

# Memorandum

Tab 19

To: CHAIR AND COMMISSIONERS

CTC Meeting: March 21-22, 2018

Reference No.: 4.18  
Action

Published Date: March 9, 2018

From: SUSAN BRANSEN  
Executive Director

Prepared By: Dawn Cheser  
Associate Deputy Director

Subject: **ADOPTION OF THE SENATE BILL 1 ACCOUNTABILITY AND TRANSPARENCY GUIDELINES RESOLUTION G-18-09**

## **ISSUE:**

Should the California Transportation Commission (Commission) adopt the Senate Bill (SB) 1 Accountability and Transparency Guidelines set forth in Attachment A?

## **RECOMMENDATION:**

Staff recommends that the Commission adopt the SB 1 Accountability and Transparency Guidelines set forth in Attachment A and permit staff to make technical, non-substantive changes to the guidelines. Modifications based on stakeholder input received subsequent to the Draft SB 1 Accountability and Transparency Guidelines presented at the January 31, 2018 Commission meeting are highlighted.

## **BACKGROUND:**

The Road Repair and Accountability Act of 2017 (Senate Bill [SB] 1, Chapter 5, Statutes of 2017) provides the first significant, stable, and on-going increase in state transportation funding in more than two decades. The Legislature has provided additional funding to and increased the Commission's role in several existing programs, and created new programs for the Commission to oversee including, but not limited to, the Active Transportation Program, the Local Partnership Program, the Local Streets and Roads Program, the Solutions for Congested Corridors Program, the State Highway Operation and Protection Program, the State Transportation Improvement Program, and the Trade Corridor Enhancement Program.

SB 1 states that "it is the intent of the Legislature that the Department of Transportation and local governments are held accountable for the efficient investment of public funds to maintain the public highways, streets, and roads, and are accountable to the people through performance goals that are tracked and reported."

The Commission's responsibility for the accountability of SB 1 program funds focuses on the identification and reporting of expected and actual benefits of the projects along with the delivery

of projects within their approved scope, cost, and schedule and reporting these findings to the Legislature and the public in a transparent and timely manner.

The SB 1 Accountability and Transparency Guidelines are modelled after the Proposition 1B Accountability Implementation Plan and describe the Commission's accountability structure. This structure is intended to communicate the Commission's expectations and specifically emphasize program and project accountability and allow for transparent and effective decisions and the timely delivery of transportation system improvements and resulting benefits.

The Commission received initial input from transportation stakeholders during the November 16, 2017 public workshop. A second workshop was held on January 22, 2018 to receive additional input. The draft SB 1 Accountability and Transparency Guidelines shaped by this input, were released on January 26, 2018 and presented at the January 31, 2018 Commission meeting. Additional stakeholder comments were received subsequent to the January Commission meeting and modifications were made as necessary. Overall, the stakeholders were supportive of the draft SB 1 Accountability and Transparency Guidelines.

Attachments:

- Attachment A: SB 1 Accountability and Transparency Guidelines
- Attachment B: Resolution G-18-09
- Attachment C: Comment Letters

Reference No.: 4.18  
March 21-22, 2018  
Attachment A

# **California Transportation Commission**

The Road Repair and Accountability Act of 2017

SB 1 Accountability and Transparency Guidelines

*March 9, 2018*

**California Transportation Commission**  
The Road Repair and Accountability Act of 2017  
SB 1 Accountability and Transparency Guidelines

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# California Transportation Commission

## The Road Repair and Accountability Act of 2017

### SB 1 Accountability and Transparency Guidelines

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#### BACKGROUND

The Road Repair and Accountability Act of 2017 (Senate Bill [SB] 1, Chapter 5, Statutes of 2017) provides the first significant, stable, and on-going increase in state transportation funding in more than two decades. The Legislature has provided additional funding to the California Transportation Commission (Commission), increased its role in several existing programs, and created new programs for the Commission to oversee. These programs include the Active Transportation Program, the Local Partnership Program, the Local Streets and Roads Program, the Solutions for Congested Corridors Program, the State Highway Operation and Protection Program, the State Transportation Improvement Program, and the Trade Corridor Enhancement Program.

**SB 1 states that “it is the intent of the Legislature that the Department of Transportation and local governments are held accountable for the efficient investment of public funds to maintain the public highways, streets, and roads, and are accountable to the people through performance goals that are tracked and reported.”**

The Commission’s responsibility for the accountability of SB 1 program funds is focused on the identification and reporting of expected and actual benefits of the projects along with the delivery of projects within their approved scope, cost, and schedule, and reporting these findings to the Legislature and the public in a transparent and timely manner.

