

Bureau of Rail Freight, Ports and Waterways

Grant Program Policy

A. Background

The Rail Freight Assistance Program (RFAP) and Rail Transportation Assistance Program (RTAP), also known as *Rail TAP* in the pending Bureau regulations, provide financial assistance for investment in rail freight infrastructure. The intent of the programs is to (1) preserve essential rail freight service where economically feasible and (2) preserve or stimulate economic development through the generation of new or expanded rail freight service. The programs provide financial assistance to eligible applicants for the maintenance or new construction of rail freight infrastructure. Funding for both the RFAP and RTAP is subject to annual authorization by the General Assembly. Although funding for the programs has grown substantially from the time when these programs were first created in the mid 1980's, the programs remain very competitive.

B. Project Funding

The Bureau of Rail Freight, Ports & Waterways (BRFPW or Bureau) is charged with the administration of monies allocated from the Commonwealth General Fund to the RFAP and monies from the Capital Budget for RTAP grants. RTAP, also known as *Capital Budget* in Act 119, is only available to those applicants with a line item(s) in a Capital Budget Bill. Applicants should contact their local state representative or state senator to secure a line item. The RFAP and RTAP monies are available on a matching grant basis to eligible applicants that meet certain project eligibility requirements. **Because the dollar value of requests for financial assistance through the RFAP and RTAP usually exceeds the available funding, not all eligible applications receive funding or the full amount requested.** Policies guiding the funding of both programs include:

- The maximum Commonwealth funding for an eligible RFAP project is up to 70 percent (70%) of the total project cost, ***not to exceed*** \$700,000. The funding for the new construction portion of an RFAP project ***cannot*** exceed \$250,000. The final grant award is based upon the actual bid costs.
 - RFAP funded projects may use combinations of other local, Commonwealth, or federal funds for the RFAP grant match; however, these projects may ***not*** use RTAP awards for grant match purposes.
 - RFAP funded projects may ***not*** use more than 15 percent (15%) of the final grant award for costs associated with railroad at-grade crossing bed maintenance or reconstruction within the applicant's right-of-way.
- The maximum Commonwealth funding for an eligible RTAP project is up to 70 percent (70%) of the total project cost, ***not*** to exceed the amount of the line item. The final grant award is based upon line item budget requests.
 - RTAP funds are subject to approval and appropriation by the Pennsylvania Legislature.

- RTAP funded projects may use combinations of other local, Commonwealth, or federal funds for the RTAP grant match; however, these projects may *not* use RFAP awards for grant match purposes.
 - RTAP funded projects may *not* use more than 50 percent (50%) of the final grant award for *right-of-way* (as defined by the Bureau) acquisition.
 - RTAP funded projects may *not* use more than 15 percent (15%) of the final grant award for costs associated with railroad at-grade crossing bed maintenance or reconstruction within the applicant's right-of-way.
 - RTAP funded projects may *not* use more than five percent (5%) of the final grant award for the acquisition or refurbishment of rolling stock.
 - No RTAP funded project will be allocated more than ten percent (10%) of the total program's appropriation in any given calendar year.
- RFAP project grants will remain in active status for up to a maximum of 18 months.
 - RTAP project grants will remain in active status for up to a maximum of 2 fiscal years

C. Project Eligibility

- Financial assistance is available on a matching grant basis to railroad companies, transportation organizations, municipalities, municipal authorities and users of rail freight infrastructure.
- Only projects involving maintenance and/or new construction of rail freight or intermodal infrastructure are eligible for funding.
 - Maintenance projects consist of the replacement of ties, rail, plates, turnouts, other track materials or structural materials, and/or the insertion of incremental ballast sufficient to functionally restore, improve, or maintain an existing railroad line to a level necessary to support its safe operation or use (see Track Rehabilitation section of the Project Management Policy for details).
 - New construction projects consist of the cost to purchase ties, rail, ballast, and other track materials or structural materials in sufficient quantity to construct a railroad line (where none exists) or a rail-associated facility to a level necessary to support its safe operation or use. Buildings or building materials to construct new structures are expressly excluded from construction costs unless such structures are used exclusively for rail freight operations (see Track Construction section of the Project Management Policy for details).
- Applicants seeking funding for maintenance projects or projects requesting less than \$250,000 in state share grant funding for new construction costs may apply to the RFAP.
- Applicants seeking state share grant funding in excess of \$250,000 for new construction costs may apply to the RTAP.
- Applicants may apply for assistance for one project *only* per calendar year from the RFAP program.
- Applicants may apply for assistance for one project *only* per calendar year from the RTAP program.
- Matching Fund Limitations
 - Projects funded through the RFAP may not use RTAP program funds for the RFAP grant match.

