

NOTE: This is a courtesy copy of this rule. The official version can be found in the New Jersey Administrative Code. Should there be any discrepancies between this text and the official version, the official version will govern.

**TITLE 16. TRANSPORTATION  
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.

Expires on August 6, 2031.

**SUBCHAPTER 1. PURPOSE AND SCOPE, AND CONTACT INFORMATION**

**§ 16:44-1.1 Purpose**

The purpose of this chapter is to provide the processes by which contractors can become prequalified to bid on Department of Transportation (Department) projects. The chapter describes the prequalification process; distribution of standard specifications, construction plans, and special provisions; the contracting process, including advertisement, bidding, award, bonding requirements, and payments to contractors. Rules related to debarment, suspension, and disqualifications are also included. Further, the chapter establishes the process for hearings and contested cases relating to prequalification and bidding.

**§ 16:44-1.2 Scope**

This chapter applies to any contractor that is seeking prequalification, has applied for prequalification, or is prequalified by the Department. Only contractors who have been prequalified by the Department pursuant to this chapter are eligible to bid on Department projects.

**§ 16:44-1.3 Contact information**

(a) Unless otherwise specified, all documents required to be submitted to the Department pursuant to this chapter shall be sent to:

Bureau of Construction Services

New Jersey Department of Transportation

PO Box 600

Trenton, NJ 08625-0600

or electronically at

[CSPD@dot.nj.gov](mailto:CSPD@dot.nj.gov)

(b) Further information may be found at:

<https://dot.nj.gov/transportation/business/procurement/ConstrServ/>

## **SUBCHAPTER 2. DEFINITIONS**

### **§ 16:44-2.1 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.

"Bidder" means any contractor that submits a bid to the Department in response to an advertisement.

"Bureau" means the Bureau of Construction Services, Procurement Division, at the Department.

"Commissioner" means the Commissioner of the New Jersey Department of Transportation or such person as the Commissioner may designate, when legally permissible.

"Contract" means a written agreement between the Department and a contractor or a contractor and other entities setting forth the obligations of the parties including, but not limited to, the performance of work for a project and the basis of payment.

"Contractor" means a person that is prequalified, or who has applied for prequalification, with the Department.

"Debarment" means an exclusion from the ability to contract with the Department.

"Department" means the New Jersey Department of Transportation.

"Disqualification" means a debarment or a suspension for a specified period of time, which denies or revokes a contractor's ability to bid or contract with the Department.

"Entity reorganization" means any change in the structure or organization of an entity 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 entity to another or new entity;
3. Any modification of the entity's name;
4. Any other change, modification, dissolution, transfer of, deletion from, or addition to the entity that may affect the operation of the entity as a contractor; or
5. Any change in operation or function of the entity, such as a change in industry classification.

"Equivalent project" means a project whose work scope and complexity level is considered to be equal to that of a Department project, such as work undertaken for other state departments of transportation, state highway authorities, U.S. Army Corps of Engineers, New Jersey Turnpike Authority, South Jersey Turnpike Authority, NJ Transit and Port Authority of New York and New Jersey.

"Financial capability" means an amount, calculated pursuant to N.J.A.C. 16:44-3.4, used to determine a contractor's work classification limit.

"Net working capital" means 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 a business.

"Net worth" means the excess of total assets over total liabilities, as shown in the balance sheets.

"Performance evaluation rating" means the numerical rating reported on Form DC-83, which is calculated on the basis of the contractor's performance during the rating period pursuant to the contract.

"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 the advertised documents for a project, as may be amended by addenda. Plans include the version of the standard details specified on the key sheet.

"Prequalification" means the process by which the Department assigns a work classification and a work classification limit to a contractor.

"Prequalified" means the status of having qualified to bid or contract with the Department based on completion of the prequalification process.

"Project" means Department contracts for construction or maintenance as described in a Department advertisement.

"Questionnaire" means a Contractor's Financial and Equipment Statement Questionnaire and Past Performance Record-Form DC-74A, which is available on the Department's website at <https://dot.nj.gov/transportation/business/procurement/ConstrServ/prequalrequire.shtml>.

"Rating period" means the period of time that the Department uses to evaluate contractors through their performance evaluation ratings.

"Related project" means a project whose work scope and complexity level is considered to be related to that of a Department project, such as work undertaken for a county, township, municipality or utility authority.

"Special Provisions" means project-specific specifications, non-standard specifications, and requirements for the performance of prescribed work, which, in addition to the Standard Specifications, are part of the Department's contract documents.

"Standard Specifications" means the 2019 edition of the "New Jersey Department of Transportation Standard Specifications for Road and Bridge Construction," as amended and supplemented, incorporated herein by reference.

"Substantial completion" means that on a project-by-project basis, the Department requires that all work, with the exception of specifics, has been completed pursuant to

contract and reflects the term as defined in the Standard Specifications for Road and Bridge Construction.

"Suspension" means an exclusion from Department contracting pursuant to N.J.A.C. 16:44-11.5.

"Work classification" means a category of work for a Department project. The Department may use more than one work classification to categorize a particular project in its advertisement for bids.

"Work classification limit" means the maximum dollar amount that a contractor may bid on any advertised project for a particular work classification.

