

TITLE 18 TRANSPORTATION AND HIGHWAYS
CHAPTER 27 HIGHWAY CONSTRUCTION GENERAL PROVISIONS
PART 6 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, 4/20/2021]

18.27.6.2 SCOPE: This rule covers the application, evaluation, award and close out process for the transportation project fund (the fund) and all eligible entities in the state of New Mexico applying for and receiving grant money from the fund.
[18.27.6.2 NMAC - N, 4/20/2021]

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, 4/20/2021]

18.27.6.4 DURATION: Permanent.
[18.27.6.4 NMAC - N, 4/20/2021]

18.27.6.5 EFFECTIVE DATE: April 20, 2021 unless a later date is cited at the end of a section.
[18.27.6.5 NMAC - N, 4/20/2021]

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. In 2020, the New Mexico legislature enacted Laws of 2020, Chapter 31, Section 1, which made certain amendments to the local government transportation project fund enabling statute including changing the title of the fund to simply “transportation project fund.” Money in the transportation project fund is appropriated to the New Mexico department of transportation to administer the fund and to make grants to eligible entities for 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, 4/20/2021]

18.27.6.7 DEFINITIONS: As used in this rule:

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

B. “**Beautification project**” means a landscape project that is intended to enhance the attractiveness of a public right-of-way or a transportation facility.

C. “**Commission**” means the state transportation commission.

D. Definitions beginning with “D”:

(1) “**Department**” means the New Mexico department of transportation.

(2) “**DFA**” means the department of finance and administration of the state of New Mexico.

(3) “**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.

(4) “**District**” means one of the six New Mexico department of transportation districts.

(5) “**District engineer**” means the department of transportation district engineer as designated pursuant to Subsection C of Section 67-3-8 NMSA 1978.

E. “**Eligible entity**” means those entities eligible under the provisions of the transportation project fund to receive grants for transportation projects.

F. Definitions beginning with “F”:

(1) “**Fiscal year**” means 12 calendar months commencing on July first and ending on June 30 of the year being described.

(2) “**Fund**” has the same meaning as defined in Section 67-3-78 NMSA 1978 (2019).

G. Definitions beginning with “G”:

(1) **“Grant”** means the award of funds from the fund to a grantee for a transportation project.

(2) **“Grantee”** means an eligible entity receiving a grant.

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

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

(5) **“Grant program”** means the grant program established by the department to make grants to eligible entities for transportation projects.

H. Definitions beginning with “H”: [RESERVED]

I. Definitions beginning with “I”: [RESERVED]

J. Definitions beginning with “J”: [RESERVED]

K. Definitions beginning with “K”: [RESERVED]

L. Definitions beginning with “L”:

(1) **“Landscape” or “landscaping”** means any vegetation, mulches, irrigation systems, and other landscape components, such as street furniture, specialty paving, tree gates, walls, planters, fountains, fences, and lighting (excluding public utility street and area lighting).

(2) **“Landscape project”** means any planned or actual landscape or landscaping on a public right-of-way, including its construction or installation, planning, beautification, and maintenance thereof, by a municipality, county, tribe, or an abutting private property owner or other non-governmental entity.

(3) **“Letter of approval”** means a document issued by a district engineer that authorizes an eligible entity 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.

(4) **“Letter of authorization”** means a document issued by a district engineer that authorizes an eligible entity 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.

(5) **“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.

M. Definitions beginning with “M”:

(1) **“Maintenance”** is defined as the planned strategy of extending the service life of an existing roadway system, including its structures and appurtenances, by applying cost-effective treatments or procedures that preserves the system, retards future deterioration, and maintains or improves the functional condition of the system without significantly increasing the structural capacity. Examples of pavement related maintenance activities include asphalt crack sealing, chip sealing, slurry or micro-surfacing, thin and ultra-thin hot-mix asphalt overlay, concrete joint sealing, diamond grinding, dowel-bar retrofit, and isolated, partial or full-depth concrete repairs to restore functionality of the slab; e.g.; edge spalls, or corner breaks. Examples of maintenance activities for bridge structures include deck joint repair and replacement; bearing repair and replacement; localized deck repairs; deck sealing; grid deck section repair or localized section replacement; concrete repair on pedestals, bents, caps, piling, piers, and columns; and bridge deck drainage.

