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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 September 12, 2024.

SUBCHAPTER 1. PURPOSE AND SCOPE

16:44-1.1 Purpose and scope

The purpose of this chapter is to provide the processes by which contractors can become qualified to bid on Department projects, can obtain Department plans and specifications, can enter into contracts for construction projects and receive payment for work, may be debarred, suspended or disqualified and may secure approval of its reorganization.

16:44-1.2 (Reserved)

16:44-1.3 (Reserved)

16:44-1.4 (Reserved)

16:44-1.5 (Reserved)

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16:44-1.16 (Reserved)

16:44-1.17 (Reserved)

16:44-1.18 (Reserved)

16:44-1.19 (Reserved)

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.

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

"Classification" means the process that assigns a project rating to a contractor that denotes the work types and maximum dollar amount of a contract on which the Department will allow the contractor to submit a bid.

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

"Commissioner" means the Commissioner of the New Jersey Department of Transportation.

"Contractor" means a person that is classified, or who has applied for 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 industry classification.

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

"Department" means the New Jersey Department of Transportation.

"Department 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.

"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.

"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 the dollar threshold on the maximum amount of a project rating, which may be assigned by the Department pursuant to N.J.A.C. 16:44-3.6 upon examination of the contractor's Questionnaire and financial statement in accordance with this chapter.

"Overall performance rating" means the average of all performance ratings assigned to a contractor within the last four consecutive years of rated periods.

"Performance rating" means the numerical rating, expressed as a percentage, assigned to a contractor for a project(s) completed within the last four consecutive years of rated periods. The performance rating shall be calculated on the basis of the contractor's performance as reported on Form DC-83, which has been completed by the Department's RE upon final acceptance of the applicable project(s).

"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 construction plans and contract documents for an advertised project for which bids will be accepted, as amended by addenda and change of plans, if any. Plans include the version of the standard details specified on the key sheet.

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

"Project rating" means the maximum dollar amount that a contractor shall be allowed to bid in a particular work type on an individual project.

"Questionnaire" means information, including, but not limited to, financial statements, equipment statements, experience and past performance records submitted under oath in response to the current version of Department Form DC-74A.

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

"RE" means the Department's field representative having direct supervision of the administration of a project.

"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 attachments to the Standard Specifications, which include project specific requirements prepared using the Department's current Standards Inputs and required non-standard specifications, which are not covered in either the Standard Specifications or the Standard Inputs.

"Standard Specifications" means the 2001 edition of the "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 Department contracting pursuant to N.J.A.C. 16:44-11.5.

16:44-2.2 (Reserved)

SUBCHAPTER 3. CLASSIFICATION OF PROSPECTIVE BIDDERS

16:44-3.1 Prequalification Committee

The Prequalification Committee shall be comprised of five voting members, selected at the discretion of the Commissioner. The Bureau Manager shall serve as Secretary to the Committee, and may be delegated authority by the Committee to sign Classification applications on behalf of the Committee in those circumstances deemed appropriate by the Committee.

16:44-3.2 Questionnaire

(a) In order to bid on Department projects, a contractor must be classified and have a project rating. To be classified, the contractor must complete a Questionnaire on Form DC-74A available on the Department's website at www.nj.gov/transportation/business/procurement/ConstrServ/prequalrequire.shtml or from the Bureau at New Jersey Department of Transportation, Construction Services, 1035 Parkway Ave., P.O. Box 605, Trenton, NJ, 08625-0605, (609) 530-2103. The following satisfactory information must be provided to the Department:

1. A classified CPA certified audited financial statement or a classified CPA reviewed financial statement in accordance with general accepted accounting principles. 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 extended by banks. 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 certified public accountant 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. The certified audited financial statements shall have an unqualified opinion. All financial statements, whether audited or reviewed, shall be for a full one-year accounting cycle.

ii. Submission of CPA reviewed financial statements will limit the contractor's financial capability and project rating 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;

2. 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;

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

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 using the Department's work type codes, location, contract price, name and current telephone number 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, 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 or other person, regardless of title held, who has the ability to control a contractor's operations;

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 (LLC), a statement setting forth the names and home 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 LLC, owning a 10 percent or greater interest in the contractor, the statement shall also set forth the names and home addresses of all stockholders, partners or members owning a 10 percent or greater interest in that corporation, partnership or LLC. Disclosure of the names and home 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. A statement identifying the work types for which the contractor is seeking classification. The contractor will not be assigned a project rating for work types that have not been requested; and

11. An affidavit attesting that all statements contained in the Questionnaire are true and accurate.

16:44-3.3 Penalties for false statements

(a) 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 classification or in the course of any hearing pertaining to an application for classification, 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 (LLC), 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.

16:44-3.4 Classification process

(a) Contractors shall complete the Questionnaire in its entirety and must answer all questions and provide all required information to the satisfaction of the Department. Incomplete submissions will necessitate requests for additional information and will not be processed by the Department until the additional information is received.