#### APPLICABILITY

These Accountability and Transparency Guidelines (Guidelines) are applicable to the Active Transportation Program, Local Partnership Program, Solutions for Congested Corridors Program, State Highway Operation and Protection Program, and Trade Corridor Enhancement Program, collectively referred to herein as SB 1 Programs. The Guidelines are intended to supplement the Commission's programmatic guidelines for each SB 1 Program. In the event of a conflict between the provisions outlined in these Guidelines and those provided in specific programmatic guidelines adopted by the Commission, the provisions of these Guidelines will govern. These Guidelines are effective immediately upon approval by the Commission and may be amended at any time subject to a Commission action at a duly noticed Commission meeting. While the Commission is authorized to program and allocate funding for SB 1 Programs, the California Department of Transportation (Department) provides the administrative oversight for SB 1 Programs and ensures that the terms and conditions of the Commission’s guidelines and subsequent programming, allocation, reporting, and other actions are followed.

## PURPOSE

SB 1 Program funded projects include but are not limited to highway, transit, active transportation, local streets and roads, congestion relief, trade corridor and other related projects, some of which are significantly complex, representing significant costs, constrained schedules, and are subject to many project delivery processes each with considerable impacts to timely project delivery. These Guidelines are intended to communicate the Commission's expectations and emphasize program and project accountability. Specifically, as described in these Guidelines, the Commission intends to exercise programmatic oversight for the delivery of SB 1 projects with regard to benefits, scope, cost, and schedule consistent with the program objectives, project applications, and executed agreements.

## SB 1 PROGRAM ACCOUNTABILITY

Modelled after certain aspects of the Proposition 1B Accountability Implementation Plan, these Guidelines describe the Commission's accountability structure that is intended to allow for transparent and effective decisions and the timely delivery of transportation system improvements and resulting benefits. The following describes the components of this accountability structure. Please note, while not all SB 1 funded projects are subject to the Front-End Accountability and In-Progress Accountability requirements, all SB 1 projects are subject to the Follow-up Accountability requirements.

### A. Front-End Accountability

The Commission will require project Baseline Agreements (Attachment A) for the following programs and projects:

- Active Transportation Program – only projects with a total project cost of \$25 million or greater or a total programmed amount of \$10 million or greater adopted in the 2017 Active Transportation Program Augmentation and subsequent program amendments and adoptions.
- Competitive Local Partnership Program – only projects with a total project cost of \$25 million or greater or a total programmed amount of \$10 million or greater adopted in the 2018 Competitive Local Partnership Program and subsequent program amendments and adoptions.
- Solutions for Congested Corridors Program – all projects adopted in the 2018 Congested Corridors Program and subsequent program amendments and adoptions.
- State Highway Operation and Protection Program – only projects with a total project cost of \$50 million or greater, or a total programmed amount (in right-of-way and/or construction) of \$15 million or greater adopted in the 2018 State Highway Operation and Protection Program and subsequent program amendments and adoptions.
- Trade Corridor Enhancement Program – all projects adopted in the 2018 Trade Corridor Enhancement Program and subsequent program amendments and adoptions.

If a project that initially falls below the aforementioned thresholds later increases to equal or exceed the threshold requirements, a Baseline Agreement will be required within 60 days of when the change is identified.

A Baseline Agreement will be amended, if a project receives additional SB 1 Program funds in a subsequent programming cycle, if there is a change in the responsible parties, or at the discretion of the Commission.

Each Baseline Agreement shall be signed by a duly authorized officer (ex: Board Chair, Executive Director) of the Applicant and the Implementing Agency, the Department's Director, and the Commission's Executive Director.

The Baseline Agreements set forth the agreed upon expected benefits, project scope, schedule, and cost, and provide a benchmark for comparison to the current status of the project for reporting purposes. These Baseline Agreements will also identify the agency responsible for meeting the reporting requirements and, for locally implemented projects, identify the responsibilities relative to the type and location of the project. The Baseline Agreement is considered the front-end document that forms the foundation for the Commission's in-progress and follow-up accountability.

The Commission shall approve all Baseline Agreements at a regular Commission meeting within four months after a project has been adopted into a SB 1 Program. The following exceptions apply:

- For projects adopted into the 2017 Active Transportation Program Augmentation, the Baseline Agreements are due four months after adoption of these Guidelines.
- For projects that have not received environmental clearance, the Baseline Agreements are due six ~~three~~ months after the Lead Agency filing of a notice of exemption or filing a notice of determination pursuant to the California Environmental Quality Act.
- For projects requesting an allocation of funding for a project component other than environmental, at the May 2018 or June 2018 Commission meetings, the Baseline Agreement shall be approved by the Commission no later than the October 2018 Commission meeting.
- No Baseline Agreement will be required for State Highway Operation and Protection Program Emergency Response projects that are necessary to respond promptly to damages to the state highway system caused by floods, slides, earthquakes, fires, and other significant events.

