



New Mexico DEPARTMENT OF
TRANSPORTATION

December 2, 2015

VIA ELECTRONIC MAIL ONLY AT (johndon.martinez@dot.gov)

Mr. John Don Martinez, Division Administrator
Federal Highway Administration (FHWA), New Mexico Division Office
4001 Office Court Drive, Suite 801
Santa Fe, New Mexico 87507

Re: 3rd Quarter Special Experimental Projects No. 14 (SEP-14) New Mexico Department of Transportation (NMDOT) Contractor Prequalification Program Update

Dear Mr. Martinez,

In accordance with FHWA's SEP-14 reporting requirements outlined in the FHWA letter of February 26, 2015 the NMDOT is required to submit quarterly reporting to the FHWA. The NMDOT requests that the New Mexico Division Office forward this correspondence and all attachments to Mr. Gerald Yakowenko and Mr. Walter Waidelich with SEP-14's approval office in the FHWA's Office of Infrastructure. The 2015 third quarter reporting for the NMDOT Contractor Prequalification Program (Program) is as follows:

Projects Closed Under Program in 2015

The NMDOT let 63 federally-funded projects under the Program and the Contractor Prequalification Rule (Rule). So far, the NMDOT has closed one project, CN A300815, with prime contractor Mountain States Constructors. The NMDOT anticipates that by the end of the calendar year 8 of the let projects will close. This means that the NMDOT will, upon project closure, have objective past performance data and prequalification scores for 9 projects for prequalification scores in 2016.

Compass Form

In anticipation of the Projects that will close in the 2015 calendar year the NMDOT updated its project closure form to capture the appropriate Program related performance factor data. Specifically, where the performance factor calls for a comparison between two data points the compass form now contains that information. The NMDOT anticipates that the revisions to the form will aid NMDOT project managers in the accurate reporting of performance factor data. Also, the NMDOT will include the completed form with the final payment

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processed to a contractor so that the contractor is aware of the information contained in the form. Attached is the current version of the form.

Webpage Changes

The NMDOT has created an independent webpage for third party access to information regarding the NMDOT Rule and Program. This is in an effort to continue the NMDOT's information sharing process about this innovative Program. Please see the attached screen shot of the updated webpage.

Database

The NMDOT is currently running system checks on the database created to house Program related data. Upon completion of this process, and with the SEP-14 year-end reporting, the NMDOT will provide to FHWA screen shots of the input fields for the database.

Information Sharing Meetings

As discussed in the last quarterly update, members of the NMDOT prequalification team and ACNM meet quarterly to discuss the implementation of the Program. At a previous quarterly meeting, ACNM asked for clarification as to when and how claims would be counted under the Program. Although a response was provided at the meeting the NMDOT also provided its response is writing. Attached please find a copy of the same.

Western Association of State Highway and Transportation Officials (WASHTO)

The NMDOT was selected to present on the track of Innovation and Funding/Policies at the annual WASHTO meeting held in Boise, Idaho. A copy of the presentation was not provided with the previous quarterly update. Attached please find the same.

Should there be questions or comments please contact me.

Sincerely,

/S/

Ernest D. Archuleta, PE
Operations Director

Attachment(s)

cc: Tom Church, Cabinet Secretary NMDOT
Anthony Lujan, Deputy Secretary,
NMDOT Loren Hatch, Deputy Secretary, NMDOT
Armando Armendariz, Division Director,
NMDOT Michael Moehn, ACNM Chapter President
Mike Beck, ACNM Executive Director

IA-1103		New Mexico Department of Transportation	
Contractor		Control No.	District
Prequalification Performance Factor Measurements			
Fields that are highlighted in yellow (or noted as Calculated) are calculated values do not enter any data			
Pf liquidated damages (Pfld)		For MCD Projects	
Mandatory Completion Date			
# of Days added via CO (awarded time)			
Adjusted Mandatory Completion Date (Calculated)		1/00/00	
Notice to Proceed Date (as indicated in SiteManager)			
Substantial Completion Date/Actual Completion Date			
		For WD or CD Projects	
Original Contract Time			
#of Days added via CO (awarded time)			
Total Days Contracted (Calculated)		0	
Total Days Charged			
Pf claim (Pfc)			
Yes or No. If yes, indicate level of claim at this time.			
Pf non-conformance (Pfn)			
#of Progress Payments (including zero dollar payments)			
#of Progress Payments w/o a non-conformance			
Pf safety (Pfs)		Obtained by OIG from contractor prequalification packet	
Pf disincentive (Pfd)		\$ Value of applicable item	\$ Value of Disincentive
401			
403			
404			
416			
417			
423			
424			
450			
451			
901			
Sums(Calculated)			
Pf subcontractor (Pfsc)			
#of negative findings from the State DBE Liaison. Attach letter(s) from the DBE Liaison			
Project Manager		Project Manager Signature	
		Date	