(b) When a contractor submits a Questionnaire, the contractor shall include the required fee in accordance with N.J.S.A. 27:7-35.3. Payment shall be made as specified

in the Questionnaire and no Questionnaire will be processed until the required fee is received by the Bureau.

(c) The Department will notify a contractor of its determination of its classification within 15 days of the Department's receipt of a completed Questionnaire, and will send a confirming letter by first class mail. If the Department requests additional information from the contractor to complete the Questionnaire or to clarify information contained in the Questionnaire, the contractor will be notified of its classification by first class mail within 15 days of the Department's receipt of the requested information. Classification will be effective 15 days from receipt of the completed Questionnaire or 15 days from receipt of any additional information, provided that the additional information is satisfactory to the Bureau.

(d) Classification shall expire 18 months after the close of business date of the financial statement accompanying the Questionnaire. Contractors that do not submit a new Questionnaire at least 15 days prior to this expiration date will have their classification expire and cannot bid on Department projects unless a completed and satisfactory Questionnaire is received at least 15 days prior to the date on which bids are received.

(e) A contractor may request a change in classification at any time and shall follow the procedures for classification described in this chapter. Requests for a change in classification necessary to bid on a particular Department project, requires receipt by the Department of satisfactory additional information in support of the classification change at least 15 days prior to the date on which bids are to be received.

16:44-3.5 Appeals and enforcement

A contractor dissatisfied with the classification assigned to it by the Department may request in writing a hearing before the Prequalification Committee and at the hearing may present further evidence to justify a different classification. The Prequalification Committee will make the final administrative decision based on the information presented at the hearing.

16:44-3.6 Work types and project rating ranges

(a) Contractors will be classified and assigned a project rating according to the work type and the maximum dollar value of work on which they may bid. Contractors will be assigned project ratings in differing dollar ranges for different work types.

(b) The work types for which contractors may seek classification are on file at the Department and are posted on the Department's website at: www.nj.gov/transportation/business/procurement/ConstrServ/ClassCode.shtm.

(c) Project ratings will be assigned to contractors by the Department pursuant to N.J.A.C. 16:44-3.8.

(d) The dollar ranges within which project ratings may be assigned are as set forth in Table I below:

\$ 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		

1. A contractor who does not qualify to bid in the \$ 1,000,001 to \$ 2,000,000 range or higher will be classified with a project rating equal to its financial capability, as determined pursuant to N.J.A.C. 16:44-3.7.

2. Contractors who have been assigned project ratings of "unlimited," will be notified when the Department intends to accept bids for a project in this class. Each contractor that intends to bid upon such a project shall be required to apply for and obtain a specific approval 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 approvals at least 15 days before the date set for the receipt of bids on the "unlimited" class project.

16:44-3.7 Determination of financial capability

(a) Financial capability of a contractor will be determined by the Department based on its examination of the following:

1. The contractor's net working capital. Net working capital is, as used in this chapter, defined as 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. The Department will use the contractor's net worth, as shown in the balance sheets, in lieu of the contractor's net working capital whenever the net worth is less than its net working capital;

2. Net book value of construction equipment less the amount of any outstanding loans for the purchase of that equipment will equal the amount allowed; and

3. Unsecured lines of credit in accordance with the Questionnaire.

(b) The contractor's financial capacity will be determined by the Department according to the following calculation:

Financial capability = (net working capital or net worth x 15) + (net book value of construction equipment less the value of any outstanding loans x 15) + (unsecured lines of credit in accordance with the Questionnaire x 7).

16:44-3.8 Project rating

(a) Classified contractors will be assigned a project rating for work types in which the Department determines they have sufficient experience. The project rating will reflect the experience and quality of work of the contractor, its officers, stockholders, managing members and key personnel. The Department reserves the right to not assign a project rating to any contractor for good cause shown. The Department will notify the contractor of any such proposed action and an opportunity will be given to present additional information in support of its classification request. A contractor may be assigned project ratings in differing ranges for different work types.

(b) Project ratings in any work type cannot exceed the determination of the contractor's financial capability.

(c) For each work type in which a project rating is assigned, that project rating will be determined by the Department on the basis of one of three methods as follows:

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

(d) Utilizing performance ratings: For contractors that have completed Department work within the last 12 consecutive rated periods, the contractor's overall performance rating will be used to determine their project rating.

1. If the contractor's overall performance rating is 70 or above, the contractor will receive a project rating equal to its financial capability as referenced in Table I at N.J.A.C. 16:44-3.6.

2. If a contractor's overall performance rating is less than 70, the Department may, in the public interest, not assign the contractor a project rating, or may assign a limited project rating.