The Commission may delete a project for which no Baseline Agreement is executed. The Commission will not consider approval of a project allocation, except for the environmental project component, without an approved Baseline Agreement.

For all SB 1 Program projects, the Commission requires that the Department enter into agreements (cooperative or funding) with implementing agencies that in pertinent part will include the accountability and transparency principles and best management practices outlined in these Guidelines, any specific requirements in the individual programmatic guidelines, and be consistent with executed Baseline Agreement. The Commission is not a signatory to cooperative or funding agreements described in this section.

## **B. In-Progress Accountability**

The following outlines the in-progress accountability steps the Commission intends to employ to assure that SB 1 Program funded projects are successfully delivered consistent with the respective

program guidelines, Commission programming and allocation actions, and cooperative or funding agreements by and between SB 1 Program funding recipients and the Department.

#### 1. Ongoing Program Monitoring and Review

Implementing agencies are responsible for managing the scope, cost, and schedule of the project consistent with the adopted programs and executed agreements. Commission staff shall receive routine program and project progress reports from the Department. Commission staff may also schedule routine status meetings with implementing agencies, and will perform routine assessments of project progress as compared to the executed agreements. The purpose of this assessment is to identify possible issues of concern, establish an understanding of related impacts, and prepare agenda items for the Commission. Commission staff anticipates placing projects that are unable to maintain delivery and cost commitments on a "watch list" and expects these projects to be identified in the progress reports.

#### 2. Program or Project Amendments

The Commission will consider program or project amendments at its regular meetings. Program or project amendments requested by implementing agencies shall receive the approval of the same entities that signed the agreements (cooperative, funding, or baseline) before presentation to the Commission and will be processed in accordance with the respective programmatic guidelines.

#### 3. Allocation of Funds

The Commission will allocate funds only when the implementing agency requests an allocation that has been prepared in accordance with the respective programmatic guidelines. The Commission will consider allocation requests on its regular agenda.

### **C. Program Reporting**

The Commission will use various reporting mechanisms to provide regular updates to the public and the Legislature as described below and in the Follow-up Accountability Section.

#### 1. Progress Report

Once a project has been adopted into one of the SB 1 Programs, the Implementing Agency, unless otherwise specified, will submit regular and timely project updates to the Department. The Department will prepare a program progress report for each SB 1 Program and submit to the Commission. Commission Staff will use the reports to identify issues and concerns that may be presented to the Commission for further action.

The first progress reports will be presented to the Commission during the October 2018 meeting and will cover the period of March 2018 through August 2018. Subsequent quarterly program progress reports will be presented to the Commission every December (July through September period), March (October through December period), May (January through March period) and August (April through June period). Beginning in July 2019, progress reports will become semi-annual and will be presented to the Commission in March (July thru December period) and August (January through June period).

The progress report shall be written in plain language and include information appropriate to assess the current state of the overall program and each project as compared to the previous report.

The first section of the progress report will be the overall program summary taking into account all projects in the SB 1 Programs and will identify, at a minimum, the total programmed and un-programmed funds, total dollars allocated, number of projects allocated, number of completed projects, and a summary of the benefits (outputs and outcomes) achieved with the completed projects.

The second section of the progress report will be for each project that is subject to the Baseline Agreement requirement and will include the following:

- The current cost, schedule, scope and expected benefits as compared to the cost, schedule, and scope approved under the Baseline Agreement or for projects that have not yet cleared environmental, as approved at the time the project was adopted into the respective program, and a status of the construction contract award, if applicable.
- A summary describing any changes to the scope, cost, schedule and expected benefits of the project and a corrective action plan if necessary, since the last report.
- Incurred expenditures to date for all project component costs, with the SB 1 Program funds being identified separately.
- Identification and discussion of any significant issues that may impact implementation of the project including financial constraints and commitments, and risks and impacts.
- Status of the Completion and Final Delivery Reports submittals for completed projects or completed project segments. This requirement will apply to all projects in the SB 1 Programs. See the Follow-up Accountability section for more details.

## 2. Annual Reports

The Commission will provide in its annual report to the Legislature a summary of its activities relative to the administration of the SB 1 Programs. This report may also discuss significant issues with these programs, and may recommend legislative proposals that could facilitate their implementation.