## **SUBCHAPTER 3. CLASSIFICATION OF PROSPECTIVE BIDDERS**

### **§ 16:44-3.1 Prequalification committee**

The committee responsible for decisions related to the prequalification of contractors is comprised of five voting members, selected at the discretion of the Commissioner, as follows: the Department Chief Financial Officer; the Assistant Commissioner for Capital Program Management; the Assistant Commissioner for Operations; the Director of the Division of Civil Rights and Affirmative Action; and the Director of the Division of Procurement. The Manager of the Bureau of Construction Services shall serve as secretary to the committee and may be delegated authority by the committee to execute prequalification-related documents on their behalf.

### **§ 16:44-3.2 Process**

(a) In order to bid on a project, a contractor must be prequalified for a minimum of one work classification identified in the Department's advertisement for bids for that project.

(b) To become prequalified, a contractor must submit a completed questionnaire, Form DC-74A, and all other information required pursuant to this subchapter.

1. Contractors shall complete the questionnaire in its entirety and must answer all questions and provide all information required pursuant to this subchapter to the satisfaction of the Department.
2. Incomplete submissions will necessitate requests for additional information and will not be processed by the Department unless, and until, such additional information is received.
3. When a contractor submits a questionnaire, the contractor shall include the required fee made payable to the Department of the Treasury pursuant to N.J.S.A. 27:7-35.3. Questionnaires will not be processed until the required fee is received by the Department.

(c) The Department may prequalify a contractor for any work classification and work classification limit for which the Department determines the contractor has demonstrated:

1. Financial capability, as determined by the Department pursuant to N.J.A.C. 16:44-3.4; and

2. Acceptable past performance or work experience, as determined by the Department pursuant to N.J.A.C. 16:44-3.5.

(d) In making a determination regarding a contractor's prequalification, the Department will review the contractor's completed questionnaire, along with the information submitted by the contractor pursuant to this subchapter, and may also consider any other information available to the Department.

(e) The Department will notify a contractor of its determination regarding prequalification within 15 days of the Department's receipt of the completed questionnaire, required fee, and all other information required pursuant to this subchapter. If the Department requests additional information pursuant to N.J.A.C. 16:44-3.2(b)2, the contractor will be notified within 15 days of the Department's receipt of the additional information.

(f) Any prequalification assigned to the contractor will be effective 15 days from the Department's receipt of the completed questionnaire and required fee and all other information required pursuant to this subchapter or 15 days from the Department's receipt of any additional information requested, provided that such additional information is satisfactory to the Department.

(g) For a full one-year accounting cycle, a contractor's prequalification shall expire 18 months after the close of the business date of the financial statement accompanying its questionnaire. For a six-month accounting cycle, a contractor's prequalification shall expire nine months after the close of the business date of the financial statement accompanying its questionnaire. Contractors that do not submit a new questionnaire at least 15 days prior to this expiration date will have their prequalification expired and must submit a new questionnaire to the Department no later than 15 days prior to the date on which bids are to be received for any project that the contractor desires to bid.

(h) A prequalified contractor may request a change to their work classification or classification limit at any time and shall follow the procedures described in this subchapter to become prequalified for a new work classification or work classification limit. The Department must receive a completed questionnaire and all other information required by this subchapter no later than 15 days prior to the date on which bids are to be received for any project that the contractor desires to bid with the requested prequalification or, if the Department requests additional information pursuant to N.J.A.C. 16:44-3.2(b)2, the Department must receive such additional information no later than 15 days prior to the date on which bids are to be received.

(i) The Department may change a contractor's work classification or classification limit, without a request from the contractor, if it receives additional information subsequent to prequalification that would affect the Department's original determination.

(j) The Department reserves the right to not prequalify any contractor at its discretion.

### **§ 16:44-3.3 Information required for prequalification**

(a) To become prequalified with the Department, a contractor must submit the following to the Department's Bureau of Construction Services:

1. A completed questionnaire, Form DC-74A, which is available on the Department's website at:

<https://dot.nj.gov/transportation/business/procurement/ConstrServ/prequalrequire.shtml>;

2. A classified certified public accountant (CPA)-certified audited financial statement or a classified CPA-certified reviewed financial statement, either of which shall be prepared in accordance with Generally Accepted Accounting Principles (GAAP). The financial statement shall show current assets and current liabilities and shall include verifications of equipment owned or leased and confirmation of unsecured lines of credit. The financial statements shall be complete, with a balance sheet, related statements of income, retained earnings, cash flows, and notes to financial statements in complete detail. The financial statements shall be completed by a CPA or public accountant, pursuant to 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. All financial statements shall have an unqualified opinion. All financial statements, whether audited or reviewed, shall be for a full one-year accounting cycle or six-month accounting cycle.
- ii. Submission of classified CPA certified reviewed financial statements will limit the contractor's financial capability and work classification limit(s) to no more than \$ 10,000,000.
- iii. A consolidated financial statement may be submitted with the questionnaire completed in the name of the parent corporation. A consolidated financial statement is required if the contractor is a variable interest entity according to the Financial Accounting Standards Board (FASB) interpretation, FIN 46R. A consolidated financial statement submitted with a 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 or compiled financial statement is not acceptable;
3. A statement as to construction equipment owned, which shall give complete details of the purchase price minus accumulated depreciation to equal book value per piece. Net book value less the amount of any outstanding loan for the purchase of that equipment will equal the amount allowed;
4. A statement as to organization, which shall show the company's ability to successfully complete a project of the requested work classification(s), including key personnel;
5. A statement as to prior experience, which shall show the length of time in which the contractor has been engaged in the contracting business. The statement shall also disclose the nature of the contractor's experience during that period;

