

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.
[18.27.1 NMAC - N/E, 7/16/2019]

18.27.6.2 SCOPE: This rule covers the application, contracting, construction and close out process for the local government transportation project fund (the program) and all local governments in the state of New Mexico applying for and receiving grant money from the fund.
[18.27.2 NMAC - N/E, 7/16/2019]

18.27.6.3 STATUTORY AUTHORITY: Sections 67-3-11 and 67-3-28 NMSA 1978, and HB 694.
[18.27.3 NMAC - N/E, 7/16/2019]

18.27.6.4 DURATION: Permanent.
[18.27.4 NMAC - N/E, 7/16/2019]

18.27.6.5 EFFECTIVE DATE: July 16, 2019 unless a later date is cited at the end of a section.
[18.27.5 NMAC - N/E, 7/16/2019]

18.27.6.6 OBJECTIVE: The purpose of this regulation is to describe the application, evaluation, contracting, and construction 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 NMAC - N/E, 7/16/2019]

18.27.6.7 DEFINITIONS: As used in this rule:

- A.** “**ADA**” means Americans with Disabilities Act.
- B.** “**Commission**” means the state transportation commission.
- C.** “**Construction**” means the supervising, inspecting, actual building, and incurrence of all costs incidental to the construction or reconstruction of a public highway.
- D.** “**Department**” means the New Mexico department of transportation.
- E.** “**District**” means one of the six New Mexico department of transportation districts.
- F.** “**District engineer**” means the department of transportation district engineer or designee.
- G.** “**Fiscal year**” means 12 calendar months commencing on July 1 and ending on June 30 of the year being described.
- H.** “**Fund**” has the same meaning as defined in Subsection A of section 1 of HB 694.
- I.** “**DFA**” means the department of finance and administration of the state of New Mexico.
- J.** “**HB 694**” means house bill 694 enacted in the 2019 legislative session and signed into law on April 3, 2019.
- K.** “**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.
- L.** “**Local government**” has the same meaning as defined in Subsection A of section 2 of HB 694.
- M.** “**Local government transportation project**” has the same meaning as defined in Subsection A of section 3 of HB 694.
- N.** “**MPO**” means metropolitan planning organization.
- O.** “**National Highway System**” (NHS) means that system of highways designated and approved in accordance with the provisions of 23 U.S.C. 103(b).
- P.** “**Non-state money**” has the same meaning as defined in Subsection A of section 4 HB 694.
- Q.** “**PF**” means project feasibility form.
- R.** “**PPF**” means project prospectus form.

S. "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.

T. "RTPO" means regional transportation planning organization.

U. "Secretary" means the cabinet secretary of the New Mexico department of transportation or designee.

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

W. "The Program" means the local government transportation project fund program.

X. "Transportation infrastructure" means highway, streets, and roadways, bridges, crossing structures and parking facilities, including all areas for vehicular use for travel, ingress, egress and parking.

Y. "Tribal/Local Public Agency Handbook" (T/LPAH) means the most recent edition of the guidance developed by the NMDOT to assist tribal and local public agencies in successfully navigating the planning, design, and implementation of federally-funded transportation projects.

[18.27.7 NMAC - N/E, 7/16/2019]

18.27.6.8 GENERAL GUIDELINES: The following general guidelines are established for administration of the fund authorized by HB 694.

A. All or parts of the funds appropriated in subsection 3 of section 9 of the general appropriation act of 2019 may be used by the department to make grants to local governments for local government transportation projects.

B. Only local governments submitting complete applications and requests for grant funds from the program by the deadlines specified in this rule are eligible for grants from the fund and for hardship waivers.

C. 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, and bridges, crossing structures, parking facilities, including all areas for vehicular use for travel, ingress, egress and parking.

D. The department will participate up to ninety-five percent of the total cost of the program provided that the local government has demonstrated an ability to provide the remainder of the project costs in non-state money. Non-cash contributions can be used on a project but will not count towards the required local match and should not be included in the project budget. The local government is responsible for any and all cost overruns.

E. The department will participate up to one hundred percent of the total cost of the program if a financial hardship qualification certificate is issued to the local government by the DFA.

F. All applications must have been received by the department by the deadline of June 14, 2019 at close of business or 5:00p.m.

G. The department's questions and responses dated May 7, 2019 will be used as general guidelines through the end of calendar year 2019.