### **D. Follow-up Accountability**

Beginning with the 2017 Active Transportation Program Augmentation, 2018 Formulaic and Competitive Local Partnership Programs, 2018 Solutions for Congested Corridors Program, 2018 State Highway Operation and Protection Program (only projects subject to the Baseline Agreement requirement), 2018 Trade Corridor Enhancement Program, and subsequent program adoptions, the Implementing Agency, unless otherwise specified, will submit timely Completion and Final Delivery Reports to the Department for all projects receiving funds in the aforementioned programs. The Department will review and approve the reports prior to submitting to the Commission. Commission staff will use the reports to identify issues and concerns that may be presented to the Commission for further action.

#### 1. Completion Reports

Within six months of construction contract acceptance or the project becoming operable (open to the public), whichever comes sooner, the Department shall provide a Completion Report to the Commission on the scope of the completed project, its estimated final cost, estimated duration,

and project benefits as compared to those included in the executed project agreements. Additionally, the Completion Report shall describe the methodologies and assumptions used to evaluate how the project benefits were evaluated as compared to the methodologies and assumptions used in the executed project agreements. In the event the project benefits identified in the Completion Report differ from those identified in the executed program agreements (cooperative, funding, or baseline), the difference must be noted, quantified, and explained. Documentation used for the benefit evaluation shall be preserved and made available for review by the Department, the Commission, the Transportation Inspector General, Department of Finance, and/or the California State Auditor, if requested. The Completion Report should not be delayed due to claims, plant establishment periods, ongoing environmental mitigation monitoring, or other reasons.

For projects receiving SB 1 Program funds for pre-construction components only, the Department shall provide the Completion Report to the Commission within six months of the conclusion of the pre-construction component. The Completion Report will include the scope of the project component, its estimated final cost, and duration as compared to those included in the executed project agreements. Additionally, the Completion Report shall provide an updated schedule, a description of how the project will progress to construction, and a discussion on how the project will continue to provide the benefits described in the executed project agreements (cooperative, funding, or baseline).

For projects delivered in segments, a Completion Report will be required for each segment and note that a summary Completion Report will be provided when the final project segment is complete. An audit may be done on one or all segments of a segmented project.

The Department shall withhold an appropriate percentage of SB 1 Program funds until acceptance of the Completion Report by the Department.

## 2. Final Delivery Reports

A Final Delivery Report will be provided within 180 days of conclusion of all remaining project activities beyond the acceptance of the construction contract to reflect final project expenditures, any changes that occurred after submittal of the Completion Report and an updated evaluation of the benefits. The Commission may include this information in its annual reports to the Legislature.

## 3. Audits of Project Expenditures and Outcomes

SB 1 created the position of Transportation Inspector General as Director of the Independent Office of Audits and Investigations to ensure the Department, and external entities that receive state and federal transportation funds from the Department, are spending those funds efficiently, effectively, economically, and in compliance with applicable state and federal requirements.

The Inspector General is required to review policies, practices, and procedures and conduct audits and investigations of activities involving all state transportation funds.

In order to achieve independence, the Inspector General is required to report at least annually to the Governor, Legislature, and Commission with a summary of investigation and audit findings and to report to the Secretary of Transportation and the Department's Director and Chief Deputy Director on an ongoing basis.

The Commission expects that audits will be conducted on a representative sample of projects from each of the respective SB 1 Programs and provide a finding on the following:

- Whether project costs incurred and reimbursed comply with the executed project agreements or approved amendments thereof; state and federal laws and regulations; contract provisions, and Commission guidelines.
- Whether project deliverables (outputs) and outcomes are reasonable in comparison with the project cost, scope, schedule and benefits described in executed project agreements or approved amendments thereof.

Additional audits, if deemed necessary, may be requested by the Commission during the implementation phases of the project. In addition to any final audit performed, it may be beneficial to provide semi-final audits when a project is substantially completed. It is expected that the findings from these audits will be included in the Inspector General's reports to the Commission.

Attachments:

Attachment A: Project Baseline Agreement Template

**ROAD REPAIR AND ACCOUNTABILITY ACT OF 2017**

**PROJECT BASELINE AGREEMENT**

[insert Project Name]

Resolution \_\_\_\_\_

**1. FUNDING PROGRAM**

- Active Transportation Program
- Local Partnership Program (Competitive)
- Solutions for Congested Corridors Program
- State Highway Operation and Protection Program
- Trade Corridor Enhancement Program

**2. PARTIES AND DATE**

- 2.1 This Project Baseline Agreement (Agreement) for the [insert Project Name], effective on [insert date Commission approved baseline], is made by and between the California Transportation Commission (Commission), the California Department of Transportation (Caltrans), the Project Applicant, [insert Name of Project Applicant], and the Implementing Agency, [insert Name of Implementing Agency], sometimes collectively referred to as the “Parties”.

