

# DRPT

## Rail Industrial Access Fund Program Procedures Manual



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## 1. General Program Description

The General Assembly of Virginia declared it to be in the public interest that access railroad tracks and facilities be constructed to certain industrial commercial sites where rail freight service is or may be needed by new or substantially expanded industry and that financial assistance be provided to areas seeking to furnish rail freight trackage between the normal limits of existing or proposed common carrier railroad tracks and facilities, and the actual site of existing or proposed commercial buildings or facilities. The Fund for construction of industrial access railroad tracks is codified as Section 33.2.1600 of the Code of Virginia (1950).

The Department of Rail and Public Transportation (DRPT) administers the Railroad Industrial Access Program (RIA) which is subject to the approval of the Commonwealth Transportation Board (CTB). This program is open to businesses, municipalities, economic development entities, and railroads. The limited funding shall be used for track facilities and engineering, but not for utility relocation or right-of-way acquisition. Grantees will be required to confirm that initial expectations regarding anticipated carloads and employment figures were met.

Funding for projects approved for the RIA will not exceed \$300,000 unmatched, and no more than \$450,000 if matched dollar-for-dollar above \$300,000. This total cannot be more than 15% of the total capital improvement/investment of the project. No one city, town, or county may receive more than \$450,000 in a single year.

Projects must be completed and invoiced within 2 years of the date of the CTB approval of the Application.

### ***a. Code of Virginia for Railroad Industrial Access Program***

#### **§ 33.2-1600. Fund for construction of industrial access railroad tracks**

- A. The General Assembly declares it to be in the public interest that access railroad tracks and facilities be constructed to certain industrial commercial sites where rail freight service is or may be needed by new or substantially expanded industry and that financial assistance be provided to areas seeking to furnish rail freight trackage between the normal limits of existing or proposed common carrier railroad tracks and facilities and the actual site of existing or proposed commercial or industrial buildings or facilities. This section is enacted in furtherance of these purposes and is intended to be comparable to the fund for access roads to economic development sites established pursuant to § [33.2-1509](#).
- B. The funding for this program shall be set forth in the appropriation act.
- C. The Director of the Department of Rail and Public Transportation shall administer and expend or commit, subject to the approval of the Board, such funds for constructing, reconstructing, or improving industrial access railroad tracks and related facilities. The Director of the Department of Rail and Public Transportation may consult with the Commissioner of Agriculture and Consumer Services and the Chief Executive Officer of the Virginia Economic Development Partnership, or their designated

representatives, concerning applications for funds. Funds shall be spent directly by the Director of the Department of Rail and Public Transportation or by reimbursement of the local entities, private or public.

D. Funds may be used to construct, reconstruct, or improve part or all of the necessary tracks and related facilities on public or private property currently used or being developed, existent or prospective, for single industries or industrial subdivisions under firm contract or already constructed, including those subdivisions owned or promoted by railroad companies and others. Applications for funds must be approved by the local governing body.

E. In deciding whether to construct any such access track, the Board shall consider the cost thereof in relation to prospective volume of rail traffic, capital investment, potential employment, and other economic and public benefits. The Board shall adopt procedures to encourage widespread use of the funds, shall limit allocation of funds so that no locality receives more than 50 percent of the funds in any one fiscal year unless there are not sufficient applications prior to May 1 of each year to use the available funds, and shall consider the practices of the Department of Transportation in distributing funds for access roads to economic development sites under [§33.2-1509](#).

F. Tracks and facilities constructed with such funds shall be the property of the Commonwealth for the useful life of the project as determined by the Director of the Department of Rail and Public Transportation and shall be made available for use by all common carriers using the railway system to which they connect. The landowners or using businesses shall, prior to the commitment of funds by the Director of the Department of Rail and Public Transportation, be contractually committed to the perpetual maintenance of such tracks and facilities so constructed and to the payment of any costs related to the future relocation or removal of such tracks and facilities.

## 2. Intended Project Sample Types

The RIA is intended to assist the following project types:

- Track construction to new commercial or industrial facilities
- Track construction or improvement to substantially expanding existing commercial or industrial facilities

Ineligible projects for this Program are:

- Right-of-way acquisitions
- Utility relocations
- Track and switches to clear point connecting access track to main line
- Railroad operations and maintenance
- Track construction with rail smaller than 115 lb/yd

### **3. Applicable Standards**

#### ***a. Applicable Standards***

The new facilities must be designed and constructed to meet the approval of the connecting mainline railroad operator. The applicant must provide continuous maintenance in accordance with the American Railway Engineering and Maintenance of Way Association (AREMA) standards for the lifetime of the project.

