

NEW MEXICO  
HIGHER EDUCATION  
DEPARTMENT



*Fostering Student Success from Cradle to Career*

## CAPITAL OUTLAY ANNUAL TRAINING

**APRIL 6, 2023**





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# HIGHER EDUCATION NOTICE OF OBLIGATIONS

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*GOVERNOR*

MICHELLE LUJAN GRISHAM

*CABINET SECRETARY*

STEPHANIE M. RODRIGUEZ

*CAPITAL PROJECTS DIRECTOR*

GERALD M. HOEHNE

- Last Revision 6/27/22
- 2-page document
- Posted on NMHED Website
  - Resources for Schools
  - Capital Projects
  - Resources
  - Draw Request Information
  - Notice of Obligation Procedure



#### NOTICE OF OBLIGATION (NOO) PROCEDURES

The New Mexico Higher Education Department, being the named intermediate agency of certain capital outlay appropriations, is responsible for the reimbursement of allowable expenditures. The following procedures outline the process for Higher Education Institutions (HEI) to follow when submitting a NOO request to the Department:

1. A fully executed grant agreement between NMHED and the HEI is required before NOO requests will be accepted.
2. Projects requiring formal approval in accordance with NMAC 5.3.10 CAPITAL PROJECTS APPROVAL BY THE NEW MEXICO HIGHER EDUCATION DEPARTMENT must be approved prior to requesting a NOO.
3. NOO requests must be prepared and submitted in accordance with ARTICLE II. LIMITATION ON DEPARTMENT'S OBLIGATION TO MAKE GRANT DISBURSEMENT TO GRANTEE of the executed grant agreement.
4. The NMHED must receive a completed Notice of Obligation Form that includes the name of each vendor, the total amount of the third-party agreement, and the total amount of encumbrance being requested. An HEI may encumber funds for multiple vendors however the NMHED will only encumber up to the appropriation amount. Any additional costs will be the responsibility of the HEI.
5. The following sections outline the specific documents that must be submitted to the NMHED when requesting a NOO:
  - A. Request for Proposals (RFP) or Invitation for Bids (IFB)
    - I. Copy of contract, as soon as possible *after execution by Third Party but prior to execution by the HEI*. Contract must, at a minimum, include the following:
      - Reference to project appropriation number or appropriation description
      - Detailed statement of work;
      - Contract Amount;
      - Contract completion date;
      - Article XV. - Required Non-Appropriations Clause from grant agreement; and,
      - Article XVI. - Required Termination Clause from grant agreement
  - B. Request for Quote (RFQ) using existing SPA, GSA or CES Contract
    - I. Construction Services Agreement;
    - II. Reference to project appropriation number or appropriation description;
    - III. Detailed statement of work;
    - IV. Contract Amount;
    - V. Contract completion date;
    - VI. Article XV. - Required Non-Appropriations Clause from grant agreement; and,
    - VII. Article XVI. - Required Termination Clause from grant agreement



C. If purchasing equipment or materials only, and a contract is not required, submit a cost proposal or quote. Cost proposals or quotes must, at a minimum, include the following:

- I. Reference to project appropriation number or appropriation description;
- II. Valid period of cost proposal/quote;
- III. Detailed statement of work;
- IV. Itemized description of deliverables and cost;
- V. Shipping/Freight/Delivery costs, if applicable; and,
- VI. GRT amount if not included in proposal/quote

#### D. NOO Modification Requests

I. Copy of change order, as soon as possible *after execution by Third Party but prior to execution by the HEI*. Change order must, at a minimum, include the following:

- Reference to project appropriation number or appropriation description;
- Detailed description of change; and,
- Change order amount

II. For non-change order modifications, such as reducing an encumbrance, provide the following:

- Justification from HEI on why the change is being requested

6. Submit all NOO requests with required supporting documentation to the following email address: [Gerald.Hoehne@state.nm.us](mailto:Gerald.Hoehne@state.nm.us)
7. The NMHED reviews the documentation, issues the NOO to the HEI, and encumbers the funds.
8. Once the HEI receives the signed NOO, they can execute the third-party agreement, create a purchase order, and proceed with the project.
9. Provide a copy of the executed third-party agreement and purchase order to NMHED.

**IMPORTANT:** The NMHED will only reimburse expenditures related to the statement of work or itemized description of materials that supported the issuance of the signed NOO.

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# NOTICE OF OBLIGATION (NOO) PROCEDURES

Purchase of equipment does not include labor. If labor is required to setup, install, or fabricate anything else, it will require a service contract.

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**IMPORTANT:** The NMHED will only reimburse expenditures related to the statement of work or itemized description of materials that supported the issuance of the signed NOO.