H. Applications will be evaluated for project readiness and must have project scoping completed with project needs, limits, and construction process already established and ready to move into the initial design phase, or if design is complete, then to the next phase of the project

I. All costs associated with preparing, reviewing, and submitting an application and any required supporting documentation by the local government are not eligible for grant funding participation. This includes the cost of any consultant services procured by the local government in the application process. The cost of the consultant's services can be considered part of the local government's share of the project costs.

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

K. Projects are expected to commence and be completed in a timely manner.

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

M. All awarded program funds must be spent by June 30, 2024.

N. All grant funding is subject to department audit. The findings of the audit are final.

O. Funds 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 funds will be returned to the department through the audit process.

P. If the local government will be combining the program funding with federal funding at any point in the project, the project must comply with the (T/LPAH).

[18.27.8 NMAC - N/E, 7/16/2019]

18.27.6.9 CALL FOR PROJECTS AND APPLICATION PROCEDURES:

A. The department invited local governments to submit applications for grants from the fund for local transportation infrastructure projects by a call for projects letter dated April 30, 2019. Criteria upon which the submitted applications would be accepted were specified in the letter.

B. Completed applications were required to be submitted to the appropriate MPO or RTPO planner no later than the date specified in the call for projects for forwarding to the NMDOT. 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 fiscal year 2020.

C. Incomplete applications were subject to return to the local government submitting the application.
[18.27.9 NMAC - N/E, 7/16/2019]

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 NMDOT's Project Oversight Division.

B. Waiver of matching funds will be considered in the manner provided for in 18.27.3 NMAC - local government road fund guidelines for waiver of local entities matching funds due to financial hardship.

C. If the local government's hardship application is approved, 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. A waiver must be requested and determination made before a grant agreement will be signed with the department.

[18.27.10 NMAC - N/E, 7/16/2019]

18.27.6.11 DEPARTMENT AND STATE TRANSPORTATION COMMISSION PROCEDURES:

A. The secretary shall by August 1, 2019 submit a proposed list of local government transportation projects identified by the MPO and RTPO planning processes to the commission.

B. Final project selection and funding amounts will be determined by the commission no later than September 1, 2019. 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 any other manner. The commission may, in its sole discretion, reject all applications or award grants totaling less than the FY20 appropriated funds. The commission may approve subsequent changes to a priority list as it deems necessary.

C. 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 preliminary engineering/project design activities. If the local government fails to execute and return the grant agreement within 30 days of receiving the notice of award, the project shall be considered lapsed and will be submitted to the commission for re-programming.

D. 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. The format of the request for disbursement will be determined by the department.

[18.27.11 NMAC - N/E, 7/16/2019]

18.27.6.12 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 all grant money 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.

[18.27.12 NMAC - N/E, 7/16/2019]

18.27.6.13 DESIGN/BIDDING/CONSTRUCTION:

A. If the local government will be combining the program funding with federal funding at any point in the project, the project must be administered in accordance with the (T/LPAH).

B. A permit must be obtained from the NMDOT in accordance with 18.31.6 NMAC - state highway access management requirements, whenever a local government will be using the fund but without the assistance of any Federal-aid to perform construction work on a portion of a state highway. Design and construction shall be in accordance with standards established by the NMDOT.

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 applicable state, local and federal regulations including the 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.

F. Projects on locally owned roadways are to be designed in accordance with the local government's established design standards. In the absence of formally established municipal geometric and other applicable design standards, the local government is responsible for ensuring that the plans, specifications and estimates meet required design criteria and standards.

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 responsible charge of a licensed professional engineer.
[18.27.13 NMAC - N/E, 7/16/2019]

18.27.6.14 PROJECT EVALUATION:

A. The local government's performance and administration of the grant funding will be monitored 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 performance;
- (2) The local government is not financially stable;
- (3) The local government has a management system, which does not meet the management standards set forth;
- (4) The local government is otherwise not responsible; or
- (5) 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.

[18.27.14 NMAC - N/E, 7/16/2019]

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

[18.27.15 NMAC - N/E, 7/16/2019]

18.27.6.16 PROJECT MONITORING AND CLOSE OUT:

A. Progress on funded projects may be monitored periodically by the department to ensure that the project goals, objectives, performance requirements, timelines, milestone completion, budgets, and other related program criteria are being met.

B. 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.

C. 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.

D. 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 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.

E. 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.

[18.27.16 NMAC - N/E, 7/16/2019]

History of 18.27.16 NMAC: [RESERVED]