

State Capital Outlay for Non-Profit Organizations

What is this meeting for?

The City wants to take this opportunity to explain how the State Capital Outlay (aka State Grant) process works for non-profit organizations, as best we are able, so that you can get the requested projects delivered as quickly as possible. Part of this is explaining the process from the State, over which we have no control, but at the same time letting you know what we think they will be looking for to allow you to be prepared to show them that your project is ready for approval. We will also go through the City's Fiscal Agent application.

Utilizing the City as your Fiscal Agent costs you nothing and has a ton of benefits, as we do the vast majority of the work involved while accepting the liabilities. You choose the place and design, we do the quotes, bidding, vendor contracting, compliance with local laws, construction management, permitting, payment, auditing, etc..

We cannot, and do not, speak for the State, especially regarding specifics. In case the State tells you something that differs from this presentation regarding their process, the State's answer ALWAYS supersedes ours.

We are also not here to provide in-depth legal or fiscal advice on how to obtain other funding sources, nor to explain how others may do so or have done. We cannot speak for any other Organization besides ourselves.

30,000' Overview

- Work with Department to create project
- Apply for City to be Fiscal Agent
- Enter Project online
- State Bill is passed
- State ensures project meets State Law before funds certified for release
- Org & City work with State to get funding certified
- State gives City funds
- City provides project requested by Org
- Org provides public services

Key Takeaways

- No project will receive any funding until the State Department of Finance or Board of Finance certifies that the project meets State law. This ALWAYS includes a Use Agreement/Contract with a City Department. They have over 2000 of these to process!
- Open communication with your sponsoring City Department at all stages will smooth many of the roadblocks, problems, and slowdowns common with Non-Profit Capital requests.
- Per State Law, your Organization cannot receive Capital funds. The City receives these funds and spends them on your behalf. This means the City uses its own purchasing processes.

- CIP is the liaison between City and State regarding Capital funds. If CIP doesn't know about your project, it will take a very long time to obtain project funding. We have 1-200 of these to process and track!

Things to Remember

DFA = State Department of Finance and Administration, SBoF = State Board of Finance. These acronyms will be used together always in this presentation. They are the main State bodies that determine and certify project compliance with State Law. The City has no say over them, nor their decisions. No project will receive funding until they give approval "certification".

The City WANTS to help you acquire these funds quickly and get your project going. We want people fed, housed, trained, etc. We must follow State Law to do so, however.

The Rules we list are a non-exhaustive list of things that DFA/SBoF will ask you to ensure are met before they will certify funding to be released. They are NOT requirements you must do/meet in order to be approved for the City to act as your Fiscal Agent, **for the City to act as your Fiscal Agent, we simply need information.** We may question the project and issues we notice, especially about use agreements, but that will not keep us from being your FA, we're trying to help clear things up before they slow down the process. Again, we want to help you make this work.

This information is only intended to help you understand what we think they are looking for so you can plan ahead and be ready, and thus the process is smoother for everyone.

You are asking the State to provide the City with Capital Funds, that the City will then spend on your behalf. **Your Organization does not purchase anything.** The City is provided funding by the State, and the City makes the purchases. The purchases are then provided to your Organization in return for service, as defined in your Use Agreement/Contract.

"Capital Funds" have many different meanings. Everything presented here only applies to Capital funding from the State or City, which are public funds obtained through bond sales spent by the Municipality spent in furtherance of the public interest. You may hear of other companies using Capital Funds for other things, but be aware that even money coming from private firms is called Capital Funding, even though different laws apply. The phrase "Capital Funds" is typically used to describe any large sum of non-recurring funding primarily intended for infrastructure or larger, long term purchases/projects, such as building construction, building expansion, building renovations, major building repairs. The source and recipient of these funds determine the laws that may apply.

For Example

Organization "KindFolks" uses the City as their Fiscal Agent to request \$450,000 in Capital Funds from the State "to purchase land, acquire right of way, and to purchase, obtain, renovate, improve, and otherwise provide for a teen homeless shelter in ABQ in Bernalillo County."

The bill passes. DFA/SBoF contacts the City for information to ensure State Law is met.

