

**Little Hoover Commission
Bond Oversight / Proposition 1B Bond Accountability
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INTRODUCTION:

Proposition 1B accountability has basis in the Executive Order S-02-07, Senate Bill 88 (Chapter 181, Statutes of 2007); California Transportation Commission (CTC) Accountability Implementation Plan; accountability plans adopted by administrative agencies and departments; and long-standing statutory, regulatory and policy requirements for various boards and commissions involved in transportation and air-quality related matters. In addition, the bond accountability requirements and expectations are consistent with existing program and project management practices commonly used for transportation projects, or are an evolutionary step to improve these practices. For many programs, the adopted accountability plans exceed the requirements of Executive Order S-02-07 and SB 88, most notably in the frequency that project status is collected and reported to the public (quarterly vs. bi-annually).

FRONT-END ACCOUNTABILITY

In some cases, the bond act itself included fairly specific intent for expected outcomes and criteria for project selection. In other cases, the bond act was fairly general and additional criteria was to be provided by subsequent legislation or by program guidelines developed by the designated administrative agency. In all cases, the intent is that each bond program is outcome-orient towards specific goals with individualized performance-based criteria for project selection to identify a portfolio of projects that, as a whole, maximize the public benefits resulting from the bond investment.

All steps of the front-end accountability measures are conducted in an open and transparent method generally at both the state and local level. Program development activities (approval of criteria and guidelines, solicitation for project nominations, project nomination review and project approval / selection) is generally conducted by appointed State boards or commissions (CTC, California Air Resources Board) operating under open meeting laws. These boards and commissions are supported by full-time professional staff with broad understanding of the policy and financial implications of bond investments and economic and social impacts of a wide variety of transportation or air quality projects. At the local level, projects are selected for nomination of bond funding by regional or local governmental entities (city councils, regional transportation planning agencies, port authorities, transit agencies, regional air districts, etc.) in public meetings. Capital outlay projects are generally required to be in a Regional

Transportation Plan (RTP), the Interregional Transportation Strategic Plan, a goods movement infrastructure plan adopted at a statewide or regional level, or an adopted statewide or air-basin emissions reduction plan.

Project nomination packages included a detailed description of the project's scope and expected benefits, project development and construction schedule, and estimated cost and anticipated source of funds. All projects must have a fully-committed financial plan to be considered for bond funds. Ultimately, projects were selected based on investment models for life-cycle return-on-investment determinations; and other defined measurement of benefits, such as the reduction in vehicle hours of delay, that result from implementation of the project. The project's construction start date was often a criterion to ensure that the benefits could be realized on the earliest possible timeline.

One of the most significant accountability aspects adopted by the CTC is that, with a very small number of exceptions, bond funds are restricted to construction activities. This ensure that bond funds are not expended until the project has cleared all environmental approvals, has all necessary property acquired, and has a fully engineered set of plans and contract document. At a minimum, project must result in a usable segment that provides public benefit immediately upon project completion. Dedicating bond funding to construction reduces the risk that bond funds will be used without the realization of committed benefits, and also provides a powerful incentive for project sponsors to deliver the projects within the scope, schedule and costs proposed in the project nomination package.

Currently, guidelines have been adopted and at least an initial set of projects approved for all but one of the Proposition 1B programs. Recipient agencies include the California Department of Transportation (Caltrans), regional transportation agencies, cities, counties, port authorities and transit operators.

IN-PROGRESS ACCOUNTABILITY

The accountability implementation plan adopted by the CTC builds on the project delivery capabilities developed over the past few decades, with additional transparency aspects through the Bond Accountability website. The CTC requires the execution of a "baseline agreement" for each bond-funded project that commits the project sponsor, Caltrans and the CTC to fulfill its respective roles in the successful implementation of the project. The baseline agreement is to reflect the project characteristics documented in the project nomination package. The accountability process requires a quarterly assessment of each project to determine that the project is on track to meet the schedule, cost, scope and benefit commitments contained in the baseline agreement, or if issues exist, the submittal and approval of a "corrective action plan" that identifies opportunities to get the project on-track or to re-scope the project while still delivering the promised benefits. Detailed risk management plans are developed by project teams that document potential risks, avoidance strategies, and response strategies where risks cannot be avoided. The

project management process is intended to be forward looking to focus resources on delivering projects that meet specific schedule and cost objectives and performance outcomes.