(2) **“Metropolitan transportation plan”** means the official multimodal transportation plan addressing no less than a 2-year planning horizon that a MPO develops, adopts, and updates through the metropolitan transportation planning process.

(3) **“MPO”** means metropolitan planning organization.

N. Definitions beginning with “N”:

(1) **“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).

(2) **“Non-state money”** has the same meaning as defined in Section 67-3-78 NMSA 1978.

O. Definitions beginning with “O”: [RESERVED]

P. Definitions beginning with “P”:

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

(2) **"Project agreement"** means a written document between an eligible entity 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.

(3) **"Public authority"** is defined as a Federal, State, county, municipality, village, town, tribe, or other local government or instrumentality with authority to finance, build, operate, or maintain a public roadway.

(4) **"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.

(5) **"Public right-of-way"** means a strip of property, owned by a public authority, within which a public roadway exists or is planned to be built. The public right-of-way consists of all lands within the defined highway right-of-way limits, including airspace above and below the facility. This area typically includes, but is not limited to, the roadway(s), shoulders, and sidewalk(s), if any; areas for drainage, utilities, landscaping, berms, and fencing; rest areas; and the defined clear zone.

(6) **"Public roadway"** means any road or street owned and maintained by a public authority and open to public travel.

Q. Definitions beginning with "Q": [RESERVED]

R. Definitions beginning with "R":

(1) **"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.

(2) **"Roadway"** means that portion of a public roadway intended for vehicular use.

(3) **"RTPO"** means regional transportation planning organization.

S. Definitions beginning with "S":

(1) **"Secretary"** means the cabinet secretary of the New Mexico department of transportation or designee.

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

T. Definitions beginning with "T":

(1) **"Transportation facility"** means any road, bridge, tunnel, overpass, ferry, airport, mass transit facility, vehicle parking facility, port facility, sidewalk, bicycle facility or similar facility used for the transportation of persons or goods, together with any buildings, structures, parking areas, appurtenances, and other property needed to operate such facility.

(2) **"Transportation infrastructure"** has the same meaning as defined in Section 67-3-78 NMSA 1978.

(3) **"Transportation project"** has the same meaning as defined in Section 67-3-78 NMSA 1978.

(4) **"Transportation improvement program" (TIP)** means a prioritized listing/program of transportation projects covering a period of four years that is developed and formally adopted by a MPO as part of the metropolitan transportation planning process, consistent with the metropolitan transportation plan, and required for projects to be eligible for funding under title 23 U.S.C. and title 49 U.S.C. chapter 53.

(5) **"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.

U. Definitions beginning with "U": [RESERVED]

V. Definitions beginning with "V": [RESERVED]

W. Definitions beginning with "W": [RESERVED]

X. Definitions beginning with "X": [RESERVED]

Y. Definitions beginning with "Y": [RESERVED]

Z. Definitions beginning with "Z": [RESERVED]

[18.27.6.7 NMAC - N, 4/20/2021]

18.27.6.8 GENERAL GUIDELINES:

- A.** The department may make grants to eligible entities for 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, transit, bicycle or pedestrian use for travel, ingress, egress and parking. An eligible entity may seek funding for any discrete phase of a transportation project. A project included in a transportation improvement program is an eligible project provided the project is not funded with federal funds and the project does not qualify as a beautification project.
- C.** The department will award up to ninety-five percent of the total cost of a transportation project provided that the eligible entity has demonstrated an ability to provide the remainder of the project costs in local funds. The eligible entity is responsible for any and all expenditures in excess of the grant award.
- D.** The department will award up to one hundred percent of the total cost of a transportation project if a financial hardship qualification certificate is issued by DFA, or if the department makes such a determination in the event a tribe requests a waiver. The eligible entity is responsible for any and all expenditures in excess of the grant award.
- E.** Costs associated with preparing, reviewing, and submitting an application and any required supporting documentation prepared by the eligible entity, and any costs of a consultant's services incurred in preparing an application, are not eligible for grant funding participation.
- F.** The department will not perform any in depth analysis or review of project scope, cost estimates, functionality, project phasing and scheduling or overall constructability. The department may conduct an in-depth analysis after the completion of a project when evaluating the eligible entity's ability to properly administer, implement and complete a project.
- G.** Applicants must have the ability to successfully deliver their project.
- H.** All grant awarded funds must be spent no later than 30 months from the effective date of the grant agreement.
- I.** All grants are subject to department audit.
- J.** Grants awarded to an eligible entity will be provided for a specific project. Unexpended funds cannot be used for any other purpose or project. A grant award can be used for any project included in the state transportation improvement program provided the project will not be receiving any federal funding and is not a transportation beautification project. Unexpended grant awards will be returned to the department after project completion.