KindFolks produces this information to the City, including a use agreement with the City's Dept. of Family and Community Services (FCS). This Agreement specifies that KindFolks will utilize a City

owned facility to operate a teen homeless shelter, and will provide services to the City in lieu of rent, as provided in their Contract. DFA/SBoF agrees and certifies the project.

This money is released to the City. FCS then coordinates with KindFolks, purchases a property and home, and pays City contracted companies for the necessary renovations using those funds. KindFolks then begins utilizing the facility to provide the services specified in their Use Agreement.

Notes

Because the Department with which you have a use agreement makes all purchases, they must follow their own purchasing rules. Each Department has their own purchasing rules! You may have a quote from a contractor you want to use, but the City must use City-contracted providers, as they have been sourced in a manner that follows the legally required processes. i.e. publicly-available open bidding processes, required bonding and insurance amounts, quality control, appropriate wage levels as required by the State, etc.

The information on how the funding may be used is to inform you about what you may and may not ask the City to purchase, so keep it in mind when designing your projects and writing your project Scope. The City has internal auditing and approval on such funds, so even if the Department agrees, the purchase may be denied. This is rare, and typically only occurs if the purchase is felt to violate the scope of the bill, or the Organization has Anti-donation clause violations due to misuse of City Property.

The City does not receive the leftover funds for itself. The funds remain bound by the scope specified in the bill, for use towards those things only, in furtherance of the Use Agreement with your Organization. These funds will be reverted to the State either at Project Completion or 3 years from Bond Sale. If you receive further funds for the same Scope, in another Legislative Session, these leftover funds **may** still be usable towards that project. You can request that these funds be reauthorized if you are unable to expend the full amount by the reversion date, or if you have significant “leftovers” on a project that will apply.

We have an interest to have things done well and done right, we do not profit from coming under budget. Our interest in doing things economically is our responsibility to handle public funds wisely. As such, things may be slightly more expensive under a City Contract, as we specify higher quality, longer lasting materials, etc. but we often also have discounts due to volume and contractual agreement pricing.

More Notes

We have 6 months from the sale of the bond to create “a substantial binding obligation to a third party to expend 5%” of the funding. This means the City has an approved Notice of Obligation from the State. If this is not done, ALL unspent funds revert back to the State. As such, missing out on the first bond sale is not necessarily a bad thing.

It is important that your projects are planned, and since the City is making the purchases, you need to be coordinated with your Department! As a public entity, the City is required to follow laws and rules that other companies do not regarding purchasing and contracting. These processes are intended

to ensure public funds are not misused or misspent. As such, our process can take additional time. You will need to account for this in your timeline.

85% of the funds must be spent within 3 years of the sale of the bond, or all remaining funds revert back to the State. This applies to the “leftovers” of previous projects as well. You can request to keep the funds by seeking “reauthorization” from the State. For Furniture, IT, and other non-attached items, it is 2 years.

If SBoF/DFA has not released/certified your request by the end of 3 fiscal years of the bill passage, the authorization for that project is automatically voided. i.e. If the bill passed in fy2020, you have until June 30th 2023 to get DFA/SBoF to certify the funds for release.

All of these stipulations regarding timing are in the first 10 or so pages of each sessions’ Capital Funding house bill. Read Them! An easy place to locate these bills online is at https://www.nmlegis.gov/Legislation/Legislation_List run the search for the Legislative year, and using your browsers’ find function for “Capital”.

Timelines

Year-round: Coordinate with your associated City Department regarding your Organization’s upcoming projects and capital requests.

Oct 7th – Capital Outlay Project Requests to <https://www.nmlegis.gov/CapitalOutlayWeb/> open for submission.

Requests must be made in Legislative Language. For assistance with the form, call the States’ LCS Capital Outlay Division at 505-986-4600

City Fiscal Agent Applications online at <https://www.cabq.gov/municipaldevelopment/programs/state-capital-outlay-for-non-profits>

Dec 30th 2021 5 p.m. – City’s Deadline for Fiscal Agent Applications to smaden@cabq.gov

Jan 13th 2022 3 p.m. – Deadline for Online Capital Outlay Request entry. **Be sure your project is entered online by this date!**

Jan 30th 3 p.m. – Reauthorization request deadline.

