

TITLE 18 TRANSPORTATION AND HIGHWAYS

CHAPTER 27 HIGHWAY CONSTRUCTION GENERAL PROVISIONS

PART 6 LOCAL GOVERNMENT TRANSPORTATION PROJECT FUND

18.27.6.1 ISSUING AGENCY:New Mexico department of transportation, Post Office Box 1149, Santa Fe, New Mexico 87504-1149.

[18.27.6.1 NMAC – N, __/__/20]

18.27.6.2 SCOPE: This rule covers the application, evaluation, award and close out process for the local government transportation project fund (the fund) and all local governments in the state of New Mexico applying for and receiving grant money from the fund.

[18.27.6.2 NMAC – N, __/__/20]

18.27.6.3 STATUTORY AUTHORITY: Sections 67-3-11, 67-3-28 and 67-3-78 NMSA 1978.

[18.27.6.3 NMAC – N, __/__/20]

18.27.6.4 DURATION: Permanent.

[18.27.6.4 NMAC – N, __/__/20]

18.27.6.5 EFFECTIVE DATE: March 1, 2020 unless a later date is cited at the end of a section.

[18.27.6.5 NMAC – N, __/__/20]

18.27.6.6 OBJECTIVE:

A. In 2019, the New Mexico legislature enacted Laws of 2019, Chapter 205, Section 1, which created the local government transportation project fund and was compiled as Section 67-3-78 NMSA 1978. Money in the local government transportation project fund is appropriated to the New Mexico department of transportation to administer the fund and to make grants to local governments for local government transportation projects.

B. The purpose of this rule is to describe the application, evaluation, award, and close out processes to be administered by the department for money appropriated to the fund by the New Mexico legislature for the development of transportation infrastructure.

[18.27.6.6 NMAC – N, __/__/20]

18.27.6.7 DEFINITIONS: As used in this rule:

“Annual appropriation” means the annual amount of state funds appropriated to the fund by the legislature.

“Commission” means the state transportation commission.

“Department” means the New Mexico department of transportation.

“DFA” means the department of finance and administration of the state of New Mexico.

“Directive” is a written communication that prescribes or establishes policy, organization, methods, procedures, requirements, guidelines, or delegations of authority. It also provides information essential to the administration or operation of the fund.

“District” means one of the six New Mexico department of transportation districts.

“District engineer” means the department of transportation district engineer as designated pursuant to Subsection (C) of Section 67-3-78 NMSA 1978 (2019).

"Fiscal year" means 12 calendar months commencing on July 1 and ending on June 30 of the year being described.

“Fund” has the same meaning as defined in Subsection A(1) of Section 67-3-78 NMSA 1978 (2019).

“Grant” means the award of funds from the fund to a grantee for a local government transportation project.

“Grantee” means a local government receiving a grant.

“Grant agreement” means a written document memorializing the terms and conditions of a grant award granted pursuant to the grant program.

“Grant award” means the funds awarded to a grantee from the fund pursuant to a grant.

"Grant program" means the grant program established by the department to make grants to local governments for local government transportation projects.

"Letter of approval" means a document issued by a district engineer that authorizes a local government to proceed with a project that is located in full or in part within a department right-of-way or NHS route, or when the project ties into or crosses a department right-of-way or an NHS route, or when the project may have an effect on existing improvements within department rights-of-way. A project agreement is not required for a project that receives a letter of approval.

"Letter of authorization" means a document issued by a district engineer that authorizes a local government to proceed with seeking funding for a project that is located in full or in part within a department right-of-way or NHS route, or when the project ties into or crosses a department right-of-way or an NHS route, or when the project may have an effect on existing improvements within department rights-of-way. A letter of authorization is a conditional approval of a project. Final approval shall be given by a project agreement.

“Local funds” means revenue received from any locally imposed gross receipts tax, property tax, municipal gasoline tax, franchise fee, user fees or any other locally imposed fees or taxes, and enterprise activities, which can be lawfully used for transportation projects, but excluding state grants and loans and federal grants.

“Local government” has the same meaning as defined in Subsection A(2) of Section 67-3-78 NMSA 1978 (2019).

“Local government transportation project” has the same meaning as defined in Subsection A(3) of NMSA 1978 § 67-3-78 (2019).

"Metropolitan transportation plan" means the official multimodal transportation plan addressing no less than a 20-year planning horizon that a MPO develops, adopts, and updates through the metropolitan transportation planning process.

“MPO” means metropolitan planning organization.

"National Highway System" or “NHS” means that system of highways designated and approved in accordance with the provisions of 23 U.S.C. 103(b).