**3. RECITAL**

- 3.2 Whereas at its [insert meeting date Commission programmed project] meeting the Commission approved the [insert Funding Program] and included in this program of projects the [insert Project Name], the parties are entering into this Project Baseline Agreement to document the project cost, schedule, scope and benefits, as detailed on the Project Programming Request Form attached hereto as Exhibit A and the Project Report attached hereto as Exhibit B, as the baseline for project monitoring by the Commission.
- 3.3 The undersigned Project Applicant certifies that the funding sources cited are committed and expected to be available; the estimated costs represent full project funding; and the scope and description of benefits is the best estimate possible.

**4. GENERAL PROVISIONS**

The Project Applicant, Implementing Agency, and Caltrans agree to abide by the following provisions:

- 4.1 To meet the requirements of the Road Repair and Accountability Act of 2017 (Senate Bill [SB] 1, Chapter 5, Statutes of 2017) which provides the first significant, stable, and on-going increase in state transportation funding in more than two decades.
- 4.2 To adhere, as applicable, to the provisions of the Commission:
- Resolution *[insert number]*, “Adoption of Program of Projects for the Active Transportation Program”, dated *[insert date]*.
  - Resolution *[insert number]*, “Adoption of Program of Projects for the Local Partnership Program”, dated *[insert date]*
  - Resolution *[insert number]*, “Adoption of Program of Projects for the Solutions for Congested Corridors Program”, dated *[insert date]*
  - Resolution *[insert number]*, “Adoption of Program of Projects for the State Highway Operation and Protection Program”, dated *[insert date]*
  - Resolution *[insert number]*, “Adoption of Program of Projects for the Trade Corridor Enhancement Program”, dated *[insert date]*
- 4.3 All signatories agree to adhere to the Commission’s *[insert Funding Program(s)]* Guidelines. Any conflict between the programs will be resolved at the discretion of the Commission.
- 4.4 All signatories agree to adhere to the Commission’s SB 1 Accountability and Transparency Guidelines and policies, and program and project amendment processes.
- 4.5 The *[insert agency(s)]* agrees to secure funds for any additional costs of the project.
- 4.6 The *[insert agency(s)]* agrees to report to Caltrans on a quarterly basis; after July 2019, reports will be on a semi-annual basis on the progress made toward the implementation of the project, including scope, cost, schedule, outcomes, and anticipated benefits.
- 4.7 Caltrans agrees to prepare program progress reports on a quarterly basis; after July 2019, reports will be on a semi-annual basis and include information appropriate to assess the current state of the overall program and the current status of each project identified in the program report.
- 4.8 The *[insert agency(s)]* agrees to submit a timely Completion Report and Final Delivery Report as specified in the Commission’s SB 1 Accountability and Transparency Guidelines.
- 4.9 All signatories agree to maintain and make available to the Commission and/or its designated representative, all work related documents, including without limitation engineering, financial and other data, and methodologies and assumptions used in the determination of project benefits during the course of the project, and retain those records for four years from the date of the final closeout of the project. Financial records will be maintained in accordance with Generally Accepted Accounting Principles.
- 4.10 The Transportation Inspector General of the Independent Office of Audits and Investigations has the right to audit the project records, including technical and financial data, of the Department of Transportation, the Project Applicant, the Implementing

Agency, and any consultant or subconsultants at any time during the course of the project and for four years from the date of the final closeout of the project, therefore all project records shall be maintained and made available at the time of request . Audits will be conducted in accordance with Generally Accepted Government Auditing Standards.

**5. SPECIFIC PROVISIONS AND CONDITIONS**

5.1 Project Schedule and Cost

See Project Programming Request Form, attached as Exhibit A.

5.2 Project Scope

See Project Report or equivalent, attached as Exhibit B. At a minimum, the attachment shall include the cover page, evidence of approval, executive summary, and a link to or electronic copy of the full document.

5.3 Other Project Specific Provisions and Conditions

**Attachments:**

Exhibit A: Project Programming Request Form

Exhibit B: Project Report

**SIGNATURE PAGE**  
**TO**  
**PROJECT BASELINE AGREEMENT**

*[insert Project Name]*

Resolution \_\_\_\_\_

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Name \_\_\_\_\_ Date \_\_\_\_\_  
Title \_\_\_\_\_  
Project Applicant \_\_\_\_\_

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Name \_\_\_\_\_ Date \_\_\_\_\_  
Title \_\_\_\_\_  
Implementing Agency \_\_\_\_\_

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Laurie Berman \_\_\_\_\_ Date \_\_\_\_\_  
Director \_\_\_\_\_  
California Department of Transportation \_\_\_\_\_

