NMDOT PERFORMANCE-BASED CONTRACTOR PREQUALIFICATION

Rewarding Good Performers and Encouraging Poor Performers to Improve

Sally Reeves P.E. – State Construction Engineer
Lisa Vega P.E. – District Construction Engineer
Geraldine Aguilar – Office of Inspector General
Pam Gallegos – Office of Inspector General
NMDOT Prequalification Information

• [http://dot.state.nm.us/content/nmdot/en.html](http://dot.state.nm.us/content/nmdot/en.html)
  - Doing Business
  - Contractor Prequalification


• **NMDOT-#GO-prequal-questions@state.nm.us**

• **prequal.answers@state.nm.us**
NMDOT Prequalification Information

• The Magazine of the American Society of Civil Engineers (ASCE), Kevin Wilcox, NMDOT Tests New Contracting Plan, [https://www.asce.org/magazine/20150407-nmdot-tests-new-contracting-plan/](https://www.asce.org/magazine/20150407-nmdot-tests-new-contracting-plan/)


• The Report to the Utah Legislature, Office of the Legislative Auditor General, A Performance Audit of the Utah Department of Transportation, [https://le.utah.gov/audit/16_06rpt.pdf](https://le.utah.gov/audit/16_06rpt.pdf)
Outline of Presentation

- Sally Reeves
  - Brief History
- Geraldine Aguilar and Pam Gallegos
  - Where to start the Contractor Prequalification process
- Lisa Vega
  - Equation and example
  - Performance Factors
    - Claims
    - Disincentive
    - Liquidated Damages
    - Non-Conformances
    - Safety
    - Subcontractor
- Sally Reeves
  - Challenges
  - Conclusions
- Q&A
Brief History

- Old rule was basically a registration process (1998)
- 2005 - 1st attempt was a pass fail system (never implemented)
- 2013 – State Transportation Commission requested change - 2nd attempt is NMAC 18.27.5 – Implemented Jan 2015 Letting
  - Determines Contractor “Responsibility” by measuring performance factors – Section 102.2 “Prequalification of Bidders”

- Special Experimental Program (FHWA SEP -14 Alternative Contracting)
  - [https://www.fhwa.dot.gov/programadmin/contracts/sepa.cfm](https://www.fhwa.dot.gov/programadmin/contracts/sepa.cfm)

- 2nd attempt modified NMAC 18.27.5 (revised) – Implementing Jan 2018 Letting
Where to Start

- http://dot.state.nm.us/content/nmdot/en/prequalification.html
- Exiting NMAC
- Revised NMAC
- Contractor Prequalification Packet
- Contractor Prequalified List
- Growth of Contractor Scores
## Growth in Number of Prequalified Contractors with a score

<table>
<thead>
<tr>
<th></th>
<th>2015</th>
<th>2016</th>
<th>2017</th>
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</thead>
<tbody>
<tr>
<td>Fisher Sand &amp; Gravel</td>
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<td></td>
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<tr>
<td>FNF Construction</td>
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<tr>
<td>Kimo Constructors</td>
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<tr>
<td>Mountain States Construction</td>
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<tr>
<td>Fisher Sand &amp; Gravel</td>
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<tr>
<td>Albuquerquee Asphalt</td>
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<tr>
<td>AUI Inc</td>
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<tr>
<td>C &amp; E Concrete</td>
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<tr>
<td>Constructors Inc</td>
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<tr>
<td>El Terrero Construction</td>
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<tr>
<td>Fisher Sand &amp; Gravel</td>
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<tr>
<td>FNF Construction</td>
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<tr>
<td>Hasse Contracting</td>
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<tr>
<td>Highway Supply</td>
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<tr>
<td>Interstate Highway</td>
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<tr>
<td>K Barnett &amp; Sons</td>
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<tr>
<td>Kimo Constructors</td>
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<tr>
<td>Meridian Contractors</td>
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<tr>
<td>Mountain State Constructors</td>
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<tr>
<td>MWI Inc</td>
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<tr>
<td>RAM Construction</td>
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<tr>
<td>Vital Consulting</td>
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<tr>
<td></td>
<td>4</td>
<td>17</td>
<td>27</td>
</tr>
</tbody>
</table>
**Prequalification Performance Factor Measurements**