Reauthorization request forms are available online at https://www.nmlegis.gov/Publications/Capital_Outlay/capital_outlay_reauth_form.pdf

Feb 2nd – Deadline for Introduction

Feb 17th – Session Ends

Mar 9th – Deadline for Governor action – may Line Item Veto

Questionnaires and follow-up by DFA/SBoF

Bond Sales – Typically June and December

Sponsors and Legislators have a different set of Deadlines than we do, so if you've missed a deadline, a Sponsor or Legislator **may** be able to help.

Three months after sale: Notice of Obligation (NoO) for at least 5% must be issued, or funds are reverted.

Three Years after sale: 85% of funds must be spent, or all remaining funds are reverted. This is 2 years for Furniture, computers, and other small, non-attached items.

Main Rules

Again, these are STATE rules for the Capital Outlay process. DFA/SBoF will be checking to make sure your project meets these requirements before it will certify any funds to be released.

The Non-Profit Organization (NPO) must have an active Operating/Use Agreement/Contract with the City of Albuquerque before the project will be placed in the bond sale. This agreement needs to specify the services your Org will be providing to the City in lieu of rent for the requested items.

Even if the bill passes allowing you funding, those funds WILL NOT be distributed to the City until DFA/SBoF certifies that the project meets State Law. This will require you to submit supporting documentation, including an active use agreement.

Any and all items procured with these funds belong to the City of Albuquerque, even after the expiration of the Use Agreement/Contract.

Building renovation/improvement funds may only be used on/for a building owned by the City of Albuquerque. The State will not agree that we own an HVAC unit/roof/etc. attached to a building we don't own.

All outlay funds/items/projects must be used in furtherance of the service contracted by the City of Albuquerque. Building habitability projects (bathrooms, HVAC, etc.) are permitted. i.e. If contracted for meal delivery, can't buy a big-screen tv, nor a run-around car for admin purposes. IT can also be tricky, so be sure to specify that in Scope and Scope of Services.

Capital funds may only be used for the items/project/locations defined in the Legislation as passed. ["Scope" legislative language applies.](#)

Procurement and Anti-Donation

The two main hurdles to jump for purposes of the Use Agreement/Contract (on the City-side), are anti-donation and procurement.

Procurement refers to the Rules the City has to follow in order to buy or procure services and goods.

Anti-donation refers to the prohibition in the NM Constitution that prevents the government (including the City) from giving money or anything of value to any private entity – even a non-profit entity. To read this section of the NM Constitution, [Ctrl + click here](#)

This means that if the City provides money or anything of value to you (through the capital outlay process), you have to provide services in exchange for that value. This is a Constitutional requirement and not something that the City can change. This is how it's not a Donation.

- ▶ The Rules for professional technical contracts can be found at §§ 5-5-1 et seq. ROA 1994, and for social services contracts, at the Department of Family and Community Services, Social Services Contracts Procurement Rules.

City Fiscal Agent Application

<https://www.cabq.gov/municipaldevelopment/programs/state-capital-outlay-for-non-profits>

Return to smaden@cabq.gov by 12/20/21 @ 5pm

Use Subject Line 2022-1 FA *yourorgname*

Applications are sent to Sponsoring Dept and Mayor's Office for approval.

Application – Page 3

Legislative Language used, this is the "Scope" of the project online when you enter at <https://www.nmlegis.gov/CapitalOutlayWeb/>.

For the legal definitions of "scope words" [Ctrl + click here](#). This is how NM courts will define your project, and the rules the City will use to determine what we may or may not do with the funds.

The phrases "or otherwise improve"/"or otherwise provide for" are excellent to use, as they entail a great deal of intent. i.e. "to purchase vehicles, modify, equip, install, and otherwise provide for hot meal delivery vehicles in Albuquerque in Bernalillo County." "To acquire land, right of way, construct, purchase, install, equip, and otherwise provide for new low-cost housing in Albuquerque in Bernalillo County."