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Susan Bransen \_\_\_\_\_ Date \_\_\_\_\_  
Executive Director \_\_\_\_\_  
California Transportation Commission \_\_\_\_\_

## CALIFORNIA TRANSPORTATION COMMISSION

### **Adoption of the Senate Bill 1 Accountability and Transparency Guidelines Resolution G-18-09**

- 1.1 **WHEREAS**, on April 28, 2017, the Governor signed Senate Bill (SB) 1 (Beall, Chapter 5, Statutes of 2017), known as the Road Repair and Accountability Act of 2017, and created new and augmented existing programs, including, but not limited to, the Active Transportation Program, the Local Partnership Program, the Local Streets and Roads Program, the Solutions for Congested Corridors Program, the State Highway Operation and Protection Program (SHOPP), the State Transportation Improvement Program, and the Trade Corridor Enhancement Program, and
- 1.2 **WHEREAS**, SB 1 states that “it is the intent of the Legislature that the Department of Transportation and local governments are held accountable for the efficient investment of public funds to maintain the public highways, streets, and roads, and are accountable to the people through performance goals that are tracked and reported”, and
- 1.3 **WHEREAS**, the California Transportation Commission (Commission) is responsible for the accountability and transparency of the SB 1 program funds under its purview, and
- 1.4 **WHEREAS**, the Commission held two workshops on November 16, 2017, and January 22, 2018 to receive input on the development of the SB 1 Accountability and Transparency Guidelines.
- 2.1 **NOW THEREFORE BE IT RESOLVED**, that the Commission adopts the SB 1 Accountability and Transparency Guidelines, as presented by staff on March 21, 2018, and
- 2.2 **BE IT FURTHER RESOLVED**, that the purpose of these guidelines is to identify the Commission’s policy and expectations and thus emphasize program and project accountability, and
- 2.3 **BE IT FURTHER RESOLVED**, that the Commission intends to exercise programmatic oversight for the delivery of SB 1 projects with regard to benefits, scope, cost, and schedule consistent with the program objectives and executed agreements, and
- 2.4 **BE IT FURTHER RESOLVED**, that the Commission, through its guidelines, has set forth its expectation that the California Department of Transportation will provide the administrative oversight for SB 1 Programs and ensure that the terms and conditions of the Commission’s guidelines and subsequent programming, allocation, reporting, and other actions are followed; and
- 2.5 **BE IT FURTHER RESOLVED**, that the Commission staff is authorized to make minor technical changes as needed to the guidelines, and
- 2.6 **BE IT FURTHER RESOLVED**, that the Commission directs staff to post these guidelines to the Commission’s website.

**DEPARTMENT OF TRANSPORTATION**

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*Making Conservation  
a California Way of Life.*

**Reference No.: 4.18**  
**March 21-22, 2018**  
**Attachment C**

February 14, 2018

*Susan*  
Ms. Susan Bransen  
Executive Director  
California Transportation Commission  
1120 N Street  
Sacramento, CA 95814

Dear Ms. Bransen:

Thank you for the opportunity to provide comments on the draft Accountability and Transparency Guidelines (Guidelines) that Commission staff have drafted to help guide the successful implementation of Senate Bill (SB) 1 funding programs. I would like to commend the Commission staff on their outstanding work in developing the guidelines in a collaborative manner and coordinating with Department staff and other agencies on SB 1 implementation. The Department has prepared comments on the draft Guidelines for your consideration and potential inclusion into the final Guidelines. Our collective success is essential to the long-term viability and fiscal stability of the remarkable legislative achievement represented by SB 1.

The Department has identified four key topics that merit attention as listed below:

**State Highway Operation Protection Program (SHOPP)**

The State Highway Operation Protection Program (SHOPP) has comprehensive Commission-adopted guidelines that address the unique needs of the SHOPP and were developed to be consistent with Asset Management as required by SB 486 and further clarified by SB 1. Rather than having two sets of guidelines that pertain to the SHOPP, the Department requests that the existing Interim SHOPP guidelines be amended to incorporate any needed additional requirements that may be included within these Guidelines. This will provide a single set of guidelines for those developing, implementing or auditing SHOPP projects.

**Baseline Agreements**

The current draft Guidelines identify the completion of the Environmental Document as being the point in the project development process that Baseline Agreements will be required.

Ms. Susan Bransen  
February 14, 2018  
Page 2

We suggest using the Project Approval milestone to initiate such agreements. The details being committed to in the Baseline Agreements are not adequately determined until the completion of the entire Project Approval and Environmental Document (PA&ED) Phase, most importantly the project's estimated cost and schedule. The Environmental Document identifies the preferred alternative, project impacts, and mitigations but does not identify project cost and schedule.