#### ***b. Applicable Certifications***

The Applicant must certify that it will provide the right of way (ROW) for and assume liability of any railroad tracks and associated facilities financed by the Railroad Industrial Access Fund.

### **4. Establishment of Scope, Schedule, and Budget**

During the Application Process the Applicant will establish a work scope, associated timeline, and budget which best address their needs and complies with the Program requirements. DRPT will review these documents for reasonableness and compliance in the Project Evaluation process (Section 5.b). Subsequent plans, specifications, and changes to the project will be submitted by the Grantee and reviewed and approved by DRPT (Section 6).

### **5. Grant Application Process**

#### ***a. Initiation***

Applications are submitted to the Department of Rail and Public Transportation via email or hardcopy. Application and Program Guidance are available via the Department's OLGA website.

Applications may be submitted at any time. Eligible recipients are:

- Business, Commercial, or Industrial Enterprises
- Municipal and County Governments acting on behalf of Enterprises
- Local Departments of Economic Development acting on behalf of Enterprises
- Railroads

The application must include:

- Estimated Project Cost
  - Eligible Project Cost
  - Site Preparation
  - Trackwork
  - Engineering
  - Environmental Mitigation

- Ineligible Project Cost
  - Utility Relocation
  - Switches and track to clear point of main line
  - Right-of-way acquisition
  - Rail under 115 lb/yd
- Approximate cost of new facility if applicable
- Estimated railcar and employment projections
- Resolution from local governing body (Board of Supervisors) supporting the proposed project
- Location sketch and an outline of the proposed project
- Drawing of Proposed Track Project showing clear points
- Certification of continuous maintenance and liability
- Guarantees of right-of-way
- Letter from Main Line Operator for:
  - Serving the industry or business
  - Approving the plans of the proposed access track
  - Common carrier status
- Detailed background information/summary on the applicant business/entity

Upon receipt of an application, the DRPT Manager of Rail Preservation and Access Programs (DRPT Program Manager):

- Assigns a reference number to the application
- Sets up project files for the application
- Notifies applicant of receipt of application
- Enters the applicant information into the INDAC Master Spreadsheet log of projects.

### ***b. Project Evaluation and Selection***

The DRPT Program Manager reviews the application for:

- Applicant eligibility
- Project eligibility
- Application completeness
- Documentation of verifiable and acceptable match if requesting over \$300,000
- Resolution of Local Government showing support for the project
- Required Attachments with signatures
- Railroad commitment to serve the Applicant

The DRPT Program Manager will request additional information from Applicant within 10 days, if needed.

The DRPT Program Manager conducts a second level review of application using the Project Selection Criteria Point System which incorporates these criteria:

- Number of Carloads

- Added Employment
- Track Funds vs. Capital Investment Cost
- Unemployment
- Inclusion in other Virginia Economic Development Initiatives
- Contribution to Track Construction
- Shortline Viability (if located on a Shortline Railroad)
- Number of rail cars versus trucks which will be used to serve the facility

The DRPT Program Manager will calculate the minimum carload requirement by referring to the minimum number of carloads on the scoring sheet which would still have allowed the application to score the 50 points necessary for the project to proceed to the CTB for approval.

### ***c. Project Recommendation***

With an application review that scores 50 application points or higher, the DRPT Project Manager prepares a project presentation, which includes a map showing general location and detailed site information, and a draft decision brief for the next CTB meeting. DRPT will present the proposed project at the next scheduled CTB meeting following receipt of the complete, eligible application. After presentation of the proposed project, the DRPT Program Manager will prepare a resolution for presentation at the next CTB action meeting. The local resolution must be received in order for the project to be presented before the CTB.

### ***d. CTB Approval Process***

- DRPT briefs the CTB with the proposed project presentation and decision brief during the CTB's workshop session.
- CTB Resolution – the CTB makes a decision on the resolution at its next scheduled action meeting which is usually 30 days later.

After the CTB has made its decision, the DRPT Manager of Rail Preservation and Access Programs:

- Sends notification to the Applicant of the CTB's decision.
- Issues Letter of No Prejudice on specifics of project with conditions, if necessary (Note: The Letter of No Prejudice is an agreement to allow the Grantee to proceed with project scope with certain conditions attached.).
- Works with grantee and Attorney General's office to write an Agreement and a Notice to Proceed.