6. 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 using the Department's work classification codes, location, contract price, name and current telephone number, and email address of the owner's construction representative or 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, failure 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;
7. A statement setting forth any other pertinent and material facts that will justify the work classification(s) and work classification limit(s) desired;
8. A statement disclosing any suspension, debarment, or disqualification of the contractor, its parent company or subsidiary, or any owner, stockholder, officer, partner, or employee, or other person, regardless of title held, who has the ability to control a contractor's operations;
9. 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;
10. A statement setting forth the names and home addresses of all stockholders, partners, or members owning a 10 percent or greater beneficial interest in the contractor. If one or more stockholders, partners, or members owning a 10 percent or greater beneficial interest in the contractor is, itself, an entity, the statement shall also set forth the names and home addresses of all stockholders, partners, or members owning a 10 percent or greater beneficial interest in that entity. Disclosure of the names and home addresses of all stockholders, partners, or members owning a 10 percent or greater beneficial interest shall continue at each level of ownership until all stockholders, partners, or members owning a 10 percent or greater beneficial interest have been disclosed;
11. A statement identifying the work classifications and work classification limits for which the contractor is requesting to be prequalified. A contractor will not be prequalified for any work classification or work classification limit that has not been requested; and
12. An affidavit attesting that all statements set forth in the questionnaire are true and accurate.

#### **§ 16:44-3.4 Determination of financial capability**

- (a) The Department will review the following information provided by the contractor to determine a contractor's financial capability:
  1. The lesser of the contractor's net working capital or net worth;

2. The net book value of the contractor's construction equipment, less the amount of any outstanding loans for the purchase of that equipment; and
3. Any unsecured lines of credit, in accordance with the questionnaire, that the contractor may have, less the amount of any outstanding loans on the lines of credit.

(b) The Department will calculate the contractor's financial capability using the following formula:

Financial capability = ((net working capital or net worth) x 15) + ((net book value of construction equipment-value of any outstanding loans) x 15) + ((unsecured lines of credit-value of outstanding loans) x 7)

(c) The Department will assign the contractor financial capability range based on its current calculation, pursuant to Table III at N.J.A.C. 16:44-3.6.

(d) A contractor whose calculated financial capability is less than the \$ 1,000,001 to \$ 2,000,000 dollar range will receive a financial capability equal to its calculated financial capability.

### **§ 16:44-3.5 Determination of work classifications and work classification limits**

(a) In determining a contractor's prequalification, the Department will evaluate the contractor's past performance using one of the following methods, as provided for in this section:

1. Performance evaluation ratings;
2. Evaluation of verifiable work experience; or
3. Evaluation of resumes of officers, stockholders, managing members, or key personnel.

(b) The Department will consider performance evaluation ratings in the assignment of a work classification limit if a contractor has performed work of the same work classification on a prior Department project and received a performance evaluation rating from the Department within four years of submitting its request for prequalification.

1. The Department will assign performance evaluation ratings for each project awarded to a contractor, in accordance with the terms of the contract for that project.
2. Unless there is information to the contrary, a contractor assigned a performance evaluation rating of 70 or above for all projects during the last four rating periods, may be prequalified for a work classification limit equal to the highest dollar range pursuant to Table III at N.J.A.C. 16:44-3.6 for each work classification the Department deems to be qualified.
  - i. Information that may prevent the contractor from becoming prequalified for the highest dollar range may include, but is not limited to, debarments, suspensions, or disqualifications from any government agency, a prior reduction in work classification limit, or unsatisfactory performance. In the event that a previous work classification limit was reduced by the Department for a reason related to

performance, a contractor will not be assigned an increased work classification limit for the period of such reduction.

- ii. In no event will a contractor be prequalified for a work classification limit that is greater than its financial capability, as determined by the Department pursuant to N.J.A.C. 16:44-3.4.
3. Where a contractor's performance evaluation rating is below 70 or where a contractor's performance has otherwise been determined to be significantly unsatisfactory on any project, including, but not limited to, having been defaulted by the Department, the Department may, in the public interest, take any or all of the following actions:
  - i. Notify the contractor that its performance was unsatisfactory, and that the Department will continue to monitor its performance;
  - ii. Require the contractor to submit to the Department, for its approval, a performance improvement plan to address any unsatisfactory performance;
  - iii. Reduce the contractor's work classification limit for any or all work classifications for a period up to five years; or
  - iv. Debar, suspend, or disqualify the contractor from being able to bid, pursuant to the provisions at N.J.A.C. 16:44-11.
4. The Department shall have the right to take the actions at (b)3 above at any time, whether the contractor is currently prequalified to bid on Department projects, or is seeking to renew or change its prequalification.

