

**TOBACCO GRANT PROGRAM**  
**2019-20**  
**GRANTEE HANDBOOK**  
**DOJ-PROP56-2019-20-1**



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# **HANDBOOK FOR GRANTS MADE BY THE DEPARTMENT OF JUSTICE TO LOCAL AGENCIES UNDER PROPOSITION 56, THE HEALTHCARE, RESEARCH AND PREVENTION TOBACCO TAX ACT OF 2016 (THE ACT)**

*All items contained in this handbook are subject to change.*

## **Eligibility**

In accordance with the State Budget Act and Proposition 56, any local government or local government agency within the State of California that has authority to enforce tobacco-related state laws or local ordinances, is eligible to receive funds.

## **Purpose**

Funds are granted for enforcement of tobacco-related state laws or local ordinances specifically including state and local laws related to the illegal sales and marketing of tobacco products to minors, and for investigative activities and compliance checks to reduce illegal sales of tobacco products to minors and youth.

## **Applications**

An eligible agency may submit one application.

## **Joint Applications**

An eligible agency may submit one application and one joint application. A joint application should include, in addition to other requirements set forth in the Request for Proposals, the following information:

- Identification of all entities that are jointly applying for the grant.
- A designation of the primary applicant and of all secondary applicants.
- A statement from the primary applicant indicating that the primary applicant agrees to assume responsibility for performance of the Projects in the event a grant is made.
- A statement from each secondary applicant identifying and acknowledging each responsibility that the secondary applicant shall assume in the event a grant is made to the primary applicant.
- A statement setting forth the benefits and disadvantages reasonably likely to arise from joint, as distinct from separate, performance of the project.
- A statement indicating whether any primary or secondary applicant is also submitting a separate application or is a primary or secondary applicant in any other joint application, and briefly identifying such application(s).

## **Competitive Process**

All Grants will be made on a competitive basis.

## **Administrative Review**

- Applications will undergo an administrative review by the Department of Justice (Department) to determine whether the application is timely, legible and complete, and whether the applicant agency is eligible.
- Incomplete, illegible and untimely applications and applications received from ineligible entities will be disqualified.
- An applicant may appeal disqualification of its application.
- An applicant may request the Department to amend its application.
- All applications that are not disqualified will undergo a merits review.
- Department staff shall submit the results of the administrative review to the Attorney General and/or his designee for approval.

## **Merits Review**

- Applications that satisfy the administrative review shall be reviewed by a merits review committee.
- The merits review committee shall evaluate and score applications based on the extent to which the applications satisfy the scoring criteria set forth in the Request for Proposals, and on the extent to which the applicants show capacity to perform the proposed projects, to comply with the Act's requirement to refrain from using grant funds to supplant any existing state or local funding of activities that have the same purposes as those of the Act, and to comply with the administrative requirements of the grant, including those regarding submission of progress and final reports.
- The merits review committee shall make a funding recommendation for each Application, other than those that were disqualified or denied, based on the following factors:
  - Amount of available funding.
  - Amount of funding requested for eligible and meritorious activities.
  - The merits of the application based on the scoring criteria set forth in the Request for Proposals.
  - The Department's program, enforcement and research priorities, if any, as articulated in the Request for Proposals.
  - Indicia of support for the application from local stakeholders including, for example, tobacco control and prevention programs; public health, health and human services, or environmental health departments; local lead agencies; community or youth organizations; and local elected officials.
  - Indicia of the likely benefits of the scale of operations.
  - Indicia that the funds granted will not be used to supplant existing state or local funds used for the same purpose.
  - An applicant may appeal a denial or a reduction in the amount awarded.
  - The merits review committee shall provide its scoring and recommendations as to approval or denial of applications, and as to the amount of funding for successful applications, to the Attorney General and/or his designee.

### **Notification of Award, Denial or Disqualification**

- The Department shall send out notice to all applicants of disqualification, denial, award, or other decision within 30 days of the Attorney General's decision. A notice of denial or disqualification will include the reason for the denial or disqualification.
- Notification of award does not authorize commencement of grant activities. Grant activities may not begin until a memorandum of understanding between the grantee and the Department is fully executed.

