

## **DIVISION 35**

### Standards to Determine Project Eligibility and Application Procedures For Grants Under The Oregon Streetcar Project Fund Program

#### **732-035-0010**

##### **Purpose**

Chapter 746, Oregon Laws 2007 created the Oregon Streetcar Project Fund, allowing for the issuance of lottery bonds for the purpose of financing grants through ODOT to municipalities to provide for the purchase of streetcars used in public transit systems. The purpose of division 35 rules is to establish the Oregon Streetcar Project Fund Program.

Stat. Auth.: ORS 184.616, 184.619 and Sec. 24 (2), Ch. 746, OL 2007  
Stats. Implemented: ORS 184.670, 184.685, Ch. 746, OL 2007

#### **732-035-0020**

##### **Definitions**

For the purposes of division 35 rules, the following terms have the following definitions, unless the context clearly indicates otherwise:

(1) “Grant Agreement” means a legally binding contract between the Department and Recipient that contains the terms and conditions under which the Department is providing funds from the Oregon Streetcar Project Fund for an Approved Project.

(2) “Applicant” means a municipality and operator of a rail fixed guideway system that applies for funds from the Oregon Streetcar Project Fund.

(3) “Approved Project” means a Project that the Department has selected to receive funding through a grant from the Oregon Streetcar Project Fund.

(4) “Commission” means the Oregon Transportation Commission.

(5) “Department” means the Oregon Department of Transportation.

(6) “Director” means the Director of the Oregon Department of Transportation.

(7) “Municipality” as defined in ORS 285B.410b means an Oregon city or county, the Port of Portland created by ORS 778.010, a county service district organized under ORS chapter 451, a district as defined in ORS 198.010, a tribal council of a federally recognized Indian tribe in this state or an airport district organized under ORS chapter 838.

(8) “Oregon-based Manufacturer” means, for the purposes of the Oregon Streetcar Fund Program, an entity whose manufacturing facilities are physically located in Oregon, and which is organized or authorized to do business under Oregon law.

(9) “Oregon-owned Manufacturer” means a sole proprietorship owned by an Oregon resident paying taxes in Oregon, or an entity 51 percent of which is owned by an Oregon resident or residents residing and paying taxes in Oregon.

(10) “Oregon Streetcar Project Fund” is defined in Chapter 746, OL 2007 as a fund consisting of lottery bond proceeds deposited in the fund, interest earnings on the fund and any other moneys appropriated to the fund by the Legislative Assembly.

(11) “Program” means the Oregon Streetcar Project Fund Program established by division 35 rules to administer the Oregon Streetcar Project Fund.

(12) "Program Funds" means the money in the Oregon Streetcar Project Fund that may be used as grants for eligible projects.

(13) “Project” means a proposal to purchase Oregon Manufactured Streetcars from an Oregon-based and Oregon-owned manufacturer, to be used as part of a public transit system.

(14) "Recipient" means an Applicant that enters into a Grant Agreement with the Department to receive funds from the Oregon Streetcar Project Fund.

(15) "Streetcar" means a transit vehicle designed for local transportation operated on a rail fixed guideway, powered by electricity usually received from an overhead electric wire.

Stat. Auth.: ORS 184.616, 184.619 and Sec. 24 (2), Ch. 746, OL 2007

Stats. Implemented: ORS 184.670, 184.685, Ch. 746, OL 2007

### **732-035-0030**

#### **Program Purpose and Requirements**

(1) Purpose. Sections 22 and 23, Chapter 746, OL 2007 establish the Oregon Streetcar Project Fund. The fund is to consist of lottery bond proceeds, interest on the Fund and any other money appropriated to the Fund from the legislature. The moneys are continuously appropriated to the Department for:

(a) Grants to municipalities to provide streetcars for public transit systems.

(b) ODOT costs to administer the grant program described in these rules.

