

i. Parts I and II of the National Board Dental Examination; or  
 ii. The Integrated National Board Dental Examination;  
 5.-9. (No change.)  
 (c) (No change.)  
 (d) A candidate for dental licensure who has successfully completed the ADEX dental examination and who has not practiced as a licensed dentist for a period of five years or more prior to the date of application shall re-take the ADEX examination or a Board-approved refresher course with a post-course examination. The Board shall use the results of the clinical or post-course examination to assess competency and practice proficiencies. If the examination identifies deficiencies or educational needs, the Board may require the applicant, as a condition of licensure, to take and successfully complete any education or training or to submit to any supervision, monitoring, or limitations as the Board determines is necessary to ensure that the applicant practices with reasonable skill and safety. A candidate for dental licensure shall submit a completed application to the Board, which shall contain the following information and materials:  
 1.-2. (No change.)  
 3. Results of the successful completion of either of the following:  
 i. Parts I and II of the National Board Dental Examination; or  
 ii. The Integrated National Board Dental Examination;  
 4.-8. (No change.)  
 (e) A candidate for dental licensure by credentials, who is licensed to practice dentistry in another state or jurisdiction, shall submit a completed application to the Board, which shall contain the following information and materials:  
 1.-3. (No change.)  
 4. Results of the successful completion of either of the following:  
 i. Parts I and II of the National Board Dental Examination; or  
 ii. The Integrated National Board Dental Examination;  
 5.-10. (No change.)  
 (f)-(g) (No change.)

(a)

**DIVISION OF CONSUMER AFFAIRS  
 OFFICE OF THE DIRECTOR  
 PUBLIC MOVERS AND WAREHOUSEMEN  
 Notice of Readoption  
 Rules of Public Movers and Warehousemen  
 Readoption: N.J.A.C. 13:44D**

Authority: N.J.S.A. 45:14D-6.  
 Authorized By: Division of Consumer Affairs, Cari Fais, Acting Director.  
 Effective Date: July 29, 2024.  
 New Expiration Date: July 29, 2031.

Take notice that pursuant to N.J.S.A. 52:14B-5.1, the rules at N.J.A.C. 13:44D was scheduled to expire on October 4, 2024. The rules establish standards for the licensing and regulation of public movers and warehousemen.

Subchapter 1 provides definitions for words and phrases used throughout the rules. Subchapter 2 pertains to applications for licensure and general requirements of a licensee. Subchapter 3 requires licensees to file tariffs with the Director. The subchapter specifies the format and frequency with which the tariffs must be filed, and the rates, charges, classification ratings, terms, and conditions that must be part of tariff filings. Subchapter 3A deals with licensees who provide moving and/or storage services of office goods. It provides exemptions to regulatory requirements for licensees when they provide moving and/or storage services for office goods and exemptions for businesses that limit themselves to providing services for office goods. Subchapter 4 pertains to the general responsibilities and duties of licensees. The rules in the subchapter provide the format for forms licensees are required to provide consumers, establish insurance requirements for licensees, set forth standards for the use of an owner-operator, and allow licensees to provide

short-notice moving or warehousing services in limited circumstances. Subchapter 5 is reserved. The Appendix sets forth the format for the notice licensees are required to provide consumers.

The Director has reviewed the rules and has determined them to be necessary, reasonable, and proper for the purpose for which they were originally promulgated, as required pursuant to Executive Order No. 66 (1978). Therefore, pursuant to N.J.S.A. 45:14D-6, and in accordance with N.J.S.A. 52:14B-5.1(a)(1), these rules are readopted and shall continue in effect for a seven-year period.

TRANSPORTATION

(b)

**DIVISION OF PROCUREMENT  
 BUREAU OF CONSTRUCTION SERVICES  
 Design-Build Construction Contracts  
 Adopted New Rules: N.J.A.C. 16:44B**

Proposed: January 16, 2024, at 56 N.J.R. 112(a).  
 Adopted: June 14, 2024, by Francis K. O'Connor, Commissioner, Department of Transportation.  
 Filed: August 8, 2024, as R.2024 d.084, with non-substantial changes not requiring additional public notice and comment (see N.J.A.C. 1:30-6.3).  
 Authority: P.L. 2021, c. 71; N.J.S.A. 6:1-29, 6:1-44, 27:1A-5, 27:1A-6, and 52:35B-1 et seq.; and 23 CFR Part 636.  
 Effective Date: September 3, 2024.  
 Expiration Date: September 3, 2031.

