

West Virginia Department of Transportation  
Division of Highways

**Proposed Contractor Prequalification System  
WVDOH Answers/Responses to Public Questions/Comments**

October 13, 2021

General Questions/Comments

- Q. On the new prequalification application, what is the EMR number?  
A. EMR is a company's Experience Modification Rate.
- Q. On the new prequalification application, what is the Vendor Number?  
A. Vendor ID refers to the company's Federal Employer Identification Number (FEIN) number.
- Q. Can a prequalified contractor perform an item of work for which they are not prequalified if the item of work is not needed to meet the 30% prime threshold?  
A. No company can perform an item of work, whether as a prime contractor or subcontractor, for which they are not prequalified.
- C. The West Virginia Division of Highways (WVDOH) and Contractors Association of West Virginia (CAWV) began the task of updating the prequalification system several years ago through the efforts of a joint task force. We would like to see the group reactivated to further refine elements of the program.
- R. The WVDOH appreciates your comment. The current proposed system is based on the efforts of the previous task force.
- C. Numerous detailed comments have been submitted by contractors regarding the Performance Rating and Project Evaluation components. The prevailing concern is that we need better metrics that are easier to administer and more quantifiable. Many of the project evaluation questions appear to be very subjective. A few examples of better metrics have been suggested by contractors, but the joint task force could develop this further.
- R. The WVDOH appreciates your comment. The current proposed system is based on the efforts of the previous task force.

- C. Instructions in the application state, "The Commissioner may declare a contractor prequalification invalid at any time...in the opinion of the Commissioner..." We suggest this note be stricken and the procedures outlined regarding use of performance ratings, bonding, etc., be followed to determine who is barred or fails to qualify for bidding.
- R. The WVDOH appreciates your comment; however, we have determined the Commissioner should have the right to deem a prequalification invalid, if necessary. It should be noted that the Commissioner currently has the right to invalidate any bid at any time. This authority is necessary to ensure the best quality and value is provided to the taxpayers of West Virginia.
- C. I do not think it is proper for the Division to declare a contractor's prequalification invalid without giving the contractor proper warning and time to correct itself.
- R. The WVDOH appreciates your comment; however, we have determined the Commissioner should have the right to deem a prequalification invalid, if necessary, to ensure the best quality and value is provided to the taxpayers of West Virginia.
- C. As a current responsible and responsive prequalified contractor in the State of West Virginia, we oppose the implementation of this version of the Contractor Prequalification Application based on it being subjectively administered and not having a financial component that can be independently audited. The new application process presented will lead to less equitable prequalification practices and will penalize contractors through higher bond cost requirements and potentially debar financially credible contractors from bidding work over subject performance ratings applied through inconsistently administered ratings.
- R. Surety companies provide a much more stringent financial background check when issuing bonds, which are still required under the proposed prequalification system, than the WVDOH. We believe it is inefficient for both entities to complete these financial background checks.

#### Subcontractor Questions/Comments

- Q. The Contractor's License was acceptable in the past, and we did not need to be prequalified. If we complete the old prequalification application and get prequalified, will we still need to complete the new one?
- A. At this time subcontractors do not need to be prequalified; however, on projects let after January 1, 2022, no company, whether a prime or subcontractor, can perform work on a WVDOH construction project unless they are prequalified in that item of work.

- Q. Will there be a list of “Prequalified Subcontractors” so that a contractor is sure a subcontractor is prequalified prior to bid opening?
- A. Yes, all entities prequalified with the WVDOH will be included in the Prequalified Contractors Listing published on our website.
- Q. Do we check all areas of work (on the Prequalification Work Category Worksheet) if our subcontractor does the work?
- A. A prime contractor does not need to be prequalified in an item of work that they are subcontracting.

