



Memorandum

Subject: **ACTION:** New Mexico Contractor Performance
Based Prequalification Procurement System under
Special Experimental Project No. 14 (SEP-14)

Date: February 24, 2022

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From: Brian J. Fouch, P.E.
Director, Office of Preconstruction, Construction,
and Pavements

In Reply Refer To:
HICP-20

To: Cindy Vigue
Division Administrator (HDA-NM)
Santa Fe, New Mexico

This memorandum is in reference to a December 10, 2021 email from Max Valerio of your office which transmitted the following documents:

1. A New Mexico Department of Transportation (NMDOT) workplan for the use of a Contractor Performance Based Prequalification Procurement (CPPP) System under Special Experimental Project No. 14 (SEP-14);
2. The Contractor Prequalification Final Rule (New Mexico Administrative Code 18.27.5, ([NMAC 18.27.5](#)) effective June 8, 2021: and
3. A memorandum from your office, also dated December 10, which transmitted, endorsed, and recommended for approval the NMDOT SEP-14 workplan.

In February 2015, FHWA approved the NMDOT first use of the CPPP System under SEP-14 for a period of 6 years, expiring in January 2021. NMDOT utilized its CPPP System on certain Federal-aid Highway construction contracts. Throughout the six-year program period, the CPPP System resulted in several contractor performance improvements, most notably:

- Significant reductions in the frequency and severity of Contract Claims;
- Significant reduction in the severity and frequency of Contract Change Orders; and
- The average number of bidders per bid letting increased on average.

After this period ended, NMDOT made refinements to the CPPP System, submitted the current revised workplan, and again requested approval under SEP-14 for a period of 6 years.

Overview of NMDOT's Proposed Work Plan - 2021

The CPPP System would utilize performance-based prequalification criteria to assist in assessing the qualifications of each contractor submitting bids for Federal and State Transportation projects in the State of New Mexico. Just as in 2015, the 2021 CPPP System would evaluate contractor past performance as a measure of responsibility. It is intended to provide an opportunity to reward good performers, while encouraging poor performers to improve.

NMDOT worked with the Associated Contractors of New Mexico and other stakeholders to update the previous prequalification program and the criteria used to evaluate contractor responsibility. Public comment was addressed through the rulemaking process. The FHWA NM Division Office participated and assisted NMDOT in the development of the revised CPPP System, and strongly endorsed its inclusion into the SEP-14 Program.

For the 2021 CPPP, performance factors are calculated for each contractor for five (5) areas, which are described in the table below:

Performance Factor	Description	2015	2021
Claims	Claims will be considered only if they are unsuccessfully resolved against the contractor at the public works mediation level, (Under the 2015 rule, the score was modified if the claim was not resolved at the Cabinet Secretary level)	15%	15%
Disincentives	Measures quality of work related to certain contract items (Includes additional items in 2021)	30%	30%
Liquidated Damages	Measures a contractor's timely contract completion (unchanged from 2015)	30%	30%
Non-Conformance	Measures compliance with contract terms and conditions. (increased percentage in 2021)	10%	20%
Safety	Measures safety reflected by the contractor's experience modifier rate (EMR) provided by the contractor's bonding company. (unchanged from 2015)	5%	5%
Subcontractor	Measures prompt payment of subcontractors and suppliers. (not used in 2021)	10%	--
Total		100%	100%

In 2021, the lowest score will be capped at 0.94 (2015 cap = 0.90). This would allow for projects that do not contain disincentive factors, and ensures there is room for a small error on projects, some of which may consist of up to three construction seasons.

For 2021, project closure (18.27.5.7.R NMAC) for prequalification was modified to be the physical completion of the project as established in the current edition of the [NMDOT Standard Specifications for Highway and Bridge Construction](#), Section 109.10.8.

NMDOT set a \$5 Million threshold for System inclusion. The Cabinet Secretary may modify the threshold on annual basis and would decide which projects are excluded from consideration. NMDOT has begun implementation of the revised CPPP System. Data collection for projects began with those in the July 2021 letting. The initial reporting period will end February 2023. Other details may be found in the SEP-14 Workplan.

We are approving NMDOT's request to use the CPPP system on Federal-aid projects under SEP-14 for a period of 6 years. Changes in the above conditions may warrant additional review and modification of the approval.

Thank you for the opportunity to review and comment on this SEP-14 request. Should you have any questions, please contact Brian Hogge at (202) 366-1562, or John Huyer at (720) 437-0515.