



U.S. Department
of Transportation

Federal Highway
Administration

Memorandum

Subject: ACTION: Use of a Contractor Performance-based Prequalification and Procurement System Under Special Experimental Project No. 14

Date: February 26, 2015

From: Thomas D Everett /s/
Director, Office of Program Administration
Washington, DC

In Reply Refer To:
HIPA-30

To: J. Don Martinez
Division Administrator
Santa Fe, NM

This is in reference to New Mexico Department of Transportation's (NMDOT's) request for Special Experimental Project No. 14 (SEP-14) approval of its Contractor Performance-based Prequalification and Procurement (CPPP) System. With the assistance of Frank Lozano of your staff and the Office of Chief Counsel, we have reviewed NMDOT's submittals, including program description, State regulations, work plan materials, and evaluation schedule. Based on this review we find that the materials are satisfactory for approval of the CPPP system under SEP-14 as described below.

NMDOT will use its CPPP system to capture elements of a prime contractor's past performance and make a determination regarding the contractor's responsibility. NMDOT will gather prime contractor performance data from each project upon closure and use this data to calculate a yearly prequalification factor for the contractor. Past performance data includes the following:

- Number of unsuccessful claims pursued beyond the Cabinet Secretary administrative level,
- Disincentives related to the quality of construction (e.g. pavement smoothness),
- Liquidated damages to assess the timely completion of construction contracts,
- Non-conformances related to the contractor's timely compliance with the submission of required documents,
- Construction job site safety, and
- Compliance with the subcontractor prompt payment provisions.

Beginning in 2015, NMDOT will be gathering the above performance data for all of its active construction projects. Starting in January 2016, NMDOT will use data from projects closed the prior year to calculate a rolling average prequalification factor. NMDOT will apply this rolling average prequalification factor to each prequalified prime contractor to evaluate the prime contractors' bids. Contractors without past performance data will receive a multiplier factor of one. The use of a prequalification factor as a multiplier may result in a change in the order of bidders.

Through this innovative program, NMDOT seeks to reward good performing contractors and encourage poor performing contractors to improve.

Other important aspects of the CPPP system and NMDOT SEP-14 request that lead us to our decision are as follow:

- NMDOT will not apply the prequalification rolling average factor to proposed projects with an estimated value of less than \$5 million. We believe this is an important element to lessen competition barriers the CPPP system could create for small businesses and disadvantaged business enterprises. This would also provide biddable contracts for poor performers to gain experience, improve their prequalification factor, and bid on larger NMDOT projects.
- NMDOT will adopt two three-year evaluation periods to determine whether any part of the Program CPPP system needs to change. NMDOT will measure cost effectiveness of the program by evaluating changes in the evaluation ratings noted above as well as through evaluation of other criteria related to competition such as changes number of bidders per project and changes in average unit bid prices. NMDOT also plans to evaluate fluctuations in the number of prequalified contractors and subcontractors before and after use of the CPPP system. We believe that the analysis of competition in bidding and fluctuations in the number of prequalified contractors are important measurements for assessing the impacts of the CPPP system on competition.
- NMDOT will provide quarterly reports and annual reports to the Division.
- NMDOT will establish a prequalification committee that will meet annually to review the prequalification process and resolve issues related to the CPPP system.
- NMDOT will continue dialogue with the Associated Contractors of New Mexico (ACNM) regarding the CPPP system and will rely on the prequalification committee to respond when ACNM provides substantive feedback or presents issues with the application of the system.
- Early termination of the SEP-14 approval would result in changes to NMDOT's program to remove the use of CPPP system for Federal-aid projects.

Based on this CPPP system description, including the important aspects described above, 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 Gerald Yakowenko at (202) 366-1562, or John Huyer at (651)291-6111.