Summary of Public Comments and Agency Responses:

Comments were received from the following:  
 Jean Publee  
 Jack Kocsis, Jr., CEO, ACCNJ  
 Joseph A. Fiordaliso, President, ACEC NJ  
 Anthony Guerrieri, Assoc. V.P., AECOM  
 Ryan Sharpe, Dir. Govt. Affairs and Communications, UTCA

General Comments

COMMENT: A comment was received from Jean Publee and is included verbatim: "there will be absolutely no reduction in overages on building in nj under this new procedure so that it is meaningless. maybe having all involved means they will check on each other to stop the corruption that is represented in every building deal under state govt in nj. 98% of the state building jobs go over what the public is told it will cost. taxpayers are paying ten times what taxpayers pay in other states for building costs for nj work. we simply need more honest people involved in this work and not consider every building project as a site to get rich for some pal of govt. we need some clean up in nj. i am not supporting this change. this comment is for the public record. please receipt. jean publee jxxxx1@gmail.com" (email truncated).

RESPONSE: The Department of Transportation (Department) thanks Jean Publee for her comments and the information she provided. The design-build method will create a shorter design and construction process, while reducing the need for work stoppages and change orders, which increase project costs. The process will also ensure a well-organized, consistent, and predictable process that will protect public interests while attracting design-builders to the Department's design-build projects.

COMMENT: AECOM questioned whether the rule should address Federal processes when Federal funds are used for a project.

RESPONSE: N.J.A.C. 16:44B-3.2 states that all Federal-aid projects shall comply with 23 CFR Part 636 and all other applicable statutes and regulations.

Summary Comments

COMMENT: Relating to the 4th paragraph of the Summary section of the notice of proposal, AECOM questioned the use of the word "proposals" in the 3rd sentence. They also questioned the phrase "full

proposals will be opened simultaneously” regarding technical and price aspects. Technical proposals require review and sealed bid prices are opened at a later date in real time. How would this work?

RESPONSE: The technical and price information is further documentation requested by the Department and included with prior submissions for final review and deems the proposals full and complete. The complete proposals are opened at a previously announced time, pursuant to N.J.S.A. 52:35B-7.b and e. The winning sealed bid price is published on the Department’s website pursuant to the provisions at N.J.A.C. 16:44B-2, 6, and 9 and N.J.S.A. 52:35B-8.c.

#### Subchapter 2

COMMENT: Relating to N.J.A.C. 16:44B-2.1, AECOM asks that the definition of “design-build contract” (DBC) be amended to clarify the Department’s process.

RESPONSE: The proposed language is identical to the definition found at N.J.S.A. 52:35B-2. No change will be made upon adoption.

COMMENT: Relating to N.J.A.C. 16:44B-2.1, ACECNJ believes that the definition of “design professional” should be amended to delete language establishing that design professionals are responsible for “... observing the construction of the project or projects.” They believe that this could be used to attribute liability to the designer for construction means and methods.

RESPONSE: The proposed language is identical to the definition found at N.J.S.A. 52:35B-2. No change will be made upon adoption.

COMMENT: Relating to N.J.A.C. 16:44B-2.1, AECOM asks that the definition of “evaluation factors” be amended to include reference to the second phase of the selection process.

RESPONSE: The proposed language is identical to the definition found at N.J.S.A. 52:35B-2. Also, pursuant to N.J.S.A. 52:35B-5, the proposal evaluation factors shall be included in the request for proposal. No change will be made upon adoption.

COMMENT: Relating to N.J.A.C. 16:44B-2.1 and 4.1(b)10, AECOM recommends a maximum of four teams for the shortlist.

RESPONSE: Pursuant to N.J.S.A. 52:35B-4.c, the maximum number specified in the solicitation shall be at least two and shall not exceed six.

COMMENT: Relating to N.J.A.C. 16:44B-2.1 and 4.1(b)10, ACECNJ objects to the number of design-builders included on the shortlist. They believe that the number should be limited to three or four.

RESPONSE: Pursuant to N.J.S.A. 52:35B-4.c, the maximum number specified in the solicitation shall be at least two and shall not exceed six.

COMMENT: Relating to N.J.A.C. 16:44B-2.1, AECOM recommends that the definition states that alternative technical concepts (ATC) will be allowed and are confidential.

RESPONSE: ATCs are addressed in the Instructions to Proposers section of the RFP. Pursuant to N.J.S.A. 47:1A-1 et seq., the Open Public Records Act (OPRA), “trade secrets and proprietary commercial or financial information obtained from any source” are exempt from disclosure.

#### Subchapter 3

COMMENT: Relating to N.J.A.C. 16:44B-3.1, ACECNJ acknowledges that design-builders have registrations and work classifications necessary for the projects. Further, relating to N.J.A.C. 16:44B-6.3, ACECNJ asked about re-certification, waivers, and joint ventures.

RESPONSE: The Department thanks the commentator for their acknowledgement. The questions relating to re-classification, waivers, and joint ventures are beyond the scope of this rulemaking.

#### Subchapter 4

COMMENT: Relating to N.J.A.C. 16:44B-4.1(b), ACCNJ appreciates the Department’s reliance on the “Design-Build Construction Services Act” provisions found at N.J.S.A. 52:35B-2 through 9.