[18.27.6.8 NMAC - N, 4/20/2021]

18.27.6.9 CALL FOR PROJECTS:

- A.** The department will invite eligible entities to submit applications for grants from the fund for transportation projects by a call for projects letter using a two-phase application process. The first phase will consist of a request to submit a project feasibility form. Submittal of the project feasibility form is mandatory in order to be eligible to submit a full application in the second phase. If a project is determined to be feasible, phase two will consist of a request for the eligible entity to submit a completed project application. Any specific criteria applicable to the funding cycle will be specified in the call for projects. Applications for program funds shall conform to the application instructions described in the call for projects or the phase two request. Any procedures, requirements, conditions, restrictions, and limitations applicable to the funding cycle other than those contained in this rule will be specified in the call for projects or the phase two application request.
- B.** The completed phase one feasibility form must be submitted to the appropriate MPO or RTPO based on a project's physical location on or before the date specified in the call for projects. Failure to timely submit the required project feasibility form as required in the call for projects will result in the eligible entity being ineligible for funding in the funding cycle.
- C.** The completed project application must be submitted to the same MPO or RTPO where the project feasibility form was submitted unless otherwise instructed in writing by the department. Failure to timely submit the phase two project application will result in the eligible entity being ineligible for funding in the funding cycle.
- D.** An incomplete project feasibility form or project application 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.

[18.27.6.9 NMAC - N, 4/20/2021]

18.27.6.10 FINANCIAL HARDSHIP:

A. Eligible entities may request a waiver of their 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. If the eligible entity's application is accepted, the eligible entity 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 eligible entity official(s).

C. The department will request from the DFA's local government division a financial analysis and recommendation on a financial hardship request submitted by a county or municipality. The department will conduct the financial analysis if a waiver request is made by a tribe. The eligible entity shall cooperate with any request to provide necessary financial documents or other information requested by DFA or the department in conjunction with a financial analysis. Failure to do so will result in a denial of the waiver request.

D. If a waiver is granted, the eligible entity must request an amendment to its grant agreement.

[18.27.6.10 NMAC - N, 4/20/2021]

18.27.6.11 APPLICATION PROCEDURES, REVIEW AND EVALUATION PROCESS:

A. Any eligible entity interested in applying for a grant award must submit a completed project feasibility form to their MPO or RTPO. A complete project feasibility form must be submitted to the appropriate MPO or RTPO before the deadline specified in the call for projects.

B. If a project is determined to be feasible, the eligible entity will be requested to submit a project application.

C. Timely application packages will be reviewed and ranked by the MPO/RTPO using the criteria specified in the call for projects.

D. 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 30 days prior to the start of the fiscal year in which funding is available.

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

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

G. Final project selection and funding amounts will be determined by the commission no later than September first 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.

H. After projects are selected, the department will send out award letters and grant agreements to the selected eligible entities. Applicants whose projects were not selected will be notified as well. Each awarded eligible entity must execute a grant agreement with the department. Once a fully executed grant agreement has been received by the department, the eligible entity may then proceed with authorized project activities. If the eligible entity fails to execute and return the grant agreement within 60 days of receiving the notice of award, the project shall be considered lapsed and may be submitted to the commission for re-programming.

I. The department shall disburse the grant to the eligible entity after receipt of a request for disbursement submitted by the eligible entity to the department and receipt of a fully executed project agreement. The format of the request for disbursement will be determined by the department.

J. Any moneys appropriated to a specific eligible entity by the legislature shall be disbursed to the eligible entity after receipt of a request for disbursement submitted by the eligible entity to the department and the receipt of a fully executed project agreement.

[18.27.6.11 NMAC - N, 4/20/2021]

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 and content of the application will be determined by the department.

B. Resolution of sponsorship from their governing body, indicating the availability of the proposed match. Subject to any local restrictions, the resolution may provide that the applicant's chief executive or other appropriate officer is authorized to sign the grant agreements and all associated documents and amendments on

behalf of the eligible entity as required for receipt of the grant. 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 that owns in fee simple or possesses a perpetual easement for the project right-of-way (ROW) if the applying applicant does not own in fee simple or possess a perpetual easement for all of the project ROW.

