

# TRANSPORTATION

(a)

## DIVISION OF PROCUREMENT

### Contracts for Architectural, Landscape Architectural, Engineering and Land Surveying Services

#### Proposed Readoption with Amendments: N.J.A.C. 16:44A

Authorized By: Stephen Dilts, Commissioner, Department of Transportation.

Authority: N.J.S.A. 27:1A-5, 27:1A-6 and 52:34-9.1 et seq.

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2009-186.

Submit written comments by August 14, 2009 to:

Miriam Weeks  
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New Jersey Department of Transportation  
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The agency proposal follows:

#### Summary

In accordance with N.J.S.A. 52:14B-5.1c and Executive Order No. 66 (1978), N.J.A.C. 16:44A is scheduled to expire on November 23, 2009. The Department of Transportation (Department) has reviewed the rules and determined that they are necessary, reasonable, and proper for the purposes for which they were originally promulgated. The Department proposes to readopt this chapter with the amendments set forth below. Because the Department has provided a 60-day comment period, this notice is excepted from the rulemaking calendar requirement of N.J.A.C. 1:30-3.3(a)5.

These rules describe the criteria used by the Department for the selection of the most highly qualified professional firms with which to contract for architectural, landscape architectural, engineering and land surveying services. These services will be referred to as professional services in the rules. In addition, the rules incorporate the statutory requirements for prequalification of professional firms.

The rules were initially adopted in 1998 in response to the enactment of P.L. 1997, c. 399. This law, codified as N.J.S.A. 52:34-9.1 et seq., requires that contracts for architectural, engineering and land surveying services be negotiated on the basis of demonstrated competence and qualifications and that these contracts be publicly announced prior to being awarded. N.J.S.A. 52:34-9.1 et seq. applies only to professional services contracts in excess of \$25,000. An agency is not precluded from using procurement processes other than those prescribed by law if those processes have been approved by the Federal government or other State law or if an emergency has been declared by the agency head, which, in this case, is the Commissioner of the Department of Transportation.

In 2004, the Department amended the chapter to clarify the criteria used for the selection of the most highly qualified professional firms. 36 N.J.R. 20(a) (January 5, 2004); 36 N.J.R. 3065(b) (June 21, 2004). Also in 2004, at the request of the New Jersey State Board of Architects, the chapter was further amended to include certified landscape architects in accordance with the term "closely allied professional" as defined in N.J.S.A. 45:3-1.1(f). 36 N.J.R. 3236(a) (July 6, 2004); 36 N.J.R. 4834(b) (October 18, 2004).

The Department proposes amendments which remove unnecessary language, delete and add definitions, include a website and bring the rules into compliance with statutory requirements.

The chapter is summarized as follows:

Subchapter 1, Applicability, explains the general applicability of the chapter. The provisions of the chapter apply only to contracts for covered professional services which are in excess of \$25,000.

Subchapter 2, Definitions, provides definitions of words and terms used throughout the chapter.

Subchapter 3, Criteria for the Selection of the Most Highly Qualified Professional Firms, sets forth the criteria to be used by the Department in the selection of professional firms in covered procurement actions.

Subchapter 4 is reserved.

The proposed amendments are as follows:

The chapter heading, "Contracts For Architectural, Landscape Architectural, Engineering And Land Surveying Services," is proposed to be amended to "Contracts For Professional Services."

At N.J.A.C. 16:44A-1.1, amendments are proposed to delete the words "architectural, landscape architectural, engineering and land surveying" and insert the word "professional." This change is being made throughout the rule wherever needed.

At N.J.A.C. 16:44A-2.1, the definition of "compensation" is proposed to be deleted as it is not used in the text of the rules. The definition of "professional architectural, landscape architectural, engineering and land surveying services" is deleted and replaced with the definition for "professional services." The words "architectural, landscape architectural, engineering or land surveying" are deleted from the definition of "professional firm."

At N.J.A.C. 16:44A-3.1(a), amendments are proposed to delete the words "architectural, landscape architectural, engineering or land surveying" and "through electronic means" and add the Department website address where information regarding the solicitation of technical proposals is located.

Current N.J.A.C. 16:44A-3.1(b) is proposed for recodification as N.J.A.C. 16:44A-3.1(c) and amended to delete the words "architectural, landscape architectural, engineering or land surveying."