RESPONSE: The Department thanks the commentator for their support of N.J.A.C. 16:44B-4.1(b)1.

COMMENT: Relating to N.J.A.C. 16:44B-4.1(b)7, ACECNJ believes that the requirement for performance and payment bonds is not the responsibility of the “design professional.” Also related to this provision, UTCA states that language should state that design professionals must have design liability insurance.

RESPONSE: The proposed language refers to design-builders and design professionals, who have differing professional liabilities. Upon adoption, the Department will insert the phrase “as applicable” to clarify the provision.

#### Subchapter 5

COMMENT: Relating to N.J.A.C. 16:44B-5, AECOM suggests that Statement of Qualifications (SOQ) rankings should not carry forward to the proposal phase. Also relating to N.J.A.C. 16:44B-5.1, ACECNJ asked whether any of the SOQ scores carry over to the project selection.

RESPONSE: The proposal phase is a continuation of the entire process and includes specific information related to key personnel and costs. All the required factors are considered in the final decision.

COMMENT: Relating to N.J.A.C. 16:44B-5.1, ACECNJ states that the requirement to review and accept the design-build contract at the SOQ submission is burdensome. There may also be questions related to subcontractors and subconsultants not yet identified. ACECNJ suggests that a draft contract be included in the SOQ. They believe that this will allow teams to have discussions with the Department. They also suggest the possibility of negotiation or changes to the design-build contract through an RFI or meetings.

RESPONSE: Relating to N.J.A.C. 16:44B-5.1, the Department believes that this comment refers to N.J.A.C. 16:44B-5.2(a). The language “along with the proposed terms and conditions of the design-build contract, and fully understands and agrees to all the requirements, terms, and conditions set forth therein” is deleted because it is redundant. The provision is also found at N.J.A.C. 16:44B-4.1(b)2. A draft contract will not be included at any time during the bidding process. There will be no negotiations or changes of the DBC, except as permitted at N.J.S.A. 52:35-7.d.

#### Subchapter 6

COMMENT: Relating to N.J.A.C. 16:44B-6.1(b), AECOM states, “Suggest wording the key person further ‘Proposals shall identify the key person (or persons at the Departments discretion) whom the design-build contract. The key person (or persons) shall not be replaced.’ The department may want to include some specialty staff.”

RESPONSE: The function of key persons is addressed in the request for qualifications (RFQ) and request for proposal (RFP) and the definitions related to this chapter. The skill set or requirements often vary greatly depending on the needs of a specific project. Therefore, making it part of the contract language for an RFQ or RFP, provides the Department with the flexibility to address the specific requirements for each agreement. The Department declines to make any changes.

COMMENT: Relating to N.J.A.C. 16:44B-6.1(c), AECOM asks whether proposal acceptance equates to winning the bid. They also believe that wording related to maximum costs is confusing.

RESPONSE: Acceptance of a proposal means that all of the required documents have been submitted and the review process can commence. It does not pertain solely to the winning bid. As to maximum costs, pursuant to N.J.S.A. 52:35B-7.d, maximum costs in a proposal may be converted to fixed prices through negotiated agreement between the design-builder and the Department.

COMMENT: Relating to N.J.A.C. 16:44B-6.2, ACECNJ states that the proposed language provides for ownership of accepted designs but does not mention unsuccessful ones. There is no mention as to whether this occurs with or without acceptance of a stipend. ACECNJ wants to maintain ownership of their design but understands that acceptance of a stipend transfers ownership. AECOM suggests an added provision that states that distribution of a stipend gives the Department rights to the proposers work product.

RESPONSE: Pursuant to N.J.S.A. 52:35B-7.f and N.J.A.C. 16:44B-6.2(a), unless and until a proposal is accepted, the drawings, specifications, and other information in the proposal shall remain the property of the person making the proposal. For an accepted proposal, the ownership of the drawings, specifications, and other information in the proposal shall be determined in accordance with existing law and the terms of the DBC. The proposed language will not be changed upon adoption.

COMMENT: Relating to N.J.A.C. 16:44B-6.3(b), ACECNJ suggests that the RFQ and RFP scoring criteria should be included in the advertisement.

RESPONSE: Pursuant to N.J.S.A. 52:35B-4.b and f and N.J.A.C. 16:44B-6.3(b), the RFPs and the solicitations establish the relative importance of the evaluation factors and sub-factors to be considered. A minimum of 50 percent consideration will be based on the cost of the bid.

COMMENT: Relating to N.J.A.C. 16:44B-6.3(b), ACECNJ suggests that the 50 percent minimum consideration be changed to the maximum amount. They also want to know how the cost is evaluated. They recommend a sliding scale. AECOM also recommends a maximum of 60 percent for price.

RESPONSE: The rules are compliant with N.J.S.A. 52:35B-1 et seq., that gives the Department discretion to set price factors at 50 percent or more. The price factor could be more than 50 percent based on the project type and scope. A maximum cap of 60 percent will limit the Department's flexibility. The Department acknowledges the suggestions, but declines to make any amendments.