#### **(2) Program Requirements**

(a) An Applicant must be a Municipality as defined in ORS 285B.410;

(b) An Applicant must use the streetcars as part of a public transit system operated by the Applicant and available to the public;

(c) Grant funds are to be used only for the purchase of newly constructed Streetcars from an Oregon-based and Oregon-owned Manufacturer;

(d) Applicant must comply with any other provisions the Department determines necessary to manage the Oregon Streetcar Project Fund Program;

(e). For each Project, the Director shall make a finding that the purchase of Streetcars as contemplated in the grant will result in the creation or maintenance of jobs with Oregon Manufacturers of Streetcars;

(3) If the Director determines that there are no Oregon-based and Oregon-owned Manufacturers of Streetcars, the Director may decline to request the issuance of bonds, or may authorize Grant Agreements that include the purchase of Streetcars from out-of-state manufacturers.

Stat. Auth.: ORS 184.616, 184.619 and Sec. 24 (2), Ch. 746, OL 2007

Stats. Implemented: ORS 184.670, 184.685, Ch. 746, OL 2007

### **732-035-0040**

#### **Program Development**

The Department shall:

(1) Study the effects of grants authorized under this program on the creation or maintenance of jobs in Oregon.

(2) File semiannual reports with the Commission on the findings of the studies.

(3) Adopt rules and develop policies and grant application procedures necessary to achieve the goals of the Program.

Stat. Auth.: ORS 184.616, 184.619 and Sec. 24 (2), Ch. 746, OL 2007

Stats. Implemented: ORS 184.670, 184.685, Ch. 746, OL 2007

### **732-035-0050**

#### **Submitting Applications**

(1) **Submission Periods.** The Department will announce periods for submitting applications for funding from the Oregon Streetcar Project Fund.

(2) **Application Requirements.** Applicants interested in receiving funds from the Oregon Streetcar Project Fund must submit a written application to the Department. The application must be in a format prescribed by the Department and contain or be accompanied by such information as the Department may require.

(3) Applications not funded may be resubmitted during subsequent application submission periods announced by the Department.

Stat. Auth.: ORS 184.616, 184.619 and Sec. 24 (2), Ch. 746, OL 2007  
Stats. Implemented: ORS 184.670, 184.685, Ch. 746, OL 2007

### **732-035-0060**

#### **Application Review**

(1) Project applications will be reviewed for compliance with the requirements in OAR 731-035-0030 and 732-035-0060.

(2) The Department will review applications received to determine whether the Applicant and the Project are eligible for Program Funds.

(3) Applicants that meet all of the following criteria are eligible:

(a) The Applicant is a Municipality within the state of Oregon.

(b) The Applicant operates a public transit system that includes Streetcars that are available to the public.

(c) The Applicant has sufficient management and financial capacity to complete the Project.

(d) Whether the Applicant is in compliance with State Safety Oversight requirements and plans. Streetcar operators must be compliant with 49CFR Part 659 and OAR 741-060-0010 through 741-060-0110.

(4) Projects that meet the following requirements are eligible:

(a) Projects that propose to purchase newly constructed Streetcars from an Oregon-based and Oregon-owned Manufacturer.

(b) If the director determines that there are no Oregon-based and Oregon-owned Manufacturers of Streetcars, then Projects that include the purchase of Streetcars from out-of-state manufacturers may be determined eligible at the Director's sole discretion.

(5) If an Applicant or Project is not eligible for Program Funds, the Department shall:

(a) Specify the additional information the Applicant must provide to establish eligibility; or

(b) Notify the Applicant that the application is ineligible.

Stat. Auth.: ORS 184.616, 184.619 and Sec. 24 (2), Ch. 746, OL 2007  
Stats. Implemented: ORS 184.670, 184.685, Ch. 746, OL 2007

### **732-035-0070**

#### **Project Selection**

(1) The Department will select Projects to be funded through a grant with moneys from the Oregon Streetcar Project Fund.

(2) In addition to the criteria in 732-035-0060, the Department will consider the following in its determination of eligible Projects to approve for receipt of funds from the Oregon Streetcar Project Fund:

(a) Whether the purchase of Streetcars as contemplated in the project will result in the creation or maintenance of jobs with Oregon-based and Oregon-owned Manufacturers of Streetcars.