The Department proposes to add new N.J.A.C. 16:44A-3.1(b) to comply with the statutory requirements of N.J.S.A. 52:34-9.3. This law requires professional firms who wish to be considered qualified to provide professional services to a State agency to file a statement of qualifications and supporting data with the agency. P.L. 2003, c. 117, effective July 1, 2003, amended this section of law to mandate that a \$100.00 fee be remitted each time the statement of qualifications is filed.

Current N.J.A.C. 16:44A-3.1(c) is proposed for recodification as N.J.A.C. 16:44A-3.1(d) with no change in text.

#### Social Impact

The rules proposed for readoption with amendments will continue to ensure that the Department adequately protects the public's interest through its prequalification and professional services selection process and that the Department obtains the services of the most qualified professional firms. The rules impact all private firms wishing to provide professional services in excess of \$25,000 to the Department, in that they are required to comply either with the procedures and guidelines established in these rules, or with some other alternate procurement procedures, as may be otherwise approved by the Federal government or any other applicable State procurement statute.

#### Economic Impact

The rules proposed for readoption with amendments outline the prequalification process and provide the criteria that will be used by the Department in the professional firm selection process. Any firm that wishes to be considered prequalified to provide professional services to the Department must file a current statement of qualifications and supporting data and remit a \$100.00 fee. Professional firms interested in providing services to the Department will incur some administrative costs for filing with the Department, and keeping current, the required statement of qualifications and supporting data.

The Department incurs direct and indirect costs for personnel and equipment required for the posting of technical proposals for required services. These costs vary depending upon the Department's expense to produce the particular documents required. The Department also incurs direct and indirect costs for the selection of qualified firms based upon the terms of the advertisement and the criteria outlined in these rules. These costs vary depending on the area of specialty and profession. It is expected that the rules proposed for readoption with amendments will not increase or decrease Department costs.

#### Federal Standards Statement

A Federal standards analysis pursuant to Executive Order No. 27 (1994) and P.L. 1995, c. 65 is not required because the rules proposed for readoption with amendments come within the authority of State statute only and are not subject to Federal requirements or standards.

#### Jobs Impact

The rules proposed for readoption with amendments will not result in either an increase or decrease in State or private sector jobs. Firms wishing to provide professional services to the Department will have to comply either with the provisions of the rules proposed for readoption herein, or with some other alternate procurement procedures, as may be applicable. The rules are procedural in nature and are not expected to result in either an increase or decrease in the total amount or value of the professional services needed to implement Department projects and programs.

#### Agriculture Industry Impact

The rules proposed for readoption with amendments have no impact on the agriculture industry in New Jersey. The rules are not intended to regulate farming, crop, or animal production.

#### Regulatory Flexibility Analysis

The rules proposed for readoption with amendments require all businesses, including small businesses, as the term is defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., to file a current statement of qualifications and supporting data along with a fee of \$100.00 in order to prequalify to provide professional services to the Department. In addition to outlining the prequalification process, N.J.A.C. 16:44A provides the criteria the Department will consider to select the most highly qualified professional firms when awarding professional service contracts. The Department has determined that these rules are the minimum necessary to accomplish these goals, and, therefore, has made no provision for lesser or differing reporting, recordkeeping, or compliance standards for small businesses. Small businesses will not have to employ professional services in order to comply with these rules.

#### Smart Growth Impact

Smart growth is based on the concept of focusing new growth into redevelopment of older urban and suburban areas, protecting existing open space, conserving natural resources, increasing transportation options and transit availability, reducing automobile dependency, stabilizing property taxes, and providing affordable housing. This is the same basic approach that underlines the State Development and Redevelopment Plan. The rules proposed for readoption with amendments will have no impact on the achievement of smart growth or the implementation of the State Development and Redevelopment Plan.

#### Housing Affordability Impact

The rules proposed for readoption with amendments will have no impact on affordable housing in New Jersey. The rules outline the prequalification process and provide the criteria that will be used by the Department in the professional firm selection process. The Department believes that it is extremely unlikely that the rules would bring about a change in the average costs associated with housing.

#### Smart Growth Development Impact

The rules proposed for readoption with amendments will have no impact on smart growth. The rules outline the prequalification process and provide the criteria that will be used by the Department in the professional firm selection process. The Department believes that it is extremely unlikely that the rules would bring about a change in housing production in Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan.

**Full text** of the rules proposed for readoption may be found in the New Jersey Administrative Code at N.J.A.C. 16:44A.