Prequalification Requirements

Pursuant to the Contractor Prequalification Rule 18.27.5 NMAC (12/07/2000, as amended through 01/01/15), prime contractors shall obtain prequalified status with the New Mexico Department of Transportation as a condition to submitting a bid. Subcontractors shall obtain prequalified status before performing any work or supplying goods or services to the project. To obtain prequalified status, prime contractors and subcontractors shall submit a timely, complete and conforming prequalification packet to the Office of Inspector General at the address on the packet. Prime contractors shall submit a new or renewal packet no later than seven (7) calendar days before the opening of any bid. Subcontractors shall submit a new or renewal packet before performing any work or supplying goods or services to the project. Prequalification status is published on the Office of Inspector General's prequalified contractors and subcontractors list. Packets and copies of the Contractor Prequalification Rule may be obtained from the Office of Inspector General at 505.476.0901.

- [Contractor Prequalification Packet](#)
- [Contractor Prequalification List](#)
- [Contractor Prequalification 18.27.5 NMAC](#)
- [Contractor Prequalification FAQ](#)

"DO NOT SEND THE W-9 FORM WITH THE PREQUAL PACKET"

The W-9 should be sent to the Accounting Section of NMDOT, link provided below. NMDOT-OIG does not handle the W-9, if sent to the wrong Department this could affect your eligibility to bid on projects.

[W-9 form](#) - New contractors must complete and email to: NMDOT.vendor-Regues@state.nm.us

For information regarding and concerning the Contractor Prequalification Process please contact:

NMDOT Office of Inspector General
P. O. Box 1149
Santa Fe, N.M. 87504-1149
Hotline: 800-671-STOP
Voice: 505-476-0900
nmdot.prequal@state.nm.us

Useful Links

- NMROADS.com
- NMDOT Maps
- NMtrainrunner.com
- MVD Online
- State Personnel Office
- Department of Public Safety

Newsroom

- Media Contacts
- Press Releases**
- Photo Galleries

NMDOT Headquarters

1120 Cerrillos Road
Santa Fe, NM 87504-1149
Telephone: (505) 827-5100
Fax: (505) 827-5469

[NewMexico.Gov](#)

Office of the Governor



New Mexico DEPARTMENT OF
TRANSPORTATION

November 20, 2015

VIA ELECTRONIC MAIL ONLY AT mbeck@acorun.org

Associated Contractors of New Mexico (ACNM)
Mike Beck, Executive Director ACNM
6135 Edith Boulevard NE
Albuquerque, New Mexico 87125

Re: Contractor Prequalification Rule 18.27.5 NMAC (Rule) and Questions Regarding Claims Performance Factor

Mr. Beck,

In a recent meeting between The New Mexico Department of Transportation (NMDOT) and the Associated Contractors of New Mexico (ACNM), ACNM requested clarification from the NMDOT about the performance factor for claims. Specifically, ACNM requested clarification on two points as follows:

- 1) Does the NMDOT count a claim pursued beyond the Cabinet Secretary administrative remedy level, starting with Public Works Mediation or with the filing of litigation?
- 2) Does the NMDOT count the claim value presented to the District Engineer or the claim value pursued in litigation for evaluating whether the claim was successful?

Each question will be addressed in turn. The Rule prescribes certain conditions before a claim will be counted for the claims performance factor calculation. See 18.27.5.6 (H) NMAC and 18.27.5.11 (C) NMAC. To address the first question, the NMDOT interprets the cited provisions to mean that any action taken to pursue a claim after the Cabinet Secretary has rendered a written decision on the claim will be considered. This means that if action is taken to pursue a claim either by proceeding with litigation in State District Court, requesting that a claim be submitted to arbitration, or exhausting the mandatory mediation procedures of the Public Works Mediation Act that claim may be counted if unsuccessful in the performance factor calculation.

