PASSED BY
CTC
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CALIFORNIA
TRANSPORTATION COMMISSION

CALIFORNIA TRANSPORTATION COMMISSION

POLICY GUIDANCE
PUBLIC PRIVATE PARTNERSHIP PROJECTS
Resolution G-09-13

1. Authority and Purpose. Section 143 of the California Streets and Highways Code, as amended by Chapter 2 of the Statutes of 2009 (Senate Bill 4, Second Extraordinary Session), authorizes the California Department of Transportation and regional transportation agencies to enter into comprehensive development lease agreements with public or private entities for transportation projects, commonly known as public private partnership (P3) agreements. Section 143 further provides that P3 projects and associated lease agreements proposed by the Department or a regional transportation agency shall be submitted to the California Transportation Commission, and that the Commission shall select and approve the projects before the Department or regional transportation agency begins a public review process for the final lease agreement. For Department projects, the Commission shall also certify the Department's determination of the useful life of the project in establishing the lease agreement terms. Where the Department or a regional transportation agency uses a final evaluation of proposals based on qualifications and best value to select a contracting private entity, Section 143 mandates that the Commission adopt the criteria for making that evaluation. However, the Commission does not approve or execute the final lease agreement nor does it have a role in selecting the private entities for P3 agreements.

   The purpose of this guidance is to set forth the Commission's policy for carrying out its role in implementing P3 projects in order to assist and advise the Department, regional transportation entities, and private entities that may be contemplating the development of P3 agreements. This Commission policy guidance is not a regulation and should not be construed as imposing any requirement or imposing any deadline on any agency beyond those found in Section 143. References to timeframes in this guidance are statements of Commission intent for responding to submittals from other agencies. They are not deadlines or restrictions for either the Commission itself or for other agencies. References to the contents of submittals from other agencies are statements of what the Commission expects that it will need in order to carry out its own responsibility for project approval under statute. They are not procedural requirements. Section 143 does not modify nor does this guidance address the Commission's authority to program and allocate state funds. This guidance does not address Department and regional transportation agency P3 project procedures that are not within the purview of the Commission.

2. Scope of Project Approval. The Commission will select and approve each P3 transportation project, as defined in Section 143(a)(6), through the adoption of a resolution at a regularly scheduled Commission meeting. Before approving a project, the Commission will conduct a

public hearing on the project as a scheduled meeting agenda item. The Commission will approve each project with reference to a P3 project proposal report, as described in section 4 below, prepared and submitted by the Department or regional transportation agency. The Commission's P3 project approval will include and apply to:

- The description of the scope of the transportation project and its boundaries, including construction work and the performance of maintenance and operations.
- The project financial plan, including the allocation of financial risk between public and private entities.
- For Department projects, a certification of the determination of the useful life of the project in establishing the lease agreement terms.
- Where the Department or regional transportation agency proposes to use a final evaluation of proposals based on qualifications and best value to select a contracting entity or lessee, the criteria that the Department or regional transportation agency will use for that evaluation.

3. Criteria for Commission Approval. The Commission will approve a P3 project if, after reviewing the project proposal report as described in section 4 below, it finds all of the following:

- That the project as described in the project proposal report is consistent with the requirements of statute.
- That the Commission's approval of the project and its financial plan does not in and of itself create a new commitment of state transportation revenues or create an undue risk to state transportation revenues committed to other projects. This does not preclude the commitment of state funds as a separate, even simultaneous, action. For example, the Commission could approve an amendment of the state transportation improvement program (STIP) to commit new funds to a P3 project, subject to the constraints of STIP funding.
- That the project, consistent with Section 143(c)(3), is primarily designed to achieve the following performance objectives, as evidenced in the project proposal report:
    - Improve mobility by improving travel times or reducing the number of vehicle hours of delay in the affected corridor.
    - Improve the operation or safety of the affected corridor.
    - Provide quantifiable air quality benefits for the region in which the project is located.
- That the project, consistent with Section 143(c)(4), addresses a known forecast demand, as determined by the Department or regional transportation agency and evidenced in the project proposal report.
- Where applicable, that the criteria that the Department or regional transportation agency proposes to use for a final evaluation of proposals based on qualifications and best value are consistent with statute.
- For a Department project, that the Department has made a determination of the useful life of the project in establishing the lease agreement terms that is consistent with the terms of the lease agreement.

4. Project Proposal Report. The Commission will consider approval of a P3 project only when the Department or regional transportation agency has prepared and submitted a project proposal report to the Commission. The Department or regional transportation agency may engage in preliminary steps leading to the development of the draft lease agreement, including the general solicitation of proposals and the prequalification of potential contracting entities, prior to submitting a project proposal report. However, the Department or regional transportation agency should not issue the final request for proposals to implement a specific transportation project, and the Department or regional transportation agency shall not conduct the final evaluation of proposals, prior to the Commission's approval of the P3 project. The Commission will place a request for approval of a P3 project on its agenda when the Commission office receives the project proposal report at least 45 days prior to the meeting.

   The project proposal report and request for P3 project approval will include or make reference to the following:

   - The description of the scope of the transportation project and its boundaries, including construction work and the performance of maintenance and operations.
   - The basis of the Department or regional transportation agency for finding that it would be in the public interest to implement the project through a public private partnership agreement.
   - The Department or regional transportation agency's proposed project financial plan, including the allocation of risk between public and private entities. The financial plan will include:
     - forecasts of revenue from tolls and user fees, as determined by the Department or regional transportation agency;
     - commitments of state or local revenues to the project (including capital, operating, maintenance, and debt service) or to any neighboring or ancillary projects necessary or desirable for full implementation of the project;
     - the alternative source of project revenue should revenues from tolls and user fees fail to meet projections or otherwise be insufficient to meet project costs; and
     - public financial responsibility for meeting project costs (including costs for operations, maintenance, and debt service) in case of default by the contracting entity or lessee.
   - The Department or regional transportation agency's estimate, with supporting documentation, of the extent to which the project will be designed to achieve each of the following performance objectives:
     - improve mobility by improving travel times or reducing the number of vehicle hours of delay in the affected corridor;
     - improve the operation or safety of the affected corridor; and
     - provide quantifiable air quality benefits for the region in which the project is located.
   - The Department or regional transportation agency's forecast of travel demand, with supporting documentation.
   - The terms of the draft lease agreement associated with the project.

- Where the Department or regional transportation agency proposes to make a final evaluation of proposals based on qualifications and best value, consistent with Section 143(g)(1)(C), the criteria the Department or regional transportation agency proposes to use in making that evaluation.
- For a Department project, the Department's determination of the useful life of the project in establishing the lease agreement terms, consistent with Section 143(d), including the basis the Department used for making that determination.

5. Project Changes after Approval. The Commission does not approve or execute the final lease agreement. However, the Commission's expectation is that, pursuant to Section 143, the final lease agreement executed by the Department or regional transportation agency will implement the project approved by the Commission, consistent with project scope as described in section 2 of this guidance. After the Commission has approved a project, it will have no further role in reviewing or approving changes to the project or the lease agreement except at the request of the Department or regional transportation agency. If the Department or regional transportation agency finds it necessary or appropriate to make changes that alter the project scope, as described in section 2 of this guidance, the Commission expects that the agency will request approval of the change by submitting a supplement to the project proposal report setting forth a description of the change and the reasons for it. The Commission will approve the change if it finds that the revised project meets the criteria set forth in section 3 of this guidance. The Commission will place a proposed project supplement on its agenda in sufficient time to allow action to be taken on the requested change within 45 days after the Commission office receives the supplement to the project proposal report.