### Bonding Questions/Comments

- Q. Based upon the proposed language it appears the Division is unnecessarily taking on burdens that will restrict competition and increase project costs. Why would the Division want to supplant some of the many benefits being bestowed by surety prequalification when it is already being done successfully and more efficiently by surety underwriters, which are in the regular business of qualifying construction firms?
- A. The proposed prequalification system is not intended to create an impact on quality contractors but to discourage substandard contractors and the use of substandard subcontractors. The WVDOH realizes the use of a scaled bonding system may not provide a large savings to contractors in the different performance ratings; however, the system will allow quality-based contractors to grow both in categories of work and performance ratings. Though it may limit the available contractors to bid on a project, it will eliminate substandard contractors.
- C. Surety bonds are a regulated product by the Insurance Commissioner. I believe the WVDOH approach to surety bonds in the new prequalification program is inconsistent with the filings approved by the Insurance Commissioner. Most sureties use a Rating Organization for consistent rates and rules. Specific sureties file exceptions to the organization rules. This procedure is allowed by code §33-20-4(c). The surety industry primarily uses The Surety Association of America manual or rules, procedures, and classifications to satisfy the requirements of rate filings. The contract price is the primary value a surety bond premium is computed by. It is my understanding that the DOH intends to require or allow surety bond penalties other than the contract amount. As a surety professional I vehemently oppose this proposed practice. There is no savings from a premium perspective; much confusion will be created in claim situations because the adjuster will not know which portion or fraction of the disputed work the fractional surety bond applies to; and, reduced surety bond premiums will not create additional capacity for contractors, as previously represented in presentations I have attended, because capacity is a function of balance sheet, capacity, and uncompleted work in process.

- R. The proposed prequalification system is not intended to create an impact on quality contractors but to discourage substandard contractors and the use of substandard subcontractors. The WVDOH realizes the use of a scaled bonding system may not provide a large savings to contractors in the different performance ratings; however, the system will allow quality-based contractors to grow both in categories and performance ratings. Though it may limit the available contractors to bid on a project, it will eliminate substandard contractors. In addition, the WVDOH has presented the proposed prequalification system to the Insurance Commission.

#### Training Questions/Comments

- Q. Are inspectors going to be trained on this?  
A. WVDOH personnel will receive training on completion of Project Evaluations.
- Q. Will the WVDOH have seminars to explain this to contractors?  
A. Currently, the WVDOH does not plan to hold seminars for contractors.
- C. Once a new prequalification system is adopted, we suggest training on its proper use and implementation be offered to WVDOH and industry personnel. Adding this joint training previously discussed on expediting project finals might be a good combination.
- R. WVDOH personnel will receive training on completion of Project Evaluations. Currently, the WVDOH does not plan to hold seminars for contractors or joint training with WVDOH staff and the contracting industry.

#### Certificate of Qualification Renewal Questions/Comments

- Q. As a prequalified contractor we are encouraged to review Prequalification Work Categories approved by the agency. What would this entail? Will we need to redo the application? Additionally, our previous prequalification expired April 30, 2021. Under this new system will we be required to submit a revised application prior to January 1, 2022?
- R. If prequalification expired on April 30, 2021, the current prequalification application will need to be completed to receive a certificate of qualification to bid on any project let on or before December 31, 2021. The new Contractor Prequalification Application will need to be completed between November 1 and December 31, 2021, to receive a certificate of qualification to bid or perform work on projects let after January 1, 2022.
- Q. If a company is currently a subcontractor and has been prequalified, do they need to fill out the revised application and qualify prior to January 1, 2022?
- R. At this time subcontractors do not have to be prequalified. However, to work as a subcontractor after January 1, 2022, a subcontractor is required to become prequalified in the category(s) of work they perform.

## General Performance Rating Questions/Comments

- Q. How does a contractor with a "D" rating improve their rating within a six-month period, or after they are barred from bidding?
- A. The contractor may bid work during the first six months they are in Category D but the last six months they may not. Contractors can improve their ratings by completing a project within the 12-month period.
- Q. Contractors have noted that the formula appears to not be proportional to the number of jobs performed and may produce a rating that is a negative number. Will bonuses be factored in to offset penalties?
- A. No, not currently.
- Q. If the contractor drops into the "D" rating, it appears to be very difficult with a short time duration for the contractor to move up into a "C" rating especially if they cannot bid work in that 6-month span. Can the probationary period/rating be less restrictive?
- A. The contractor may bid work during the first six months they are in Category D but the last six months they may not. Contractors can improve their ratings by completing a project within the 12-month period.
- Q. Does score improve if contractor is awarded a bonus?
- A. No, not currently.
- Q. Will all contractor grades be published?
- A. The overall number scores of subcontractors and the overall performance rating of contractors will be published.
- Q. Can a score be added for issues with the WVDOH slowing the process?
- A. No, not currently.
- C. The WVDOH is proposing a contractor grading system that is based on Performance Ratings. We commend the agency for attempting to reward contractors with higher performance ratings with fractional bonding percentages, while providing a disincentive for lower grades.
- R. The WVDOH appreciates your support.
- C. The Performance Factor Scores seem to penalize the Contractor for issues that may develop during the course of a project that are potentially no fault of the Contractor, leaving the Contractor at a disadvantage in the scoring calculation.
- R. All Performance Factors are in the control of the contractor.

