Kansas Administrative Regulations

Kansas Department of Transportation

Article 39.—Rail Service Assistance Program

36-39-3. Requirements and conditions for application for a loan guarantee.

(a) Each qualified entity and its lender shall file with the secretary the original and 10 copies of each application.

(b) The loan guarantee program's aggregate annual obligations shall not exceed $5,000,000. If, at the time of application, loan guarantees have previously been approved by the legislature or state finance council during the same fiscal year, the amount requested shall not exceed the difference of $5,000,000 and the amounts previously approved during that fiscal year. The sum of the amounts sought in each fiscal year, including any outstanding loan guarantees previously approved pursuant to K.S.A. 1995 Supp. 75-5046, shall not exceed $20,000,000.

(c) The applicant and lender shall acknowledge in the application that obligations of the state of Kansas resulting from the approval of an application shall be limited to payment of the remaining principal of the specific loan after lenders have exhausted all other available remedies against the obligor.

(d) Each application shall include the following:

(1) the full and correct name, principal business address, telephone number and facsimile number of the applicant;

(2) the date of the applicant's incorporation, or organization if not a corporation, and the name of the government, state, or territory under the laws of which it was incorporated or organized. If the applicant is a partnership, association or other form of organization other than a corporation, a full description of the organization shall be furnished;

(3) the name, title, and address of the person to whom correspondence regarding the application should be addressed;

(4) a certified copy of proposed or executed loan agreements, including related agreements or other documents, and detailed descriptions of the loan guarantee, including:

(A) the total amount of the loan to be guaranteed;

(B) a description of all facilities included in or directly affected by the proposed project, the physical condition of such facilities and a description of the project;

(C) each part or sub-part into which the project may reasonably be divided and the priority and schedule of expenditures for each part or sub-part;

(D) the estimated timing of the expenditure of the proceeds of the loan;

(E) a statement of whether the project involves another railroad or other participant, through joint execution, coordination, or otherwise. The applicant shall include a description of the relative participation of the applicant and the other railroad or participant, including a statement of the financing arrangements of each participant, the portion of the work to be performed by each participant and the contemplated level of usage of the facility by each participant when the work is completed, along with a statement by a responsible officer or official of the other railroad or participant that the information provided reflects their agreement on these matters;

(F) the effective date of the loan;

(G) a schedule of repayment of the principal and interest;

(H) a description of the security to be offered the secretary in connection with any loan guarantee, including a description of the priority of this loan in relation to other liens or security interests on the property that is designated as security, the applicant's opinion of the value of this security, and the basis for the opinion; and

(I) a description of the lender's security and remedies against the obligor or any other parties before the state of Kansas is obligated to pay any defaulted loan; and

(J)(i) if the loan for which a guarantee is sought is outstanding, the effective interest rate of the loan for which a loan guarantee is sought; or

(ii) if the applicant has discussed with a potential lender the terms of a loan guarantee to be issued, the proposed effective rate of interest;

(5) a statement, in summary form, showing financial obligations to or claims against the state of Kansas or obligations for which the state of Kansas is guarantor, if any.

Such statements shall be made by the applicant, any affiliated corporate entity of the applicant or the applicant's parent, and shall describe the following:

(A) the status of any and all claims under litigation; and

(B) any other debts or guarantees existing between the applicant and the state of Kansas, including the name of the department or agency involved in such loans, claims or other debts;

(6) an analysis which includes the following:

(A) a statement that the financing is justified by present and future demand for rail services, that the financing will meet existing needs for such services and that the project will provide shippers with improved service. The applicant shall submit supporting evidence with the statement, including copies of all market analyses and studies which have been performed to determine present and future demand for rail services;

(B) a description of the impact of the financing upon the projected traffic to be originated, terminated, or carried by the obligor for at least the five years immediately following completion of the project;

(C) a five-year *pro forma* statement of cash flow attributable to the project; and

(D) a description of any other benefit which would accrue to the applicant from the proceeds of the obligation;

(7) a business plan, with supporting evidence, showing:

(A) that the applicant is financially capable of acquiring, rehabilitating, or improving facilities in an efficient and economical manner;

(B) that the ratio of benefits-to-costs for any project funded by such guaranteed loan will be greater than one. The benefit-to-cost methodology to be used for this determination shall be the "Benefit-cost methodology for the Local Rail Freight Assistance Program" approved by the F.R.A. in July, 1990;

(C) that the applicant will submit with the application audited financial statements, prepared in accordance with generally accepted accounting principles, for the past two annual accounting periods;

(D) any car supply agreements and the estimated rail traffic;

(E) a balance sheet, income statement, statement of changes in financial position or statement of cash flows, notes to financial statements, operating plans and appraisals of the assets to be acquired;

(F) that the applicant has been turned down by a lending institution and that adequate funding for the proposed project is not otherwise available on terms that would make the proposed project financially feasible, in the absence of a state loan guarantee; and

(G) a written opinion from bond counsel that the guarantee of such loan by the secretary would not adversely affect the rating of bonds issued pursuant to K.S.A. 1995 Supp. 68-2314 *et seq.,* and amendments thereto;

(8) a statement, with supporting evidence, that the financing will improve the ability of the applicant to transport freight;

(9) a statement describing the maintenance program for the applicant's entire rail system and the planned maintenance program for the facilities financed by the proceeds of the obligation;

(10) from each existing lender or proposed prospective lender a statement which includes the following:

(A) the lender's full and correct name, principal business address, telephone number and facsimile number;

(B) references to applicable provisions of law, the lender's charter and other governing instruments that confer authority on the lender to accept the obligation;

(C) a copy of the loan agreement between the lender and the applicant;

(D) a brief statement of the circumstances and negotiations leading to the agreement by the lender to accept the proposed obligation;

(E) a copy of the lender's determination that the loan would not be economically feasible without the proposed loan guarantee;

(F) a statement of the nature and extent of any affiliation or business relationship between the existing or prospective lender and any of its directors, partners or principal executive officers, with the applicant and any of its directors, partners, or principal executive officers or with any person whose name is required to be furnished under this article; and

(G) a full and complete statement of all sums to be given to the lender in connection with the proposed obligation, including:

(i) the name and address of each person to whom any payment has been made or will be made and nature of any affiliation, association or prior business relationship between any person named in this paragraph and the lender or any of its directors, partners, or officers;

(ii) the amount of the cash payment or the nature and value of other consideration; and

(iii) any condition upon the obligation of the obligee to make any payment;

(11) a hazardous waste assessment report on the rail lines for which a loan guarantee is requested;

(12) a certificate of title to prove the applicant has the legal ability to allow its property to be encumbered;

(13) proof of liability insurance in effect in the amount of $5,000,000 per occurrence;

(14) an opinion from applicant's counsel that applicant is legally authorized to make this application and has no outstanding litigation or impediment that would impair its ability to perform the obligation;

(15) an acknowledgement by the applicant that the secretary may conduct a pre-audit of applicant's accounting system to determine if the system is adequate to isolate and accumulate project costs; and

(16) any additional information that the applicant deems appropriate to convey a full and complete understanding of the project and its impact or to otherwise assist the secretary in making a determination.

(Authorized by K.S.A. 1995 Supp. 75-5046; implementing K.S.A. 1995 Supp. 75-5046 and 75-5047; effective Aug. 30, 1993; amended July 11, 1997.)