

Connect New Mexico Fund
Alert: Managing Current Policy of Limiting Grant Expenditures to FY2025
March 6, 2024

Overview

The Notice of Funding Opportunity (NOFO) states that the current statutory authority limits payment for grant-based expenditures incurred by the end of fiscal year 2025 (June 30, 2025), based on House Bill 2 (2023).¹ OBAE had mentioned in the NOFO its goal to have the Legislature extend this deadline to at least fiscal year 2028 (June 30, 2028) through an amendment to House Bill 2.

This amendment did not receive consideration during the 2024 session. OBAE will propose an amendment during the 2025 Session, specifically requesting that expenditures be allowed until the end of the 2028 fiscal year (June 30, 2028). The outcome remains uncertain. Therefore, the current policy limits the issuance of grant funds for approved purchase orders until June 30, 2025.

OBAE Directive to Applicants

Awardees should incorporate the current policy into their application. OBAE requests the applicant to consider one of two options:

- A) Have the project scope, budget, and timeline reflect a project period that ends on June 30, 2025. Therefore, by this date, the project will have spent all grant and matching funds. OBAE recognizes this policy may not accommodate many fiber-based projects.
- B) Continue with your anticipated project period, but have the grant side of the budget ledger include items that can be expended by June 30, 2025. Moreover, the project plan should clearly delineate which tasks can be completed by this date.

Implications with Plan B

In the absence of a legislative extension, an awardee must recognize the special risks with Plan B. The awardee is still fully responsible for completing the project scope. This may require substituting a higher match contribution for any grant funds that remain unallocated after June 30, 2025.

The Grant Agreement (“Agreement”) will include this provision. The Agreement will also recognize other provisions to protect the State’s grant investment including:

- Clawback of grant funds based on the proportion of any uncompleted scope (e.g., percentage of locations not connected)
- Warehousing materials (for those ordered in advance) in a secure, protected facility
- Other provisions that serve to protect the public interest due to spending grant funds before any cash-based match contribution

The due diligence process will also request input about the project plan, budget, and financial standing to manage the unique circumstances. These risks become less relevant if the Legislature provides an extension to accommodate a three-year project period during the 2025 legislative session.

¹ House Bill 2, <https://www.nmlegis.gov/Sessions/23%20Regular/final/HB0002.pdf>

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Near-Term Actions

- Due to this alert, applicants have until March 18th to submit their completed application. This postponement does not change the mandate to have Grant Agreements signed by June 30, 2024.
- Please attend Office Hours for further feedback on March 8th at 11:00 am MT.
 - Link: <https://us02web.zoom.us/j/82801737100>

Frequently Asked Questions

- *Are applicants allowed to propose projects that require a timeline that extends past June 30, 2025?*
 - OBAE recognizes that many infrastructure deployment projects, especially for fiber, require at least two years of planning and implementation. An applicant may propose a project plan that extends past FY2025, with the recognition that absent legislative action, all purchase orders have to be submitted and payments issued by OBAE before June 30, 2025.

- *If all the grant funds are not applied, does the Awardee still have to invest their full match amount?*
 - The Awardee is still responsible for achieving the project scope. The Awardee will have to contribute their full match and likely any extra funds to cover the grant amount that is not allocated after June 30, 2025.

- *Should applicants consider submitting a budget in which grant funds reimburse all planned activities occurring before the end of FY 2025?*
 - Generally, OBAE aims to see grant and match funds be proportionally spent during the project period. Given the current time constraint, OBAE recognizes that applicants may submit a budget that “front loads” the grant expenses or lists expenditures on the grant side of the ledger that will likely be incurred before FY2025. This may include expenses for such items as engineering design, permitting and right of way, electronics, and materials.

- *Will OBAE provide favorable consideration to projects that require a shortened project period?*
 - The scoring guide will not change. Reviewers will still review and assign points based on the published Scoring Guide.
 - Applicants should provide a detailed narrative in their risk mitigation plan regarding how they will manage potential challenges for a project that requires grant funding after June 20, 2025.
 - During the due diligence process, OBAE will further inquire about this risk mitigation plan.

- *If the business case does not support investing in extra cash-based match, how can an applicant manage this challenge?*
 - Applicants should consider several factors. First, it will be OBAE’s intent to seek a legislative extension during the 2025 session. The applicant should calculate the risk that this extension does not materialize versus the benefits that it does. This “risk to reward” calculation should guide its thought process. Second, OBAE will encourage Awardees to advocate to their

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legislators the negative consequences of not having this extension (e.g., adverse impacts on community investment and project sustainability). Third, applicants should strategize on how they can potentially fast-track activities to enable a higher allocation of grants before June 30, 2025.

- *Will there be other changes to any reporting, performance, and other compliance requirements?*
 - All compliance requirements stated in the NOFO remain applicable and enforceable. Please see the NOFO for these requirements – some of which pertain to the project period and others remain in effect after the project closeout.