Fields that are highlighted in yellow are calculated values - do not enter any data

<table>
<thead>
<tr>
<th>Pf liquidated damages (Pfld)</th>
<th>For MCD Projects:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mandatory Completion Date</td>
<td></td>
</tr>
<tr>
<td>CO Time Extensions # of Days</td>
<td></td>
</tr>
<tr>
<td>Adjusted Mandatory Completion Date</td>
<td>1/0/00</td>
</tr>
<tr>
<td>Notice to Proceed Date (as indicated in SiteManager)</td>
<td></td>
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<tr>
<td>Substantial Completion Date (Actual Completion Date)</td>
<td></td>
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</tbody>
</table>

For WD or CD Projects:

<table>
<thead>
<tr>
<th>Original Contract Time</th>
<th></th>
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</thead>
<tbody>
<tr>
<td>CO Time Extensions # of Days</td>
<td></td>
</tr>
<tr>
<td>Adjusted Contract Time</td>
<td>0</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Pf claim (Pfc)</th>
<th></th>
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</thead>
<tbody>
<tr>
<td>Yes or No. If yes, indicate level of claim at this time.</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Pf non-conformance (Pfn)</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td># of Progress Payments (including zero dollar payments)</td>
<td></td>
</tr>
<tr>
<td># of Progress Payments without a non-conformance</td>
<td></td>
</tr>
</tbody>
</table>
## Compass Report cont.

<table>
<thead>
<tr>
<th>Pf disincentive (Pfd)</th>
<th>$ Value of applicable item</th>
<th>$ Value of Disincentive</th>
</tr>
</thead>
<tbody>
<tr>
<td>401</td>
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<td>403</td>
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<tr>
<td>901</td>
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<tr>
<td><strong>Sums</strong></td>
<td><strong>$0.00</strong></td>
<td><strong>$0.00</strong></td>
</tr>
</tbody>
</table>

### Pf subcontractor (Pfsc)

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

### Project Manager

- Date
- Project Manager Signature

### Pf claim (Pfc)

- # of Claims resolved for less than the value of the claim
Equation, Score & Examples

\[ P_{qfyr1} = P_{fc} \times 15\% + P_{fd} \times 30\% + P_{fld} \times 30\% + P_{fn} \times 10\% + P_{fs} \times 5\% + P_{fsc} \times 10\% \]

\[ P_{qfra} = \frac{P_{qfyr1} \times 0.90 + P_{qfyr2} \times 0.60 + P_{qfyr3} \times 0.30}{0.900 + 0.600 + 0.300} \]

**Example:**

\[ 1.0 \times \$5,000,000.00 = \$5,000,000.00 \]
\[ 1.05 \times \$4,950,000.00 = \$5,197,500.00 \]
\[ 0.95 \times \$5,250,000.00 = \$4,987,500.00 \]
Change in Order of Bidders

- In 2016, there were 2 projects where the prequalification factor resulted in a change of the apparent low bidder:
  - CN A301181 – Contractor #2 had a prequal factor of 0.95 and contractor #1 had a prequal factor of 1.0.
  - CN 2101771 – Contractor #2 had a prequal factor of 0.95 and contractor #1 had a prequal factor of 1.0.

- In 2017 there was 1 project:
  - CN 2101320 – Contractor #2 had a prequal factor of 0.933 and contractor #1 had a prequal factor of 1.0.
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.

• Statewide there have not been any claims that have elevated past the cabinet secretary level since the implementation of this program.
Performance Factor Disincentive (30%)

• The performance factor for Disincentives our objective measurement of the Contractor’s quality of work related to certain contract items.

• Contractors are aware that disincentives will affect their prequalification factor. Therefore, they work harder, make business decisions to remove material, or shut down operations to trouble shoot. As a result, the contractors are more accountable.

• In addition, NMDOT and the contracting community also worked together to change the specification for Section 401, Pavement Smoothness, to allow contractors to offset marginal areas for exemplary areas at a 4:1 ratio.

• Finally, the NMDOT was working toward including more disincentives for this performance factor, however elected not to make big changes to the rule as a result of collaboration with the contracting community.
Performance Factor Disincentive (30%) cont.