(c) For a contractor that has not received a prior work classification limit for a particular work classification, or who has not received a performance evaluation rating from the Department within four years of submitting its request for prequalification, the contractor's work classification limit for that work classification shall be determined as follows:

1. The Department will evaluate the contractor's statement of prior experience provided in its questionnaire to assess the quality of work performance and assess how the contractor's stated experience is related to the requested work classification. The Department may contact the owners of any of the projects listed in the contractor's questionnaire.
2. The Department will review and evaluate all information received, and will assign the contractor a work performance score and a work experience score in accordance with Tables I and II below:

Table I

Work Performance Score

Work Performance	Rating Points
	Excellent
	Good
	Fair
	Poor

Quality of Work	1.00	0.80	0.50	0.0
Completion of Work on Time	0.50	0.40	0.25	0.0

Table II  
Work Experience  
Score

	Equivalent Project Experience	Related Project Experience	No Equivalent or Related Project Experience
Work Experience Score	1.00	0.50	0.00

3. The contractor's work performance score and work experience score will be combined to establish an overall quality score for each project evaluated. For each project, the maximum potential quality score is 2.50.
4. The Department will calculate the average of the contractor's quality scores and assign the contractor a work classification limit as follows:
  - i. If the average of the contractor's quality scores is 2.20 or above, the Department may assign the contractor a work classification limit equal to its financial capability;
  - ii. If the average of the contractor's quality scores is below 2.20, the Department will assign the contractor a work classification limit pursuant to Table III at N.J.A.C. 16:44-3.6 for which the average of its quality scores multiplied by the dollar value of the largest completed project successfully verified on its questionnaire falls within; and
  - iii. In no event will a contractor be prequalified for a work classification limit that is greater than its financial capability, as determined by the Department pursuant to N.J.A.C. 16:44-3.4.

(d) For contractors with no verifiable contracting experience for the work classification requested, the Department will determine the contractor's work classification limit as follows:

1. The contractor must submit resumes detailing verifiable contracting experience of its officers, stockholders, managing members, or key personnel, along with its questionnaire;
2. Following the review of verifiable contracting experience on the resumes of its officers, stockholders, managing members, or key personnel, the Department may, in the exercise of its discretion, assign a work classification limit, pursuant to Table III at N.J.A.C. 16:44-3.6, corresponding to the level and quality of the experience;

3. If the key personnel listed on the contractor's questionnaire are not officers, shareholders, or managing members, 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 status of a contractor's key personnel, the Department may re-evaluate the contractor's work classification or work classification limit; and
4. In no event will a contractor be prequalified for a work classification limit that is greater than its financial capability, as determined by the Department pursuant to N.J.A.C. 16:44-3.4.

#### **§ 16:44-3.6 Work types and project rating ranges**

- (a) When the Department prequalifies a contractor, it will assign the contractor a work classification limit, which will establish the work classification and maximum dollar value of work on which the contractor may bid. Contractors may be assigned with work classification limits in differing ranges for different work classifications.
- (b) The work classifications for which a contractor may request prequalification are available on the Department's website at:  
<https://dot.nj.gov/transportation/business/procurement/constrserv/prequalrequire.shtm>.
- (c) The Department may assign the contractor a work classification limit in one of the dollar ranges set forth at Table III below:

TABLE III

Work Classification Limits

Dollar Ranges

\$ 1,000,001	to	\$ 2,000,000
\$ 2,000,001	to	\$ 5,000,000
\$ 5,000,001	to	\$ 10,000,000
\$ 10,000,001	to	\$ 20,000,000
\$ 20,000,001	to	\$ 50,000,000
\$ 50,000,001	to	\$ 100,000,000
\$ 100,000,001	to	\$ 200,000,000
Unlimited		

- (d) A contractor assigned a work classification whose financial capability does not qualify at the \$ 1,000,001 to \$ 2,000,000 dollar range or higher will receive a work

classification limit equal to its financial capability, as determined by the Department in accordance with N.J.A.C. 16:44-3.4.

(e) Contractors assigned a work classification limit of "unlimited" will be notified when the Department intends to receive bids for a project with an estimated range of "unlimited."

1. For any "unlimited" class project, the Department will establish specific criteria for that project based on factors set forth in the plans and specifications, including the dollar amount and nature of the work.
2. Each contractor that intends to bid on an "unlimited" class project must apply for, and obtain specific approval from, the Department to bid on that project. Such application must be received by the Department no later than 15 days before the date set for the receipt of bids.
3. Contractors requesting to form a joint venture for the purpose of submitting a bid on an "unlimited" class project must adhere to the requirements set forth at N.J.A.C. 16:44-7.2:
  - i. All contractors listed on the joint venture statement must submit specific prequalification applications for the project, at least 15 calendar days from the date set for the receipt of bids.

### **§ 16:44-3.7 Appeals**

(a) A contractor dissatisfied with the prequalification assigned to it by the Department may request, in writing, a hearing before the prequalification committee, where it may present further evidence to support its requested prequalification. The prequalification committee may change or affirm the contractor's prequalification based on the information presented at the hearing.

1. A contractor dissatisfied with the financial capability, work classification(s), and/or work classification limit(s) assigned to it by the Department, or any reduction thereof, shall request a hearing no later than 15 days after receiving notice of such assignment or reduction.

(b) All hearings pursuant to this section will be conducted in accordance with N.J.A.C. 16:44-12.

### **§ 16:44-3.8 Penalties for false statements**

(a) Pursuant to N.J.S.A. 27:7-35.9, any person who makes, or causes to be made, a false, deceptive, or fraudulent statement in the questionnaire or any other submission required in conjunction with a request for prequalification, or in the course of any hearing pertaining to a contractor's 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, officer, or employee charged with the duty of completing such questionnaire for a contractor, pay such fine or undergo imprisonment, not to exceed six months, or both.