COMMENT: Relating to N.J.A.C. 16:44B-6.3, UTCA suggests adding language, pursuant to N.J.S.A. 52:35B-8.g, which provides a 30-day timeframe for a design-builder whose proposal was rejected to review the other proposals, the technical review committee evaluation scores, and the final recommendation of award document. The request must be in writing. They also suggest that the bidder be provided with formulas, calculations, or methods used in determining the technical score.

RESPONSE: The Department acknowledges that the statutory language regarding these reviews was inadvertently omitted. The Department thanks the commenter for pointing out the omission. The language will be added upon adoption at N.J.A.C. 16:44B-9.2(e). Formulas, calculations, and other methods used are Department work product and will not be disclosed.

COMMENT: Relating to N.J.A.C. 16:44B-6.3(c), if there is a question as to whether a proposal is within the design-builder's work classification or, where it reasonably appears that a design-builder may not have the work classification that will allow it to bid on a project for which request for proposals are being sought, the proposal will be opened provisionally. If the proposal is for a different work type or in a dollar amount greater than the design-builder's maximum work classification limit, the proposal may be rejected.

As a contractor may incur significant expense in preparing a bid submission, UTCA requests language be inserted stating that the Department make every effort to avoid approving or rejecting a bid based on work classifications at this late stage of the bid process. Instead, UTCA urges the Department to address any work classification issues during the pre-qualifications process.

RESPONSE: Pursuant to the provisions found at N.J.A.C. 16:44B-5.2, the Department will address work classification issues during the SOQ review period. N.J.A.C. 16:44B-6.3(c) will be deleted upon adoption. This provision contradicts N.J.A.C. 16:44B-5.2(c) and (d), which establish the provisions that design-builders must be classified in at least one work type and one design work type as required by the SOQ. SOQs will only be accepted from design-build firms if the work classification limit is not exceeded. Also, N.J.A.C. 16:44B-4.1(b)8 states that a solicitation may include the required work classification limit of the design-builder.

#### Subchapter 7

COMMENT: Relating to N.J.A.C. 16:44B-7.1, ACECNJ questions whether the three percent stipend will be distributed equally to all the unsuccessful shortlisted firms or will each receive three percent.

RESPONSE: Stipends for each proposal shall not exceed three percent of the project's estimated cost and may be given to design-builders who are requested to submit second proposals. The stipend offer may be included in the Department's request for a second proposal from each designer on the shortlist.

#### Subchapter 8

COMMENT: Relating to N.J.A.C. 16:44B-8.1, ACECNJ asks if the authorized design professional is a Department employee or a consultant. During the technical review process, they suggest using two outside consultants as program managers help shape and deliver the program.

They state that any authorized design professional seated on the selection committee be a Department employee.

RESPONSE: The technical review committee members are chosen pursuant to N.J.S.A. 52:35B.a(4) and N.J.A.C. 16:44B-8.1. The suggestion relating to consultants is noted, but will not be implemented at this time.

COMMENT: Relating to N.J.A.C. 16:44B-8.2, ACECNJ believes that there is reduced flexibility for owners when scores are read publicly. They ask what occurs with procurement if bids are over the engineer's estimate or allocated budget. They also ask if a best and final offer (BAFO) step will be used.

RESPONSE: The Department is adhering to statutory provisions at N.J.S.A. 52:35B-8.2.c and removing language related to rankings and scores being made public. References to rankings and scores found at N.J.A.C. 16:44B-9.2(c) are also removed. Bids over-estimated will be reviewed on a case-by-case basis. The Department is not considering using BAFO at this time.

#### Subchapter 9

COMMENT: Relating to N.J.A.C. 16:44B-9.1, ACCNJ requests further clarification of the selection committee's role as a separate entity from the technical review committee.

RESPONSE: The technical review committee evaluates and scores the SOQs and proposals and creates a shortlist of design-builders who may submit second proposals. The selection committee makes the final choice of the winning design-builder, consistent with the recommendation of the technical review committee.

COMMENT: Relating to N.J.A.C. 16:44B-9.2(b) (misidentified as N.J.A.C. 16:44B-9.1(b)), ACCNJ opposes the Commissioner of Transportation's (Commissioner) act of final approval or rejection of the award recommendation.

RESPONSE: Pursuant to N.J.S.A. 27:1A-5, the Commissioner has broad powers that carry out the purpose of providing adequate highway facilities. These powers include the ability to approve or reject any recommendations. In addition to the authority given to the Commissioner at N.J.S.A. 27:1A-5 and 27:7-21, the Design-Build Construction Services Procurement Act, N.J.S.A. 52:358-1 through 10, gives the Commissioner, as head of the New Jersey Department of Transportation, the power to make the design-build contract award decision. See N.J.S.A. 52:35B-2 and 52:35B-8.b.