Just be aware that the less specific your request, the more likely it will be under heavier scrutiny for Anti-Donation. i.e. "To acquire, equip, and otherwise provide for meals for the homeless." Is unlikely to fly, as it's too vague about what you're actually planning on buying/doing with the funding. "To acquire, equip, and otherwise provide for a kitchen to provide meals for the homeless." Is a better request, although land, construct, renovate, and upgrade, should be considered to detail closer that you need land, which you would then construct a kitchen upon, or else renovate an existing facility on that land to perform that duty. Think of it as "and anything else little I overlooked or misinterpreted to make the stated goal happen". So be aware that while it will help you cover yourself for a forgotten word, or even lack of construction knowledge ("I bought the HVAC unit, but I didn't know I had to specify construction of a pad and venting!" or "I need a feasibility study?"), it should not comprise anywhere close to the majority of your scope; it's not carte blanche to do whatever you wish with the funding.

Another way to think of it is the “additional duties as assigned” of a job description. A few minor things is okay, as it’s hard to encapsulate an entire job in a few sentences. More than that is not appropriate.

One more note regarding this: If a specific word is struck from your line by the Governor using their veto authority, “or otherwise improve”/“or otherwise provide for” will NOT allow that purchase under the signed scope. The intent of the Governor to disallow Capital Funds to be spent for that particular type of use is clear.

In the Legislative language linked above, “for” is listed as the broadest interpretation term possible, but if you simply request “for a jail” as they state, you will be asked to clarify that with other words from the bill. DFA/SBoF will want more information than just that. We tried it last session with our requests, and had to spend hours backtracking them all creating traditionally worded scopes.

Also, don’t forget that acquisition of land may not necessarily entail right of way, so if you want that, you need to specify it. Equipment is considered different from vehicles or IT, so please specify those as well.

Using Capital funds for anything outside of the language in the final bill, as signed by the Governor, is a violation of State Law. Accordingly, the City will reject your request if it is deemed out of scope, but then work with you to try and come up with a way to make things work legally.

Note that the scope of your project MAY change between your entry online and the final bill with neither your approval nor notification. This may be the State clarifying words you used that aren’t legally defined or the Governor vetoing certain pieces, like striking the word “land” from your request. **The City will not change your scope without your permission.**

Scope vs Scope

The Scope of your project, as defined by the spending bill “legislative language” is NOT the “Scope of Services” in your Use Agreement with the City.

The Scope of your project defines what the Capital Outlay may legally be used for. This is what is placed in your City FA Application and the Online Capital Outlay Portal. The scope must begin with “to” (lowercase t), and end in “...in ABQ in Bernalillo County” (no period) or appropriate location. It’s possible LCS will add this automatically. They also have been known to “clarify” (change) scopes without notifying us.

i.e. to purchase, modify, and equip hot food delivery trucks in ABQ in Bernalillo County

The Scope of Services in your Use Agreement is the description of the services that you will provide for the City in return for use of the equipment/facilities purchased by said Capital funds.

It’s important that the Scope of the project and your Scope of Services are related. The State is going to feel that there’s an Anti-Donation violation in approving the installation of a kitchen for a non-profit that has a scope of services in their use agreement only to provide tutoring. While providing meals with tutoring may be a good thing, it has not been identified in the use agreement. You’re looking to expand services, adding value to your cause, but have not identified how that will impact the funding to the City, nor do you have a use agreement to do so. Important to discuss early with your Department!

i.e. KindFolks shall shelter, feed, and support homeless teens, up to 5 at a time, at the rate of \$30/person/day for the Family and Community Services Department of the City of Albuquerque. Feeding shall be 3 hot meals, support shall be access to social services, behavioral health, and tutoring...

Application Pg 4

ALL previous Capital Outlay funding requests that have been signed into law by the Governor AND are still in process of being expended or approved. Even if it's still awaiting certification by DFA/SBoF, note that here, and what DFA/SBoF are awaiting.

Do not include projects/funding that have been completed or reverted, only outstanding funds should be listed here.

The Online Application

Once you check the box agreeing to the service, it will automatically take you to the form.

This is mostly self-explanatory and they link an excellent instruction sheet everywhere on the page, but here are a few things to know.

Line 1 – Leave Blank – Unless it's an ongoing long term project that you actually have and know the ICIP.

Lines 2-5 - Your information. They have ours from Fiscal Agent on Line 6.