(b) All persons convicted of a misdemeanor pursuant to (a) above and any co-partnership, 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 Department projects.

## **SUBCHAPTER 4. DISTRIBUTION OF STANDARD SPECIFICATIONS**

### **§ 16:44-4.1 Availability**

(a) Standard Specifications are available on the Department's website at: [dot.nj.gov/transportation/eng](http://dot.nj.gov/transportation/eng). Requested hard copies will be distributed upon payment of the established selling price.

(b) Questions should be directed to the Department's engineering documents unit at EDU.Documents@dot.nj.gov or by phone at 609-963-1465.

### **§ 16:44-4.2 Distribution of free hard copies**

(a) The Department will distribute Standard Specifications without charge, upon request, to the following:

1. New Jersey county and municipal 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. Federal Highway Administration (five copies); and
5. Each successful bidder upon award of the contract (one copy regardless of its number of awarded contracts).

(b) Additional copies will be distributed upon payment of the established selling price. The Assistant Commissioner or Commissioner's designee of the departmental unit from which the plans originate may approve additional nondepartmental distribution without charge. Approvals will be made on a case-by-case basis.

## **SUBCHAPTER 5. DISTRIBUTION OF CONSTRUCTION PLANS AND SPECIAL PROVISIONS**

### **§ 16:44-5.1 Requirements**

(a) Construction plans shall be digitally scanned by the supplier in tagged image file format (TIFF) format or .pdf format prior to delivery to the Department.

(b) Special Provisions shall be provided in Microsoft Word format.

## **§ 16:44-5.2 Nondepartmental distribution**

(a) The Department's engineering documents unit will distribute one copy of the plans and Special Provisions without cost to the following:

1. Each utility specifically listed in the plans or Special Provisions as having an interest in the work to be performed;
2. Each railroad company listed in the plans or Special Provisions as having an interest in the work to be performed;
3. The county engineer wherein any part of the work on a given project is located; and
4. 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.

(b) For all others, plans and Special Provisions are only available at [www.bidx.com](http://www.bidx.com).

## **§ 16:44-5.3 Departmental distribution**

(a) The division or bureau of origination shall provide construction plans, specifications, and special provisions on each advertised project to the Department's Regional Headquarters to enable contractor organizations to review these documents. The Department's Regional Headquarters are located at:

1. Mt. Arlington  
200 Stierli Court  
Mt. Arlington, NJ 07856;
2. Trenton  
1035 Parkway Avenue  
Trenton, NJ 08625; and
3. Cherry Hill  
One Executive Campus  
Route 70 West  
Cherry Hill, NJ 08002

## **SUBCHAPTER 6. ADVERTISING FOR BIDS**

### **§ 16:44-6.1 Requirements**

(a) Projects shall be advertised by public notice published for at least three weeks before bids are to be received, pursuant to the requirements of N.J.S.A. 27:7-29. Advertisements will also be posted on the Department's website at:

<https://dot.nj.gov/transportation/business/procurement/ConstrServ/curradvproj.shtm> and the Department's electronic bidding provider at: [www.bidx.com](http://www.bidx.com).

(b) The advertisement will give a brief description of the work and materials required, specify where plans and specifications can be seen or obtained; the hour, date and place, where the electronic proposal will be received and publicly downloaded and read; and such other pertinent information as the Commissioner may deem relevant to the project.

## **SUBCHAPTER 7. BIDDING DEPARTMENT PROJECTS**

### **§ 16:44-7.1 Acceptance of bids**

- (a) Bids will only be accepted from a contractor prequalified with the Department pursuant to N.J.A.C. 16:44-3.
- (b) Bids will only be accepted from a contractor who has been prequalified in at least one of the work classifications required in the project advertisement.
- (c) Bids will only be accepted from a contractor in an amount that does not exceed its work classification limit.
- (d) When there is a question as to whether a bid is within the contractor's prequalification or, where it reasonably appears that a contractor may not have the prequalification that will allow it to bid on a project for which bids are being sought, the bid will be opened provisionally. If the bid is for a different work classification or in a dollar amount greater than the contractor's maximum work classification limit, the bid will be rejected.
- (e) No bids will be accepted after the bidding has been closed.
- (f) Bids will be accepted only if an authorized agent, employee or officer of the contractor has acknowledged receipt of all addenda.

### **§ 16:44-7.2 Joint ventures**

- (a) Two or more prequalified contractors may file a request to form a joint venture for the purpose of submitting a bid on a specific project.
- (b) Contractors requesting to form a joint venture, in accordance with this subchapter, must file a joint venture statement with the Bureau at least five days prior to the date set for receipt of bids for that specific project.
- (c) Each contractor on the joint venture statement shall share a work classification assigned to it, and that work classification must be advertised for that specific project. If all listed contractors on the joint venture statement fail to share a work classification, or if the shared work classification is not advertised for the specific project, the request to joint venture will be denied.