(b) Whether the proposed Streetcars are accessible. Facilities and vehicles used in the provision of public transportation services must be in compliance with 42 U.S.C. Sections 12101 et seq. and DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 CFR Part 37; and Joint Architectural and Transportation Barriers Compliance Board (ATBCB)/DOT regulations, "Americans with Disabilities (ADA) Accessibility Specifications for Transportation Vehicles," 36 CFR Part 1192 and 49 CFR Part 38.

Stat. Auth.: ORS 184.616, 184.619 and Sec. 24 (2), Ch. 746, OL 2007  
Stats. Implemented: ORS 184.670, 184.685, Ch. 746, OL 2007

### **732-035-0080**

#### **Project Administration**

(1) The Department will track expenditures, performance and compliance for all Projects.

(2) The Department and an Applicant for an Approved Project will execute a Grant Agreement prior to the disbursement of Program Funds for an Approved Project. The Grant Agreement is effective on the date all required signatures are obtained or at such later date as specified in the Grant Agreement.

(3) The Grant Agreement will contain provisions and requirements, including without limitation:

(a) Documentation of the projected costs for an Approved Project;

(b) Certification by Recipient to terms and conditions of grant award for ongoing responsibility to manage the Streetcar assets to required federal safety oversight standards and maintain Streetcars and related equipment to manufacturer's requirements;

(c) Description of how Program Funds for grants will be paid, either on a reimbursement basis or as negotiated with the recipient;.

(d) Requirement that Recipients provide the Department upon request with a copy of any documents, studies, reports and materials developed during the Project, including a written report on the activities or results of the Project and any other information that may be reasonably requested by the Department;

(e) Requirement that Recipients separately account for all moneys received from the Oregon Streetcar Project Fund in Project accounts in accordance with Generally Accepted Accounting Principles.

(f) Requirement that Program Funds disbursed but not used for an Approved Project must be returned to the Department;

(g) Provision that written amendments to Grant Agreements are required to change an Approved Project's cost, scope, objectives or timeframe.

(h) Covenant of Recipient to use Project funds in a manner that will not adversely affect the tax-exempt status of any bonds issued pursuant to the authority of Chapter 816, Oregon Laws 2005.

(4) The Department may invoke sanctions against a Recipient that fails to comply with the requirements governing the Program. The Department will not impose sanctions until the

Recipient has been notified in writing of such failure to comply with the Program requirements as specified in this chapter and has been given a reasonable time to respond and correct the deficiencies noted. The following circumstances may warrant sanctions:

- (a) State statutory and/or administrative rule requirements have not been met;
- (b) There is a default in the Grant Agreement; or
- (c) The Department finds that significant corrective actions are necessary to protect the integrity of the Program Funds for the Project and those corrective actions are not, or will not be, made within a reasonable time.

**(5)** The Department may impose one or more of the following sanctions:

- (a) Terminate an existing Grant Agreement.
- (b) Withhold unexpended Program Funds.
- (c) Require return of unexpended Program Funds or repayment of expended Program Funds.
- (d) Refuse to accept applications from the Applicant for future grants.
- (e) Other remedies that may be incorporated into Grant Agreements.

**(6)** The remedies set forth in this rule are cumulative, are not exclusive, and are in addition to any other rights and remedies provided by law or under the Grant Agreement.

**(7)** The Director shall consider protests of the funding and Project administration decisions for the Program. Only the Applicant or Recipient may protest. Protests must be submitted in writing to the Director within 30 days of the event or action that is being protested. The Director's decision is final. Jurisdiction for review of the Director's decision is in the circuit court for Marion County pursuant to ORS 183.484.

**(8)** The Director may waive non-statutory requirements of this Program if it is demonstrated such a waiver would serve to further the goals and objectives of the Program.

**(9)** The Department shall compile information on projects funded through the Oregon Streetcar Fund Program as described in OAR 732-035-0040 and report the resulting effect on creation and maintenance of Oregon jobs in a periodic report to the Commission for the duration of the Program.

Stat. Auth.: ORS 184.616, 184.619 and Sec. 24 (2), Ch. 746, OL 2007  
Stats. Implemented: ORS 184.670, 184.685, Ch. 746, OL 2007