- Projects funded through the RTAP may not use RFAP program funds for the RTAP grant match.
- Eligible RFAP projects will have an estimated useful life of at least five (5) years.
- RFAP grant awards may *not* be used for the acquisition cost of land, rights-of-way, rights to land, buildings, or building materials to construct a new building (unless such buildings are used exclusively for rail freight or intermodal operations).
- Eligible RTAP projects will have an estimated useful life of at least twenty (20) years and may include acquisition costs of rights-of-way.
- RTAP grant awards may not be used to purchase buildings or the materials to construct a new structure unless such structures are used exclusively for rail freight and/or intermodal operations.

D. Application Requirements

RFAP and RTAP applications will be fully completed and received within the published acceptance period. Following the close of this period, applicants are given the opportunity to present their projects in Harrisburg in order to allow Bureau staff members to more effectively evaluate the projects and in order to optimally invest the allotted program monies. Policies guiding the application requirements of both programs include:

- RFAP and RTAP applications can only be submitted during the open application period.
 - The open application period for RFAP will be determined by the Bureau on an annual basis.
 - The open application period for RTAP will be determined by the Bureau on an annual basis.
- Applications will be filed electronically using the dotGrants web-based application or other means identified by the Bureau.
- Applications will be fully completed, include a detailed project schedule with identified milestones and completion date, and demonstrate the applicant project's capacity to meet the programs' trackwork inspection criteria, carloadings, standard contract provisions, and competitive bid requirements.
- Only applications received during the open application period will be considered to have met the application deadline for a fiscal year.
- Only applications received during the open application period which include all required information as indicated above will be accepted. The Bureau has the authority to reject application(s) in which required data was not provided.

E. Application Schedule

If an applicant is selected to receive funding, the following is an approximate timeframe (business days) of estimated review times (starting after the application is submitted):

1. Application Review/Approval by Planning and Engineering sections – 30 days
2. Bid Package/Specifications Review/Approval – 15 days
3. Bid Results Review/Approval – 15 days
4. Grant Agreement Preparation/Chief Council Review – 15 days

5. Comptroller Review – 15 days
6. LATS/Signatures/Grant Awarded – 15 days

F. Application Evaluations and Grant Selections

The Bureau is responsible for awarding grants based upon the results of an objective evaluation process that serves the legislative intent of the programs and promotes the public interest. All projects are scored and evaluated for selection based on scoring criteria that reflect the intent of the project and the initiatives of the Commonwealth. Once the projects are evaluated, the Deputy Secretary of the Bureau presents a recommended list of projects to the Program Management Committee (PMC) for RFAP projects and the State Transportation Commission (STC) for both RFAP/RTAP projects approval. After approval by the STC, all the applicants are notified of their funding status. Policies guiding the evaluation and selection of both RFAP and RTAP applications include:

