

OREGON DEPARTMENT OF TRANSPORTATION

The logo graphic consists of a solid blue horizontal bar at the top. Below it, there are stylized, overlapping shapes in black and blue that suggest a road or a bridge structure.

FEDERAL-AID FUNDING

For

HIGH PRIORITY

PROJECT SPONSORS

By

THE

OREGON DEPARTMENT OF TRANSPORTATION

Local Government Section

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FEDERAL-AID FUNDING REQUIREMENTS

For

HIGH PRIORITY PROJECT SPONSORS

The long-awaited federal transportation reauthorization bill Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users, (SAFETEA-LU), was enacted August 10, 2005. SAFETEA-LU reauthorizes programs, funding and policies for Federal Highway Administration (FHWA) programs that were last authorized in TEA-21,¹ which expired September 30, 2003. SAFETEA-LU designates funding for specific Oregon highway projects in a number of FHWA programs, such as the Transportation Improvement Program, Projects of National and Regional Significance, and High Priority Project (HPP). This paper will focus on the administration of funding for Oregon's HPP highway project earmarks

The following information is provided to notify HPP sponsors of the basic requirements to use funds from the Federal Highway Administration (FHWA). Traditionally, these projects have involved major transportation projects, such as roadways and/or bridges. The majority of the funding for the traditional roadway and bridge projects and the HPP funds come from the same source, SAFETEA-LU. The legislation does not allow for lesser requirements of FHWA, or any other pertinent federal laws and regulations, such as compliance with the National Environmental Policy Act (NEPA) of 1969 as amended, and the Americans with Disabilities Act. All projects using these funds are subject to federal and state regulations. Provisions have been provided to permit the transfer of these funds to other federal agencies.

ODOT Responsibilities

As with other federal highway funds received in Oregon, ODOT is responsible for administration of HPP funds. As mandated by the FHWA, ODOT must ensure that the development and construction of any project using federal funding is accomplished in a manner which will provide a safe and structurally sound facility, and follows federal and state policies, laws and regulations. ODOT is also interested in seeing that the projects proceed as expeditiously as possible, and are implemented to serve the desired public function.

ODOT's intent is to inform local project sponsors of federal project requirements and collaborate on the most efficient, cost effective ways to meet them. These projects, for the most part, will be developed and constructed via the ODOT Local Program federal-aid process. However, in order to expedite the timely and accurate delivery of these projects, ODOT has agreement with FHWA for up-front expenditure of HPP earmark funds in order to complete the vital prospectus, scope and cost estimate project elements.

HPP Project Sponsor Responsibilities

¹ Transportation Equity Act for the 21st Century.

The project sponsor should be aware of their matching funding responsibility (typically a minimum of 10.27 % of the total project amount), the time frame in which the funds will be available, and the actual final amount of the funds that will be available for expenditure on the project. ODOT will provide the project sponsor with this information when it becomes available. The project sponsor also needs to be aware that using federal transportation funds will require compliance with many federal requirements such as NEPA and the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970. It is important to recognize the additional cost and time involved in meeting federal requirements. Depending on an individual project's status within SAFETEA-LU, or if the funding source is a Congressional appropriations bill, there may be other requirements associated with the particular funding source. The project sponsor is responsible to work with ODOT to make sure that all requirements are identified and met.

Project sponsors are responsible to provide additional funding for projects that do not have adequate funding. All additional project expenditures and over-runs to complete the obligated projects are the responsibility of the project sponsor. Earmarked project funds must be used for the project indicated in the legislation. If the project costs are lower than the earmarked project funds, reimbursement will be limited to the project costs only, subject to availability of funds. Any excess project funds may not be diverted to other projects.

HPP Funding Availability

Funding limitations for all earmarked projects

All earmarked projects are subject to availability and reductions in the amount of funds, even though a full funding amount is shown in SAFETEA-LU. Generally, under SAFETEA-LU the maximum available each year will be twenty percent of the earmark, subject to reductions for limitations in Obligation Authority, which are annually imposed by Congress for a given Federal Fiscal Year, and occasional Congressional rescissions in the amount of federal funds that can be made available for expenditure. This could occur at any time. Such annual spending limitations generally range from 85% to 95% of the authorized amount.

SAFETEA-LU Projects

Funding for HPP projects earmarked under SAFETEA-LU will be made available through Congressional appropriations over the five years of the Act. Total funding to be available will not be known until the final year of the legislation or Federal Fiscal Year 2009. Project sponsors will need to budget their projects' expenditures accordingly as federal funds will not be available to permit the up-front funding of entire projects until 2009. If delivery of the project is needed before 2009, the sponsor may provide up-front funding and then get reimbursed with federal funds when they become available.