- C. Score based on different types of work (Bridge, Asphalt, Excavation, etc.) instead of just single score for contractor.
- R. The WVDOH appreciates your opinion; however, we plan to proceed with the scoring as written.
- Q. The way the performance rating calculations are made, a contractor can fall into category F quite easily and if the contractor is barred from bidding for two years the chances are that the said contractor will cease to exist. Especially if it is a small contractor that works exclusively for the WVDOH. Therefore, I wish the debarment level would be reduced to a 1-2 and increase the probationary period.
- A. The probationary period is one year, and the debarment period is two years.

#### Performance Rating (RACC) Questions/Comments

- C. "A" – Number of requests for additional payment. We run into this scenario all of the time. No project is ever designed "perfectly" therefore you always run into the need for modifications to the plans due to actual field conditions which are circumstances beyond the control of the contractor. Some of these modifications can be extremely expensive. Example: Contractor excavated the cut in accordance with the plans and specs however the material encountered was not sufficient enough to withstand the designed slopes. With that being said, we awaited on the EOR to redesign the cut slopes to better withstand the existing conditions. The amount of work it took to "solve the problem" was 3 times the established unit price in the contract. I was told this amount had to be approved by "Charleston" before we could continue to work. This example under the new regulations would have given the Contractor a negative effect on our RACC factor but yet beyond the control of the Contractor.
- R. The example given would not be considered a request by the contractor. This is only a factor when the Contractor contacts someone directly in the WVDOH chain of command above the Regional Construction Engineer.
- C. "B" – Number of NOI's. Anytime a contractor encounters what is perceived as a "change", they are required to follow the "notice" provisions located within the contract specifications. Notice provisions need to be followed to the letter of the law or a potential claim can be dismissed even if it is determined legitimate. Giving notice is a requirement by our contract and shouldn't be held against the contractor. Many times, "NOI's" are only issued but never become claims because they are withdrawn or resolved through the change order process.
- R. If a contractor completes and submits the form, then it would count in this category.

- C. "C" – Number of Claims. This too shouldn't be held against the contractor. Claims are our right to be justly compensated for work that is in dispute. Most contractors will not pursue claims as the pursuits are expensive to the contractor; however, if a contractor pursues a claim, they are certain an injustice has been exercised by the WVDOH and therefore is justified in their expense to pursue.
- R. The WVDOH has yet to see a trend of contractors filing in the Court of Claims (COC). Even if a contractor does file a claim in the COC, it will likely only result in a score of one in this category.
  
- C. This section is a significant concern to industry, as we do not believe a request for additional compensation or filing a claim should negatively impact a contractor's rating. The appropriate way to handle these issues is addressed in the specifications and is a common practice.
- R. The WVDOH appreciates your comment. The intent of this section is to discourage the filing of claims and encourage communication and negotiations when issues arise.
  
- C. Not proportional to number of projects performed. A contractor that completes 100 jobs and files 3 claims will receive a worse rating than one that completed 2 jobs and files 2 claims.
- R. This rating is completed for each individual project, not completed once and then used over a period of time.
  
- C. Penalizes contractor for following 105.17 - If additional compensation is considered due for work or material not covered in the Contract, written notification of the intent to make a claim under Subsection 104.9, shall be given to the Engineer before beginning or continuing the affected work...If notification is not given, or the Contractor does not afford the Engineer proper facilities for keeping strict account of actual costs, the Contractor waives any claim for additional compensation. WVDOH should not penalize contractors for following the specs. WVDOH appears to be incentivizing contractors to waive their right to extra pay when they encounter extra pay. I'm pretty sure FHWA is adamantly supportive of early notification of potential claims.
- R. Notice of Potential Claim Form is what triggers the count as per Specification Section 105.17. Notification, as described in Specification Section 104.9, does not.
  
- C. Rating could be negative. In school if you get every answer wrong on a test, you get a zero. If WVDOH were teaching with this system, you could get a -100% or even a -1000%.
- R. The WVDOH appreciates your comment but intends to move forward with the formula as written.
  