- The Bureau will evaluate each eligible RFAP and RTAP project in terms of its expected payback as measured in terms of its potential to:
 - Meet the goals and objectives of the individual programs;
 - Meet the goals and objectives of the statewide rail long-range plan;
 - Meet the goals and objectives of the applicant's representative Metropolitan Planning Organization (MPO) or Rural Planning Organization (RPO);
 - Re-establish or create new rail service;
 - Improve public safety;
 - Provide economic development and job growth;
 - Achieve a positive benefit/cost ratio;
 - Positively affect the environment; and
 - Increase carloadings.
- The Bureau may confer with an applicant or conduct a site visit to clarify the intent or amend the scope of a proposed project. Under no circumstance will such consultation be considered as intent by the Bureau to offer a grant to the applicant.
- The Bureau will notify each applicant who has submitted a completed application as to whether or not the Bureau intends to offer a grant.
 - If the Bureau intends to offer a grant to an applicant, the following conditions apply:
 - The applicant will receive a letter from the Bureau notifying him of the Bureau's decision and, if applicable, any specific grant conditions.
 - The applicant will notify the Bureau in writing within thirty (30) days of receipt of the proposed grant offer of his intention to accept or decline the offer.
 - If the applicant either declines the proposed grant offer or does not notify the Bureau in writing of its intention to accept the grant offer within thirty (30) days, the Bureau may, at the discretion of the Director, withdraw the grant offer.

- If the Bureau does not intend to offer a grant to an applicant, the following conditions apply:
 - If additional funding becomes available or if a previously offered applicant declines a proposed grant offer, the Bureau, at the discretion of the Secretary, may notify the applicant of such a change in circumstance and of its intent to award a grant.
 - Upon the Bureau providing notification to the applicant of its intent to offer, the same conditions will apply to the applicant as if the applicant was initially offered a grant.

G. Project Management

See the Bureau's Project Management Policy for information concerning construction policies and procedures.

H. Audits and Post Award Evaluations

The Bureau requires that each grant recipient establish and maintain an adequate accounting record for each individual project that will enable the Bureau to determine the legitimacy of costs incurred for the project. The Bureau requires access, for the purpose of audit and examination, to books, documents, papers, and records of the grant recipient that are pertinent to an individual project.

- RFAP and RTAP grant recipients will keep records that will facilitate an effective audit for a period of five (5) years after the date of their receipt of the Bureau's final payment (project closeout).
- RFAP and RTAP grant recipients will keep records which fully disclose the amount and disposition of the grant proceeds, including:
 - The total cost of the plan or program in connection with the grant; and
 - The given or used grant amount and nature of that portion of the cost of the plan or program supplied by other sources.
- RFAP and RTAP grant recipients will also keep, at a minimum, the following project documents:
 - Vendor's invoices;
 - Applicable purchase orders;
 - Receiving reports;
 - Inventory records;
 - Method of pricing;
 - Returns;
 - Catalog cuts;
 - Plans;
 - Carloadings reports;
 - Inspection reports;
 - Final inspection;
 - Report showing acceptance for the project; and

- Record of disposition or correction of project work deemed unsatisfactory by the Bureau through inspection or other means.
- The grant recipient will submit annual carloading reports for five (5) consecutive years, beginning in the year following project completion, comparing the average guaranteed carloadings achieved against the carloading projections contained in the grant agreement. Discrepancies between the carloadings documented in the report and the projected carloadings identified in the grant agreement will be noted and actions identified to ensure that the project will achieve the projected carloadings within six (6) months. A record of the grant recipient's default may be entered into the *Statewide Contractor Responsibility File* per Management Directive 215.9 for future consideration in any determination as to whether Commonwealth grants are to be extended to the grant recipient.

For a project which is completed between January 1, 20XX and December 31, 20XX the carloading data will be collected for the following full calendar year between January 1, 20XY and December 31, 20XY. This data will be reported to the Bureau of Rail Freight, Ports & Waterways on the carloading report (attached to agreement) that will be sent to the grantee (method determined by Bureau) early the following calendar year 20XZ. The data is due by April 1, 20XZ.

The Bureau requires the Grantee meet 50% of the projected estimated carloadings that are entered in the Bureau approved grant application. To arrive at that number the Bureau calculates the average of the projected 3 years of carloadings and then divides it in half. That number will be the number of carloadings that the Grantee must average annually over five full calendar years beginning the year after project completion. See example below:

Projected year 1	5,000 carloadings
Projected year 2	6,000 carloadings
Projected year 3	<u>7,000</u> carloadings
Total	18,000 carloadings
	<u>÷3</u>
	6,000 carloadings (average per year)
	<u>x50%</u>
	3,000 carloadings (required annual minimum)

In this example the Grantee would be required to average a minimum of 3,000 carloadings per year for next five full calendar years to fulfill the carloading obligation (based on the Bureau approved grant application and the grant agreement executed).

