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.
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
**New Mexico Department of Transportation**

**Contractor Control No.**  
**District**

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**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)

<table>
<thead>
<tr>
<th>Sums(Calculated)</th>
<th>$ Value of applicable item</th>
<th>$ Value of Disincentive</th>
</tr>
</thead>
<tbody>
<tr>
<td>401</td>
<td></td>
<td></td>
</tr>
<tr>
<td>403</td>
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<tr>
<td>451</td>
<td></td>
<td></td>
</tr>
<tr>
<td>901</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

### Pf subcontractor (Pfsc)

- **# of negative findings from the State DBE Liaison**
- Attach letter(s) from the DBE Liaison

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**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-Reqeues@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
- NMairrunner.com
- MVDO Online
- Office of the Governor
- 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
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...
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

Prequalification Factors (Pqf)  
Associated Yearly Percentage

Liquidated Damages  =  30%  Pfld
Claims  =  15%  Pfc
Non-Conformances  =  10%  Pfn
Safety  =  5%  Pfs
Disincentives  =  30%  Pfd
Subcontractor  =  10%  Pfsc

\[ Pqfyr = Pfc \times 15\% + Pfld \times 30\% + Pfd \times 30\% + Pfn \times 10\% + Pfs \times S\% + Pfsc \times 10\% \]

\[ Pqfya = \frac{(Pqfyr1 \times 0.900) + (Pqfyr2 \times 0.600) + (Pqfyr3 \times 0.300)}{0.900 + 0.600 + 0.300} \]
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 (Pqfy) Calculations

<table>
<thead>
<tr>
<th>Prequalification Factors (Pqf)</th>
<th>Associated Yearly Percentage</th>
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</thead>
<tbody>
<tr>
<td>Liquidated Damages</td>
<td>30% Pfld</td>
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<td>Claims</td>
<td>15% Pfc</td>
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<td>Safety</td>
<td>5% Pfs</td>
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<tr>
<td>Disincentives</td>
<td>30% Pfd</td>
</tr>
<tr>
<td>Subcontractor</td>
<td>10% Pfsc</td>
</tr>
<tr>
<td></td>
<td>100%</td>
</tr>
</tbody>
</table>

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

Current Year

Pqfy1 = 2011

Pqfy1 = Pfc*15%+Pfd*30%+Pfld*.30%+Pfn*10%+Pfs*5%+Pfsc*10%

Rolling Average Performance Quality Factor (Pqfra) Calculations

<table>
<thead>
<tr>
<th>Years Evaluated</th>
<th>Yearly Weighting Factor</th>
</tr>
</thead>
<tbody>
<tr>
<td>Pqfy1</td>
<td>2011                    = 0.900</td>
</tr>
<tr>
<td>Pqfy2</td>
<td>2010                    = 0.600</td>
</tr>
<tr>
<td>Pqfy3</td>
<td>2009                    = 0.300</td>
</tr>
</tbody>
</table>

Pqfra = 1.092

\[
Pqfra = \frac{(Pqfy1 \times 0.900) + (Pqfy2 \times 0.600) + (Pqfy3 \times 0.300)}{(0.900 + 0.600 + 0.300)}
\]
Questions