“Non-state money” has the same meaning as defined in Subsection A(4) of Section 67-3-78 NMSA 1978 (2019).

“Program guidelines” means guidelines for the operation of the grant program established and revised by the department from time to time.

"Project agreement" means a written document between a local government and the department that memorializes the roles and responsibilities of the parties with respect to a project that receives a letter of authorization. The project agreement will include, but is not limited to, the roles and responsibilities with respect to design standards and exceptions, compliance with state, local and federal regulations, survey and right of way acquisition requirements, and construction phase duties and obligations. A project agreement is required in addition to a grant agreement.

“Public authority” is defined as a Federal, State, county, municipality, village, town, Indian tribe, or other local government or instrumentality with authority to finance, build, operate, or maintain a public roadway.

“Public highway” means every public street, road, highway or thoroughfare of any kind in this state used by the public whether actually dedicated to the public and accepted by proper authority or otherwise.

“Public roadway” means any road or street owned and maintained by a public authority and open to public travel.

“Regional transportation plan" means the multimodal transportation plan for the non-metropolitan area covered by the RTPO, developed, adopted and updated through the RTPO planning process.

“Roadway” means that portion of a public roadway intended for vehicular use.

RTPO means regional transportation planning organization.

“Secretary” means the cabinet secretary of the New Mexico department of transportation or designee.

"State highway" means every public highway which has been designated as a state highway either by the legislature or by the state transportation commission.

“Transportation infrastructure” has the same meaning as defined in Subsection A(5) of Section 67-3-78 NMSA 1978 (2019).

“Tribal/Local Public Agency Handbook” means the most recent edition of the guidance developed by the department to assist tribal and local public agencies in successfully navigating the planning, design, and implementation of federally-funded transportation projects.

[18.27.6.7 NMAC – N, ___/___/20]

18.27.6.8 GENERAL GUIDELINES:

A. The department may make grants to local governments for local government transportation projects as funds are appropriated in a manner deemed necessary to effectuate the purposes of the fund.

B. Eligible projects include environmental and other studies, planning, design, construction and acquisition of rights of way necessary for the development of transportation infrastructure, and includes highways, streets, roadways, bridges, crossing structures, parking facilities, including all areas for vehicular use for travel, ingress, egress and parking.

C. The department will participate up to 95% of the total cost of a local government transportation project provided that the local government has demonstrated an ability to provide the remainder of the project costs in local funds. Non-cash contributions can

be used on a project but will not count towards the required local match. The local government is responsible for any and all expenditures in excess of the grant award.

D. The department will participate up to 100% of the total cost of a local government transportation project if a financial hardship qualification certificate is issued by DFA. The local government is responsible for any and all expenditures in excess of the grant award.

E. In-kind contributions associated with preparing, reviewing, and submitting an application and any required supporting documentation prepared by the local government are not eligible for grant funding participation.

F. The department will not perform any detailed technical reviews of project scope, cost budget, project schedule or any other required documentation.

G. Applicants must have the ability to successfully deliver their project.

H. All grant awarded funds must be spent no later than thirty (30) months from the effective date of the Grant Agreement.

I. All grants are subject to department audit. The findings of the audit are final.

J. Grants awarded to a local government will be provided for a specific project. Unexpended funds cannot be used for any other purpose or project. Unexpended grant awards will be returned to the department after project completion.

[18.27.6.8 NMAC – N, __/__/20]

18.27.6.9 CALL FOR PROJECTS:

A. The department will invite local governments to submit applications for grants from the fund for local transportation infrastructure projects by a call for projects letter. Any specific criteria applicable to the funding cycle will be specified in the letter. Applications for program funds shall conform to the application instructions described in the call for projects. Any procedures, requirements, conditions, restrictions, and limitations applicable to the funding cycle other than those contained in this rule will be specified in the letter.

B. Completed applications must be submitted to the appropriate MPO or RTPO based on a project's physical location on or before the date specified in the letter. Failure to timely submit the required documentation as required in the call for projects will result in the local government being ineligible for funding in the funding cycle.

C. Incomplete applications will be rejected and will not be considered for funding in the funding cycle unless amended or corrected on or before the date specified in the call for projects letter.

[18.27.6.9 NMAC – N, __/__/20]

18.27.6.10 FINANCIAL HARDSHIP:

A. Local governments eligible for participation in the program may request a waiver of their matching share in whole or in part due to financial hardship. Waiver requests with supporting documentation shall be submitted to the department's division or bureau designated in the call for projects.

B. Waiver of matching funds will not be considered if a local government has an unexpended grant award for an unfinished local government transportation project.