COMMENT: Relating to N.J.A.C. 16:44B-9.2, ACECNJ again suggests that the design-builder's right to review proposals, technical evaluations, and committee recommendations be established in the rule. They also want information regarding methods used to determine technical scores.

RESPONSE: Referring to the Department's response to a similar comment regarding N.J.A.C. 16:44B-6.3, language providing the bidders an opportunity to request a review is being inserted upon adoption. Formulas, calculations, and other methods used are Department work product and will not be disclosed.

#### Federal Standards Statement

The adopted new rules are consistent with the requirements at 23 CFR Part 636. Therefore, a Federal standards analysis pursuant to Executive Order No. 27 (1994) and P.L. 1995, c. 65, is not required.

Full text of the adopted new rules follows (additions to proposal indicated in boldface with asterisks \*thus\*; deletions from proposal indicated in brackets with asterisks \*[thus]\*):

#### CHAPTER 44B DESIGN-BUILD CONSTRUCTION CONTRACTS

##### SUBCHAPTER 1. PURPOSE AND SCOPE

###### 16:44B-1.1 Purpose

The purpose of this chapter is to provide the processes by which design-builders may enter into design-build contracts with the New Jersey Department of Transportation (Department).

###### 16:44B-1.2 Scope

This chapter implements N.J.S.A. 52:35B-1 et seq., the Design-Build Construction Services Procurement Act, which establishes the procedures

for the awarding of design-build contracts for State and local contracting units and provides that the Department may follow a two-phase selection process.

## SUBCHAPTER 2. DEFINITIONS

### 16:44B-2.1 Definitions

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

“Commissioner” means the Commissioner of the New Jersey Department of Transportation or such person as the Commissioner may designate, when legally possible.

“Department” means the New Jersey Department of Transportation.

“Design-build contract” means a contract between the Department and a design-builder to provide design, labor, materials, and other professional and construction services for a public project. A design-build contract may be conditional upon subsequent refinements in scope and price and may permit the Department to make changes in the scope of the project without invalidating the design-build contract.

“Design-build project” means a project delivery system that combines all or some portions of the design and construction phases of a construction project into a single contract including, but not limited to, design and regulatory permit approvals.

“Design-builder” means the entity, whether natural person, partnership, joint stock company, corporation, trust, professional corporation, business association, design-build team, joint venture, or other legal business entity or successor, that proposes to design and construct any public project, who is registered pursuant to the provisions at N.J.S.A. 34:11-56.48 et seq., classified by the New Jersey Division of Property Management and Construction or the New Jersey Department of Transportation, where relevant, to perform work on a design-build project, and prequalified pursuant to N.J.A.C. 16:44-3 and 16:44A-3.1.

“Design professional” means the entity, whether natural person, partnership, joint stock company, corporation, trust, professional corporation, business association, joint venture, or other legal business entity or successor that provides licensed and prequalified architectural, engineering, or surveying services in accordance with N.J.S.A. 45:3-1 et seq., and 45:8-27 et seq., and that shall be responsible for planning, designing, and observing the construction of the project or projects.

“Evaluation factors” means the requirements the Department will consider for the first phase of the selection process, and will include, but not be limited to, specialized experience, training certification of professional and field workforce, technical competence, capacity to perform, safety modification rating, past performance, and other appropriate factors. Price shall only be considered in the second phase of the selection process.

“Key persons” means individuals identified and included by a design-builder in the phase one and phase two submissions as having a responsible role in the successful completion of the design-build contract.

“Price bid” means a sealed proposal containing the cost of providing the required design and construction and other services described in the request for proposals.

“Proposal” means an offer to enter into a design-build contract in response to a request for proposals.

“Publicly read” means a posting by the Department at <https://www.BidExpress.com> and/or <https://www.state.nj.us/transportation/business/procurement/> of the list of the design-builders who submitted a statement of qualifications; the shortlist; or the design-builder awarded the design-build contract, if any.

“Request for proposals” or “RFP” means the written document issued by the Department, including all required documentation, in the second phase of a two-phase selection process to be used to identify the design-builder offering the best value to the Department.

“Shortlist” means the list of design-builders selected to participate in the second phase of a two-phase selection process. The maximum number, as specified in the solicitation, shall be at least two and shall not exceed six.

“Solicitation” means a written document including all additional information issued by the Department in the first phase of the two-phase selection process that describes the project in enough detail to allow

potential design-builders to determine if they wish to compete for the design-build contract and that requests information from design-builders regarding the qualifications, experience, and organizational structure of the design-builder’s team, which information can be used by the Department to establish a shortlist of the design-builders to receive the request for proposals for the design-build project.

“Statement of qualifications” or “SOQ” means the document(s) submitted by a design-builder in response to a solicitation issued by the Department that describes the qualifications and capabilities of the design-builder and the design-builder’s key persons, who will perform the scope of services to be included in a design-build contract.