### § 16:44-7.3 Bid procedure

- (a) The Department will exclusively utilize an internet bidding process, and each bidder shall be required to submit its bid electronically. No paper bids will be accepted.
  1. Internet bidding information is available through the Department's electronic bidding provider at: [www.bidx.com](http://www.bidx.com).
  2. Prospective bidders must download the bidding software from the Department's electronic bidding provider, and no alteration of the software shall be permitted.
  3. Registration and subscription fees are required to submit bids through the Department's electronic bidding system and also to access plans and special provisions.
- (b) Each bidder shall download all bid documents from the Department's electronic bidding system, and shall ensure delivery of its bid and all required components prior to the conclusion of the bidding period including, but not limited to, the following:
  1. The proposal form provided on the Department's electronic bidding system, executed by an individual registered with the Department as a duly authorized representative to bind the contractor to its bid;
  2. A specified price for each pay item, unless alternate pricing is specified;
  3. An acknowledgment of all addenda to the advertisement posted through the Department's electronic bidding system; and
  4. A proposal bond in an amount equal to or greater than 50 percent of the total bid price, which references the project to which it applies.
    - i. 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 authorized to transact business in the State of New Jersey and listed in the current United States Treasury Department Circular 570, which will establish the underwriting limitation for any one risk.
    - ii. 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.
- (c) At the time of bid, all bidders shall:
  1. For 100 percent State-funded projects, be registered with the New Jersey Department of Labor and Workforce Development, Division of Wage and Hour Compliance, pursuant to the Public Works Contractor Registration Act, N.J.S.A. 34:11-56.48 et seq., for all projects where the payment of prevailing wage is required by any provision of law. A bid will be rejected if the bidder fails to have a valid current registration; and

2. Comply with the requirements at N.J.S.A. 10:5-31 et seq., Law Against Discrimination and N.J.A.C. 17:27, Equal Employment Opportunity and Affirmative Action Rules.

(d) The contractor is solely responsible for any and all errors or omissions in its bid, as well as the timely submission of its bid and all required components through the electronic bidding system.

(e) The Department will download all bids at the conclusion of the bidding period and will open each bid as near to the hour specified in the advertisement as is practical. The Department will make the total bid prices public at each bid opening.

(f) The Department shall review each bid for completeness and conformity with the advertised requirements and reserves the right to reject any bid, in accordance with this chapter and the terms provided in the Standard Specifications or Special Provisions.

#### **§ 16:44-7.4 Rejection of bids**

(a) The Department may disqualify any contractor and reject its bid at any time prior to the contract execution when there have been developments subsequent to prequalification which, in the opinion of the Department, would adversely affect the responsibility of the bidder. Before taking such action, the Department will notify the bidder and give it an opportunity to present additional information, in accordance with N.J.A.C. 16:44-12.

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

1. If the proposal is not properly electronically signed;
2. 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;
3. 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;
4. If the bidder makes an alteration to the "Unit Prices" or "Amounts" as provided by the Department in the bid proposal, unless otherwise directed by addendum;
5. If the bidder fails to provide a total price in its bid;
6. If the bidder fails to acknowledge all addenda posted through the Department's website. The addenda acknowledgement folder is included in the Department's internet bidding file. Certain addenda contain amendments and may require revisions to the schedule of items to be bid. The Department also has the right to reject bids that do not contain all applicable amendments to the schedule of items to be bid; or
7. If the bidder fails to comply with the provisions of this chapter;
8. If the bidder fails to have a valid current registration with the New Jersey Department of Labor and Workforce Development, Division of Wage and Hour Compliance, pursuant to the provisions at N.J.S.A. 34:11-56.51 et seq., for projects where the payment of prevailing wage is required by any provision of law;

9. If the bidder fails to have a valid business registration with the New Jersey Department of the Treasury, Division of Revenue, as required pursuant to N.J.S.A. 52:32-44;
10. If the bidder fails to comply with the Standard Specifications, Special Provisions, Addenda, or any other law, rule, or regulation concerning the project for which it bid;
11. If the bidder is a joint venture and fails to file a joint venture statement in accordance with this subchapter;
12. For an "unlimited" class project, if the contractor has not obtained specific approval from the Department in accordance with N.J.A.C. 16:44-3.6(e); and
13. If the Department deems it advisable to do so in the interest of the State or public.

(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.

## **§ 16:44-7.5 Withdrawal**

A bidder may withdraw a bid by notifying the Department, in writing, prior to the opening of any bid on the advertised project.

## **SUBCHAPTER 8. PROJECT AWARD**

### **§ 16:44-8.1 General provisions**

- (a) The Department shall identify the lowest responsible bidder and second lowest responsible bidder.
- (b) The Department shall award the contract to the lowest responsible bidder, or may reject all the bids in accordance with N.J.A.C. 16:44-7, within 30 working days after the bids are received. The timeframe for awarding the contract may be extended by mutual agreement. The contractor must agree to perform in accordance with the plans and special provisions at the time the bids were received.
- (c) The contractor shall have a valid business registration with the New Jersey Department of the Treasury, Division of Revenue, as required pursuant to N.J.S.A. 52:32-44, prior to award of the contract.
- (d) For State-funded projects and pursuant to N.J.A.C. 17:27-3, the contractor shall submit an Affirmative Action Employee Information Report to the Department's Division of Civil Rights and Affirmative Action within five days from the day bids are received.
- (e) The contractor shall submit an Affirmative Action Plan for Disadvantaged Business Enterprises, Emerging Small Business Enterprises, and Small Business Enterprises, which has been approved by the Department's Division of Civil Rights and Affirmative Action, within five days from the day bids are received.
- (f) Award of the contract shall not be binding on the Department. The Department reserves the right to cancel an award at any time before the contract and bond documents

have been fully executed by the contractor and the Department, without incurring any liability of any kind.