- C. Additional compensation requests are an inherent part of the construction process. Should contractors be penalized for a successful outcome in A or C?
- R. At this time, success or lack of success is counted the same.

- C. Will a contractor be penalized for a negotiated outcome to benefit both parties?
- R. No, as long as the negotiations are made at a level that does not involve WVDOH personnel in the chain of command above the Regional Construction Engineer.
  
- C. RACC Performance factor should be based on claims made by the contractor that did not get resolved in favor of the contractor. If there has to be a legitimate request made by the contractor due to a mistake or an omission of quantities or an item, that request should not be held against the contractor.
- R. If the request is legitimate, it should not be elevated to any WVDOH personnel in the chain of command above the Regional Construction Engineer.

#### Performance Rating (Penalty) Questions/Comments

- Q. Does bonus offset penalty score?
- A. No, not currently.
  
- C. Bridge decks is a good example of why this shouldn't be used. An example is a project on which a contractor constructed several bridges that were very small in length. The contractor used the Class H concrete and primarily there was only one supplier available to supply this material due to the location of the project. The ready-mix supplier had an issue at the plant; however, it didn't show up until the 28-day strength tests were performed. The contractor had to take a penalty on the concrete, but it was not due to workmanship by the contractor but a supplier issue (sole source supplier due to location of the work). This would be detrimental to the contractor under this new requirement but yet out of our control.
- R. The WVDOH appreciates your comment, but the taxpayers of West Virginia are paying for quality whether it be construction, materials, or a different factor.
  
- C. Contractors have noted that "A" should be total pay, not a specific contract item.
- R. The WVDOH appreciates your comment but intends to move forward with the process as written.
  
- C. Rating could be negative.
- R. The WVDOH appreciates your comment but intends to move forward with the process as written.



- C. "A" should equal the total Pay to Contractor during period, not Total Paid Dollar Amount of Applicable Items. A contractor could do \$100M of work and only receive one penalty on a minor item, but if the penalty wiped out the entire value of the item, the contractor would receive a zero. This is similar to the "not proportional to number of projects" issue with Pf RACC and Pf Time; it doesn't account for the volume of work a contractor does.
- R. The WVDOH appreciates your concern, however, the taxpayers of West Virginia are paying for quality.
  
- C. Should A be the final contract total, not just specific items? Current Applicable Items value heavily skews the value down. Example: \$1M project or a \$200k project receives similar penalty if there is a single penalty on a concrete item that might not be a large portion of the contract.
- R. The WVDOH appreciates your comment but intends to move forward with the process as written.
  
- C. Suggestion: apply penalties to contractor performance-based items only i.e., rolling straight edge on deck and divide the penalty by total contract price.
- R. The WVDOH appreciates your suggestion but intends to move forward with the process as written.
  
- C. Also believe that material penalties i.e., gradations should not be counted since those are outside of the contractor's control, especially in regions where there are limited or only supplier.
- R. The WVDOH appreciates your comment, but the taxpayers of West Virginia are paying for quality whether it be construction, materials, or a different factor.
  
- C. Penalty Performance Factor - 'A' should be total contract value and 'B' to be total penalties of all items on the project.
- R. The WVDOH appreciates your comment but intends to move forward with the process as written.

#### Performance Rating (Time) Questions/Comments

- C. Not sure the intent to this section. The WVDOH has the right by specifications to withhold Liquidated Damages if a contractor is late in completing the project due to their lack of performance. If you maintain this new policy this seems unjustly penalizing the contractor from both LD's and the performance factor requirement.
- R. The WVDOH appreciates your comment but intends to move forward with the process as written.

- C. Suggest that a factor for Time be deleted. There are many challenges facing the agency and industry that support elimination, including permitting issues, ROW issues, use of aggressive schedules to meet bond and funding requirements, changing weather patterns, material shortages, COVID and manpower issues and more. The majority of these are out of the control of the contractor.
- R. Please note that all justifiable time extensions are considered when calculating Performance Factor Time.
  
- C. Rating could be greater than one. If the intent is to give contractors "extra credit" finishing early, then this is not a problem.
- R. Correct, the rating could be greater than one.
  
- C. Unclear how rating is combined if a contractor performs both Fixed Date and Working Day projects. Examples given are for one or the other.
- R. The rating would be based on actual duration used vs. completion dates.
  