Other previously earmarked projects

Funds for other earmarked projects, such as through Congressional Appropriations bills, may only be available in the approved fiscal year, or as specified in the individual legislation. Projects that do not use funding within the individually specified time frame stand the chance of losing access to the earmarked funds.

Non-governmental Project Sponsors

Project sponsors that are not governmental entities, Railroads or Utilities may be required to secure a government agency or a local government as a co-sponsor, because Oregon procurement regulations restrict transportation funds from being provided directly to a non-governmental entity in certain circumstances. Reimbursements of project expenses will be made directly to the governmental co-sponsor. The co-sponsor and the non-governmental entity project sponsor will need to execute an agreement between them that will govern their relationship, and to include arrangements for invoicing and the receipt of funds from ODOT.

Basic Federal-aid requirements

The following is basic information on the major requirements that must be followed to receive reimbursement of the earmarked federal funds.

Funding

Funding for earmarked projects is administered on a reimbursable basis. ODOT will reimburse project costs for any amount up to the cumulative funding received, including federal funding and local match deposits.

Matching

Matching funding must be applied in advance of the implementation of the HPP project. To determine the approximate amount of match required for federal funds on a project that is funded 89.73% federal and 10.27% sponsor match, multiply the amount of available federal funding by 0.114454 (this is the ratio of 0.1027/0.8973). Remember, the amount of federal funds is limited and may not cover the entire cost of a project so the entire local match may be more. Also, remember that the amount of federal funds actually received may be reduced by funding limitation as described previously. The project sponsor is responsible for all costs in excess of available federal participating funds.

Intergovernmental Agreement (IGA)

All HPP projects will be required to have an IGA executed and federal obligation prior to incurring reimbursable expenditures. Federal funds identified for the project may be used to pay for the scoping effort and complete all parts of the project prospectus.

Environmental Requirements

All projects using federal-aid transportation funds must conform to the requirements of NEPA, The National Historic Preservation Act - Section 106, the US Department of Transportation Act – Section 4 (f), Section 404 of the Clean Water Act, Section 7 of the Endangered Species Act and the Americans with Disabilities Act. The required environmental documentation must be completed and approved. Details regarding federal environmental requirements can be found at the FHWA website, <http://environment.fhwa.dot.gov/projdev/tdmpdo.htm>. Smaller projects may qualify as Categorical Exclusions (CEs). CEs are defined as actions which do not individually or cumulatively result in significant environmental effects, and are therefore excluded from the requirement to prepare an environmental document such as an Environmental Impact Statement.

Right-of-Way (Property) Acquisitions

All projects that have been awarded earmarked funds must follow the Federal Uniform Relocation Assistance and Real Property Acquisition Policies Act (Uniform Act), as amended and all applicable FHWA reimbursement regulations and requirements for the acquisition of right-of-way for the project. This applies to the acquisition of real property, either in fee or by easement, and whether or not federal funds are used for this activity. It is important to follow this process because failure to do so could render all project phases ineligible for federal funds. ODOT will certify all R/W files and procedures.

Transportation Improvement Program/ Statewide Transportation Improvement Program

Sponsors of projects located in areas covered by a Metropolitan Planning Organization (MPO) will need to ensure that the project is added to the local Transportation Improvement Program (TIP) prior to advertisement. After a project has been added to the appropriate TIP the SHA will ensure that the project is added to the Statewide Transportation Improvement Program (STIP). Projects outside metropolitan areas will need to be added to the STIP before funding can be made available. Projects seeking the use of federal transportation funds will not be approved by ODOT or FHWA until they are included in these programming documents, as required under federal law. In addition if the project is in an air quality maintenance area or non-attainment area the project will need to be modeled for air quality conformity.

Advertisement

All projects sponsored by non-certified agencies will be advertised for construction through the ODOT bid and award process. Only projects sponsored by certified agencies will be allowed to be advertised and contracted by those agencies. Information regarding the package of plans, specifications, and estimates, and other materials required, including permits, is available through the ODOT Region local liaison staff. Any HPP project transferred from FHWA to another federal agency will not be contracted through ODOT.

General Information

Development of a detailed cost estimate is also a critical element of a successful project. This will assist the project sponsor in determining that the funding available is adequate and all cost elements of the project are considered.

To assist project sponsors, a scoping development document is available at the following link:
<http://www.oregon.gov/ODOT/HWY/LGS/online.shtml>

Information regarding HPP project development and delivery will be added, as it is developed, to the ODOT Local Program website at the following link:
<http://www.oregon.gov/ODOT/HWY/LGS/>

For additional information on developing these projects contact the ODOT Local Agency Liaison in your area. Contact information for ODOT Local Agency Liaisons can be found at the following ODOT Local Program website link:
http://www.oregon.gov/ODOT/HWY/LGS/contact_us.shtml