## NOTICE OF OBLIGATION (NOO) PROCEDURES

# NOTICE OF OBLIGATION (NOO) FORM

- Fillable form
- Posted on NMHED website
  - Resources for Schools
  - Capital Projects
  - Resources
  - Draw Request Information
  - Notice of Obligation Form - Fillable

## NOTICE OF OBLIGATION TO REIMBURSE GRANTEE EXHIBIT 2

### Notice of Obligation to Reimburse Grantee **# 1**

DATE:

TO: Department Representative:

FROM: Grantee:

Grantee Official Representative:

SUBJECT: Notice of Obligation to Reimburse Grantee

Grant Number:

Grant Termination Date:

As the designated representative of the Department for Grant Agreement number  entered into between Grantee and the Department, I certify that the Grantee has submitted to the Department the following third party obligation executed, in writing, by the third party's authorized representative:

Vendor or Contractor:

Third Party Obligation Amount:

Vendor or Contractor:

Third Party Obligation Amount:

Vendor or Contractor:

Third Party Obligation Amount:

I certify that the State is issuing this Notice of Obligation to Reimburse Grantee for permissible purposes within the scope of the project description, subject to all the terms and conditions of the above referenced Grant Agreement.

Grant Amount (Minus AIPP if applicable):

The Amount of this Notice of Obligation:

The Total Amount of all Previously Issued Notices of Obligation:

The Total Amount of all Notices of Obligation to Date:

*Note: Contract amounts may exceed the total grant amount, but the invoices paid by the grant will not exceed the grant amount.*

Department Rep. Approver:

Title:

Signature:

Date:

1 Administrative and/or Indirect Cost – generally, the legislation authorizing the issuance of bonds prohibits the use of its proceeds for indirect expenses (e.g. penalty fees or damages other than pay for work performed, attorney fees, and administrative fees). Such use of bond proceeds shall not be allowed unless specifically authorized by statute.



# NOTICE OF OBLIGATION (NOO) FORM EXAMPLE

- Fields filled in except signature and date at the bottom of the page for the approver
- Enter vendor(s) or contractor(s) name – Up to 3 per NOO can be submitted
- Third party obligation amount – list the total contract amount then the amount to be obligated

## Notice of Obligation to Reimburse Grantee [# 1]

DATE: 7/28/2022

TO: Department Representative: Gerald Hoehne Director of Capital Projects  
FROM: Grantee: Santa Fe Community College  
Grantee Official Representative: Nick Telles, Chief Financial Officer

SUBJECT: Notice of Obligation to Reimburse Grantee

Grant Number: F3097

Grant Termination Date: 06/30/2025

As the designated representative of the Department for Grant Agreement number F3097 entered into between Grantee and the Department, I certify that the Grantee has submitted to the Department the following third party obligation executed, in writing, by the third party's authorized representative:

Vendor or Contractor: APIC Solutions, Inc.-P0049046  
Third Party Obligation Amount: Total PO \$673,467.63. Total NOO \$388,249.97


Vendor or Contractor:  
Third Party Obligation Amount:

Vendor or Contractor:  
Third Party Obligation Amount:

I certify that the State is issuing this Notice of Obligation to Reimburse Grantee for permissible purposes within the scope of the project description, subject to all the terms and conditions of the above referenced Grant Agreement.

Grant Amount (Minus AIPP if applicable): 825,000.00  
The Amount of this Notice of Obligation: 388,249.97  
The Total Amount of all Previously Issued Notices of Obligation: 0.00  
The Total Amount of all Notices of Obligation to Date: 388,249.97

*Note: Contract amounts may exceed the total grant amount, but the invoices paid by the grant will not exceed the grant amount.*

Department Rep. Approver: Gerald Hoehne  
Title: Director of Capital Projects  
Signature:   
Date: 07/28/2022

1 Administrative and/or Indirect Cost – generally, the legislation authorizing the issuance of bonds prohibits the use of its proceeds for indirect expenses (e.g. penalty fees or damages other than pay for work performed, attorney fees, and administrative fees). Such use of bond proceeds shall not be allowed unless specifically authorized by statute.

Department Representative line at the top of the page and the Department Rep. Approver line are both Gerald Hoehne as per the Grant Agreement.