The results of the quarterly reporting process concludes with informational reports to the CTC as well as action items where corrective actions involving funds under the CTC control is required. The progress of each project is posted in the Bond Accountability site. The Bond Accountability site documents the original (or baseline) plan for each project, the current approved plan which accounts for variances and corrective actions approved through formal change management processes, and actual and forecast milestone schedules, expenditures and budget projections.

Caltrans has an internal Division of Audits and Investigation (A&I). A&I staff are currently conducting Financial Integrity and State Manager's Accountability Act (FISMA) audits of Caltrans programs. The California Legislature passed FISMA in 1983 to require state agencies to establish and maintain a system of internal accounting and administrative control. State entities with internal audit units are to complete biennial internal control audits (covering accounting and fiscal compliance practices). This audit process is completed on a continuous basis and involves review of all fiscal controls. Due to heightened sensitivities, FISMA audits conducted in the current audit plan will have an emphasis on Proposition 1B within the context of the overall control structure of each program. These audits should assist in identifying risks and vulnerability and will provide programs an opportunity to take corrective actions before bond funds are allocated. Most of the activity will be with the headquarters programs, however, there will be some review and sampling in districts and field offices.

In-Progress Accountability: Caltrans Projects

In-progress accountability involves processes that are currently in-place, or are to be enhanced to meet accountability expectations. Proposition 1B projects are among the highest priority within the Caltrans project portfolio and will benefit from the existing capabilities and current culture where on-time, on-budget success is the norm. Caltrans has employed a formal project management system since 1988 to foster team-based project delivery. The most significant characteristic of this approach is that each individual project has a project manager that coordinates the project team from cradle to grave, thus improving the efficiency and effectiveness of delivering projects "on-time and within budget." In 1989, SB 45 was enacted to change the prior practice of only accounting for the construction cost of project to one that includes all costs (environmental, engineering, property acquisition and construction.) Every project since this time has had a defined scope, schedule and cost which is continuously monitored by the project team and is subject to a rigorous change management process involving internal and external project stakeholders. Over the past 3 fiscal years, Caltrans Director Kempton has engaged his 12 district directors in a "contract for delivery" to commit to on-time delivery for all capital outlay projects, not just bond projects. During this time,

Caltrans has delivered 753 out of 754 (99.9%) promised projects on-time. The existing project management and resource management capabilities also allowed Caltrans to respond to many unplanned natural and man-made emergencies without adversely affecting these commitments.

Caltrans has long employed a “bottoms-up” approach to the development of project management plans and resource needs. The project management plans include significant project milestones and discreet activities containing the type of resources needed to produce project deliverables. Project teams continuously monitor the progress of each project and report milestone accomplishments and expenditures as they occur. The project management plans and accomplishments form the basis of a variety of legislative reports and quarterly delivery reports provided to the CTC and project sponsors. These same project management plans were used for the baseline agreements with the CTC for the projects to be delivered by Caltrans.

The existing project monitoring and change management processes employed by Caltrans essentially were considered “best practice” by the CTC and were modeled as in-progress accountability requirements for all bond programs.

In-Progress Accountability: Non-Caltrans Projects

For many years, Caltrans has worked with local governmental agencies and transit operators through its Division of Local Assistance and Division of Mass Transportation. Staffing has been established in each of the Caltrans districts to provide an interface to these agencies that ensures State transportation funds are made available when needed for locally sponsored projects, and that the State funds are used for appropriate expenditures on the specific projects receiving and allocation from the CTC. Each allocation is encumbered under a formal agreement between Caltrans and the recipient agency that documents how the funds are to be used and terms for invoicing and reimbursement of eligible costs. With rare exception, transportation funds are made available on a reimbursement basis. Local agencies must award contracts, incur costs and submit detailed invoices prior to reimbursement.