“Technical proposal” means the written description, including any drawings, specifications, or other items, of the proposed approach to managing and accomplishing all project activities during the design and construction of the design-build project that is provided by the design-builder in response to the request for proposals.

“Two-phase selection process” means a procurement process in which the first phase submission consists of a statement of qualifications in response to a solicitation. The second phase submission consists of the price bid and technical proposals in response to the request for proposals.

“Work classification limit” means the maximum dollar amount of the classification assigned for which a design-builder shall be allowed to bid in a particular work type on an individual project in phase one of a two-phase selection process.

## SUBCHAPTER 3. GENERAL PROVISIONS

### 16:44B-3.1 General provisions

(a) Design-builders shall:

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 through 56.57;

2. Have a valid business registration with the New Jersey Department of the Treasury, Division of Revenue, pursuant to N.J.S.A. 52:32-44;

3. Comply with the requirements at N.J.S.A. 10:5-1 et seq., Law Against Discrimination, and N.J.A.C. 17:27, Equal Employment Opportunity and Affirmative Action Rules;

4. Satisfy the prequalification and work classification requirements stated in the solicitation prior to submitting a statement of qualifications in response to the design-build solicitation; and

5. Comply with any and all applicable Federal or State statutory or regulatory bidding and contract requirements.

### 16:44B-3.2 Federal Highway Administration approval and authorization

All Federal aid design-build highway projects shall comply with 23 CFR Part 636 and all applicable Federal statutes and regulations, as required.

## SUBCHAPTER 4. SOLICITATION REQUIREMENTS

### 16:44B-4.1 Solicitation requirements

(a) Projects will be solicited by public notice pursuant to the requirements at N.J.S.A. 27:7-29. Solicitations will also be posted on the Department’s website at: <https://www.state.nj.us/transportation/business/procurement/> and the Department’s electronic bidding provider at: <https://www.BidExpress.com>.

(b) Each design-build solicitation by the Department may include, but not be limited to, the following:

1. The procedures to be followed for submitting a statement of qualifications, the criteria for evaluation and their relative weight, and the procedures for making awards, including a reference to the requirements at N.J.S.A. 52:35B-2 through 9 and this chapter;

2. The proposed terms and conditions for the design-build contract;

3. A description of the drawings, specifications, or other items to be submitted in response to the request for proposals in the form of a technical proposal, with guidance as to the form and level of completeness of the drawings, specifications, or submittals that shall be acceptable;

4. A schedule for planned commencement and completion of the design-build contract;

5. Affirmative action, disadvantaged business or small business goals or requirements for the design-build contract, in accordance with the requirements of all rules, regulations, standards, or policies adopted by the Department;

6. The required qualifications of the design-builder;

7. Requirements for design-builders and the design professional to have performance bonds, payments bonds, and insurance, \*as applicable,\* and to meet all the qualifications of the Department;

8. The required work classification limit of the design-builder;

9. Offer of a stipend, if any;

10. The maximum number of design-builders the Department will identify on the shortlist. The maximum number specified in the solicitation will be at least two and shall not exceed six; and

11. A statement that the prospective design-builder is in compliance with all applicable laws, including the New Jersey Prevailing Wage Act, N.J.S.A. 34:11-56.25 et seq., the Public Works Contractor Registration Act, N.J.S.A. 34:11-56.48 et seq., and the Construction Industry Independent Contractor Act, N.J.S.A. 34:20-1 et seq.

(c) The solicitation may include any other information that the Department, in its discretion, chooses to supply, including, without limitation, surveys, soils reports, drawings or models of existing structures, environmental studies, photographs, or references to public records.

#### SUBCHAPTER 5. STATEMENT OF QUALIFICATIONS

##### 16:44B-5.1 Statement of qualifications (SOQ) evaluation factors

The solicitation will include the evaluation factors and the relative importance assigned to the evaluation factors and any sub-factors to be considered by the Department to determine the shortlist.

##### 16:44B-5.2 Submittal of statement of qualifications

(a) The submission of an SOQ is an acknowledgement that the design-builder has completely reviewed the solicitation\*[, along with the proposed terms and conditions of the design-build contract, and fully understands and agrees to all the requirements, terms, and conditions set forth therein]\*.

(b) An SOQ will only be accepted from a design-builder pre-qualified with the Department pursuant to N.J.A.C. 16:44-3 and 16:44A-3.1.

(c) An SOQ will only be accepted from a design-builder that has been classified in at least one construction work type and at least one design work type as required in the solicitation.

(d) An SOQ will only be accepted from a design-build firm if the work classification limit is not exceeded.

(e) An SOQ shall identify the key persons to whom the design-builder will delegate obligations under the design-build contract. The key persons so identified shall not be replaced without the approval of the Department. The Department will have a reasonable basis for withholding approval.

