall be imposed only upon approval of the Commissioner of Transportation and upon approval of the Attorney General, except as otherwise provided by law.

(b) The existence of any cause for suspension shall not require that a suspension be imposed, and a decision to suspend shall be made at the discretion of the Commissioner of Transportation and of the Attorney General, and shall be rendered in the best interest of the State.

(c) Suspension shall not be based upon unsupported accusation, but upon adequate evidence that cause exists or

upon evidence adequate to create a reasonable suspicion that cause exists.

(d) In assessing whether adequate evidence exists to find a cause for suspension, consideration shall be given to the amount of credible evidence which is available, to the existence or absence of corroboration as to important allegations, and to inferences which may properly be drawn from the existence or absence of affirmative facts.

(e) Reasonable suspicion of a cause described in N.J.A.C. 16:44-8.1(a)1 through 8 may be established by the rendering of a final judgment or conviction by a court or administrative agency of competent jurisdiction, by grand jury indictment, or by evidence that such violations of civil or criminal law did occur.

(f) A suspension invoked by another agency of government for any of the causes described in N.J.A.C. 16:44-8.1 may be the basis for the imposition of a concurrent suspension by the Department, which may impose such suspension without the approval of the Attorney General.

Recodified from 16:44-8.6 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.2004 d.342, effective September 7, 2004.
See: 36 N.J.R. 1659(a), 36 N.J.R. 4155(b).
Rewrote the section.

16:44-8.6 Procedures, period of suspension and scope of suspension

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

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

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

Recodified from 16:44-8.7 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.2004 d.342, effective September 7, 2004.
See: 36 N.J.R. 1659(a), 36 N.J.R. 4155(b).
Rewrote the section.

16:44-8.7 Disqualification

The disqualification of the person shall conform to N.J.S.A. 27:7-35.1 et seq. and this chapter.

Recodified from 16:44-8.8 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.2004 d.342, effective September 7, 2004.
See: 36 N.J.R. 1659(a), 36 N.J.R. 4155(b).
Substituted "this chapter" for "N.J.A.C. 16:65-1.1 et seq."

16:44-8.8 Extent of debarment, suspension or disqualification

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

Recodified from 16:44-8.9 and 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.2004 d.342, effective September 7, 2004.
See: 36 N.J.R. 1659(a), 36 N.J.R. 4155(b).
Substituted "Department" for "NJDOT".

16:44-8.9 Prior notice

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

Recodified from 16:44-8.10 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.2004 d.342, effective September 7, 2004.
See: 36 N.J.R. 1659(a), 36 N.J.R. 4155(b).
Inserted "the Department shall give" preceding "prior notice" and deleted "shall be given" following "suspension".

16:44-8.10 List of debarred, suspended or disqualified persons

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

Recodified from 16:44-8.11 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.2004 d.342, effective September 7, 2004.
See: 36 N.J.R. 1659(a), 36 N.J.R. 4155(b).

Substituted "Department" for "NJDOT" preceding "shall supply" and substituted "in this chapter" for "herein" following "procedures prescribed".

16:44-8.11 Discretion

Nothing contained in this chapter shall be construed to limit the authority of the Commissioner of Transportation to refrain from contracting within the discretion allowed by law.

Recodified from 16:44-8.12 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.2004 d.342, effective September 7, 2004.
See: 36 N.J.R. 1659(a), 36 N.J.R. 4155(b).

Substituted "in this chapter" for "herein" preceding "shall be construed".

SUBCHAPTER 9. REORGANIZATION OF CONTRACTORS

16:44-9.1 Purpose

(a) The purpose of this subchapter is to provide the Commissioner of Transportation with the means of assuring that the public is adequately protected whenever a contractor, which is a corporation or a limited liability company (LLC), doing business with the Department, wishes to reorganize its structure in any fashion, including a change of its name.

(b) A contractor must comply with the procedures in this subchapter when a contractor is prequalified with the Department and wishes to continue bidding on Department projects or when a contractor has an ongoing contract in existence with the Department.

Amended by R.2004 d.342, effective September 7, 2004.
See: 36 N.J.R. 1659(a), 36 N.J.R. 4155(b).
Rewrote the section.

16:44-9.2 Requirements

(a) Whenever a contractor wishes to undertake a reorganization as described in the definition of "corporate or LLC reorganization" at N.J.A.C. 16:44-1.1 the contractor must accomplish the following:

1. The contractor must advise the Commissioner of Transportation in writing of the proposed reorganization (including a change of name) and provide a copy of the minutes or resolution or other official act properly authorizing the change. Such notice shall be made prior to the actual change when the contractor has an existing or ongoing contract in effect with the Department, and no change shall be accomplished without the express written approval of the Commissioner.

2. The contractor must properly register the new status, including any change in name, with the New Jersey Secretary of State or other appropriate New Jersey State office in a manner consistent with the applicable laws.

3. A contractor with an ongoing contract with the Department shall provide a binding certification from the surety company who issued the payment and performance bonds for the contract stating that the surety concurs in the reorganization and will honor its obligations under the bonds after the reorganization takes place.

4. A contractor shall provide proof in writing that the reorganization shall not affect in any manner:

- i. Its obligations under any existing contracts;
- ii. Its prequalification rating and classification.

5. If the reorganization takes the form of a transfer of assets in a new or different corporation or limited liability company (LLC), the new corporation or LLC shall be required to do the following:

i. Present a new Vendor Identification Number (Federal Identification Number);

ii. Satisfy the prequalification requirements as specified under N.J.A.C. 16:44-1.2 including the filing of a new prequalification questionnaire;

iii. In the case of a foreign corporation, provide the name and address of its agent in New Jersey authorized to accept service pursuant to N.J.S.A. 14A:13-1 et seq.;

(b) After all requirements have been met, the Commissioner will ascertain whether the proposed reorganization affects the assets, equipment or qualifications for bidding. If so, the Commissioner may reclassify the contractor in accordance with the affects of the reorganization.

R.1981 d.399, effective November 2, 1981.

See: 13 N.J.R. 524(a), 13 N.J.R. 779(c).

Recodified from 16:44-9.3 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 16:44-9.2, Definitions, repealed.

Amended by R.2004 d.342, effective September 7, 2004.

See: 36 N.J.R. 1659(a), 36 N.J.R. 4155(b).

Rewrote the section.