Local agencies and vendors employed by local agencies are subject to cost principles established by the Federal Highway Administration (FHWA) many years ago for reimbursement of Federally-eligible expenditures. The cost principles established through federal regulations have been adopted as policy by Caltrans for State funds, include bond expenditures. The cost principles are very specific regarding eligible and allocable costs and are imbedded in each local agency agreement. Local agencies and vendors are subject to pre-award or post-award audits to document that financial controls exist. When a pre-award audit identifies risks and vulnerabilities, the auditee is advised that these findings should be addressed prior to commencement of the work. The pre-award or post-award audit findings are shared with the recipient agencies and Caltrans program staff that oversight the agreements.

The local agency agreements for bond projects have been enhanced to include requirements for quarterly reporting of project status and issues by the recipient agency, as well as the follow-up requirements for final project delivery reports and final close-out audits.

In-Progress Accountability: Construction Management

As previously mentioned, bond funds are generally restricted to the construction phase of bond-funded projects. Bond funds are allocated to the construction contract when it is ready to proceed for solicitation and award. Bond funding is a not-to-exceed financial cap. In the event the project requires additional funding to award or complete the contract, it is to be secured from non-bond funds that are available to the project.

All transportation capital outlay contracts are subject to the State contract act which includes competitive bidding with award of the construction contract to the lowest responsible bidder. Detailed plans, specifications and estimates are prepared prior to solicitation and award of construction contracts. Caltrans and local agencies have professional engineering staff or construction management consultants to oversee contractor operations and ensure the projects are built according to plans and specifications. Payment is generally based on unit costs to ensure that payments are made only for work performed.

The construction management team is generally located on-site with the construction contractor so that issues that arise in the field are identified and addressed in a timely fashion. The resident engineer has a limited contingency fund (usually 5% of the construction budget) to address minor change orders. This contingency funding level does not allow for expanded or undocumented scope to be added to contracts in the field. The State contract act also prohibits the addition of significant work into contracts without competitive bidding. In the event that the construction project encounters unexpected conditions in the field and addition funds are needed to complete the contract, the resident engineer must work through the project manager and project sponsor to secure necessary funding. Such funding generally requires formal action by local agencies boards or the CTC when funding under their control is involved.

Shortly after the bonds were passed, Caltrans and the Business, Transportation and Housing Agency (BTH) undertook the Industry Construction Expansion (ICE) program to grow and expand the contractor and labor pool and increase the availability of construction materials necessary to implement the bond projects. This effort, coupled with the recent decline in the residential and commercial construction sectors, has resulted in the majority of projects being bid well below the engineer's construction estimate of record. The availability of contractors who have the resources and capabilities to bid on Caltrans projects is at a record level. The ICE effort has benefited projects awarded by local agencies as well as those awarded by Caltrans.

FOLLOW-UP ACCOUNTABILITY

Once project construction is complete and the project is put into public use, the follow-up accountability includes a final project report and final audit. The final project report is generated by the project team (or the recipient local agency) and is an evaluation of the actual project delivery compared with the schedule, cost, scope and benefits included in the original baseline agreement. Any variance will be identified and “lessons-learned” applied for future projects. The final audit is to ensure that bond funds were expended consistent with the Bond Act and appropriate program guidelines, and that the outcomes as reported in the final project report are consistent with the scope, cost, schedule and benefits contained in the project baseline agreement. In accordance with fiscal provisions included in all executed agreements, unallowable costs (if any) will be identified and recovered. This is similar to the existing audit requirements for federally funded programs managed by Caltrans for many years.

Caltrans’ Division of Audits and Investigation is responsible to produce the final audits and has contracted with the State Controllers Office to assist in this effort. Final reports will be posted on the Bond Accountability website as they become available. To date, only two Proposition 1B projects have been concluded through construction and the development of the final report and final audit are underway.