- C. In the current climate of the WVDOH being pressured to get projects out the door quickly with short completion dates tied to funding requirements, this Pf could be very punitive to contractors. The importance of this factor will prompt more submittals from contractors for time extensions no matter how minimal because the "every day counts" phrase really matters now even if the contractor is ahead of the completion date. Surely the WVDOH does not want to see a greater influx of time extension requests.
- R. Justifiable time extensions should be submitted.
  
- C. Projects with large time variable aspects sometimes require the contractor to build in risk to mitigate those variables. Now, this penalty will be monetary not once through current LD's but twice with a rating penalty.
- R. Liquidated Damages (LD) is not a monetary penalty but instead a reimbursement of administrative costs.  
Currently, it is still under debate as to whether or not a contractors performance rating provides a monetary advantage.
  
- C. Suggestion: delete the time performance factor and use a metric tied to bonding capacity. There is no bonding capacity factor in the equation. While we can agree a bond should not be the "be all end all", it is still a legitimate and beneficial metric for measuring a contractor.
- R. The WVDOH appreciates your suggestion but intends to move forward with the process as written.

- C. Due to the short time limits, weather issues, limited available work forces and the large volume of work that is out for bid, all contractors are forced to anticipate extended working periods. Therefore, I believe it is not reasonable to include working time into the equation.
- R. The WVDOH appreciates your comment but intends to move forward with the process as written.

#### Performance Rating (Compliance) Questions/Comments

- Q. Will the contractor be penalized for a WVDOH order to suspend work due to an issue that is not the fault of the contractor?
- R. Please refer to the Contractor Prequalification Application which states, "This factor is calculated based on the suspension of work by the Division's project supervisor or other entities due to a contractor's improper work or defective materials or negligence."
- C. Caution is needed here to assure that the contractor is not penalized for a shutdown that is not the fault of the contractor.
- R. Please refer to the Contractor Prequalification Application which states, "This factor is calculated based on the suspension of work by the Division's project supervisor or other entities due to a contractor's improper work or defective materials or negligence."
- C. Not proportional to number of projects performed.
- R. This rating is completed for each individual project, not completed once and then used over a period of time.
- C. Rating could be negative.
- R. The WVDOH appreciates your comment but intends to move forward with the formula as written.
- C. The contractor should not be penalized for a project shut down unless the shut down is due to a problem or a non-conformance by the contractor.
- R. Please refer to the Contractor Prequalification Application which states, "This factor is calculated based on the suspension of work by the Division's project supervisor or other entities due to a contractor's improper work or defective materials or negligence."

## Performance Rating (Safety) Questions/Comments

- C. I really don't have an opinion on this evaluation criteria. We hold safety in high regards and strive to be in the 0.75 EMR rating area. In fact our current EMR rating is 0.71. However, I will say these metrics are "trailing indicators" of a contractor's safety program and implementation.
- R. The WVDOH appreciates your comment. This factor was a recommendation from the previous task force and the WVDOH intends to move forward with this factor as written.
  
- C. The WVDOH is proposing to use a contractor's Experience Modification Rate, or E-MOD rate, as an indicator of safety performance. We believe we need a more appropriate use of the E-MOD rate. We refer you to the attached article in the April 22, 2019, issue of ENR magazine for more details.
- R. The WVDOH appreciates your comment. This factor was a recommendation from the previous task force and the WVDOH intends to move forward with this factor as written.
  
- C. EMR is not meant to measure safety performance. It was created by the insurance industry, and they are almost unanimously in agreement on this point. The attached article from the construction industry's most prominent trade publication provides more explanation.
- R. The WVDOH appreciates your comment. This factor was a recommendation from the previous task force and the WVDOH intends to move forward with this factor as written.
  
- C. There are multiple articles and research indicating the EMR is not a proper measure of a contractor's safety record.
- R. The WVDOH appreciates your comment. This factor was a recommendation from the previous task force and the WVDOH intends to move forward with this factor as written.
  
- C. Suggestion: Start a contractor at a value of 1, then have reduction factors for OSHA violations or accidents on the project.
- R. The WVDOH appreciates your comment but intends to move forward with the formula as written.
  
- C. Using the EMR for safety performance factor is incorrect based upon the method of EMR calculation. Number of safety violations on a given project might be a better method.
- R. The WVDOH appreciates your comment. This factor was a recommendation from the previous task force and the WVDOH intends to move forward with this factor as written.