The carloading data submitted to the Bureau is subject to verification by Department Internal auditors or by external auditors contracted by the Bureau. As stated in the executed grant agreement, not meeting the 50% carloading requirement and/or not reporting the data allows the Commonwealth to recapture a proportionate share (determined by Bureau) of the entire amount of state grant funds used upon demand.

I. Letter of non-prejudice

A letter of non-prejudice may be requested by an applicant at any time prior to his selection as a grant recipient and completion of the grant execution process. A letter of non-prejudice is a document that is required by the Department when the applicant desires to procure materials and/or begin construction activities prior to execution of a grant agreement. The grantee must have a bid package (and/or RFQ for material) and low bid award prior to starting any construction.

A letter of non-prejudice does not constitute an award and the Department makes no warranty or assurance that grant funds will be made available for the project. The award of funding is dependent upon a variety of factors including, but not limited to: meeting the application requirements/guidelines, the availability of an adequate appropriation for the program and the approval of your project application under the Rail Freight Assistance Program.

The letter of non-prejudice request is made to the Bureau Director.

J. Reimbursements

Costs of labor, materials, and equipment which are directly related to the construction of the specific project and project location(s), as indicated in the Bureau approved bid package, specifications, plans, etc., will be reimbursed at 70%. Detailed invoicing receipts indicating all such costs must be provided.

Costs which are indirectly associated with the progression of the construction as required by the railroad, contractor, or wholly owned affiliate thereof are not reimbursable.

The following is a partial list of items which are not eligible for reimbursement:

1. Reusable Tools (hand/power)
2. Clothing
3. Computers or related software equipment
4. Surveying instruments
5. Grant application preparation costs incurred by the grantee
6. Grantee in-house administrative and engineering costs

For work being performed by Grantee/Railroad forces the following costs (individually less than \$5,000) are reimbursable. Documentation indicating the item(s) was used solely for the progression of the project will be required at time of reimbursement:

1. Invoices for materials from home improvement centers, i.e. Lowes, Home Depot, ACE, etc.
2. Fuel (auto/diesel) (for railroad owned or rented equipment) used for the progression of the project.
3. Non-Department Maintenance and Protection of Traffic (M&P), in accordance with current FHWA Manual on Uniform Traffic Control Devices (MUTCD).

Pier Diem costs related to the progression of the project for Grantee/Railroad, Contractor, and Project Management forces are not reimbursable.

The Bureau will have the authority to review all requests for reimbursement costs. The resolution of any disputes as to the eligibility of invoiced costs will be at the discretion of the Bureau and the final determination of approved reimbursable costs will be made by the Bureau Director.

K. Reimbursement for Services

- Reimbursement for project management on an RFAP/RTAP project may be **up to five percent (5%)** of the total grant or \$60,000 (\$42,000 state share), whichever is less. Maximum reimbursement will be based on project complexity – Section 10(a) of pending regulations will apply.
- All invoices for project management services will be approved by the Grantee prior to submission for payment to the department.
- Invoices for project management services will be submitted to the Bureau by the Grantee on Grantee letterhead and signed by both the consultant and the Grantee.
- Invoicing/reimbursement for project management services will be as follows:
 - Initial invoicing/reimbursement may occur at the time of agreement execution and will not exceed 25 percent (25%) of the project management fee.
 - Second invoicing/reimbursement may occur at fifty percent (50%) project completion and will not exceed 32.5 percent (32.5%) of the project management fee.
 - Third invoicing/reimbursement may occur at seventy five percent (75%) project completion and will not exceed 32.5 percent (32.5%) of the project management fee.
 - Final invoicing/reimbursement will be at project close/out final inspection and will be ten percent (10%).