



City of Albuquerque

Regulation Governing Requests for the City of Albuquerque to Serve as Fiscal Agent of a State Capital Outlay Project

Promulgated by

The Department of Municipal Development

Effective Date: 1/30/2023

City of Albuquerque
Department of Municipal Development
P.O. Box 1293
Albuquerque, New Mexico 87103

October 17, 2022

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REGULATION GOVERNING REQUESTS FOR THE CITY OF ALBUQUERQUE TO SERVE AS FISCAL AGENT OF A STATE CAPITAL OUTLAY PROJECT

1. AUTHORITY

- 1.1 This Regulation is promulgated pursuant to Section 5-5-11.E ROA 1994, hereafter the “Public Purchases Ordinance.”
- 1.2 In the event that this Regulation is in conflict with the provisions of the Public Purchases Ordinance, the provisions of the Public Purchases Ordinance shall prevail.

2. PURPOSE AND POLICY

This Regulation is designed to promote the following purposes and policies of the City:

- 2.1 To establish procedures for consideration of requests for the City to serve as fiscal agent of a State Capital Outlay Project.
- 2.2 To simplify, clarify and accurately describe the process to request the City to serve as fiscal agent of a State Capital Outlay Project.
- 2.3 To describe the responsibilities of Requestors of a City-sponsored State Capital Outlay Project.
- 2.4 To streamline and expedite the completion of City-sponsored State Capital Outlay Projects.
- 2.5 To ensure State Capital Outlay Projects Use Agreements are issued to appropriate Requestors of a City-sponsored State Capital Outlay Project.
- 2.6 To protect the substantial interest of the City in the integrity of the City's State Capital Outlay Project Use Agreement contracting process.

3. APPLICABILITY

- 3.1 This Regulation establishes processes, procedures and guidelines related to requests for the City to serve as fiscal agent of a State Capital Outlay Project.
- 3.2 This Regulation applies to all Nonprofit Organizations and Governmental Entities requesting or attempting to request State Capital Outlay to fund a City-sponsored State Capital Outlay Project.

- 3.3 This Regulation establishes processes, procedures and guidelines related to the development of City-sponsored State Capital Outlay Project Use Agreements and the administration of City-sponsored State Capital Outlay Project Use Agreements.
- 3.4 This Regulation only applies to State Capital Outlay and does not apply to other procurements.

4. DEFINITIONS

The following terms when used in this Regulation shall have the following meanings unless the context clearly indicates otherwise:

- 4.1 “Agreement” refers to a “State Capital Outlay Project Use Agreement” defined below in 4.12. The term “Agreement” and “Contract” will be used interchangeably.
- 4.2 “Contract” refers to a “State Capital Outlay Project Use Agreement” defined below in 4.12. The term “Agreement” and “Contract” will be used interchangeably.
- 4.3 “Department” refers to the Department of Municipal Development or its successor(s) or any other City of Albuquerque Department that enters into State Capital Outlay Agreements under this Regulation.
- 4.4 “Debarment” refers to exclusion or prohibition from contracting.
- 4.5 “Director” refers to the Director of the Department of Municipal Development or their designee.
- 4.6 “Nonprofit Organization” refers to any organization designated as a 501(c) by the Internal Revenue Service.
- 4.7 “Request” refers to the request submitted for the City to serve as fiscal agent of a State Capital Outlay Project.
- 4.8 “Requester” refers to a Nonprofit Organization or a Governmental Entity requesting the City to serve as fiscal agent of a State Capital Outlay Project.
- 4.9 “Governmental Entity” refers to any public body.
- 4.10 “State Capital Outlay” refers to funding for a State Capital Outlay Project in a bill passed by the New Mexico State Legislature and signed by the Governor.
- 4.11 “State Capital Outlay Project” refers to the physical property to be built, improved, purchased, or equipped as described in an appropriations bill passed by the New Mexico State Legislature and signed by the Governor.

- 4.12 “State Capital Outlay Project Use Agreement” refers to a contract with a Nonprofit Organization or Governmental Entity for a State Capital Outlay Project which specifies the services to be provided and the terms and conditions which must be adhered to in order to use property purchased by the City with funding from State Capital Outlay.
- 4.13 “Waiver” refers to a formal written statement from the Department signed by the Director and the City Attorney or their designee allowing the Requestor an exception to a rule in these requirements.