## Project Evaluation Form Questions/Comments

- Q. Q2: What is the metric for “furnishing documentation in a timely manner”? If the contractor follows the time allowance provided in 105.16.2 between Substantial and Final Completion, why would they receive a score less than 10?
- A. Timeframes are outlined in the contract documents. If a contractor meets those timeframes, then they will receive a score of 10.
- Q. Q20/Q22: Doesn't this circumvent the point of lab #s? Materials with lab #s should = Score of 10.
- A. If a contractor has materials with lab numbers that pass, then that contractor should receive a score of 10.
- Q. Q28- isn't this tied to punch list and 105.15.2?
- A. Yes.
- Q. What are the criteria for Question #27?
- A. The average of all subcontractors' project evaluation scores.
- C. Industry has significant concerns with the overall subjectivity of the project evaluation process. You will see that the reflected comments submitted by contractors on our task force. The questions are often times soliciting opinions, which is not fair to anyone involved with the project. It is also very concerning that several of the questions seem to discourage partnering at the project level. We should not want to penalize a contractor for collaborating with project personnel, responsibly providing NOI's, submitting change orders, filing claims when needed, and requesting additional payment in response to changing conditions, all things that happen on projects every day. We sincerely believe we work together to build a project evaluation program based on better metrics that are fair and less subjective.
- R. The WVDOH appreciates your comment but intends to move forward with the Project Evaluation Form as written with possible minor revisions.
- C. Q3: The schedule is the schedule so I would think if Project Float isn't exceeded the contractor shouldn't be penalized with a score of <10 regardless of intermittent delays.
- R. This Project Evaluation question refers to the submittal requirements of Standard Specification 108.3.
- C. Q4: This one seems reasonable to an extent (maybe we are biased as a subcontractor); however, to potentially receive a score of 8 because notice is provided “most” of the time seems unfair. Sub Schedule changes, especially on a project that could have multiple subs in rapid succession, is a common occurrence in which desirable notice cannot be given.
- R. The WVDOH appreciates your comment but intends to move forward with Question Four on the Project Evaluation Form as written.

- C. Q5: The terms always, routinely, and available seem very subjective. A superintendent providing “resistance” because of a differing opinion shouldn’t receive a score of 5 as the rubric implies.
- R. The WVDOH will review this Project Evaluation question.
- C. Q6: To receive a 10, “no instruction” should be needed from the Project. This implies that if the contractor receives a 10, an inspector was never required on project. Contractors rely on a collaborative effort with the experienced personnel of the WVDOH. It would be a better reflection of a contractor rating if the contractor does not respond within a predetermined time frame to the Supervisor’s concerns similar to the Design Build WVDOH comment and contractor response process.
- R. The WVDOH appreciates your comment but intends to move forward with Question Six on the Project Evaluation Form as written.
- C. Q11: Echo the response to Q6. The Project is there in a supportive capacity to collaboratively ensure the safety of the traffic zone. If the contractor addresses concerns from the Project they should not be penalized as this rubric implies.
- R. The WVDOH appreciates your comment but intends to move forward with Question 11 on the Project Evaluation Form as written.
- C. Q12: To receive a score of 5 for “same day notifications of operations” seems excessively punitive as day to day operations on any construction site are EXTREMELY fluid.
- R. The WVDOH appreciates your comment but intends to move forward with Question 12 on the Project Evaluation Form as written.
- C. Q13-15: Echo Q6 and Q10, if the role of the Project is to support the flow of the work typically by means of helping inspect and collaborate with the contractor, why should the contractor be penalized?
- R. The WVDOH appreciates your comment but intends to move forward with Questions 13, 14 and 15 on the Project Evaluation Form as written.
- C. Q16: Would it be better to rate if the contractor contacted 811 and collaborated with the WVDOH in mitigating utility conflicts. This could be an all or nothing rating and eliminate ambiguity in the rating.
- R. The WVDOH appreciates your comment but intends to move forward with Question 16 on the Project Evaluation Form as written.
- C. Q18: Follows Q12. Sometimes proper notice cannot be given
- R. Notification requirements are included in the Standard Specifications.