(e) Evaluation of verifiable work experience: For contractors that have not been assigned a performance rating within the last 12 consecutive rated periods, and in which the contractor engaged in the work types for which classification is being sought, the project rating will be determined as follows:

1. For each project being evaluated, the contractor will provide information from public and private owners for whom the contractor has performed work. Those owners will be contacted and the information will be reviewed, evaluated and a score assigned in the manner set forth in Table II - Work Performance Score and Table III - Work Experience Score, below:

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

	Equivalent Project Experience	Related Project Experience	No Equivalent or Related Project Experience
Work experience on projects	1.00	0.50	0.00

2. 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. See example:

$$\text{(Work Performance Score + Work Experience Score = Quality Score)}$$

$$1.5 + 1.0 = 2.5$$

3. The average of the quality scores calculated for each evaluation will be multiplied by the dollar value of the largest completed project for which an evaluation was performed. A contractor's project rating shall be the range found in Table I at N.J.A.C. 16:44-3.6, within which the resulting dollar figure falls.

4. If the contractor's work performance scores are evaluated to be excellent or good and the project work experience is determined by the department to be equivalent work, the Department will assign a project rating equal to its financial capability.

(f) Evaluation of resumes of officers, stockholders, managing members or key personnel: For contractors with no verifiable contracting experience, newly formed contractors, or contractors without work experience, the project rating will be determined as follows:

1. Officers, stockholders, managing members or key personnel must submit resumes detailing verifiable contracting experience.

2. Upon verification of acceptable contracting experience, the Department will, in the exercise of its discretion and for good cause, assign a project rating corresponding to the level and quality of that experience.

3. If the key personnel to be evaluated are not officers, stockholders or managing members of the contractor's company, 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.

(g) Contractors forming a joint venture pursuant to N.J.A.C. 16:44-7.2 will have their project ratings combined where each joint venture participant has been assigned project ratings in at least one of the work types specified in the project advertisement.

SUBCHAPTER 4. DISTRIBUTION OF STANDARD SPECIFICATIONS

16:44-4.1 Requirements

(a) The Department's engineering documents unit will:

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

(b) Standard Specifications are available on the Department's website at: www.state.nj.us/transportation/eng/specs/index.shtml#StandardSpecifications. Contact information for the Department's engineering documents unit is: 609-530-5587 (phone) and 609-530-6626 or 609-530-4704 (fax).

16:44-4.2 Distribution of free copies

(a) The Department's engineering documents unit will distribute Standard Specifications without charge upon request, 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. 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 prior to delivery to the Department.

(b) Special Provisions shall be provided on a CD ROM 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.

16:44-5.3 Departmental distribution

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

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

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: www.nj.gov/transportation/business/procurement/ConstrServ/curradvproj.shtm and the Department's electronic bidding provider at: 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 classified with the Department pursuant to N.J.A.C. 16:44-3.

(b) Bids will only be accepted from a contractor who has been classified in at least one of the work types required in the project advertisement.

(c) Bids will only be accepted from a contractor in an amount that does not exceed its project rating.

(d) When there is a question as to whether a bid is within the contractor's classification or, where it reasonably appears that a contractor may not have the classification 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 type or in a dollar amount greater than the contractor's maximum project rating, 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

Two or more contractors holding valid classifications with the Department may file a request to form a joint venture for the purpose of submitting a bid on a specific project. A joint venture statement must be filed with the Bureau at least five days prior to the date set for receipt of bids on the project.

16:44-7.3 Bid procedure

(a) Bids will be received at the hour, date and place specified in the advertisement or as otherwise noticed to all potential bidders.

(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.

(c) When required by the project's specifications, the Department will utilize an internet bidding process and the contractor shall be required to submit the bid via the internet using the appropriate software. When the internet bidding process is specified, no "paper" bids will be accepted.

1. Internet bidding information is available on the Department's website at www.bidx.com. The contractor shall download the bidding software. No alteration of the software is permitted. Registration and subscription fees are required to submit bids via the internet and to access plans and Special Provisions.

2. The contractor shall download all bid documents from the Department's internet bidding website. The bid shall consist of the completed bid documents that are submitted via the internet by the contractor to the Department prior to the time for the opening of bids. The Department assumes no responsibility for errors or omissions in the downloaded documents, except as specifically provided for in the bid documents.

3. The contractor shall submit a proposal form as provided on the Department's internet bidding website. The contractor shall include all addenda amendments on the proposal form.

4. The contractor shall specify a price for each pay item except when alternate pricing is specified.

5. The contractor shall submit its bid with a valid electronic signature. An additional fee is required for each person authorized by the contractor to electronically sign the bid.

6. The contractor shall ensure delivery of its bid and all its components, including the required schedule of items. For wholly State-funded projects, the bid documents shall include acknowledgment of compliance with the registrations specified in (f) and (g) below, and with N.J.S.A. 19:44A-20.13, a proposal bond form and other related documents, as required by specification.