### ***e. Example of Grant Agreement***

- Examples of Grant Agreements can be found in the Document Management System or on the Rail Division Server.



## 6. Contract Development

The DRPT financial programming section assigns a Project number for each project resolution approved by the CTB. Grantees must submit a Virginia Substitute W-9 tax form prior to their project number being assigned. The DRPT Program Manager prepares a Project Agreement (examples of Grant Agreements can be found in the Document Management System or on the Rail Division Server) and routes the Agreement through the Office of the Attorney General and internally at DRPT for approval before sending the Agreement to the Grantee for execution.

The Project Agreement will include the Scope, Milestone Schedule, Budget, and Performance Criteria. The Grantee is required to forward any additional plans and specifications developed for the project.

The Grantee will have two years from the CTB date of approval of the project to complete the project. After project acceptance by the Department and payment of the invoice, the Grantee will have a 3 year performance period to reach the minimum carload projections committed to on their Application.

The DRPT Program Manager sends two sets of the Agreement to the Grantee for review, approval, and signature. Once Grantee signs and returns the Agreement, the Program Manager sends the partially signed Agreement to the Attorney General's office (OAG) with the original copy sent to the Grantee for comparison. After the OAG review, the Director of DRPT reviews, signs, and dates the Agreement. The DRPT Program Manager scans the executed Agreement into DMS, retains one Agreement set for the master project file, and returns the other set to Grantee.

### ***a. Final Scope, Budget, and Schedule, and Plan Reviews***

Following execution of the Agreement, Grantees will prepare the project plans and cost estimates. Upon receipt of the final Scope, Budget, and Schedule, DRPT has a goal to review the updated project information within 30 days. During review efforts, the DRPT Program Manager should review any changes to scope or limits of work different than that described in the Agreement.

If there are items from the review requiring additional information, the DRPT Program Manager will request such information in writing. All up to 30 days for a response from the Grantee.

### ***b. Approval and Notice to Proceed***

When the final Scope, Budget, Schedule, and Plan submittal has been accepted by DRPT, the DRPT Project Manager will provide a Notice to Proceed to the Grantee.

## 7. Project Performance and Monitoring

### ***a. Notice to Proceed***

The RIA Program requires a formal Notice to Proceed to the Grantee. Costs incurred prior to the issuance of a Notice to Proceed will not be paid unless granted by a Letter of No Prejudice issued by the DRPT Director (first reviewed by the Office of the Attorney General). The budget and schedule are agreed upon in the project agreement review period (See Section 6).

**b. Program Guidance**

- RIA Program Guidance can be found in the Document Management System or on the Rail Division Server.

**c. Project Bid for Construction**

Once the particular project has been through the Engineering (Environmental, Permitting, and Design) phases and when construction documents have been issued and acknowledged by DRPT, the Grantee will typically determine whether or not they will accomplish the work with their own forces (in-house) or complete the work with outside forces. If the Grantee plans to utilize outside forces, they must abide by the guidelines outlined by DRPT. The project must be publicly bid and have a public bid opening. The Grantee must submit a Bid Summary to the Program Manager for approval (Copies of approved bid summaries can be found in project files on the Rail Division Server). If the Grantee does not award the bid to the lowest responsive bidder, they must provide an explanation in writing.

Final drawings, if necessary, will be utilized in a pre-bid or pre-construction process. Once DRPT has issued a construction Notice to Proceed (NTP), and the bid/award process has been accomplished (if applicable), construction of the project will commence. DRPT or their representatives should be included in all preliminary documentation and communication concerning the above noted processes.

**d. Site Reviews**

Projects in the Railroad Industrial Access Program require a site visit at the end of the construction project, which is prompted by the submission of the Grantee's invoice. After a successful site visit, recommendation for payment and project close-out happen at the same time. The conditions set forth in the agreements, as well as the contingent interest the State holds in RIA Projects allows for on-site visitation and follow-up as needed. The agreement terms indicate the final inspection should be completed within 20 days of receiving notice from the Grantee that the project is completed.

Due to the brevity of RIA construction projects, the RIA Program does not currently require pre-construction or interim site visits. Upon receipt of the one required invoice submitted by the Grantee, the Program Manager will complete a site visit and prepare a site visit report. This report will be included in the invoice processing procedure, as addressed in Section 8.