Line 6 – Albuquerque

Line 7 – Albuquerque (not your org, LCS will change it)

Line 8 – Albuquerque

Line 9 – Albuquerque

Unless outside City limits, then Bernalillo County (or appropriate location)

Line 12 – This is the Scope of your project

to acquire, plan, design, build...in ABQ in Bernalillo County

Remember the lowercase t in "to" at the beginning, and lack of period at the end. That's what they ask for so it plugs straight in to the legislation without needing editing. Be sure to replace ABQ and Bernalillo County with the appropriate information if different.

Line 13 – Construct/Acquire/Renovate/Expand are most common

Line 21 – choose only 1; A is most common, vehicle, equipment, IT, or strictly Land purchase is B.

Begin with ABQ, and then add the facility type and the answer from Line 13. i.e. ABQ Food Kitchen Construct, ABQ Teen Shelter Acquisition, ABQ Hot Food Trucks Purchase (line B), ABQ Senior Transport Van Purchase (line B)

“Albuquerque” in their system means “City of Albuquerque”. If the question refers to location, it’s ABQ City Boundaries. If it’s referring to an entity, it’s the Municipal Government. If it is not the named City, that is denoted, such as Bernalillo and Bernalillo County.

Line 22 – This is where you choose the Sponsors to direct your request to. Be Selective! Below is a list of the Sponsors for ABQ, and their districts. If you are a City-wide style Org or program, then go ahead and choose all the ABQ Sponsors. If you’re a localized project, please choose only the appropriate Sponsors.

Begin with ABQ, and then add the facility type and the answer from Line 13. i.e. ABQ Food Kitchen Construct, ABQ Teen Shelter Acquisition, ABQ Hot Food Trucks Purchase (line B), ABQ Senior Transport Van Purchase (line B)

“Albuquerque” in their system means “City of Albuquerque”. If the question refers to location, it’s ABQ City Boundaries. If it’s referring to an entity, it’s the Municipal Government. If it is not the named City, that is denoted, such as Bernalillo and Bernalillo County.

At the bottom is a blue button to submit the project. It will give you the option to print the certificate, which will pop up a certificate in a window, and give you the option to download it as a PDF. Please do so!

Email the City

We use the LCS Project ID to track all projects, there are over 2000 in the bill and over 300 for the City alone. Having your exact ID number makes a 20 minute search requiring calls to the State into a 30 second one. Not knowing a specific item “belongs” to us causes months’ worth of delays while we track them all down, and if this is one of yours that will delay your project.

We prefer the entire certificate in PDF so we can copy-paste into our spreadsheets and it includes all the necessary contact information for tracking, but even just the LCS Project ID is a massive help. **Please do not forget this!**

DFA/SBoF Questionnaires and Follow-up

After the bill has passed, check over the bill to ensure the scope of the language did not change and note the final amount.

As DFA/SBoF begin to investigate these projects, they will email the City/you to ask you to respond to questions they have regarding the project. This will be done at <https://www.state.nm.us/capitalprojects/index.jsp>

Typical questions include greater detail regarding the project itself, exactly what will be done, the existing state of the facility, etc. **Note the 400 character limit!** If you go over, they will not receive it, so please be concise. This is not the place to try and advocate for your service by describing importance, history, etc. It is for you to say things such as “existing roof at 1234 Main St. 87111 has many large leaks, funds are to have roofing contractor completely tar existing roof and to address and repair/replace any structural damages caused by leak.” That alone is 197 characters, half your limit, for a simple roof leak. We will help you respond to these questionnaires.

They will also request paperwork to prove that the project will meet State law, one of these will be a Use Agreement or Contract with the City.

Until DFA/SBoF certifies the project, no funds will be released. They will not certify the project until they have deemed the project follows State Law.

The Wait

Even if the bill passes permitting your Organization to receive Capital funding, those funds WILL NOT be released until DFA/SBoF ensures the project meets State Law. This is a State process, and remember that they typically have over 2000 projects to work through.