### **Grant Agreement**

- A written and signed memorandum of understanding is required for all grants.
- The grant agreement includes the Request for Proposals and associated documents, this handbook, the Application and any associated documents submitted in response to the Request for Proposals, and the signed memorandum of understanding.
- A grant agreement for a joint application includes, in addition to the items required for all grant agreements, the following:
  - Name of the primary grantee.
  - Name of each secondary grantee.
  - The division of funds between each grantee, if applicable.
  - Name of the Grant manager for the primary grantee.
  - Name of the official contact for the grant for each secondary grantee.
  - Name of the authorizing official for the primary grantee.
  - Name of the authorizing official for each secondary grantee.
  - Name of the fiscal or accounting official for the primary grantee.
  - Approved designation, between the primary and each secondary grantee, of responsibilities for performance of the grant.
  - A statement from the primary grantee indicating assumption of responsibility for performance of the project(s) in the event a grant is made.
  - A statement from each secondary grantee identifying and acknowledging each responsibility that the secondary grantee shall assume in the event a grant is awarded.

### **Prior Written Approval Required**

Prior approval by the Department is required for changes to an approved project or budget. Prior approval must be requested, and may be granted, only in writing. Prior approval is required for a revision of the project or scope of work, budget changes, extension of grant duration, purchase of equipment with a purchase price of over \$5,000 per item not included in the approval budget, travel not included in the approved budget, contracting out or obtaining the services of a third party not included in the grant agreement, withdrawal of a secondary grantee from a project that is part of a joint application, or use of program income for purposes not in accordance with the grant agreement. Failure to obtain prior approval may result in the Department pursuing remedies for non-compliance.

## **Access**

Upon reasonable notice, grantees shall allow the Department access to the records of the project, the project sites (if applicable), and any employees or contractors who may reasonably have information related to the project. Also, upon reasonable notice, grantees shall allow the Department to accompany the grantee on project-related activities.

## **Performance Compliance, Audit, and Responsibility**

- Grants and funding are subject to performance compliance reviews in the form of site visits, interviews with grantees, contractors and other stakeholders, and review of relevant documents. This review may be performed by the Department or its designee.
- The grantee is the responsible agency and may not transfer or assign the grant to another entity without prior written authorization from the Department.
- Grantees are subject to audit by the California State Auditor, as required by Revenue and Taxation Code, section 30130.56, subdivision (a).
- Grantees are subject to a financial compliance review in the form of an audit, an agreed-upon-procedure, or both. A review will be conducted in accordance with the Generally Accepted Government Auditing Standards and Revenue and Tax Code, sections 30130.56 and 30130.57, subdivisions (e)(1), (f) & (g), designed to accomplish any one or more of the following: to monitor compliance with the requirements of the grant program and the terms and conditions of the grant agreement; to assess the quantity, quality, timeliness and cost of services the grantee produces and delivers under the terms and conditions of the grant agreement; and to assess the performance of any contract entered into by a grantee relating to a grant.

## **Reports**

Progress reports, final reports, and inspection data shall be submitted by the grantee to the Department in accordance with the reporting requirements and deadlines set forth in the grant agreement.

## **Withholding of Ten Percent Pending Closeout**

The Department may withhold ten percent of the grant amount pending receipt of the final report by the Department, approval of the final report by the Department, resolution of performance issues to the satisfaction of the Department, or resolution of audit findings prior to closeout.

## **Procurement of Goods or Services**

The grantee shall follow its own written procurement policies and procedures when procuring goods or services for activities relating to performance of the grant. All documents related to the procurement of goods or services shall be maintained by the grantee for the records retention period and provided to the Department upon request.

## **Use of Contractors**

- Grantees may contract for services for performance of a project as set forth in the grant agreement or with prior written approval from the Department.
- Contractor services must be for the purpose of achieving the grant objectives.

- Grantees are responsible for ensuring that each contractor complies with the grant agreement, including, if applicable, collecting and reporting of inspection data.
- Contracting out shall not affect the grantee's overall responsibility for the management of a Project, and the grantee shall reserve sufficient rights and control to enable it to fulfill its responsibilities for the grant.
- Grantees shall have a written agreement with each contractor and shall submit a copy of the agreement to the Department.

### **Administrative Costs**

A Grantee shall not use more than 5 percent of the funds received for administrative costs. See Rev. & Tax Code, section 30130.57, subd. (f) & (g).

### **Project Costs**

Project costs may include the reasonable and necessary cost of tobacco products purchased during grant-related enforcement operations and the reasonable and necessary costs incurred to obtain identification document and electronic payment services for use by minors or agents during grant-related enforcement operations.