C. If the local government's application is accepted, the local government shall submit a resolution or certification indicating that it cannot match all or a portion of its

share. The resolution or certification shall be signed by the appropriate local government official(s).

D. The department will request from the DFA's local government division a financial analysis and recommendation on a local government's financial hardship for the fiscal year in which the waiver is requested.

E. If a waiver is granted, the local government must request an amendment to its Grant Agreement.

[18.27.6.10 NMAC – N, __/__/20]

18.27.6.11 APPLICATION PROCEDURES, REVIEW AND EVALUATION PROCESS:

A. Any local government interested in applying for a grant award must submit a completed application packet to their MPO or RTPO. A complete application packet must be submitted to the appropriate MPO or RTPO before the application deadline specified in the call for projects.

B. Application packages submitted to the MPO/RTPO will be reviewed and ranked by the MPO/RTPO using the criteria developed by the MPO/RTPO.

C. Each MPO/RTPO will submit its ranked list of projects to the district engineer for the district where the project is located no later than thirty (30) days prior to the start of the fiscal year in which funding is available.

D. Each individual district engineer will present their recommendation to the secretary prior to start of the fiscal year in which funding is available.

E. The secretary shall by August 1st of the fiscal year in which funds are available submit a proposed list of local government transportation projects identified by the above described project review process to the commission.

F. Final project selection and funding amounts will be determined by the commission no later than September 1st of that same fiscal year. The commission's decision will be final. At its discretion, the commission may adjust the projects selected in an effort to program funds in a geographically equitable manner or in any other manner. The commission may, in its sole discretion, reject all applications or award grants totaling less than the funds appropriated for the particular fiscal year. The commission may approve subsequent changes to a priority list as it deems necessary.

G. After projects are selected, the department will send out award letters and grant agreements to the selected local governments. Applicants whose projects were not selected will be notified as well. Each awarded local government must execute a grant agreement with the department. Once a fully executed grant agreement has been received by the department, the local government may then proceed with authorized project activities. If the local government fails to execute and return the grant agreement within thirty (30) days of receiving the notice of award, the project shall be considered lapsed and may be submitted to the commission for re-programming.

H. Subject to any terms and conditions contained in the grant agreement, the department shall disburse the grant to the local government after receipt of a request for disbursement submitted by the local government to the department and if applicable a fully executed project agreement. The format of the request for disbursement will be determined by the department.

[18.27.6.11 NMAC – N, __/__/20]

18.27.6.12 APPLICATION REQUIREMENTS:

_. Applicants must submit the following documents (as a single PDF) as part of the application process:

A. Completed Application. The format of the application will be determined by the department.;

B. Resolution of Sponsorship from their governing body, indicating the availability of the proposed match. Alternatively, the applicant may submit an official letter signed by the applicant’s chief executive or official with budget authority, indicating the availability of the match;

C. Detailed map of project location;

D. If applicable, letters of support from the governmental entity or entities that own the project right-of-way (ROW) if the applying applicant does not own all of the project ROW.

E. If applicable, a letter of approval or authorization from the district engineer.

[18.27.6.12 NMAC – N, __/__/20]

18.27.6.13 EVALUATION PROCESS: Each MPO/RTPO will be evaluating and ranking projects based on the transportation needs of the local government, the transportation priorities of the MPO/RTPO as established in the MPO Metropolitan Transportation Plan or the RTPO Regional Transportation Plan, and the specific merits of the individual projects using evaluation criteria developed by the MPO/RTPO.

[18.27.6.13 NMAC – N, __/__/20]

18.27.6.14 AGREEMENT CONDITIONS, REQUIREMENTS AND PROCEDURES:

A. The local government must expend and account for grant funds in accordance with state laws and procedures for expending and accounting for its own funds.

B. If a local government commences performance on a transportation infrastructure project but fails to complete the project, the department may seek reimbursement of the grant award received by the local government for that project.

C. The department shall have the right to monitor the activities of local government as necessary to ensure grant awards are used for authorized purposes in compliance with laws, regulations and the provision of contracts or grant agreements and performance goals are achieved.

[18.27.6.14 NMAC – N, __/__/20]

18.27.6.15 DESIGN/BIDDING/CONSTRUCTION:

A. If the local government will be combining the grant award with federal funding at any point in the project, the project must be administered in accordance with the “Tribal/Local Public Agency Handbook”.

