

Memorandum

To: CHAIR AND COMMISSIONERS

CTC Meeting: June 24, 2020

From: MITCH WEISS, Executive Director

Reference Number: 4.11, Action

Prepared By: Kevin Dillon
Assistant Deputy Director

Published Date: June 12, 2020

Subject: Transit and Intercity Rail Capital Program Allocation Policy, Resolution G-20-61

Recommendation:

Staff recommends the California Transportation Commission (Commission) approve the following recommendations:

- (1) Approve the Transit and Intercity Rail Capital Program Allocation Policy (Attachment B).
- (2) Apply the Interim Timely Use of Funds Policy adopted at the May 2020 Commission meeting to the Transit and Intercity Rail Capital Program for all project delivery milestones after allocation.
- (3) Direct the California Department of Transportation (Caltrans) to submit a program delivery status update by October 1, 2020 on all projects and project components that have been allocated by the Commission but that have not yet been completed, and to report on all Transit and Intercity Capital Program allocations on a semi-annual basis.

Issue:

The Commission has adopted policies and procedures for the timely use of funds for all programs under the Commission's purview, except for the Transit and Intercity Rail Capital Program. In August 2018, the Commission approved a policy memo (Attachment C) to continue its timely use of funds policies and to hold responsible agencies accountable for timely delivery of public funding commitments for all competitive programs under the Commission's purview.

To ensure consistency among all programs, Commission staff proposes to define processes and expectations for all allocations and time extensions made for the Transit and Intercity Rail Capital Program as detailed in the Transit and Intercity Rail Capital Program Allocation Policy (Attachment B). This policy will apply timely use of funds provisions to all project allocations in the Transit and Intercity Rail Capital

Program beginning in FY 2020-21 and require project delivery time extensions to be brought before the Commission for approval with the following exceptions:

1. **Project Components with Allocations Approved Prior to July 1, 2020.** For project components that received an allocation prior to July 1, 2020, the basis for applying the Timely Use of Funds provisions will be the milestones in the program delivery status update presented by Caltrans no later than October 1, 2020.
2. **Projects with Multi-Year Funding Agreements.** For a project that received an allocation for a phase of a project component that will require additional allocations for the same phase, the schedule at the time the initial allocation was approved will be the basis for applying the Timely Use of Funds provisions.

Furthermore, to ensure that prior allocations made to the Transit and Intercity Rail Capital Program are consistent with this policy, Caltrans shall provide a program delivery status update for all projects and project components that have been allocated by the Commission, but have not yet been completed, by no later than October 1, 2020. This report will be in addition to the semi-annual reports provided by Caltrans on the status of the Transit and Intercity Rail Program. This update will include the delivery status of project milestones as follows:

- Construction contract award date or anticipated award date.
- Project completion date or expected completion date.
- Project expenditures to date.

Background:

California Public Resources Code Section 75220 requires the Transit and Intercity Rail Capital Program to fund transformative capital improvements that will modernize California's intercity, commuter, and urban rail systems and bus and ferry transit systems.

The objectives of the Transit and Intercity Rail Capital Program are to:

- Reduce emissions of greenhouse gases.
- Expand and improve transit service to increase ridership.
- Integrate the rail service of the state's various rail operators, including integration with the high-speed rail system.
- Improve transit safety.

Pursuant to statute, the California State Transportation Agency (CalSTA) is responsible for developing guidelines for the Transit and Intercity Rail Capital Program, making project selections, approving the program of projects, and updating the program every even-numbered year.

Statute further requires the Commission allocate funds to projects approved for funding by CalSTA for the Transit and Intercity Rail Capital Program.

Attachments:

- Attachment A: Resolution No. G-20-61
- Attachment B: Transit and Intercity Rail Capital Program Allocation Policy
- Attachment C: Program Guidelines: Timely Use of Funds Provisions

**CALIFORNIA TRANSPORTATION COMMISSION
TRANSIT AND INTERCITY RAIL CAPITAL PROGRAM ALLOCATION POLICY**

RESOLUTION G-20-61

- 1.1 **WHEREAS**, the California Public Resources Code Section 75220 created the Transit and Intercity Rail Capital Program to fund transformative capital improvements that will modernize California's intercity, commuter, and urban rail systems and bus and ferry transit systems, and
- 1.2 **WHEREAS**, the objectives of the Transit and Intercity Rail Capital Program are: (1) reduce emissions of greenhouse gases, (2) expand and improve transit service to increase ridership, (3) integrate the rail service of the state's various rail operators, including integration with the high-speed rail system, and (4) improve transit safety, and
- 1.3 **WHEREAS**, the California State Transportation Agency (CalSTA) is responsible for developing guidelines, evaluating applications, and approving a multiyear program of projects, and
- 1.4 **WHEREAS**, the California Transportation Commission (Commission) is responsible for allocating funding to projects in the Transit and Intercity Rail Capital Program of projects approved by CalSTA, and
- 1.5 **WHEREAS**, the Commission has incorporated timely use of funds provisions to all programs under the Commission's purview; these provisions establish requirements for allocation, project delivery deadlines, time extensions, and project scope changes be approved by the Commission, and
- 1.6 **WHEREAS**, the Commission proposes to apply these timely use of funds provisions to the Transit and Intercity Rail Capital Program, to be consistent with all programs under the Commission's purview and provide clear expectations for Commission allocations.

- 2.1 **NOW, THEREFORE, BE IT RESOLVED**, that the Commission hereby adopts the timely use of funds provisions for the Transit and Intercity Rail Capital Program, as defined in the Transit and Intercity Rail Capital Program Allocation Policy (Attachment B), and
- 2.2 **BE IT FURTHER RESOLVED**, that the California Department of Transportation (Caltrans) shall provide the Commission with a project status update no later than October 1, 2020, and report on all Transit and Intercity Rail Capital Program project allocations to ensure compliance with this policy, and
- 2.3 **BE IT FURTHER RESOLVED**, that Caltrans shall report semi-annually on the status of the projects in Transit and Intercity Rail Capital Program to the Commission.

**CALIFORNIA TRANSPORTATION COMMISSION
TRANSIT AND INTERCITY RAIL CAPITAL PROGRAM ALLOCATION POLICY
Resolution G-20-61**

In accordance with Public Resources Code 75220(C), the California Transportation Commission (Commission) shall allocate funding to applicants pursuant to the program of projects approved by the California State Transportation Agency (CalSTA) for the Transit and Intercity Rail Capital Program. The Commission recognizes that the approved program of projects is expressed in more detail with regards to project component, phase and fiscal year of implementation in the Transit and Intercity Rail Capital Program Allocation Plan (which is regularly updated as approved projects progress through development). These two documents are collectively referred to here as the “Program”. Allocations made by the Commission follow the timely use of funds provisions that are consistent across all funding programs under the Commission’s purview.

To provide consistency in the programming of state transportation funds, the total award to each project component should be listed in the Transit and Intercity Rail Capital Program in the fiscal year(s) in which the project component will be implemented. If a project is expected to require multiple contracts for any component, each contract should be programmed separately. All project allocation requests that come before the Commission must be consistent with the Program.

The following describes how the Commission intends to manage Transit and Intercity Rail Capital Program allocations:

1. Allocations will be made to the full programmed amount for each project component. If a project will require multiple construction contracts, allocations will be made to the full programmed amount for each contract. The Commission will consider the allocation of funds for a project when it receives an allocation request with a recommendation from the California Department of Transportation (Caltrans). The recommendation should include a determination of project readiness, the availability of appropriated Transit and Intercity Rail Capital Program funding, and the availability of all other committed funding.

Funds allocated for project development or right-of-way costs must be expended by the end of the fiscal year of allocation plus two additional fiscal years, unless a longer time-frame is requested at the time of allocation or the Commission approves a time extension subsequent to the allocation.

Allocations for award are valid for six months from the date of allocation unless otherwise indicated at the time of allocation or the Commission approves a time extension subsequent to the allocation. For funds allocated for construction, including rolling stock procurement, the implementing agency has up to 36 months after the award of a contract, to complete (accept) the contract unless a longer time-frame is requested at the time of allocation or the Commission

approves a time extension subsequent to the allocation. The implementing agency must submit a final invoice to Caltrans no later than 180 days after contract acceptance.

2. The Commission will approve the allocation if the funds are available and the allocation is necessary to implement the project or project component included in CalSTA's approved 5-Year Transit and Intercity Rail Capital Program. For projects that are ready to advertise, the Commission expects Caltrans to certify that a project's plans, specifications and estimates are complete, environmental and right-of-way clearances are secured, and all necessary permits and agreements (including railroad construction and maintenance) are executed.

For the procurement of rolling stock, the Commission may consider the exercising of an option or the certification of funds for contract elements as meeting the milestone for contract award provided that the agency is under no contractual obligation to pay any funds or penalty if the option is not exercised or the funds not certified.

Construction allocations for projects or project components not ready for advertisement will not be placed on the Commission's agenda for allocation approval.

In compliance with Section 21150 of the Public Resources Code, the Commission will not allocate funds for design, right-of-way, or construction prior to documentation of environmental clearance under the California Environmental Quality Act. As a matter of policy, the Commission will not allocate funds for design, right-of-way, or construction of a federally funded project prior to documentation of environmental clearance under the National Environmental Policy Act.

The implementing agency must not award the contract for a project or project component until the Commission has allocated the funds for the project. Any changes to the scope of a project or project component after the allocation of funds to the project or project component must be approved in advance by the Commission.

3. CalSTA may change the timeline for the allocation of a project component based on changes in project delivery needs. These changes will be communicated in updates to the Program. The Commission may grant the extension of a deadline for award of a contract, for expenditures for project development or right-of-way, for project completion, and for project reimbursement. The Commission may grant a deadline extension if it finds that an unforeseen and extraordinary circumstance beyond the control of the agency has occurred that justifies the extension. The extension will not exceed the period of delay directly attributable to the extraordinary circumstance, and in no event will be longer than 20 months.

All requests for project delivery deadline time extensions shall follow the Caltrans time extension process in order to be included in the Commission's agenda. The extension request should describe the specific circumstance that justifies the extension and identify the delay directly attributable to that circumstance. Caltrans will review all time extension requests and make a recommendation to the Commission for approval.

4. Caltrans is responsible for managing the cash flow needed to match the Transit and Intercity Rail Capital Program's resources to projects or project components that have received Commission allocations, in accordance with the terms of CalSTA delegated authority and approval.
5. After allocation, Caltrans is responsible for managing project delivery and reimbursements in cooperation with the implementing agencies, in accordance with the terms of CalSTA delegated authority and approval.

Memorandum

Reference No.: 4.11
June 24, 2020
Attachment C

To: CHAIR AND COMMISSIONERS

CTC Meeting: August 15-16, 2018

From: 
SUSAN BRANSEN
Executive Director



Reference No.: 4.23
Action

Published Date: August 3, 2018

Prepared By: Stephen Maller
Chief Engineer

Subject: PROGRAM GUIDELINES: TIMELY USE OF FUNDS PROVISIONS

ISSUE:

Should the California Transportation Commission (Commission) retain its current timely-use-of-funds policies as specified in the Commission adopted competitive program guidelines?

RECOMMENDATION:

Staff recommends the Commission continue to use existing timely-use-of-funds policies as specified in the Commission adopted competitive program guidelines to hold responsible agencies accountable for timely delivery of public fund commitments.

BACKGROUND:

Senate Bill (SB) 45 (Chapter 662, Statutes of 1997) consolidated many highway and rail transportation programs into the State Transportation Improvement Program (STIP). Prior to SB 45, the Commission's Financial Guidelines provided direction on programming, allocation, award, timely-use-of-funds and other requirements for the varied highway and rail programs. Post SB 45 the Commission reissued its Financial Guidelines as the STIP Guidelines to incorporate the new SB 45 provisions. At that time, the Commission stipulated that the Caltrans State Highway Operation and Protection Program would follow the STIP Guidelines as appropriate.

In response to a decrease in timely project delivery, the Legislature passed SB 837 (Chapter 53, Statutes of 1998) which added the following timely-use-of-funds provisions under Government Code Section 14529.8:

(a) Funds may be allocated by the commission for each project element during the fiscal year that is identified in the state transportation improvement program and the funds shall be available for expenditure during that fiscal year and the following two fiscal years. Any funds not allocated, or allocated but not encumbered, during the period specified in this section, shall remain in the State Highway Account or Public Transportation Account, or be returned to that particular account, as the case may be.

(b) Upon a finding that an unforeseen and extraordinary circumstance beyond the control of the responsible agency has occurred that justifies an extension, the commission may extend the deadlines specified in subdivision (a). The deadline extensions shall not exceed the period of delay directly attributed to the extraordinary circumstance and in no event be more than 20 months. The commission shall not grant more than one extension.

The Commission amended its STIP Guidelines to incorporate the timely-use-of-funds provisions of Government Code Section 14529.8 and allowed for one up to 20-months extension for unforeseen and extraordinary circumstance beyond the control of the responsible agency and only for the period of delay directly attributed to the extraordinary circumstance per unique stage in a project's progress:

1. Allocation Time Extension
2. Contract Award Time Extension
3. Project Completion Time Extension
4. Project Expenditure Time Extension

As the Commission developed guidelines in consultation with transportation stakeholders for newly enacted transportation programs such as the Active Transportation Program (ATP), Solutions for Congested Corridors Program (SCCP), Trade Corridor Enhancement Program (TCEP) and Local Partnership Program (LPP), the Commission included timely-use-of-funds provisions in the program guidelines to hold Caltrans and local governments accountable for the efficient investment of public funds and accountable to the people through performance goals that are tracked and reported as required by Streets & Highways Code Section 2032.5 (a). All the program guidelines mirror the STIP Guidelines in that the provisions allow for extensions in the four unique project stages, the requests must show an unforeseen and extraordinary circumstance beyond the control of the responsible agency, the deadline extensions shall not exceed the period of delay directly attributed to the extraordinary circumstance, the requests cannot be for more than 20-months under any circumstance, and the Commission shall not grant more than one extension per unique project stage. Several program guidelines specify a more restrictive maximum extension period of no more than 12-months due to the extremely competitive nature of the programs.

Staff recommends the Commission continue applying the existing timely-use-of-funds policies as specified in the Commission adopted program guidelines. However, there are other options the Commission could consider since the timely-use-of-funds requirements specified in Government Code Section 14529.8 refer only to the STIP.

The Commission could choose not to allow any time extensions in the Commission adopted competitive programs since there is no statutory authority that addresses the consideration of time extensions. Also, due to the competitive nature of the programs, each programmed project was deemed to have competed well for limited state resources compared to other submitted applications. If a programmed project is not able to reach completion via the adopted schedule, the funding for that project would lapse and could be available for

reprogramming at a subsequent cycle or could be reallocated to the next eligible project that was not funded because of funding capacity limitations.

The Commission could choose to allow multiple time extensions within a defined time span of each unique project stage say 12-months, 20-months or any other number of months the Commission pleases to use in the Commission adopted competitive programs since there is no statutory authority that precludes such consideration of time extensions. Such multiple time extensions would reduce accountability and if invoked several times at each unique project stage would add years to project delivery. For example if multiple extensions are granted at each project stage and the defined time is 20-months, the total project delay could be 80-months (6.67 years). If the defined time is 12-months, the total project delay could be 48-months (4 years).

The Commission could allow unlimited time extensions in the Commission adopted programs other than the STIP. Unlimited time extensions would result in significantly reduced accountability and additional workload for the Commission, Caltrans and Commission staff. One consequence of unlimited time extensions would be that few projects are completed in a reasonable amount of time and the public could perceive that the Commission and project sponsors are incapable of on time delivery of promised projects.

The current Commission timely-use-of-funds policy of granting only one time extension per unique project stage is not overly taxing for projects as is illustrated by the following statistics: from 2014 through June 2018, under the Commission's current ATP program guidelines the Commission allocated funds to 751 ATP projects, approved 344 ATP time extensions of which 16 lapsed and resulted in the failure of 4 ATP projects that could not meet their timely-use-of-funds provisions. This is a failure rate of 0.5 percent, but does keep project sponsors accountable for on time delivery of their projects. The number of extension requests will surely increase if multiple or unlimited time extensions were to be granted, but granting multiple extensions would not necessarily lead to a decreased failure rate. Further, it is not certain that granting multiple time extensions will improve the delivery of any given project. Often, multiple time extension requests are an indication of more deeply ingrained project scope and cost problems that additional time extensions will not necessarily solve.