**Full text** of the proposed amendments follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

## CHAPTER 44A CONTRACTS FOR [ARCHITECTURAL, LANDSCAPE ARCHITECTURAL, ENGINEERING AND LAND SURVEYING] PROFESSIONAL SERVICES

### SUBCHAPTER 1. APPLICABILITY

#### 16:44A-1.1 Applicability

The provisions of this chapter shall apply only to contracts for [architectural, landscape architectural, engineering and land surveying] professional services which are in excess of \$25,000 and subject to the procurement provision requirements of N.J.S.A. 52:34-9.1 et seq. Nothing in this chapter shall preclude the Department from using procurement processes other than those prescribed herein if those processes have been approved by the Federal government or other State statute or if an emergency has been declared by the Commissioner of the Department of Transportation.

### SUBCHAPTER 2. DEFINITIONS

#### 16:44A-2.1 Definitions

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

... ["Compensation" means the basis of payment by an agency for professional architectural, landscape architectural, engineering or land surveying services.]

... ["Professional architectural, landscape architectural, engineering and land surveying services" means those services, including planning, environmental, and construction inspection services required for the development and construction of projects, within the scope of the practice of architecture, landscape architecture, professional engineering or professional land surveying as defined by the laws of this State or those performed by an architect, landscape architect, professional engineer or professional land surveyor in connection with his or her professional employment practice.]

"Professional firm" means any individual, firm, partnership, corporation, association or other legal entity permitted by law to provide professional [architectural, landscape architectural, engineering or land surveying] services in this State.

"Professional services" means those professional architectural, landscape architectural, engineering and land surveying services, including planning, environmental, and construction inspection services required for the development and construction of projects, within the scope of the practice of architecture, landscape architecture, professional engineering or professional land surveying as defined by the laws of this State or those performed by an architect, landscape architect, professional engineer or professional land surveyor in connection with his or her professional employment practice.

### SUBCHAPTER 3. CRITERIA FOR THE SELECTION OF THE MOST HIGHLY QUALIFIED PROFESSIONAL FIRMS

#### 16:44A-3.1 Criteria for the selection of the most highly qualified professional firms

(a) Prior to the solicitation of technical proposals pertaining to the procurement of professional [architectural, landscape architectural, engineering or land surveying] services, the Department shall publicly advertise its need for such services. The advertisement shall conform to the requirements of N.J.S.A. 52:34-12(a) and (b), or be publicly advertised [through electronic means] on the Department's website at: [www.nj.gov/transportation/business/procurement/ProfServ/](http://www.nj.gov/transportation/business/procurement/ProfServ/). The advertisement shall either include a statement of the criteria by which the Department shall evaluate the technical qualifications of professional firms and determine the order of preference to be used in designating the firms most highly qualified to perform the services or identify such criteria by reference to the provisions of this chapter.

(b) Any professional firm that wishes to provide professional services to the Department shall pre-qualify by filing a current statement of qualifications and supporting data with the Department pursuant to N.J.S.A. 52:34-9.3. Such statements may be filed at any time during the calendar year, and a fee of \$100.00 shall be remitted by the professional firm at the time each statement is filed. Statements filed more than two years prior to the Department's publication of an advertisement shall not be deemed current statements and shall not be considered for that particular advertised need.

[(b)] (c) In selecting the most highly qualified professional firms with which to contract for [architectural, landscape architectural, engineering or land surveying] professional services, the Department, where applicable, shall consider the following criteria:

1.-5. (No change.)

[(c)] (d) (No change in text.)

SUBCHAPTER 4. (RESERVED)

## TREASURY — TAXATION

(a)

### DIVISION OF TAXATION

#### General Policies and Procedures

#### Tax Clearance for Business Assistance and Incentives

#### Proposed New Rules: N.J.A.C. 18:2-10

Authorized By: Cheryl Fulmer, Acting Director, Division of Taxation.

Authority: N.J.S.A. 54:50-39.

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2009-179.

Submit written comments by August 14, 2009 to:

Mitchell Smith  
Administrative Practice Officer  
Division of Taxation  
50 Barrack Street  
P.O. Box 269  
Trenton, New Jersey 08695-0269

The agency proposal follows:

#### Summary

The proposed new rules establish policies and procedures for obtaining tax clearance as a precondition for any award of business assistance or incentive offered by State departments and agencies, including independent authorities and instrumentalities of the State, as provided by the applicable statutory provisions.