**e. Reporting Process and Intervals**

Action items relating to the RIA Application / Agreement / Invoicing process should be prioritized and tracked by the DRPT Program Manager in a consistent manner.

It is important for the DRPT Program Manager to keep accurate and up-to-date files and other document control processes in order for DRPT to have an accurate project history. The DRPT Program Manager shall examine and document the life cycle of the project.

## ***f. Distribution of Information within DRPT***

For documentation and distribution of information within DRPT, it is important to document information and provide that documentation to the project file.

Following is a general understanding of the requirements for dissemination of project information:

- Correspondence with the Grantees and others concerning DRPT projects, should be documented. Telephone conversations should be followed up with an e-mail if there is an Action Item pending. E-mails that lead to action items, agreements, or deliverable dates, should be provided to the correspondence file.
- The project file should have a history of communication and documentation involving DRPT and their representatives pertaining to the project and any issues that may be addressed during the life of the project.
- The document management process should be kept current by the DRPT Program Manager. It is important to keep accurate updates of all logs and status reports.
- Maintain files in the Document Management System (DMS).

## **8. Invoicing Process**

### ***a. Introduction***

The following invoicing procedure provides a guideline for reviewing and processing invoices. The DRPT Program Manager assigned to the respective project is responsible and will take ownership of assuring that the invoice is reviewed and processed within 20 days of receipt. This guidance ensures that an approved invoice amount can be paid within the required 30 days. The 30-day turn around time (30-day prompt pay) is mandated by the Virginia Public Procurement Act.

The invoice should be reviewed within the first five (5) days for completeness. If there is additional information required from the Grantee, a written request can be issued within the initial five (5) days, requesting the missing information. It is recommended, that prior to requesting information in writing, that the DRPT Program Manager contact the Grantee directly and explain the missing information needed, but shall also provide the written request as a procedure of record. Notice must be provided to the Grantee so as to establish a written documentation of a potential delay in the 30-day prompt pay requirement.

The Railroad Industrial Access Program, DRPT allows only one (1) invoice at the completion of the project. Progressive or partial invoices from the Grantee will not be paid.

### ***b. Invoice Arrives at DRPT***

The Division of Finance and Administration receives, date stamps, and logs invoice into the financial system and forwards to the DRPT Program Manager. Upon receipt of the Invoice the DRPT Program Manager will contact the Grantee and schedule a site review.

**c. Initial Review of Project Files**

1. DRPT Program Manager is encouraged to make working notes on the invoice during review.
2. Confirm a signed Agreement is in place.
3. Review signed Agreement general requirements of project.
4. Confirm the invoice submitted matches the budget shown in signed agreement.
5. Confirm an NTP was issued.
6. Within five (5) days of receipt of invoice, provide a completeness verification of all items required for a proper invoice. Should missing items be discovered, contact Grantee and issue a follow up written request which outlines the required data needed. The written request should also provide a target date for the Grantee to submit the information needed (no longer than an additional 10 days).
7. Determine if a Grantee's incomplete invoice must be logged out of the system.

**d. Invoice Review by DRPT Program Manager**

1. Utilize and complete Invoice review check list. The contents of the invoice must be reviewed item by item for mistakes, missing data, missing backup or other issues (e.g., material delivered to a different site than the project location, unreasonable hours charged for a particular employee, math calculations not calculated properly).
2. Invoices should be accompanied by Project Report / Schedule Adjustments / Cost Overrun Justifications, Certification of Capital Expenditures Letter, etc. as per the Agreement.
3. Verify that the schedule was met. If project was behind schedule, review acceptable justification.
4. Verify that the requested invoice amount is no more than 15% of the total Capital Expenditures of the project.
5. Verify no additional scope items have been added.

**e. Invoices Requiring Additional Information**

1. For any other missing information, the DRPT Program Manager shall request the information in writing from the Grantee.
2. The Program Manager will notify the Fiscal Division of a potential delay in invoice approval and place the invoice on hold.

**f. Issuing Review of Invoice and Recommendation of Payment  
Memo**

1. After the site visit is complete and all issues are reviewed, verified, and satisfied, the DRPT Project Manager shall complete the Invoice Review Checklist (and prepare the Memorandum for Release of Payment).
2. DRPT Program Manager attaches the Memorandum for Release of Payment, Invoice review checklist, and any field site visit reports, to the original invoice, and submits to the Fiscal Division for processing and scanning into DMS.
3. A Documentation of Contingent Interest Report must be completed and sent to the Grantee.