## ARTICLE II. LIMITATION ON DEPARTMENT'S OBLIGATION TO MAKE GRANT DISBURSEMENT TO GRANTEE

A. Upon the Effective Date of this Agreement, for permissible purposes within the scope of the Project Description, the Grantee shall only be reimbursed monies for which the Department has issued and the Grantee has received a Notice of Department's Obligation to Reimburse<sup>2</sup> Grantee (hereinafter referred to as "Notice of Obligation"). This Grant Agreement and the disbursement of any and all amounts of the above referenced Adjusted Appropriation Amount are expressly conditioned upon the following:

- (i) Irrespective of any Notice of Obligation, the Grantee's expenditures shall be made on or before the Reversion Date and, if applicable, an Early Termination Date (i.e., the goods have been delivered and accepted or the title to the goods has been transferred to the Grantee and/or the services have been rendered for the Grantee); and
- (ii) The total amount received by the Grantee shall not exceed the lesser of: (a) the Adjusted Appropriation Amount identified in Article I(A) herein or (b) the total of all amounts stated in the Notice(s) of Obligation evidencing that the Department has received and accepted the Grantee's Third-Party Obligation(s), as defined in subparagraph iii of this Article II(A); and
- (iii) The Grantee's expenditures were made pursuant to the State Procurement Code and execution of binding written obligations or purchase orders with third party contractors or vendors for the provision of services, including professional services, or the purchase of tangible personal property and real property for the Project, hereinafter referred to as "Third Party Obligations"; and
- (iv) The Grantee's submittal of timely Requests for Payment in accordance with the procedures set forth in Article IX of this Agreement; and
- (v) In the event that capital assets acquired with Project funds are to be sold, leased, or licensed to or operated by a private entity, the sale, lease, license, or operating agreement:
  - a. must be approved by the applicable oversight entity (if any) in accordance with law; or
  - b. if no oversight entity is required to approve the transaction, the Department must approve the transaction as complying with law.

# GRANT AGREEMENT FOR NOOS

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- a. The Grantee shall submit to the Department one copy of all Third-Party Obligations and amendments thereto (including terminations) as soon as possible after execution by the Third Party but prior to execution by the Grantee.
- b. Grantee acknowledges and agrees that if it chooses to enter into a Third-Party Obligation prior to receiving a Notice of Obligation that covers the expenditure, it is solely responsible for such obligations.
- c. The Department may, in its sole and absolute discretion, issue to Grantee a Notice of Obligation for the particular amount of that Third-Party Obligation that only obligates the Department to reimburse Grantee's expenditures made on or before the Reversion Date or an Early Termination Date. The current Notice of Obligation form is attached to this Agreement as Exhibit 2.
- d. The date the Department signs the Notice of Obligation is the date that the Department's Notice of Obligation is effective. After that date, the Grantee is authorized to budget the particular amount set forth in the Notice of Obligation, execute the Third-Party Obligation and request the Third Party to begin work. Payment for any work performed or goods received prior to the effective date of the Notice of Obligation is wholly and solely the obligation of the Grantee.



- b. Grantee acknowledges and agrees that if it chooses to enter into a Third-Party Obligation prior to receiving a Notice of Obligation that covers the expenditure, it is solely responsible for such obligations.

## GRANT AGREEMENT FOR NOOS

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## **ARTICLE XV. REQUIRED NON-APPROPRIATIONS CLAUSE IN CONTRACTS FUNDED IN WHOLE OR PART BY FUNDS MADE AVAILABLE UNDER THIS AGREEMENT**

“The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the Legislature of New Mexico for the performance of this Agreement. If sufficient appropriations and authorization are not made by the Legislature, the Clovis Community College may immediately terminate this Agreement by giving Contractor written notice of such termination. The Clovis Community College’s decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final. Contractor hereby waives any rights to assert an impairment of contract claim against the Clovis Community College or the NMHED or the State of New Mexico in the event of immediate or Early Termination of this Agreement by the Clovis Community College or the Department”

# GRANT AGREEMENT FOR NOOS

## **ARTICLE XVI. REQUIRED TERMINATION CLAUSE IN CONTRACTS FUNDED IN WHOLE OR PART BY FUNDS MADE AVAILABLE UNDER THIS AGREEMENT**

“This contract is funded in whole or in part by funds made available under a NMHED Grant Agreement. Should the NMHED early terminate the grant agreement, Clovis Community College may early terminate this contract by providing Contractor written notice of such termination. In the event of termination pursuant to this paragraph, Clovis Community College’s only liability shall be to pay Contractor for acceptable goods delivered and services rendered before the termination date.”



# GRANT AGREEMENT FOR NOO'S

## RECAP of Important Points:

- Institution must have a notice of obligation in place prior to incurring any expenditures.
- NMHED will not approve an NOO unless the project has been approved by NMHED, and if applicable, the State Board of Finance.
- Institutions are responsible for any costs incurred prior to the NOO approval.
- Proper documentation must be submitted, per the NOO approval process, for NOOs to be considered.