B. A local government project that is located in full or in part within a department right-of-way or NHS route, or when the project ties into or crosses a department right-of-way or an NHS route, or when the project may have an effect on existing improvements

within department rights-of-way, requires the approval of the department as evidenced by either a letter of approval or letter of authorization from the district engineer for the district where the project is located. The local government shall contact the appropriate district engineer to determine if either is needed for the project. The district engineer will conduct a review of the project and determine whether the project requires a letter of approval or a letter of authorization from the department. If the district engineer determines the project does not require a letter of authorization, the district engineer, or designee, will submit a letter of approval to the local government. If the district engineer determines the project requires a letter of authorization, the local government must enter into a project agreement with the department before any grant funding will be distributed. The local government shall cause the project to be constructed in compliance with any and all department designated standards, conditions and criteria as specified in the project agreement.

C. For local transportation projects funded entirely by the fund, or in combination with local funds, and no Federal-aid funds are involved, the following apply:

D. All design activities necessary to advance the project to construction will be the responsibility of the local government.

E. It will be the local government's responsibility to ensure compliance with any and all state, local and federal regulations including the Americans with Disabilities Act (ADA) and laws regarding noise ordinances, air quality, surface water quality, ground water quality, threatened and endangered species, hazardous materials, historic and cultural properties, and cultural resources. The department will not be involved in permit preparation, review, or coordination with the regulatory agencies.

F. Projects on locally owned roadways are to be designed in accordance with the local government's established design standards. The local government is responsible for ensuring that the plans, specifications and estimates meet applicable design criteria and standards. The department will not perform any detailed technical reviews of project design and related documents.

G. In accordance with Section 67-3-62 NMSA 1978, any transportation infrastructure projects for constructing highways along new alignments or for purposes of substantially widening highways along the existing alignments must consider provisions for pedestrian, bicycle, and equestrian facilities concurrent with the design of the project.

H. Pursuant to Section 61-23-26 NMSA 1978, all local government transportation infrastructure projects involving engineering requires the engineering to be under the responsible charge of a licensed professional engineer.

I. The local government will be responsible for advertising the project for construction bids and for receiving and publicly opening bids received for the project. The department will have no involvement in the bidding process.

J. The local government shall follow its normal procedures for award of the contract and assure that all applicable requirements are followed. The local government shall retain the executed contract, document the award date, and the preconstruction conference minutes as part of the project files. The department will have no involvement in the award of the contract and will not participate in resolving any disputes between the local government and its bidders.

K. The local government will have the responsibility and control of the construction phase and resulting quality of the completed work. The department will have no involvement in the construction phase other than its discretionary ability to periodically monitor the implementation of the project, and will not participate in resolving any disputes between the local government and its contractor.

L. Department personnel will not conduct periodic assurance inspections or comparison material testing. The department, at its discretion, may perform a final inspection upon project completion.

[18.27.6.15 NMAC – N, __/__/20]

18.27.6.16 PROJECT EVALUATION:

A. The local government's performance and administration of the grant funding will be reviewed and evaluated by the department. If a local government exhibits an inability to properly administer a project future grant funds may be withheld.

B. The following criteria shall be used to determine whether a local government cannot properly administer a project:

(1) The local government has a history of unsatisfactory project implementation and completion;

(2) The local government fails to keep all books, make all reports, and conform to all rules and regulations adopted by the Local Government Division, Financial Management Bureau of the New Mexico Department of Finance and Administration;

(3) The local government is otherwise not responsible; or

(4) If random audits by the department determine that the local government has not performed in accordance with the terms of the grant agreement, the standards set forth in the grant agreement or in accordance with generally accepted governmental accounting principles.

[18.27.6.16 NMAC – N, __/__/20]

18.27.6.17 PROJECT DOCUMENTATION:

A. The local government shall maintain a complete set of project files for a period of not less than five (5) years following the completion of the project. The project files shall contain all documents that are specified as required by the grant agreement.

[18.27.6.17 NMAC – N, __/__/20]

18.27.6.18 PROJECT MONITORING AND CLOSE OUT:

A. The department reserves the right to request the local government to submit progress reports at any time. Reports are due within 30 days of such a request.

B. Within 60 days after the date of completion of the project, the local government must submit a written certification that it has complied with the requirements of this rule and the grant agreement.

C. The department reserves the right to request the local government to submit additional documentation to demonstrate completion of the terms and conditions required by the grant program. It is the responsibility of the local government to comply in full with all such requests and to submit the requested documentation in a timely manner.

D. Financial audits of the project may be required. Financial audits do not limit the authority of the department to conduct or arrange for additional audits, reviews, and evaluations. The local government must make records available for review or audit upon request by the department. The department is entitled to recover amounts based on the results of an audit.

[18.27.6.18 NMAC – N, __/__/20]