### ***g. Finance Process***

All Agreements contain the requirement that the Grantee must submit invoices created by the Invoice Creation and Processing System (ICAPS) format. This allows the Grantee to essentially fill in the blanks and have the correct formulas applied to the expenditures. The Grantee invoice includes a cover sheet, a summary sheet detailing payments, and backup documentation.

The Fiscal Division is responsible for verifying the ICAPS system coding. As outlined within this procedure, the DRPT Program Manager reviews the invoice for appropriate project charges and factual conditions.

The Fiscal Division finalizes the invoicing process by:

- Processing payment and completing the 30-day turn around time, and
- Scanning the Invoice and Invoice review documents into DMS.

### ***h. Closure Process by DRPT Program Manager***

The Fiscal Division files a hard copy with copy of signed authorization of payment and scans the entire invoice and supporting documentation into DMS.

## **9. Post Construction / Grant Closeout**

### ***a. Project Acceptance***

Unless a project extension has been approved in writing by the Director, the Grantee must complete the project and submit invoices for reimbursement within two years of the CTB Approval Date. The DRPT Program Manager performs a final site review to ensure that the project has been successfully completed and processes final payment as addressed in Section 8. The Grantee is required to maintain and make available all documentation regarding project cost for five years from the date of final payment from DRPT.

### ***b. Funds Analysis***

Upon acceptance and payment of the final project invoice, any unused funds will be returned to the RIA fund.

### ***c. Contingent Interest of Ownership***

1. **Acknowledgement:** For each project using State Funds, DRPT retains its Right of Contingent Interest in the materials of the project for a 15-year contingent interest period per the terms of the executed Agreement.
2. **Retirement of Commonwealth's Contingent Interest Schedule:** At the end of the 15-year contingent interest period, the DRPT Program Manager prepares an Acknowledgement of Expiration of DRPT's Interest Letter which is signed by the Director of DRPT for the project file and notification to the Grantee. The original letter is mailed to Grantee and a copy is maintained on DMS and in the Grantee project file.

**d. Reporting Requirements**

The DRPT Program Manager sends a request for railcar data annually on a Fiscal Year schedule to Grantee to verify their carload usage.

**e. RIA Repayment Policy**

The grant agreement requires repayment of grant funds if Grantees fail to meet the minimum carload performance requirements of the agreement. In the event that a grantee has missed its target minimum carload requirement, the following repayment policy of the RIA provides a proportionate credit for the partial public benefit achieved by RIA Grantees. This policy shall apply to all projects whose performance period began after January 1, 2006.

Partial public benefit achieved shall be defined as the highest actual number of revenue rail carloads run over the RIA grant funded tracks divided by the target performance stated in the grant agreement between the Department and the Grantee.

If the Grantee fails to meet the Annual Carload usage goal during the three-year Performance Period, the Grantee will reimburse the Department based on the percentage of the performance achieved. The percentage for partial repayment of the grant shall be determined by the difference between the highest Annual Carload count reported to the Department and the Minimum Threshold necessary to achieve 50 Application Points, plus accrued annual interest using the prevailing statutory legal rate of interest established by the Virginia General Assembly calculated from the date when payment is made by the Department to date of payment of any reimbursement amount.

Repayment schedules shall be as specified in the grant agreement between the Department and the Grantee. Any interest will be applied as per the terms of the grant agreement. The Director of the Department of Rail and Public Transportation is authorized to implement this policy and enter into repayment agreements satisfactory to the Director.

## **10. Miscellaneous**

**a. Audits**

Project audits are conducted both passively (i.e. during routine project management, review of invoices, project site visits, review of Grantee correspondence) and actively (i.e. scheduled audit for in-depth reviews). Additionally, DRPT is subject to a state oversight audit performed by the Department of Accounts (DOA). It is important for program/project records to be complete and accurate and filed properly in order for the audits to be successful.

The Grantee is required to maintain and make available all documentation regarding project cost for a period of five years from the date of final payment from DRPT.

The Fiscal Division will govern the external audit process for costs incurred and paid.

**b. *Public Information Issues***

Public Information including news releases, press contact, etc. is the responsibility of the Department's Communications Officer. All matters relating to public information should be referred to the Communication Officer.