Proposed N.J.A.C. 18:2-10.1 states that the purpose of the subchapter is to describe the process by which the Division of Taxation will issue a Tax Clearance Certification as evidence that a person or business entity applying for an award of business assistance or incentive offered by a government department or agency of the State including independent authorities and instrumentalities of the State has no outstanding New Jersey tax liability pursuant to N.J.S.A. 54:50-39. The rule specifically stipulates that the procedures provided are exclusively for the purposes of obtaining tax clearance as a requirement when applying for an award of business assistance or incentive offered by the State, and are separate and distinct from any other tax clearance procedures that may be provided either statutorily or through other regulatory sections within the Administrative Code.

Proposed N.J.A.C. 18:2-10.2 defines "business assistance or incentive," "business entity" and "taxes" to clarify who and under what circumstances the tax clearance procedures apply, and the type of information that the Division is authorized to review in determining whether there is compliance with New Jersey tax laws.

The application process is provided in proposed N.J.A.C. 18:2-10.3 and 10.4, which requires that a completed application specific for each agency assistance or incentive program be submitted to the Division of Taxation accompanied by a statutorily authorized fee which shall be \$75.00 for regular processing, \$200.00 for expedited processing.

Proposed N.J.A.C. 18:2-10.4 further explains that the certificates issued by the Division are valid for a 90-day period unless they are renewed, which can be up to three times within a 365-day period without payment of an additional fee, and that the fees are nonrefundable.

Proposed N.J.A.C. 18:2-10.5 sets forth the circumstances in which an Interim Tax Clearance Certificate may be issued upon approval of the Director of the Division of Taxation and gives the basis for which such determination can be made. The Director may use such discretion when certain conditions are met, to avoid impeding commerce or the economic interests of the State.

Proposed N.J.A.C. 18:2-10.6 declares that issuing a Tax Clearance Certificate, whether under regular circumstances or on an interim basis, does not waive or limit the Division's authority to audit, to resolve outstanding tax issues, or limit its tax collection activities.

Proposed N.J.A.C. 18:2-10.7 affirms that an applicant seeking tax clearance prior to the award of business assistance or incentive is not given any additional appeal or protest rights with regard to any State tax indebtedness, filing deficiencies or penalties, by virtue of going through the tax clearance process as proscribed in the proposed subchapter.

As the Division has provided a 60-day comment period on this notice of proposal, this notice is excepted from the rulemaking calendar requirement, pursuant to N.J.A.C. 1:30-3.3(a)5.

#### Social Impact

The proposed new rules will have a socially positive impact on the State by providing specific guidelines for individuals and businesses interested in applying for business assistance and incentives from any of the State departments and agencies, including independent authorities and instrumentalities of the State, to follow to ensure that applicants will not be prohibited from receipt of such awards and assistance due to tax compliance issues. Another positive aspect is that the administrative costs associated with processing of tax clearance applications and issuing Tax Clearance Certificates may be offset by the mandatory fee that applicants will be required to pay when filing the requests for tax clearance. Clearly defined rules and procedures that provide an efficient method for awarding business assistance and incentives may increase the appeal of such programs to the citizenry of the State. The ease with which awards can be made by the departments and agencies that promote and offer financial assistance and incentives may contribute to the growth of opportunities that ultimately benefit the State.

#### Economic Impact

Enactment of the proposed new rules would minimally impact the State's economic position by raising revenue to cover the costs of administering the tax clearance program required before business assistance and incentives can be awarded. As set forth in the Summary, the proposed new fees reflect reasonable costs associated with the administration and processing of requests for tax clearance by those in the public who are seeking business assistance or incentives offered by a New Jersey department or agency, including independent authorities and instrumentalities of the State. The fee is also expected to cover the costs incurred by the Division in resolving outstanding tax issues such as delinquencies or deficiencies prior to providing tax clearance for applicants. Funding of the program by applicant fees makes adequate use of resources without burdening the taxpayers of the State.

There will be an economic impact upon those members of the general public and business community who seek to apply for business assistance or incentives that are offered by any New Jersey department or agency, including independent authorities and instrumentalities of the State, who must submit a request for tax clearance by the Division, as a requirement of the application approval process.

#### Federal Standards Statement

A Federal standards analysis is not required. The rulemaking authority is based on N.J.S.A. 54:50-39. There are no Federal regulatory