City FA Approval DOES NOT mean that the project is guaranteed, or even necessarily likely, to clear DFA/SBoF. We cannot control the State, nor decide for them what projects are and are not acceptable. We will question you during the FA process if we notice things unlikely to fly, but that is to ensure you understand that they will need to be addressed for the State. The City will almost assuredly approve your Fiscal Agent request, as we want the services to be provided, and will work with you to make it happen as best we can.

Likewise, passage of the funding bill including your project funding does not obligate the City or its Departments to form a Use Agreement/Contract with your organization to meet DFA/SBoF requirements in any way. We want to help you get these projects and provide services to the needy, but we are not legally obligated to form a use agreement to make this happen. We act in good faith to make things work, and obviously it is very rare for us to refuse, but if we cannot come to legal, agreeable terms on a contract, then we will refuse. Past AD violations or highly questionable actions from your Org will also make us very reluctant to form a contract, as we are liable for those funds as the Fiscal Agent.

You will need to be proactive, but patient, regarding the process of obtaining funding, especially with the upcoming session.

The City will answer questions as best we can, but ultimately it is your Organizations' responsibility to determine and fulfill DFA/SBoF's requirements.

The Wait, pt. 2

Funds are approved for sale in an upcoming bond by DFA/SBoF ONLY after their requirements are met.

Waiting for funds to be approved by the Governor to begin communication with City Departments will greatly slow the process, as one thing each project is GUARANTEED to require is a City Use Agreement/Contract.

We work with the Orgs as best we can on a good faith basis. Remember that we only have so many folks to create these agreements and handle these funds. As such, we will work with Orgs who are closer to being ready before we reach out to those who have never contacted us.

i.e. NPO1 has been in discussions with FCS for months regarding providing services in lieu of rent on a facility they want upgraded. Once the bill passes, they seek out FCS staff they have been working

with, and work to finalize a Use Agreement. NPO2 Had funding approved in the bill, but they have never spoken to anyone in the City other than applying for FA, and simply wait until the City calls them to begin the process of creating a Use Agreement. NPO1, and those in similar circumstances, will be our priority and are likely to have their funds certified earlier and projects completed first. NPO2, and others similar, could be waiting over a year until they are contacted to begin the process, often having funds certified for release 2 years or longer after bill passage.

The State sells bonds twice a year, typically June and December.

If you're not ready by the first sale, you'll be waiting until the next, at least. Remember that the date of sale begins the 6mo/5% and 3y/85% reversion timeline.

While the City can occasionally ask the State to prioritize projects that are ready for review, we CANNOT guarantee inclusion on any specific bond sale, nor dictate to the State. CIP gets this information from the Department, not the Organization.

The best way to speed the process is to have your ducks in a row before the process begins, be responsive, and have open communication with the State and your sponsoring Department after the bill has passed. It's November, and we are still receiving 2021 Grant agreements to be executed.

Notice of Obligation

This is just so you have some information about the process, as the Fiscal Agent, the City handles all of these steps. This is essentially the process between the City and the State after Funds are approved for sale by DFA/SBoF.

After a Bond is sold, the NoO Process is followed to disburse funds.

Step 1: Grantee (City) ensures that work performed is reimbursable under the terms of the grant

Step 2: Grantee procures 3rd party vendor using State or local procurement code

Your project must follow the purchasing rules (including Vendor choice!) of the Department with which you have, or are seeking, a Use Agreement. Each Department has their own rules! For more information, speak with your Department contact.

Submit 3rd Party vendor information "as soon as possible after execution by the 3rd Party but prior to execution by the Grantee."

Step 3: Grantee completes and submits:

- a. proof of procurement (quotes, copy of bids, RPF, etc.)
- b. completed NoO

Step 4: Agency (DFA/SBoF) will verify:

- a. proposed purchase is consistent with authorized language of grant
- b. scope of work is reimbursable under NMAC 2.61.6.8 (Scope)
- c. budget

d. 3rd party was procured properly

Step 5: Once Agency determines 3rd party agreement and NoO meet criteria, Agency signs NoO and processes the paperwork for encumbrance.

Step 6: Agency issues a Purchase Order to encumber funds for the amount indicated by NoO.

Step 7: Once the funds are encumbered, Agency will return a copy of the approved NoO to Grantee.

Step 8: Grantee can receive invoice and make payments.