### **Project Income**

Income generated from project, if any, may be reinvested by the grantee into the project for which the grant was awarded, returned to the Department, or the Department may approve other uses by the grantee of program income in accordance with the general purposes of the grant. Program income does not include fines, penalties, legal costs, attorney's fees, or other property collected as a result of enforcement actions by the grantee.

### **Records of Tobacco Products**

Grantees shall retain and preserve the tobacco products purchased or otherwise obtained during the course of performing a project, and the purchase records for such tobacco products, in accordance with the grantee's written policies regarding retention, destruction or forfeiture of such items.

### **Travel**

- Travel costs of grantees are permitted for travel to/from tobacco-related trainings, meetings, seminars, and/or workshops. All travel must be approved and included in the grant budget.
- Travel by grantees shall be in accordance with the State of California's written travel policies, subject to any further requirement in the grant agreement.
- Travel costs shall be substantiated by receipts and these receipts shall be made available to the Department upon request for reimbursement.
- Travel costs consist of the reasonable and necessary charges for commercial fares, public transportation, private vehicle, overnight and day parking of private or rental vehicles, bridge and road tolls, meals, lodging, and incidentals, incurred for travel necessary for the performance of the grant.

### **Equipment Property Records**

Grantees shall maintain property records for the records retention period for each item of tangible personal property having a useful life of more than one year and a per-unit acquisition cost of \$5,000 or more.

### **Records Retention**

Grantees shall maintain records relating to the application, grant agreement, scope of work, budget, and performance of projects, for the records retention period. These records include but are not limited to reports of enforcement activities, educational programs, policy programs, personnel activity records, payroll records, travel claims, receipts, documents showing the calculation or methodology for determining whether funds were supplanted, and documents showing the calculation or methodology for determining administrative costs.

### **Noncompliance**

- In the event a grantee fails to comply with the terms and conditions of the act or grant agreement the Department will notify the grantee and meet and confer to resolve the issue.
- In the event the Department and a grantee are unable to resolve a grantee's non-compliance with the terms and conditions of the Act or grant agreement, the Department may take one or more of the following actions:
  - Withholding of payments.
  - Recovery of funds paid to the grantee.
  - Imposition of additional conditions on the grantee.
  - Termination of the grant agreement.
  - Disqualification from consideration for future grants.

### **Closeout**

The Department shall conduct closeout review activities prior to closing out each grant to ensure that all necessary administrative actions and Projects have been completed by the grantee. Closeout review activities include review of the final report due from the grantee to ensure it is sufficient and complete, verification that any performance issues are resolved, and verification that any audit or agreed-upon-procedure findings are resolved.

### **Allowable Costs; Reasonable Costs; Allocable Costs**

- Costs must meet all of the following general criteria to be allowable:
  - Reasonable for the performance of the grant, and allocable to the grant.
  - Accorded consistent treatment. In the event a cost is assigned in one way and another cost incurred for the same purpose in like circumstances was previously allocated in another way, the grantee shall provide a description of both the current and the prior assignments. The description shall be sufficient for the Department to ascertain whether or not funds have been supplanted.
  - Adequately documented.
  - Comply with the Act and terms and conditions of the grant agreement.
  - Comply with applicable state and local laws.



- Not be disallowed under the terms of the grant agreement.
- A cost is reasonable if, in its nature and amount, it does not exceed that which would be incurred by a prudent person under the circumstances prevailing at the time the decision was made to incur the cost. In determining the reasonableness of a given cost, consideration will be given to:
  - Whether the cost is generally recognized as ordinary and necessary for the proper and efficient performance of the grant.
  - The requirements of the grant program and the terms and conditions of the grant agreement.
  - Market prices for comparable goods or services for the geographic area.
  - Whether the grantee deviates from its established practices and policies regarding the incurrence of costs, which may unjustifiably increase a cost.
- A cost is allocable to the grant if the cost is incurred for grant-related activities.
- Unless otherwise provided for in the grant agreement, if a cost is incurred for the performance of grant-related activities and also for other non-grant-related activities, and benefits both grant and non-grant activities, the proportion that is incurred for the performance of grant-related activities may be approximated using reasonable and properly documented methods and assigned to the grant.