## **SUBCHAPTER 9. CONTRACTS**

### **§ 16:44-9.1 Contracts**

- (a) The Department will forward the contract and surety corporation payment and performance bond forms to the contractor for signature and will include the time within which the executed contract and bond forms must be returned to the Department. The contract must be signed and witnessed. A properly signed and sealed corporate resolution verifying the authority of the persons to sign the contract for the corporation must be included with the contract. The corporate resolution must specify that each person individually has the authority to bind the contractor to the contract.
- (b) Each payment and performance bond must be in an amount equal to the total contract price. Payment and performance bonds must bear the date of issuance, which must be subsequent to the project award. The payment and performance bond number must be legibly shown on the top right corner of the 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 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.
- (c) 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 including, but not limited to, cancelling the contract in accordance with N.J.A.C. 16:44-8.1(f).

- (d) After execution by the Commissioner, a copy of the signed contract will be transmitted to the contractor.
- (e) For Federally funded projects, successful bidders must provide proof of the contractor's current registration with the Department of Labor and Workforce Development, Division of Wage and Hour Compliance, pursuant to the Public Works Contractor Registration Act, N.J.S.A. 34:11-56.48 et seq., prior to execution of the contract.
- (f) The contractor will have the opportunity to escrow bid documents pursuant to, and in accordance with, the project's specifications.
- (g) A non-resident contractor must complete an "Appointment of Agent" form, which will be provided by the Department.

## **SUBCHAPTER 10. RETAINAGE AND PARTIAL PAYMENTS TO CONTRACTORS**

### **§ 16:44-10.1 Partial payments to contractors**

- (a) Partial payments and retainage will be made pursuant to N.J.S.A 27:7-34, except on Federally funded projects where retainage will not be held on amounts due for partial payment for subcontracted work.
- (b) Contracts may also provide for partial payments to contractors for materials for the project that have not yet been incorporated into the work, provided the materials are of acceptable quality, are stored and protected in an acceptable manner and for which the contractor furnishes releases of liens. The amount of the partial payment may not exceed 85 percent of the bid price for the associated item.

### **§ 16:44-10.2 Percent withheld pending completion of contract**

- (a) Two percent of the amount due on partial payments of the total adjusted contract price will be deducted and retained by the Department, pending substantial completion. Upon substantial completion of the contract, as defined by the Standard Specifications for Road and Bridge Construction and/or Special Provisions, one percent will be withheld.
- (b) At any time during the performance of the work, if work is not progressing as defined by the current edition of the Department's Standard Specifications for Road and Bridge Construction, the Commissioner has discretion to increase the withholding to four percent of the payment due.

### **§ 16:44-10.3 Percent 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.

#### **§ 16:44-10.4 Pledge of approved bonds by contractor in lieu of retained percentages**

(a) Any money withheld from contract payments in accordance with this subchapter shall be paid by the State to any contractor who pledges to post bonds in lieu of retainage. Contractors 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.

#### **§ 16:44-10.5 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 in this subchapter and furnish a receipt to the contractor and send a copy to the Department. The receipt shall include:

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

#### **§ 16:44-10.6 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.

#### **§ 16:44-10.7 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.

#### **§ 16:44-10.8 Default**

If the contractor defaults or is otherwise deemed owing the Department, the Commissioner 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.

#### **§ 16:44-10.9 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.

## **SUBCHAPTER 11. DEBARMENT, SUSPENSION, AND DISQUALIFICATION**

### **§ 16:44-11.1 Causes for debarment**

(a) In the public interest, the Department may debar a person for any of the following causes:

1. Commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract, or subcontract, or in the performance of such contract or subcontract;
2. Civil or criminal violation of the Federal Organized Crime Control Act of 1970 or the New Jersey Racketeering 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 or honesty;
3. Violation of the Federal, State, or any state antitrust statutes, or of the Federal Anti-Kickback Act (18 U.S.C. § 874);
4. Violation of any of the laws governing the conduct of elections of the Federal government, State, or any state or of its political subdivisions;
5. Violation of the Law Against Discrimination (N.J.S.A. 10:5-1 et seq.), 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 staff (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 contractor for violation of any of the following prohibitions on contractor activities or for breach of any of the following obligations:

1. No contractor 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 the Treasury or any other agency with which such contractor 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 contractor shall be reported, in writing, immediately by the contractor to the Attorney General and the State Ethics Commission.
3. No contractor 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 contractor 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 of the State, or with any person, firm, or entity with which he or she is employed or associated or in which he or she has an interest within the meaning at N.J.S.A. 52:13D-13g.
4. Any relationship subject to the provisions at (b)3 above shall be reported, in writing, immediately to the State Ethics Commission, 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 contractor 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 the officer or employee.
6. No contractor 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 contractor 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 contractors 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 State Ethics Commission.