7. The contractor is solely responsible for any and all errors, for timely submission of the bid and all required components and attachments, through the electronic bidding system.

8. The Department assumes no responsibility for any claim arising from the failure of any bidder or the electronic delivery system to cause any bid, bid component or attachment to not be delivered to the Department on or before the time set for bid opening.

(d) All bids will be downloaded and printed at the bid session by the Bureau. Each bid will be reviewed for acceptability. The total bid price as submitted by the bidders will be publicly read.

(e) 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 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.

2. 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.

(f) For 100 percent State-funded projects, bidders must at the time of bid:

1. 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. A bid shall be rejected if the bidder fails to have a valid current registration;

2. Have a valid business registration with the New Jersey Department of the Treasury, Division of Revenue as required by N.J.S.A. 52:32-44. A bid shall be rejected if the bidder fails to have a valid current registration; and

3. Certify their compliance with N.J.S.A. 19:44A-20.13 and Executive Order No. 117 (2008), concerning disclosure of political contributions.

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

16:44-7.4 Rejection of bids

(a) The Commissioner may disqualify any contractor and reject its bid at any time prior to the contract execution when there have been developments subsequent to classification, which, in the opinion of the Commissioner, would adversely 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;

5. 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;

6. If the bidder fails to provide a total price in its bid;

7. 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

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.

16:44-7.5 Withdrawal

A bidder may withdraw a bid by notifying the Bureau in writing prior to the opening of any bid on the subject project.

16:44-7.6 (Reserved)

16:44-7.7 (Reserved)

16:44-7.8 (Reserved)

16:44-7.9 (Reserved)

SUBCHAPTER 8. PROJECT AWARD

16:44-8.1 General provisions

(a) The Bureau shall identify the lowest and next lowest bidders. All proposal bonds delivered with the bids, except for those of the lowest and next lowest bidders, shall be returned within three working days after the bids are received.

(b) The Department shall award the contract to the lowest responsible bidder or reject all the bids 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 specifications at the time the bids were received.

(c) The contractor shall submit an Affirmative Action Employee Information Report to the Department's Division of Civil Rights and Affirmative Action within seven days from the day bids are received. Approval of the contractor's Affirmative Action Plan for Disadvantaged Business Enterprises, Emerging Small Business Enterprises and Small Business Enterprises by the Division of Civil Rights and Affirmative Action is required prior to award of the contract.

(d) Award of the contract shall not be binding on the Department, until such a time as the contract and bond documents have been fully executed by the contractor and the Department.

16:44-8.2 (Reserved)

16:44-8.3 (Reserved)

16:44-8.4 (Reserved)

16:44-8.5 (Reserved)

16:44-8.6 (Reserved)

16:44-8.7 (Reserved)

16:44-8.8 (Reserved)

16:44-8.9 (Reserved)

16:44-8.10 (Reserved)

16:44-8.11 (Reserved)

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 include the time within which the executed contract and bond forms must be returned in accordance with the specifications. 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 at least equal to the total contract price less the lump sum price bid for the pay item "Performance Bond and Payment Bond." 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 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.

(c) For Federally funded projects, successful bidders must provide proof of the contractor's valid State of New Jersey Business Registration issued pursuant to N.J.S.A. 52:32-44 by the Department of the Treasury, Division of Revenue, 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, a copy of the signed contract will be transmitted to the contractor.

(f) 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.

(g) For 100 percent State-funded projects, the contractor must be in compliance with N.J.S.A. 19:44A-20.13 and Executive Order No. 117 (2008), concerning disclosure of political contributions, prior to the contract being executed by the Commissioner.

(h) The contractor will have the opportunity to escrow bid documents pursuant to, and in accordance with, the project's specifications.

(i) A non-resident contractor must complete an "Appointment of Agent" form, which will be provided by the Department.

16:44-9.2 (Reserved)

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 at N.J.A.C. 16:45, 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 heretofore or hereafter withheld from contract payments as provided for in this subchapter shall be paid by the State to any contractor entitled thereto who shall deposit certain negotiable bonds with a bank in the State of New Jersey, which is an approved depository of the State of New Jersey, having a trust department, and which is willing to complete the escrow agreement between the Department, 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 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.

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 thereunder, 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 of New Jersey, 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 of New Jersey, 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 persons therein (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 debar-

ment, 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 forthwith 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 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 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 said 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 Commissioner 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.

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. REORGANIZATION OF CONTRACTORS

16:44-12.1 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.

16:44-12.2 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. 16:44-2.1, the contractor must demonstrate the following:

1. Advise the Commissioner 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. 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 project rating and financial capability; and

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 classification requirements as specified under 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 Commissioner will ascertain whether the proposed reorganization affects the contractor's classification. If so, the Commissioner may reclassify the contractor in accordance with the effects of the reorganization.