5. SUBMISSION OF REQUESTS

- 5.1 Request
Requesters shall use the City of Albuquerque Capital Outlay Request Form to request the City serve as fiscal agent of a State Capital Outlay Project. The form, deadlines and other information are available from the Department.
- 5.2 Requirements
Requests not submitted in accordance with this Regulation shall not be considered by the City, unless a waiver is granted pursuant to section 9 of this Regulation
- 5.3 Noncompliance
If the City receives an allocation from State Capital Outlay that was initially requested by a Nonprofit Organization that did not complete a request in accordance with this Regulation, was not granted a waiver of the requirement to submit a request, or did not receive the Director’s acceptance of their request, the City reserves the right to: deny the Nonprofit Organization’s use of the allocated funds for any State Capital Outlay Project; and to use the funds in accordance with the language in the State Capital Outlay appropriation.

6. CITY REVIEW OF REQUESTS

- 6.1 City Acceptance or Rejection of Request
The determination to accept or reject a request for the City to serve as fiscal agent of a State Capital Outlay Project received pursuant to this Regulation shall be made by the Director, who may seek input from receiving Department staff. Requesters will be notified in writing of the determination.

7. STATE CAPITAL OUTLAY FUNDING AND USE AGREEMENTS

- 7.1 Funding
Funding for State Capital Outlay Projects is generated from State Capital Outlay appropriations passed by the New Mexico State Legislature and signed by the Governor. The New Mexico State Board of Finance or its successor coordinates, funds, and administers state capital projects under the statutory authority of the

New Mexico Department of Finance and Administration. No State Capital Outlay Project will receive any funding until the New Mexico Department of Finance and Administration or New Mexico State Board of Finance certifies that the project meets State law.

7.2 Ownership of Property

State law prohibits Nonprofit Organizations from receiving State Capital Outlay funds. As fiscal agent, the City receives State Capital Outlay funding, procures the State Capital Outlay Project, retains ownership of property, and enters into a State Capital Outlay Use Agreement for use of the State Capital Outlay Project. As the property belongs to the City of Albuquerque, it must be procured under the appropriate purchasing regulations.

7.3 Requirements

The Department will only execute State Capital Outlay Use Agreements for State Capital Outlay Projects associated with an approved City of Albuquerque Capital Outlay Request Form.

7.4 State Capital Outlay Project Use Agreements Requirements

Requesters executing State Capital Outlay Project Use Agreements with the City shall adhere to this Regulation, State law, City law, other law, any applicable State requirements, and the terms and conditions of the Agreement between the Requestor and the City.

7.5 Drafting Agreements

The Department shall be responsible for drafting Department State Capital Outlay Project Use Agreements, including an appropriate scope of services and performance measures, and shall provide such Agreement to the Requestor for execution. The Department shall then execute each Agreement pursuant to Administrative Instruction 1-1 and other applicable City requirements.

8. RIGHT TO REFUSE TO CONTRACT

8.1 In addition to the criteria laid out in this Regulation, the Department reserves the right to refuse to proceed with the development of a State Capital Outlay Project Use Agreement at any time when it is in the best interest of the City.

8.2 Except when specifically authorized by the Director in writing, the Department shall not contract with an organization that has been debarred or an organization in debt to the City as a consequence of the findings of an audit or other review.

8.3 Appeals to this process shall be made in writing to the Chief Administrative Officer within two (2) weeks of written notice that fiscal agency has been denied. The decision of the Chief Administrative Officer is final.

9. WAIVERS

- 9.1 The Director may authorize a Waiver to provisions in this Regulation on a case-by-case basis when such Waiver is in the best interest of the City of Albuquerque and is not in conflict with applicable local, state, or federal laws and regulations.
- 9.2 When the Requestor identifies conditions which it determines may be serious enough to cause the Department to consider Waiver of provisions contained in this Regulation, the Requestor shall put in writing the specific provision for which they are requesting a Waiver, and the justification.
- 9.3 The Director has discretion to accept or refuse a Waiver request, and will respond in writing with a rationale for the decision. The Director's decision is final. No Waivers shall be presumed, and a Waiver for any one agency, entity or situation shall not be transferrable to other agency, entity or situations.

10. EFFECTIVE DATE AND FILING

These regulations shall become effective on 1/30/2023 | 8:05^{DS}AM MST upon signature by the Chief Administrative Officer and filing with the City Clerk.

DocuSigned by:


B2009HDE78E849E
Chief Administrative Officer

1/25/2023 | 6:15 PM MST
Date