### **Completion Reports**

The Guidelines state, "The Department shall ensure a project Completion Report is approved prior to paying the final invoice for the respective SB 1 program funds." We recommend that the guidelines allow the Department to withhold a designated percent of the SB 1 funds until acceptance of the Completion Report by the Department. The Department would include this provision in project funding agreements executed with the sponsoring agencies.

### **Audits**

- Audits should be conducted on a representative sample of projects versus all projects. It is impractical and too expensive to audit every project. Additional suggested language from the Department on Audits is attached on pages 4 and 5.
- Rather than audits focusing on a single project output or outcome, it would be more useful to accept an output or outcome range that would be reasonable for individual projects.

Additional comments and information on points above are attached (ATTACHMENT A).

If you have questions regarding this letter or enclosed comments, please contact me or coordinate with Bruce de Terra, Chief, Division of Transportation Programming, at 916-654-4013 or by email sent to <bruce.de.terra@dot.ca.gov>

Sincerely,



NORMA ORTEGA  
Chief Financial Officer

Enclosures

ATTACHMENT A: Departmental Comments on SB 1 Accountability Guidelines

**ATTACHMENT A**  
**SB 1 Accountability and Transparency Guidelines**  
**Department comments 2-14-18**

Background (page 2)

Grammatical Edit:

*Second sentence: "The Legislature has provided additional funding to and ..."*

**Suggest replacing with: "The Legislature has provided additional funding to the California Transportation Commission (Commission), increased its role in several existing programs, and created new programs for the Commission to oversee."**

Applicability (page 2)

Grammatical Edit:

*First sentence: "With exception to the Local Streets and Roads Program, these...Senate Bill 1 programs as listed in Section IV."*

**Section IV should be replaced with Section A. Front End Accountability.**

Purpose (page 3)

Clarification:

*"Specifically, as described in these Guidelines...Commission intends to exercise programmatic oversight..."*

**Please add sentence clarifying Department responsibility: where Caltrans is lead – direct responsibilities, where Caltrans has oversight, and where projects fall under Local Assistance.**

Front end Accountability (page 3)

Clarification:

- *First Bullet: "Active Transportation Program – only for projects with a total project cost of \$25 million or greater or a total programmed amount of \$10 million or greater."*

**Please clarify whether this is applicable to all programmed phases.**

- *Third and 5<sup>th</sup> Bullet: Congested Corridors Program & Trade Corridor Enhancement Program*

**Please clarify intent that any project regardless of cost in these two programs will require a Baseline Agreement.**

- *Fourth bullet under Front-end Accountability: "State Highway Operation and Protection Program – only for projects with a total project cost of \$50 million or greater or a total **SHOPP** programmed amount (in right-of-way **capital** and/or construction **capital**) of \$15 million or greater.*

**Please clarify if the words inserted in bold and underlined are correct and if not provide clarity.**

ATTACHMENT A  
SB 1 Accountability and Transparency Guidelines  
Department comments 2-14-18

Consider adding sentence: **“If a project is less than the \$50 million/\$15 million capital at onset and becomes greater than \$50 million/ \$15 million due to cost increase, scope change or combining projects during the project development process, a baseline agreement will be required at the time of the change.”**

- *Second paragraph: “Each Baseline Agreement shall be signed by a duly authorized officer of the Applicant, Implementing Agency, the Department’s Director ...”*

**Add “or delegated representative” at the end of the sentence to avoid delays in signing Baseline Agreements.**

- *Fourth paragraph under Front-End Accountability: “The Commission shall approve all (executed) Baseline Agreements at a regular Commission meeting within four months after a project has been adopted into one of the aforementioned programs...”*

**Please clarify that Baseline Agreements will be required at Project Approval.**

- *Bullet 2 under paragraph 4: “For projects requesting an allocation at the May 2018 and June 2018 Commission Meetings ...”*

**Please clarify how projects that have already received RMRA allocations (Aug and Oct of 2017) will be handled.**

In-Progress Accountability (page 4)

*Second Paragraph – Ongoing Program Monitoring and Review: “Implementing agencies are responsible for managing the scope, cost, and schedule of the project consistent with the adopted programs and executed agreements. Commission staff shall receive routine program and project progress reports from the Department.”*

**Guidelines should clarify if this is a requirement for all projects or only those with Baseline Agreements.**

Program reporting (page 5)

- *Progress Report – first paragraph: “The first progress report...during the October 2018 meeting. Subsequent reports will be presented to the Commission every ~~December~~ **January** (First quarter), ~~March~~ **May** (second quarter), ~~May~~ **August** (third quarter) and ~~August~~ **October** (fourth quarter).*