- C. Q24: The Contractor's equipment has 0 indication on the quality of work the contractor provides. Contractor shouldn't be incentivized or penalized on the condition of their equipment.
- R. The WVDOH will review this Project Evaluation question.
- C. Q25: This rating could be skewed greatly by opinion. Public complaints are unfortunately a common occurrence to the contractor and WVDOH both, but the contractor could do everything they can to minimize complaints and still only receive an 8.
- R. The WVDOH appreciates your comment but intends to move forward with Question 25 on the Project Evaluation Form as written.
- C. Q26: This could be very open to subjective opinion if unprofessionalism and simple disagreements are conflated. Both parties can maintain professionalism while having tense debates/disagreements in the intent/interpretation of the plans/spec.
- R. The WVDOH appreciates your comment but intends to move forward with Question 26 on the Project Evaluation Form as written.
- C. In general, all the questions are very subjective.
- R. The WVDOH appreciates your opinion but respectfully disagrees and we intend to move forward with the Project Evaluation Form as written with possible minor revisions.
- C. Sec.5 - The project superintendent cannot be at the site 100% of the time due to various duties that he/she has to perform. Sometimes one superintendent will be managing more than one smaller project.
- R. The WVDOH appreciates your comment but intends to move forward with Question Five on the Project Evaluation Form as written.
- C. Sec.10 – EEO requirements are confirmed at the time of the award.
- R. Yes, that is correct.
- C. Sec.20 – All materials have to be WVDOH approved and per the WVDOH approved material list and suppliers. The contractor has no choice to use any other.
- R. If a contractor has materials with lab numbers that pass, then that contractor should receive a score of 10.
- C. Sec.19, 22 and 23 are almost the same.
- R. The WVDOH appreciates your opinion but respectfully disagrees and we intend to move forward with Questions 19, 22 and 23 on the Project Evaluation Form as written.
- C. Sec.24 - Is based on the contractors means and methods and the contractor's choice of equipment. In other words, a contractor should not be penalized for using old equipment or not enough equipment to perform the work faster.
- R. The WVDOH will review this Project Evaluation question.

- C. Sec. 28 - Currently the contractor is allowed 135 days after receiving the punch list.
- R. Yes, that is correct.
- C. Another concern is the newly proposed Project Evaluation Score, which makes up 40% of the overall Performance Rating. The Project Evaluation Score is based upon opinion and does not provide enough reasonable difference between a score of 5 or 8, which depending on circumstance, could result in a performance rating of adequate vs. below average evaluation.
- R. The WVDOH appreciates your opinion but respectfully disagrees and we intend to move forward with the Project Evaluation Form as written with possible minor revisions.
- C. We would greatly appreciate an opportunity to partner with WVDOH to help develop a metric based evaluation to rate contractors based on items such as: Timely submittal of documents such as precon docs, QC plans, lift plans, etc., but define “timely” with an actual duration; Proper submittal of materials that have lab #s; Punctual submittals of Certified Payrolls and subcontractor requests; Time required for contractor to final a job within the 135 day allowance of punchlist notification; Ratio of successful claims: unsuccessful claims; # of safety accidents on project relative to duration of project or dollar value; Occurrences involving breach of chain of authority; Contract time breaches in excess of 30% or 40% (aka egregious time overruns) instead of rating reductions per day of breach.
- R. The WVDOH appreciates your comment. Many of the Project Evaluation questions were based on those developed by the previous task force.

#### Appeal Process Questions/Comments

- C. We appreciate the opportunity to have a CAWV representative serve on the Third-Tier review board. The correct name of our association is Contractors Association of West Virginia.
- R. The WVDOH apologizes for this error and will make this correction in the final document.
- C. One of our concerns with the newly proposed process is the number of days a contractor has to file an appeal. The appeal durations provided in the document need to be increased significantly to allow for sufficient time to adequately review the ratings and/or comments given so that a factual petition can be made.
- R. If this question refers to the appeal process for Performance Ratings, this is part of the finalization process and, therefore, must be completed in a timely manner.



- C. We have attached an example performance rating that assumes there is a contractual time extension issue and several notices of potential claim that have been provided to the WVDOH but have not been resolved. Assuming these common issues are present, and the project is on-going, the Contractor Performance Rating would be 6.1 and automatically place the Contractor on probation for a 6-month period in which they could not participate in a new bidding opportunity. We assume it is not the desire of the WVDOH to lose potential bidders because of open disputes that are not resolved at the time of yearly performance rating completion. Unfortunately, no avenue, other than appeal, is available to eliminate open disputes from being included in the performance evaluation period. This seems flawed especially considering that an open dispute may not necessarily be the fault of either the Contractor or WVDOH but could be caused by outside Agencies.
- R. The WVDOH appreciates your comments but intends to move forward with processes as written.