# CAPITAL PROJECTS DIVISION CONTACTS

Gerald Hoehne

Capital Project Director

505-476-8434

[Gerald.Hoehne@hed.nm.gov](mailto:Gerald.Hoehne@hed.nm.gov)

Joe Brown

Capital Analyst

505-629-3051

[Joe.Brown@hed.nm.gov](mailto:Joe.Brown@hed.nm.gov)





# THANK YOU

Stephanie M. Rodriguez, MCRP

*Cabinet Secretary*

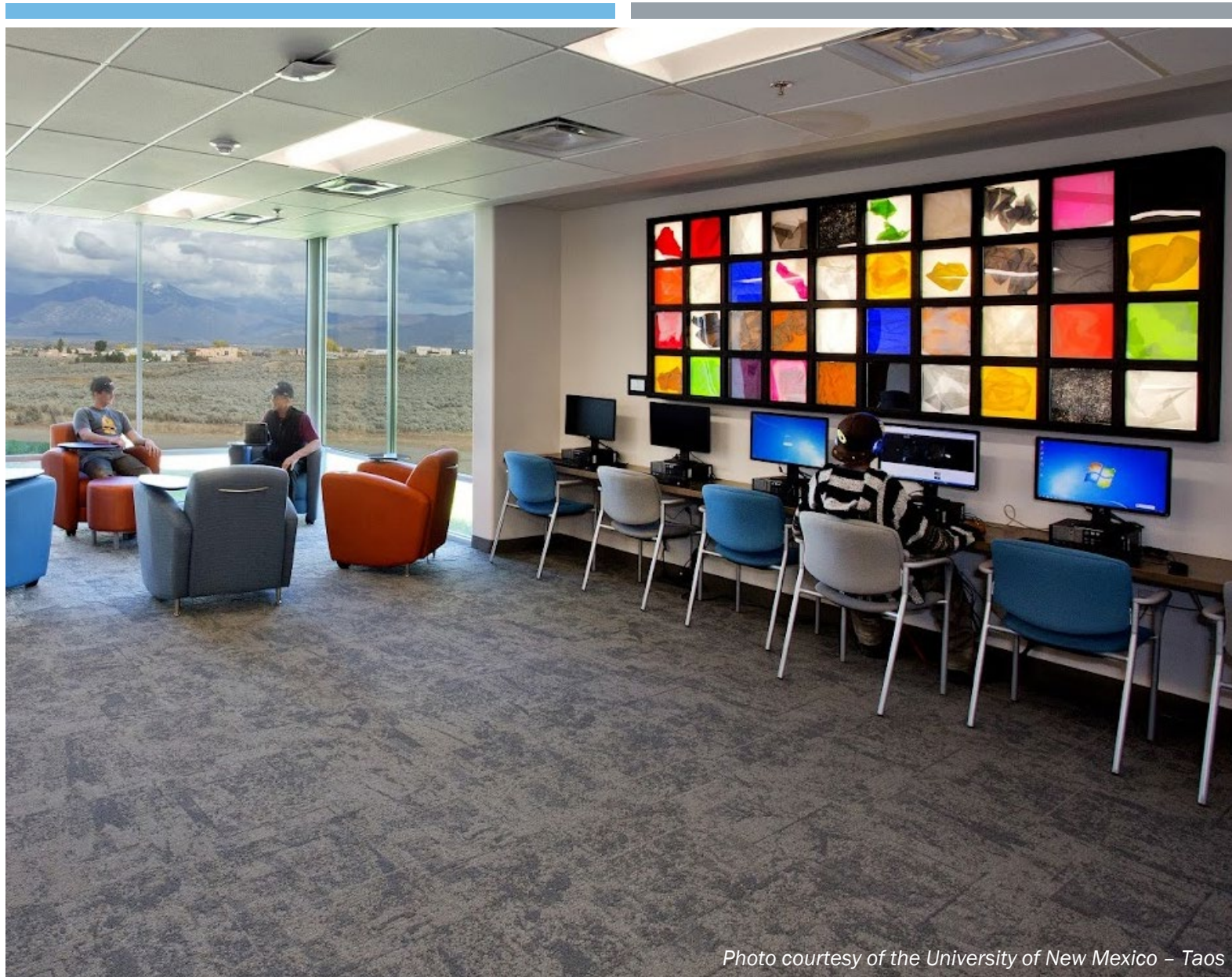
[Stephanie.Rodriguez@hed.nm.gov](mailto:Stephanie.Rodriguez@hed.nm.gov)

Gerald M. Hoehne

*Capital Projects Director*

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**@NMHigherEd**



*Photo courtesy of the University of New Mexico – Taos*