(f) No SOQ will be accepted after the solicitation has been closed.

(g) The identity of all design-builders who submitted \*[a]\* \*an\* SOQ will be publicly read on a date established by the Department.

#### SUBCHAPTER 6. PROPOSALS

##### 16:44B-6.1 Proposal requirements

(a) Proposals shall be sealed and shall not be opened until expiration of the time established for making proposals as described in the solicitation.

(b) Proposals shall identify the key person to whom the design-builder delegates obligations under the design-build contract. The key person shall not be replaced without the approval of the Department. The Department will have a reasonable basis for withholding approval.

(c) Proposals shall establish the cost of the design-build contract, which shall not be exceeded if the proposal is accepted without any change. Afterward, the maximum cost in the proposal may be converted to a fixed price to be negotiated by agreement between the Department and the design-builder.

(d) Proposals shall contain a statement that the prevailing wage rate is accounted for in the price bid proposal by the design-builder and that if awarded the contract, all workers employed in the design-build project shall be paid at least the prevailing wage determined by the Commissioner of the Department of Labor and Workforce Development, pursuant to the

provisions of the New Jersey Prevailing Wage Act, N.J.S.A. 34:11-56.25 et seq.

##### 16:44B-6.2 Proposal receipt, rejection, and withdrawal

(a) Unless and until a proposal is accepted, the drawings, specifications, and other information in the proposal shall remain the property of the design-builder. Once a proposal is accepted, the disclosure of the proposal and the information in the proposal, and the ownership of the drawings, specifications, and other information in the proposal, shall be determined in accordance with existing law and the terms of the design-build contract.

(b) The Department will have the right to reject any and all proposals. The Department may issue a new solicitation using the same evaluation factors, budget constraints, or qualifications, unless there has been a material change in circumstances affecting the needs of the Department including, but not limited to, an environmental issue, natural disaster, state of emergency, or unforeseen fiscal constraint.

(c) A proposal submitted pursuant to N.J.S.A. 52:35B-1 et seq., may be withdrawn for any reason at any time prior to acceptance.

##### 16:44B-6.3 Technical review committee evaluation of proposals

(a) Pursuant to N.J.S.A. 52:35B-4 et seq., the technical review committee will evaluate, score, and rank the proposals and make a recommendation to the Design-Builder Selection Committee.

(b) Pursuant to N.J.S.A. 52:35B-4.f, the technical review committee will evaluate each proposal based on the technical submission for the proposal, including design concepts or proposed solutions to requirements addressed within the scope of work, and the evaluation factors, including a minimum of 50 percent consideration based on the design-builder's sealed bid.

\*[(c) Where there is a question as to whether a proposal is within the design-builder's work classification or, where it reasonably appears that a design-builder may not have the work classification that will allow it to bid on a project for which request for proposals are being sought, the proposal will be opened provisionally. If the proposal is for a different work type or in a dollar amount greater than the design-builder's maximum work classification limit, the proposal may be rejected.]\*

#### SUBCHAPTER 7. STIPEND

##### 16:44B-7.1 Stipend

(a) Pursuant to N.J.S.A. 52:35B-4.d, the Department may, in its sole discretion, offer a stipend, based upon the project size and type, which shall not exceed three percent of the Department's estimated cost of the project, to any design-builder providing design, construction information, or materials presented in response to a request for second proposals. Nothing in this subsection shall require the Department to offer a stipend, nor does it provide entitlement to a stipend if one is not offered. Stipends are meant to encourage the submission of second proposals and to increase competition. If the Department, in its sole discretion, offers a stipend, and then rejects all submitted proposals, the stipend may be paid pursuant to the terms of the request for proposals.

(b) The Department in its sole discretion may deny a stipend to a design-builder for an incomplete or otherwise non-responsive second proposal.

#### SUBCHAPTER 8. TECHNICAL REVIEW COMMITTEE AND THE SHORTLIST SELECTION

##### 16:44B-8.1 Technical Review Committee

The Technical Review Committee will, at a minimum, consist of a representative of the Department, the Department's project manager, and the Department's authorized design professional. The Department's attorney may advise the Committee.

##### 16:44B-8.2 Technical Review Committee shortlist selection

(a) The Technical Review Committee will evaluate and score the SOQs received based on the specified evaluation factors in the request for proposals, select the highest qualified number of design-builders specified in the solicitation, and request that the shortlist design-builders submit a second proposal.

(b) The \*ranking and scores of all design-builders that submitted a SOQ to create the]\* shortlist will be publicly read on a date established by the Department.

SUBCHAPTER 9. DESIGN-BUILDER SELECTION COMMITTEE AND DESIGN-BUILD CONTRACT AWARD PROCESS

16:44B-9.1 Design-Builder Selection Committee

The Design-Builder Selection Committee will consist of five voting members which shall be appointed by the Commissioner.