## **Appeals**

- Actions that a grantee may appeal include:
  - Disqualification of an application.
  - Imposition of additional conditions.
  - Suspension or termination of a grant agreement.
  - Denial of an application in whole or in part.
- Appeals must be in writing, postmarked within 30 calendar days of the date of the notification of the action, and mailed or emailed to the Department at the address provided in the Request for Proposals.
- An appeal must include:
  - A copy of the notification or other communication from the Department.
  - The name of the applicant or grantee, as applicable.
  - A statement of the reasons the action by the Department should not be imposed, including any documentation to support the appeal.
  - A statement of the remedy sought by the appellant.
  - Contact information for the appellant.
  - The signature of the authorized representative of the appellant.
- Appeals not postmarked or electronically transmitted in a timely fashion will be denied.
- The action or actions specified in the notification will remain in effect while the appeal is under review.
- The Attorney General or designee who is employed by the Department and who is not a member of the merits selection committee will make the final decision regarding the appeal.
- The Department will issue a decision on the appeal no later than 60 calendar days from the date the appeal is received.

- The remedy for an appeal that is successful in whole or in part may be provided either during the course of the current funding cycle or in a subsequent funding cycle that may be during the course of the following fiscal year, based on practicality and the availability of funds.

## **Definitions**

The following definitions apply to this handbook and the associated request for proposals:

- **Administrative Costs** – Necessary and reasonable indirect expenses as allowed under the terms and conditions of the grant agreement.
- **Application** – A request by an eligible agency to receive a grant from the Department pursuant to Revenue and Tax Code Section 30130.57(e)(1).
- **Contractor** – An entity or person, including a consultant, that enters into a contract with a grantee to perform an activity.
- **Department** – The California Department of Justice.
- **Grant** – An award of financial assistance made to a Grantee, the principal purpose of which is the transfer of funds to carry out a project of public benefit authorized and intended by Revenue and Taxation Code, section 30130.57, subdivision (e)(1), a Request for Proposals, and the grant agreement between the grantee and the Department.
- **Grant Agreement** – The final agreement entered into between the Department and a grantee, or primary grantee in the case of a joint application, which sets forth the terms and conditions of the Grant. The grant agreement includes the executed memorandum of understanding, Request for Proposals and associated documents, application and associated documents, and this handbook.
- **Grant Duration** – The period of time provided for in the Grant Agreement.
- **Grantee** – A local agency to which a grant is awarded. A grantee includes a primary or a secondary grantee as specified in a grant agreement arising from a Joint application.
- **Inspection Data** – Information regarding retailer inspection or enforcement activity by a grantee under the terms of the grant agreement, including but not limited to information about retailer location, retailer violations, retailer inspections, and retail-related citations, licensing actions, administrative proceedings, diversion proceedings, and prosecutions. Inspection data includes information regarding such activities whether or not a violation was found or a citation was issued. A grant agreement may contain further information about what constitutes inspection data, how it is to be gathered and retained by a grantee, and how and when it is to be reported to the Department.

- Joint Application – A request to receive a grant that is submitted by more than one eligible agency. A joint application includes a primary applicant and at least one secondary applicant.
- Local Law Enforcement Agency – A division, department, board, office, section, or branch of local government, or institution of public education, that employs one or more persons appointed and duly sworn as a peace officer; city police department; county sheriff’s department; police protection and community services district; agency of a city, county, city and county, special district, or other political subdivision of the state that is authorized to enforce criminal statutes, regulations, or local ordinances; city or county health department that is authorized to conduct workplace inspections; city, county or regional public transit agency; city, district or county housing authority; police or school resource office of a K-12 school district; police department of the University of California, California State University, or California Community Colleges; city, district, or county attorney’s office; or any other local public agency that employs one or more sworn peace officers.
- Project – An undertaking that is planned to conduct activities and achieve stated goals and objectives for which funds were awarded by the Department to a grantee from the California Healthcare, Research and Prevention Tobacco Tax Act of 2016 Fund.
- Records Retention Period – The period of time after the grant is closed out that a grantee must maintain records related to the grant, which is three years.
- Supplant – Replace or reduce the amount of state or local funds currently being appropriated or previously appropriated for a purpose because grant funds are available or expected to be available to fund that same purpose. The effect of supplanting would be to reduce the total amount that would have been available for the purpose stated in the application or grant agreement.
- Tobacco Products – The same meaning as in Revenue & Taxation Code, section 30130.50, subdivision (b).