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

[18.27.6.12 NMAC - N, 4/20/2021]

18.27.6.13 EVALUATION PROCESS: Each MPO/RTPO will be evaluating and ranking projects based on the specific merits of the individual projects using the evaluation criteria specified in the call for projects.

[18.27.6.13 NMAC - N, 4/20/2021]

18.27.6.14 AGREEMENT CONDITIONS, REQUIREMENTS AND PROCEDURES:

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

B. If an eligible entity 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 eligible entity for that project.

C. The department shall have the right to evaluate the activities of eligible entity as necessary to ensure grant awards are used for authorized purposes in compliance with applicable laws, regulations and the provisions of the grant agreement.

[18.27.6.14 NMAC - N, 4/20/2021]

18.27.6.15 DESIGN/BIDDING/CONSTRUCTION:

A. A transportation project that is located in full or in part within a department right-of-way or NHS route eligible entity must be administered in accordance with the "*Tribal/Local Public Agency Handbook*".

B. A transportation project that 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 eligible entity 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 eligible entity. If the district engineer determines the project requires a letter of authorization, the eligible entity must enter into a project agreement with the department before any grant funding will be distributed. The eligible entity 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 transportation projects funded entirely by the fund, or in combination with local funds, and no Federal-aid funds are involved, the following apply:

(1) It will be the eligible entity'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. However, the eligible entity shall provide to the district where the project is located a copy of any permit identified by the department in the project feasibility form.

(2) Projects on locally owned roadways are to be designed in accordance with the eligible entity's established design standards. The eligible entity 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.

D. In accordance with Section 67-3-62 NMSA 1978, any transportation 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.

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

F. The eligible entity 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.

G. The eligible entity shall follow its normal procedures for award of the contract and assure that all applicable requirements are followed. The eligible entity 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 eligible entity and its bidders.

H. The eligible entity 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 eligible entity and its contractor.

I. 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, 4/20/2021]

18.27.6.16 PROJECT EVALUATION:

A. The eligible entity's performance and administration of the grant funding will be reviewed and evaluated by the department at the completion of the project or, if the eligible entity fails to complete the project, following the close of the fiscal year in which the project was to be completed. If an eligible entity demonstrates, pursuant to the criteria set forth in subsection B below, an inability to properly administer a project a reduction of twenty five percent will be applied to the scoring criteria applicable to the eligible entity's next project application.

B. The following criteria shall be used in determining the ability of an eligible entity to properly administer a project:

- (1) whether the eligible entity demonstrated a pattern of unsatisfactory project implementation and completion;
- (2) whether the eligible entity has failed to keep all required books, make all requested reports, and conform to all rules and regulations adopted by DFA's local government division, financial management bureau applicable to the grant;
- (3) whether the eligible entity fails the complete the project within the allotted time; or
- (4) whether the department obtains documentation through an audit or audits that finds the eligible entity has not performed in accordance with the terms of the grant agreement, the standards set forth in the grant agreement, in accordance with generally accepted governmental accounting principles, or failed to comply 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.

C. In the event the department has conducted an evaluation pursuant to this section and has issued a preliminary determination that the eligible entity has demonstrated an inability to properly administer a project, the department shall provide written notice of the determination to the eligible entity with an opportunity to provide additional information within 30 calendar days, unless the parties to some other timeframe, to address, mitigate or refute the conclusions of the department.

(1) If the eligible entity does not produce any additional information with the designated timeframe, the preliminary determination of the department shall become final.

(2) If the eligible entity produces information with the designated timeframe, after considering the additional information the department will promptly issue a final a final determination.

[18.27.6.16 NMAC - N, 4/20/2021]

18.27.6.17 PROJECT DOCUMENTATION: The eligible entity 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.

[18.27.6.17 NMAC - N, 4/20/2021]

18.27.6.18 PROJECT MONITORING AND CLOSE OUT:

A. The department reserves the right to request the eligible entity 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 eligible entity 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 eligible entity to submit additional documentation to demonstrate completion of the terms and conditions required by the grant program. It is the responsibility of the eligible entity 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 eligible entity 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, 4/20/2021]

HISTORY OF 18.27.6 NMAC: