

Low Carbon Transit Operations Program FY 16-17 Draft Guideline Comments

On November 2, 2016, LCTOP released the FY 16-17, LCTOP Draft Guidelines (Guidelines) for a two week public review period. This document is in reference to the comments/input we received. The comments have been broken up into five categories, Disadvantaged Communities, Funding, Project Eligibility, Compliance, and Other. LCTOP Staff appreciates all the time and effort that went into providing feedback. All comments were reviewed and taken into consideration in updating the Guidelines.

Disadvantaged Communities (DAC)

Comments:

The LCTOP Guidelines should include a quantitative method showing that the project will create direct and meaningful benefits to DACs and the residents within. Only once a project proves that it is providing these benefits should they be qualified to receive such “credit” toward the 50% DAC set-aside.

Response:

Given the complexity and variety of eligible project types, a quantitative methodology would be difficult to establish. However, there is a qualitative question in the Allocation Request that asks applicants to explain the benefit(s) to the DAC. This qualitative response is used to evaluate the project to count toward the 50% DAC requirement.

Comments:

LCTOP should give priority to relatively more disadvantaged DACs when there are multiple DACs within the transit operator’s service area.

Response:

The Guidelines encourage all transit agencies to select projects that best represent a community need and provide tables from the ARB Funding Guidelines to assist recipients with criteria to prioritize projects that benefit a DAC.

Comments:

Does the 50% DAC requirement apply exclusively to transit operators or are regional entities subject to the same mandate?

Response:

While 50% of the total LCTOP funding is not set aside for DACs, both transit operators and regional entities that include a DAC within their service area are required to spend 50% of their allotted funding on projects that have a benefit to the DAC.

Comments:

Ensure that every investment counted as located in and/or as a benefit to a disadvantaged community under SB 535 provides direct and meaningful mobility benefits to low-income residents of disadvantaged communities. Caltrans should provide guidance to transit agencies on ensuring LCTOP investments prioritize service for DAC residents, thereby providing multiple benefits to these residents, including improved mobility and air quality. Caltrans should also require agencies to publicly provide data showing how the LCTOP funds are used to improve the mobility of disadvantaged community residents, in compliance with the purpose of the program as established under SB 862.

Response:

In updating the Guidelines and the FY16-17 Allocation Request, a question was added asking the recipient to describe how the project will increase transit mode share (increase mobility). SB 535 does not

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include “mobility,” in its content. If a transit operator has a DAC within their service area, the recipient must identify a DAC benefit per the ARB Funding Guidelines (Appendix 2.A, Table 2.A-1 and Table 2.A-2), which may be a benefit other than mobility. The Guidelines encourages recipients to select projects that provide the greatest possible benefit to DACs.

Comments:

Caltrans should revise draft guidelines to explicitly articulate the DAC need requirements specifically public outreach requirement. Caltrans should include the following community engagement criteria in the FY 2016-17 guidelines: **1.** At minimum, require agencies to demonstrate that they have directly solicited input by community members, in particular low-income disadvantaged community residents, for project ideas based on community-articulated needs; **2.** Require agencies to document and report on the progress and results of their public outreach and engagement efforts in interim and final reports to Caltrans, and articulate that insufficient reporting will result in denied funding from the LCTOP; **3.** At the state level, establish a public evaluation board consisting of community members that has influence over which LCTOP applications are ultimately selected for funding; and **4.** Encourage recipient agencies to consider allocating some or all of their LCTOP funds within disadvantaged communities in their service areas through participatory budgeting processes.

Response:

The Guidelines provides a list from the ARB Funding Guidelines that states the various approaches that can be utilized to address a community need, this includes but is not limited to hosting community meetings. Within the Allocation Request, applicants must explain how they communicate/work with DACs in their service area, including information on any workshops, meetings, letters, etc. Allocation Requests are reviewed thoroughly by Caltrans and ARB. Initial Submitted Draft Allocation Requests are posted on the LCTOP website and then replaced once the projects have been approved for funding.

Funding

Comments:

LCTOP should require that transit operators and regional entities that serve and include rural communities to set aside a percentage of their allocation for rural communities. We recommend that agencies that serve both rural and non-rural populations ensure, through their equity analyses, that they are investing LCTOP and other funds to provide a fair share of mobility benefits to rural riders.

Response:

LCTOP is a formula driven program where rural agencies are included in the apportionment. The Guidelines encourages recipients to select the best projects for their community- this does not exclude rural agencies or rural communities. Current legislation does not include funding requirements to specifically mandate the projects within rural communities.

Comments:

Caltrans should robustly implement SB 824’s prohibition on supplanting existing funding sources with LCTOP funds.

Response:

The Guidelines have made it very explicit that supplanting of funds is not allowed. In addition, the Allocation Request now includes a question requiring applicants to describe how the LCTOP funds will not supplant other funding sources and the Lead Agencies must certify this within the Funding Plan.

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Comments:

Caltrans should allow agencies with eligible operations project to identify the five-year use of funds as part of an initial project application and then simply reconfirm the use of new funds versus an annual allocation request with a full new project application.

Response:

Currently Caltrans and ARB are working together to address this but for now a full Allocation Request is required as funding fluctuates from year to year. Changes to projects eligibility and DAC requirements also have the ability to change from year to year. In addition, a full Quantification Methodology tool must also exemplify a GHG reduction each year.

Comments:

Caltrans should consider allowing agencies to defer the allocation request to the point at which there is sufficient funding accrued to deliver a complete project.

Response:

Agencies are allowed to defer the use of funds for up to four years. This process is called “roll-over”. The Guidelines provide a detailed description of the requirements for rolling over funds on pg. 17. However, a full Allocation Request is still required each year. Once approved, the funds will be distributed each year to the agency’s dedicated bank account where it may accrue interest until all funds have been acquired to start the project.

Comments:

Caltrans should distribute all of the funds directly to the transit provider.

Response:

The Guidelines provide great detail on how LCTOP funds are distributed. Per SB 862, “Funds shall be allocated by the Controller, according to requirements of the program, and pursuant to the distribution formula in subdivision (b) or (c) of Section 99312 of, and Section 99313 and 99314 of, the public Utilities Code.”

Project Eligibility

Comments:

Caltrans should revise the Draft Guidelines to specify that projects must meet the requirement for projects to increase ridership, in addition to meeting the eligibility criteria, GHG emissions reduction requirement, and other statutory mandates.

Response:

The Guidelines specify that with the passing of SB 824, the project eligibilities listed in Public Resources Code 75230 f (1-3) was amended to:

(f) Moneys for the program shall be expended to provide transit operating or capital assistance that meets any of the following: (1) Expenditures that directly enhance or expand transit service by supporting new or expanded bus or rail services, new or expanded water-borne transit, or expanded intermodal transit facilities, and may include equipment acquisition, fueling, and maintenance, and other costs to operate those services or facilities. (2) Operational expenditures that increase transit mode share. (3) Expenditures related to the purchase of zero-emission buses, including electric buses, and the installation of the necessary equipment and infrastructure to operate and support these zero-emission buses.

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Projects that meet *any* of these criteria have the potential to increase ridership. Within the Allocation Request, there is a question that asks the applicant to describe how the project will increase transit mode share (increase mobility).

Comments:

Caltrans should set a goal in the final FY 2016-17 guidelines to allocate a minimum of 75% of program funds to operational projects.

Response:

The Guidelines does not specify a mandate for a division of funds between capital and operational projects. Under SB 824, projects can meet any of the eligibility criteria listed in Public Resources Code 75230 f (1-3) which include both operations and capital projects (above).

Comments:

Caltrans should require a direct tie of capital expenditures to operational improvements.

Response:

The updated guidelines includes the passing of SB 824, Public Resources Code 75230 f (1-3). The third eligibility criteria includes the purchase of zero-emission buses, including electric buses, and the installation of the necessary equipment to operate and support these zero-emission buses. These types of capital expenditures are eligible and there is no requirement for these capital expenditures to be tied to operational improvements.

Comments:

In order to ensure that agencies maximize spending LCTOP funds on operational projects, Caltrans should require that transit agencies seeking to use LCTOP funds for capital purposes demonstrate that they have first applied for funds from the TIRCP, LCTP, and/or AHSC programs and been denied funding, or otherwise demonstrate that the capital need is ineligible for funding from those programs.

Response:

The Guidelines encourage agencies to consider other programs when selecting their project. In addition, the Allocation Request asks applicants to list other GGRF programs they have pursued or are utilizing for their projects. The other GGRF programs have a competitive process in which the transit agency may not be awarded funds. Also, many smaller transit agencies projects that receive LCTOP funds may not be competitive in other programs.

Comments:

The FY 2016-17 draft LCTOP guidelines benefit from the inclusion of new provisions that allow for the use of LCTOP funds for operations of new or expanded transit service within five years of the date of implementation, consistent with current federal CMAQ guidelines. It is imperative that the new guidelines ensure that these provisions are retroactive to projects that began receiving LCTOP funds in prior LCTOP cycles so that even projects implemented in prior years can continue to utilize LCTOP funds for the full five-year period.

Response:

It is the intent of the Guidelines and the definition of “New” to allow projects receiving LCTOP funds in prior years to continue utilizing LCTOP funds for the full five-year period. LCTOP staff worked with both transit agencies and ARB to create a clear definition of “New” which was amendable to both groups.

Comments:

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Why can't the replacement of a vehicle with a hybrid be a standalone project, why must the purchase of a hybrid vehicle be attached to a new or expanded service?

Response:

The Guidelines specify the requirements of SB 824, amends Public Resource Code section 75230 f (3) explicitly states the purchase zero-emission buses and necessary equipment as any eligible expenditures. Hybrid projects are still *possible* under eligibility criteria (1) or (2) as long as they provide new or expanded service or increase transit mode share.

Comments:

Caltrans should allow GGRF funds to be used for pre-construction activities as long as the overall project has a GHG benefit that can be attributed to the overall funds.

Response:

The Guidelines specify that projects that have a GHG reduction are eligible for LCTOP funds. Therefore, a project that only includes pre-construction work will likely be ineligible to receive LCTOP funds.

Comments:

Why did Caltrans include the statement "as long as the agency is not supplanting funds."?

Response:

This language is included based on SB 824, which amended Public Resource Code section 75230 (e) *A recipient transit agency shall demonstrate that each expenditure of program moneys does not supplant another source of funds.* LCTOP Guidelines did not allowed supplanting of funds last year and in this updated guidelines has explicitly detailed the language stated in the law.

Compliance

Comments:

Caltrans should require agencies to demonstrate how projects avoid substantial harms to low-income residents of disadvantaged communities, in compliance with AB 32.

Response:

The updated Allocation Request now includes a question requiring applicants to describe how the project is designed to avoid substantial burdens.

Comments:

Caltrans should require transit agencies to demonstrate compliance with their civil rights and environmental justice obligations.

Response:

Every agency that receives federal transit funds is required to have a Federal Transit Administration approved Title VI Plan that includes civil rights and environmental justice requirements. The Allocation Request includes a question about an approved Title VI Plan and verification.

Comments:

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The final guidelines should include language requiring larger agencies to either (a) provide documentation of the equity analysis they completed of a service or fare changes that they propose to make with LCTOP funds, or (b) explain why an equity analysis is not required, under the Title VI Circular. This same requirement should be extended to transit agencies that propose to retain unspent funds, loan/transfer funds, reassign surplus funds, or request a letter of no prejudice, under SB 824.

Response:

The Guidelines do note SB 824, PUC 75230 (t), “nothing in this section shall be construed to expand or extend the applicability of those laws to recipient transit agencies”.

Comments:

Following the community outreach and engagement practices set out in the Environmental Justice (EJ) Circular, Caltrans should require *all* transit agencies to:

- (a) report on the public outreach and processes in connection with their decisions about the use they propose to make of LCTOP funds;
- (b) explain how the EJ principles have been incorporated into the decision-making process;
- (c) provide a summary of the opportunities for public engagement, including a summary of the comments received from low-income and/or minority riders and how they were incorporated into the final decision;
- (d) encourage all transit agencies to allow riders to comment on a set of alternative proposals wherever feasible.

Response:

The Allocation Request was revised to include information regarding workshops, meetings, letters, e-mails, or phone calls in the response. Each transit agency is already required to comply with the EJ Circular and conduct public outreach.

Comments:

Caltrans should post on its website agencies’ allocation requests and reports, including documents demonstrating agencies’ compliance with civil rights and environmental justice obligations.

Response:

The initial submitted Allocation Requests have been and will continue to be posted on the Caltrans LCTOP website. The updated Allocation Requests asks agencies to provide their Title VI links and dates.

Other

Comments:

Caltrans should change the guidelines to allow flexibility to submit an allocation request no earlier than four months following and up to six months following the issuance of funding amounts.

Response:

It is understandable that the schedule for this year’s cycle of LCTOP funds might be tight however, keeping funding on track to be dispersed to agency before July 1st is in the best interest to meet annual reporting deadlines.

Comments:

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We appreciate the change to the guidelines that new or expanded bus or rail services, new or expanded water-borne transit, or expanded intermodal transit facilities is considered new if it is within five (5) years from the date of its implementation as opposed to 3 years in prior guidelines.

Comments:

We are pleased to see that the proposed guidelines are generally the same as in previous years, but that they have been updated for clarity and also to reflect any changes resulting from the passage of SB 824. Thank you for your efforts in administering this program as smoothly as possible and for making improvements as needed. We look forward to continually working with you and your staff to implement the LCTOP program