### **§ 16:44-11.2 Conditions affecting debarment**

- (a) Debarment shall be made only upon approval of the Commissioner, except as otherwise provided by law.
- (b) Any of the causes set forth in N.J.A.C. 16:44-11.1 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, 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. 16:44-11.1(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. 16:44-11.1(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. 16:44-11.1(a)13 shall be proper, provided that one of the causes set forth in N.J.A.C. 16:44-11.1(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.

### **§ 16:44-11.3 Procedures, period of debarment and scope of debarment**

- (a) When seeking to debar a person or a person's affiliates, the Department will 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 or she 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.

#### **§ 16:44-11.4 Causes for suspension**

In the public interest, the Department may suspend a person for any cause specified in N.J.A.C. 16:44-11.1 or upon reasonable suspicion that such cause exists.

#### **§ 16:44-11.5 Conditions for suspension**

- (a) Suspension shall be imposed only upon approval of the Commissioner 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 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. 16:44-11.1(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. 16:44-11.1 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.

#### **§ 16:44-11.6 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.

#### **§ 16:44-11.7 Disqualification**

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

#### **§ 16:44-11.8 Extent of debarment, suspension, or disqualification**

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

### **§ 16:44-11.9 Prior notice**

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

### **§ 16:44-11.10 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.

### **§ 16:44-11.11 Discretion**

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

## **SUBCHAPTER 12. HEARINGS AND CONTESTED CASES**

### **§ 16:44-12.1 Requests for hearings**

(a) Requests for hearings shall be made, in writing, to the Department's Director of the Division of Procurement (Director) as follows:

1. Bid protest. An unsuccessful bidder seeking a hearing to challenge either the rejection of its own bid or the award of the contract to another bidder shall make a written request to the Director providing the specific grounds for challenging an award of a contract or a bid rejection. The request must be received by the Director within five days after the opening of bids or the date provided on the notice of rejection, whichever is later.

2. Debarment, suspension, disqualification. A person objecting to a proposed debarment, suspension, or disqualification, or for reasons established at N.J.A.C. 16:44-11.1(a)9 through 13, shall request a hearing within 15 days after the date provided on the notice of proposed debarment, suspension, or disqualification.

(b) Requests for a hearing, except for those requested pursuant to N.J.A.C. 16:44-11.2(d), shall specify all disputed material facts and legal issues that the person intends to present at the hearing. When a hearing request fails to provide any disputed material fact and fails to provide any legal issue or any argument on that issue, the request for hearing shall be denied. The Department shall notify the person, in writing, of this denial and the grounds for the denial, and shall notify the person of the action to be taken by the Department. The notice shall constitute the final agency decision on the matter.

(c) The Department shall determine whether a matter constitutes a contested case and shall refer any matter to the Office of Administrative Law for a hearing pursuant to the requirements of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and 52:14F-1 et seq.

1. The Department may also, in its sole discretion, refer any uncontested matters to the Office of Administrative Law for a hearing pursuant to N.J.A.C. 1:1-21.

2. All matters concerning the causes set forth at N.J.A.C. 16:44-11.2(e) shall be deemed a contested case for the purposes of this chapter.

(d) If the Department determines that a matter does not constitute a contested case, the Department may schedule an informal hearing to provide the requestor with an opportunity to be heard.

1. A hearing may be held through written submission or through oral presentation.
2. Following a hearing, the Department will notify the requestor of its determination and the grounds, which shall constitute the final agency decision on the matter.

(e) The provisions of this section do not apply to claims conferences that are provided for in the Department's consultant and construction contracts. The claims conferences are convened pursuant to the provisions of the contract.

(f) The provisions of this section do not apply to performance evaluation meetings that are provided for in the Department's construction contracts.

## **SUBCHAPTER 13. REORGANIZATION OF CONTRACTORS**

### **§ 16:44-13.1 Purpose**

(a) The purpose of this subchapter is to provide the Commissioner 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 classified with the Department and wishes to continue bidding on Department projects or when a contractor has an ongoing contract in existence with the Department.

### **§ 16:44-13.2 Requirements**

(a) Whenever a contractor wishes to undertake a reorganization, as described in the definition of entity reorganization at N.J.A.C. 16:44-2.1, the contractor must demonstrate the following:

1. Advise the Department, in writing, of the reorganization (including a change of name) and provide a copy of the minutes or resolution or other official act properly authorizing the change. The notice shall be made when the contractor seeks or has prequalification or ongoing contracts in effect with the Department. No change shall be accomplished without the express written approval of the Department;
2. Proper registration of 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. Proof of a binding certification from the surety company who issued the payment and performance bonds, if the contractor has an ongoing contract with the Department, stating that the surety concurs in the reorganization and will honor its obligations under the bonds after the reorganization takes place;

4. Proof, in writing, that the reorganization shall not affect in any manner:
  - i. Its obligations under any existing contracts; or
  - ii. Its work classification limit, financial capability, or any other portion of its prequalification; and
5. If the reorganization takes the form of a transfer of assets in a new or existing entity, the entity shall be required to do the following:
  - i. Present a new Vendor Identification Number (Federal Identification Number);
  - ii. Satisfy the prequalification requirements as specified pursuant to N.J.A.C. 16:44-3.2, including the filing of a new Questionnaire; and
  - 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 Department will ascertain whether the reorganization affects the contractor's prequalification. If so, the Department may prequalify the contractor in accordance with the effects of the reorganization.