Disincentive Change Orders

Number of Projects

Year

Performance Factor Liquidated Damages (30%)

• The performance factor for liquidated damages is the objective measurement of the Contractor’s timely completion of the Project.
• With this performance factor, contractors will now implement strategies earlier to ensure all work is completed within the allotted contract time.
• Contractors pay more attention to the CPM schedule updates.
• Contractors want to address any time related issue as it is happening rather than at the end of construction.
Performance Factor Liquidated Damages (30%) cont.
Performance Factor Non-Conformance (10%)

• The objective measurement of non-conformances evaluates the Contractor’s compliance with the terms and conditions of the Contract.
• When contractors receive a Notice of a Potential Non-conformance, they are much more responsive.
• In addition, the NMDOT developed a well defined process which makes communication between the contractor and the Department less confrontational.
The plans call for the filling of DS R6750 (a drainage structure to be abandoned in place) with Flow Fill. However, AUI chose to fill the drainage structure with Engineering Fill, and did not advise the department of such plans prior to this work being done. The use of a different fill material does not conform to the requirements of the Contract.

As per Section 105.11 of the standard specifications, "Work that does not conform to the requirements of the Contract shall be unacceptable, unless it is determined by the Project Manager to be Acceptable under the provisions of Section 105.3, "Compliance With Plans and Specification." The department has also requested additional information for the Engineering Fill used.
*In accordance with 109.8.2 Non-Conformance this form serves as a notification of possible Non-Conformance to the contractor. The Contractor must remedy and/or provide mitigation within 5 calendar days after the progress payment (estimate) cut-off date or sooner as noted above in order to avoid a 25% withholding from the progress payment or subsequent progress payments.

**Inspected By:** Jayson Grover, Project Manager  
**Received By:** Kathryn Jordan, Project Manager

**Action Taken:**

The lack of product submittal prior to application of the engineered fill is an accidental oversight on AUI’s behalf. As the installation subcontractor specializes in the installed product, standard flowable fill was never intended for use. Included in the reply to this CAR is the submittal package that should have been previously submitted. Also included in the package are NMDOT project references where this product was utilized successfully. Also attached are compressive cylinder test results for the sample pulled from this product installation.

**Date of Action:** 3/15/18  
**Action Taken By:** Kathryn Jordan, Project Manager

**Comments:**

Accepted: [ ]  
Not Accepted: [ ]

**NMDOT Representative:**

Name  
Title  
Date
Performance Factor Safety (5%)

- The objective performance factor for safety evaluates and measures the Contractor’s experience modifier rate reported on the prequalification packet.
- This is an external measure from the Contractor’s bonding company.
- Overall, this performance factor has also shown improvement since the implementation of this program.
Average EMR of Prequalified Contractors

Year

2015  2016  2017  2018

EMR

0.91

0.90

0.89
Performance Factor Subcontractor (10%)

- This objective performance factor measures a Contractor’s prompt payment of its subcontractors and suppliers.
- Before this program, the NMDOT struggled to enforce this requirement.
- Since implementation, contractors are promptly paying their subcontractors.
Legal Challenges

• AUI challenge to their 2015 score (2016)
• El Terrero challenges AUI award due to score change (early 2017)
• El Terrero appealed Hearing Officer’s decision in District Court (2017)
• AUI challenged score (2017)
Legal Challenges cont.

• JHCC challenged their 2016 score due to project not closing (2017)
• JHCC filed bid protest on award to Fisher Sand & Gravel on US 82 project (2017)
• JHCC filed administrative appeal in District court to overturn Hearing Officer’s decision (2017)
• JHCC filed complaint for Declaratory Judgement and Application for Restraining Order (2017)
Legal Challenges cont.

• AUI challenges the 2017 score based on two non-conformances (2018)
• AUI has filed a Declaratory Judgement in District Court requesting the Court to find that the NMDOT’s contractual requirement that contractors pay its subcontractors when it receives a zero dollar pay estimate is contrary to law (2018)
Conclusion

- Contractors are more responsive/responsible
- No claims past Cabinet Secretary
  - Resolving issue at the lowest possible level
  - No new law suits
- Fewer Disincentives (removing or fixing at their expense)
  - Increasing quality
- Closing projects faster
- Time impacts resolved real time
- Improving our process to be more consistent statewide