To answer the second question, the NMDOT will use the claim value presented to the District Engineer to determine whether the claim was successful or unsuccessful. 18.27.5.11 (C) (2) (a) NMAC states that claims resolved for the value of the claim or more will be assigned a value of zero for the performance factor calculation. 18.27.5.11 (C) (2) (b) NMAC states that claims resolved for less than the value of the

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claim will be assigned a value of one for the performance factor calculation. Each cited section references the value of the claim "brought beyond the Cabinet Secretary level" as the baseline for determining whether a claim was successful or unsuccessful. The 2014 Edition of the NMDOT Standard Specifications for Highway and Bridge Construction (Standard Specifications) Section 105.20.1 "District Level" prohibits the claimant from amending the basis of entitlement, compensation or time requested as the claimant proceeds through the administrative remedy process from the District Engineer to the Cabinet Secretary. This prohibition ensures that the claim is evaluated in its entirety at both levels.

Reading the two provisions in conjunction, the NMDOT interprets the Standard Specifications and Rule to require that the claim value be the same whether presented to the District Engineer or to the Cabinet Secretary. Therefore, the NMDOT will use the value of the claim presented to the District Engineer to evaluate whether the claim was resolved for more or less and to then assign the appropriate performance factor. This interpretation also serves the NMDOT's stated goal of claim resolution at the lowest administrative remedy level.

Should you have any questions or comments please do not hesitate to contact me.

Thank you,

/S/

Ernest Archuleta, PE
Operations Divisions Director

cc: Tom Church, Cabinet Secretary
Anthony Lujan, Deputy Secretary
Loren Hatch, Deputy Secretary
Armando Armendariz, Division Director
Prequalification Team
J. Don Martinez, FHWA
Marcus Wilner, FHWA
Mike Moehn, ACNM President

NMDOT Performance-Based Contractor Prequalification

Rewarding Good Performers and Encouraging Poor
Performers to Improve

Ernest D. Archuleta P.E. - Division Director NMDOT

Armando M. Armendariz P.E. – Division Director NMDOT



History

- Previous Contractor Prequalification Rule was more akin to a registration process, it requested financial and equipment reporting from the Contractor
- Being prequalified required the completion of an intake form with the Office of Inspector General (OIG) within certain timeframes before Bid Opening for prime Contractors and after Bid Opening for Subcontractors
- Completion of the intake form determined Contractor eligibility to Bid and perform Contract Work
- Previous Rule has been in effect and applied since 1998



History - Rule Changes

- Dating back to 2005 the NMDOT made a business decision to explore the development of a performance-based Contractor Prequalification program
- Later in 2013 the State Transportation Commission requested revisions to the prequalification procedure to address contractor performance
- Because the previous Rule took certain elements like financial and equipment capacity into account without applying them to performance a new system that focused on performance was developed



Outline of Presentation

- All NMDOT Employees have a Role
 - Program Description
 - Tools
 - Projects Let with New Rule
- NMDOT measures overall past performance through the Prequalification Score
- The Prequalification Score is the "Responsibility" measure
 - The Term "Responsibility"
- " Objective Criteria measured to determine Responsibility
 - Performance Factors
 - Claims
 - Disincentives
 - Non-Conformances
 - Liquidated Damages
 - Subcontractor Prompt Payment
 - Safety



Program and Rule

- The NMDOT's Contractor Prequalification Program is made up of various parts, including:
 - Contractor Prequalification Rule, codified in 18.27.5 NMAC
 - Intake Packet
 - Performance Measurement
 - Performance Equation
 - Performance Output



Tools to Help

- Because of the importance of the consistent application of the Rule and Program we developed some tools to help
- link
- There are two Operations Division Directives to describe the step by step process that construction staff will use to monitor performance factors
- The NMDOT external webpage under business resources has the following documents
 - New Rule
 - New Prequalification Packet
 - Description of Changes to the Rule
 - Prequalified Contractors and Subcontractors List



NMAC 18.27.5

- The Contractor Prequalification Rule is incorporated in the Contract through the NMDOT Standard Specifications for Highway and Bridge Construction Section 102.2

Although the Prequalification Rule is managed by OIG there are various divisions, bureaus, and project offices that are responsible for the day-to-day implementation and management of the new rule as discussed earlier