16:44B-9.2 Design-build contract award process

(a) The Design-Builder Selection Committee (DBSC) will select the winning design-builder, consistent with the award recommendation of the Technical Review Committee.

(b) The Commissioner will have final approval or rejection of the award recommendation of the DBSC.

(c) \*The design-builder awarded the design-build contract, the final ranking, price, and scoring of the shortlist will be publicly read on a previously established date by the Department.]\* \*After the award decision is made, the sealed price bid will be publicly read for each proposal submitted by a design-builder.

(d) The winning design-builder will receive written notification of the accepted proposal. At the same time that notice of acceptance is delivered, the other design-builders will be notified, in writing, that their proposals were not accepted.

(e) When a design-builder receives notification that the proposal has not been accepted, the design-builder may, within 30 days, request to review the design-build proposals submitted, the technical review committee evaluation scores from the selection process, and the final recommendation of award document. The design-builder shall submit this request, in writing, to the DBSC.\*

(a)

DIVISION OF PROCUREMENT

Notice of Readoption Construction Services

Readoption: N.J.A.C. 16:44

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 27:7-71, and 27:7-35.1 et seq.

Authorized By: Francis K. O'Connor, Commissioner, Department of Transportation.

Effective Date: August 6, 2024.

New Expiration Date: August 6, 2031.

Take notice that, pursuant to N.J.S.A. 52:14B-5.1, the rules found at N.J.A.C. 16:44 were scheduled to expire on September 14, 2024. The purpose of N.J.A.C. 16:44, Construction Services, is to provide current and prospective contractors with the procedures and criteria used in the bidder classification process, information about the bidding procedure for Department of Transportation (Department) construction projects, certain contractual requirements, payment provisions, contractor eligibility, and debarment and suspension procedures. These rules contribute to an efficient bidding process and provide uniform standards by which all contractors are evaluated, rated, and classified.

The chapter is summarized as follows:

Subchapter 1, Purpose and Scope, provides the purpose and scope of the chapter.

Subchapter 2, Definitions, provides the definitions used throughout this chapter.

Subchapter 3, Classification of Prospective Bidders, provides the process for the classification of contractors and prospective bidders.

Subchapter 4, Distribution of Standard Specifications, provides the method for the distribution of standard specifications.

Subchapter 5, Distribution of Construction Plans and Special Provisions, provides the method of distributing plans and special provisions and describes the fees to be charged for such materials.

Subchapter 6, Advertising for Bids, outlines requirements related to the advertising of bids.

Subchapter 7, Bidding Department Projects, provides the procedures for bidding.

Subchapter 8, Project Award, establishes general provisions related to the awarding of projects.

Subchapter 9, Contracts, establishes provisions related to contracts that have been awarded.

Subchapter 10, Retainage and Partial Payments to Contractors, outlines the method of payment to contractors as work progresses; bond requirements for contractors; action required in cases of default; and payment of service charges.

Subchapter 11, Debarment, Suspension, and Disqualification, establishes causes, conditions, and procedures related to debarment, suspension, and disqualification.

Subchapter 12, Reorganization of Contractors, establishes procedures and guidelines to be followed by contractors who effect any change in organization while under contract with the Department.

The Department has reviewed the rules and determined that they should be readopted without change. The rules are necessary, reasonable, adequate, and responsive for the purpose for which they were originally promulgated. Therefore, pursuant to N.J.S.A. 52:14B-5.1.c(1), these rules are readopted and shall continue in effect for a seven-year period.

TREASURY—TAXATION

(b)

DIVISION OF TAXATION

Cigarette Tax Act Rules

Readoption with Amendments: N.J.A.C. 18:5

Adopted Repeals: N.J.A.C. 18:5-5.10 and 5.11

Proposed: June 3, 2024, at 56 N.J.R. 1009(a).

Adopted: August 9, 2024, by Marita Sciarrotta, Acting Director, Division of Taxation.

Filed: August 9, 2024, as R.2024 d 085, without change.

Authority: N.J.S.A. 54:40A-20 and 54:50-1.

Effective Dates: August 9, 2024, Readoption;

September 7, 2024, Amendments and Repeals.

Expiration Date: August 9, 2031.

Summary of Public Comment and Agency Response:

No comments were received.

Federal Standards Statement

A Federal standards analysis is not required because the rulemaking authority is granted by the operative provisions of the New Jersey Cigarette Tax Act, N.J.S.A. 54:40A-1.1 through 12.7, and is not subject to any Federal requirements or standards.

Full text of the readopted rules can be found in the New Jersey Administrative Code at N.J.A.C. 18:5.

Full text of the adopted amendments follows:

SUBCHAPTER 3. REVENUE TAX STAMPS

18:5-3.2 Types of stamps available; denominations

(a) (No change.)

(b) Heat decalcomania tax stamps applied by hand in denominations of \$270 are sold in blocks of individual sheets of 100 stamps and only multiples of 1,000 stamps.