Projects Let Under New Rule

January

- 6100421(days)
- 2100026
- M500795
- 3100300
- M200496

February

- A301260A
- A301260B
- 5100140
- 4101090
- 1100830
- A300815
- 2101140

March

- 2101370
- 5100810
- 6101100
- 101170
- 6100825
- 6100299
- 211810

April

- 2100140
- 6100470
- 4101180



Prequalification Rolling Average

- The Prequalification rolling average falls over a three-year period
- So in the future (2018):
 - Year one (2017) represents .9 of the score
 - Year two (2016) represents .6 of the score
 - Year three (2015) represents .3 of the score



Prequalification Score

<i>Prequalification Factors (P_{qf})</i>	<i>Associated Yearly Percentage</i>
<i>Liquidated Damages</i>	= 30% <i>P_{fld}</i>
<i>Claims</i>	= 15% <i>P_{fc}</i>
<i>Non-Conformances</i>	= 10% <i>P_{fn}</i>
<i>Safety</i>	= 5% <i>P_{fs}</i>
<i>Disincentives</i>	= 30% <i>P_{fd}</i>
<i>Subcontractor</i>	= 10% <i>P_{fsc}</i>
	<hr/>
	100%

$$P_{qfyr1} = P_{fc} * 15\% + P_{fld} * 30\% + P_{fd} * 30\% + P_{fn} * 10\% + P_{fs} * 5\% + P_{fsc} * 10\%$$

$$P_{qfra} = \frac{(P_{qfyr1} \times 0.900) + (P_{qfyr2} \times 0.600) + (P_{qfyr3} \times 0.300)}{(0.900 + 0.600 + 0.300)}$$

Pfc-Performance Factor Claims (15%)

- The performance factor for Claims is our objective measurement of whether a Claim was made on a project, elevated past the cabinet secretary level, and unsuccessful meaning a resolution less than the request for compensation or time at the cabinet secretary level



Pfd-Disincentive (30%)

- The performance factor for Disincentives our objective measurement of the Contractor's quality of work related to certain contract items



Pfld-Liquidated Damages (30%)

- The performance factor for liquidated damages is the objective measurement of the Contractor's timely completion of the Project



Pfn-Non-Conformance (10%)

- The objective measurement of non-conformances evaluates the Contractor's compliance with the terms and conditions of the Contract



Pfs-Performance Factor Safety (5%)

- The objective performance factor for safety evaluates and measures the Contractor's experience modifier rate reported on the prequalification packet



Pfsc-Performance Factor Subcontractor (10%)

- This objective performance factor measures a Contractor's prompt payment of its subcontractors and suppliers



Conclusion

Prequalification Factors (Pqf) and Performance Factor Year (Pqfyr) Calculations

<u>Prequalification Factors (Pqf)</u>		<u>Associated Yearly Percentage</u>
Liquidated Damages	=	30% Pfld
Claims	=	15% Pfc
Non-Conformances	=	10% Pfn
Safety	=	5% Pfs
Disincentives	=	30% Pfd
Subcontractor	=	10% Pfsc
		100%

Contractor Data Outputs for individual Prequalification Factors (Pqf) and resulting (Pqfyr) yearly calculation

Pfld		Pfc		Pfn		Pfs		Pfd		Pfsc	
1.019	30%	1.455	15%	1,804	10%	0.900	5%	1.048	30%	1.000	10%

Current Year **2011**

Pqfyr1

1.164

$$Pqfyr1 = Pfc \cdot 15\% + Pfd \cdot 30\% + Pfld \cdot 30\% + Pfn \cdot 10\% + Pfs \cdot 5\% + Pfsc \cdot 10\%$$

Rolling Average Performance Quality Factor (Pqfyr) Calculations

<u>Years Evaluated</u>			<u>Yearly Weighting Factor</u>
Pqfyr1	2011	=	0.900
Pqfyr2	2010	=	0.600
Pqfyr3	2009	=	0.300

Pqfyr1	2011	Pqfyr2	2010	Pqfyr3	2009
1.164	0.900	1.040	0.600	0.980	0.300

Pqfra = 1.092

$$Pqfra = \frac{(Pqfyr1 \times 0.900) + (Pqfyr2 \times 0.600) + (Pqfyr3 \times 0.300)}{(0.900 + 0.600 + 0.300)}$$

Questions