**Please see proposed revised dates in bold/underline which align with quarterly reporting.**

- *Bullet 3 – instead of expenditures state **payments received**.*

Completion Reports (page 6)

*First paragraph: “Within six months... (open to the public), **whichever is sooner**, the Department shall provide Completion report to the Commission on the scope of the completed project, its estimated final cost, estimated duration (total duration from PID? Construction duration?) ... and project benefits as compared to those included in the executed ~~project~~ **baseline** agreements.” “Additionally, the Completion*

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*Report...used in the executed ~~project~~ **baseline** agreements.” “In the event the project benefits...identified in the executed ~~program~~ **baseline** agreements, the difference...” End of first paragraph: “The completion report should not be delayed... due to claims or plant establishment periods.”*

- Suggest adding: “**Department shall be afforded one year to provide Completion report if a project has claims so that final cost figures will be accurate.**”
- **Please provide definition of Completion Report.**

Second paragraph: “*The Completion Report will include...in the executed ~~project~~ **baseline** agreements.” “For projects receiving SB 1 program funds for pre-construction components only, the Department shall provide the Completion Report to the Commission within six months of the conclusion of the pre-construction component.*

**Suggest adding: “Projects that were long-lead and received construction funding prior to completing pre-construction component will provide a Completion report at the conclusion of project construction.”**

- Last paragraph: “The Department shall ensure a project Completion Report is approved prior to paying the final invoice...”
  - **This requirement cannot be binding unless the baseline agreement, the cooperative agreement, and funding agreement with the implementing agency articulates the requirement that the Completion Report must be submitted as a condition for final payment;**
  - **If the Completion Report is not submitted but the final invoice is submitted, the Caltrans contract/oversight manager for the project must notify the implementing agency that the invoice is invalid or disputed.**
  - **If the two items bulleted above are not properly handled, Caltrans could be in violation of law for not paying the invoice.**
  - **Where there is a dispute between the Department and submitting agency, the dispute will be submitted to the Commission for resolution. We may enter into a legal quagmire if the implementing agency submits a report and there is a disagreement about its adequacy.**
  - **The Department and Commission should have an agreement as to what constitutes a Completion Report which will be incorporated into the Baseline Agreement.**

Section D 3. Audits of Project Expenditures and Outcomes

**Suggest replacing Section 3. Audits of Project Expenditures and Outcomes with the following:**

**“SB 1 created the position of Inspector General as Director of the Independent Office of Audits and Investigations to ensure the Department, and external entities that receive state and federal transportation funds from the Department, are spending those funds efficiently, effectively, economically, and in compliance with applicable state and federal requirements.**

**The Inspector General is required to review policies, practices, and procedures and conduct audits and investigations of activities involving all state transportation funds.**

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In order to achieve independence, the Inspector General is required to report at least annually to the Governor, Legislature, and Commission with a summary of investigation and audit findings and to report to the Secretary of Transportation and the Director and Chief Deputy Director on an ongoing basis.

The Commission recommends that audits be conducted on a representative sample of projects from each of the respective SB 1 programs and provide a finding on the following:

- Whether project costs incurred and reimbursed comply with the executed project agreements or approved amendments thereof; state and federal laws and regulations; contract provisions, and Commission guidelines.
  
- Whether project deliverables (outputs) and outcomes are reasonable in comparison with the project cost, scope, schedule and benefits described in executed project agreements or approved amendments thereof.

Additional audits, if deemed necessary, may be requested by the Commission during the implementation phases of the project. In addition to any final audit performed, it may be beneficial to provide semi-final audits when a project is substantially completed. It is expected that the findings from these audits will be included in the Inspector General's reports to the Commission."

Additional Comments:

- o Guidelines should define "reasonable" for example +/- 20%.
- o Second bullet replace project agreements with baseline agreements
- o Performing both Semi-final and Final audits on the same project may not be the most efficient use of resources. In preparing for audits on SB 1 projects Audits and Investigations could evaluate the possibility of conducting a two-stage review as recommended.
- o The current wording in the guidelines for both Semi-final Audit and Final Audit, provides confusing direction on the proposed timing of the audits. The Semi-final Audit section, states the audit should be performed either within 6 months of the project completion report or when the project is substantially open to traffic. However, the guidelines state, in Follow-up and Accountability, that the Department shall provide a Completion Report six months *after* contract acceptance *or* the project becoming operable (open to the public). Based on this wording and the normal timing for contractor acceptance, it appears that there is **only one option**, to perform the audit once the project is open to the public since this will always be at least six months prior to the project report being submitted (if it is on time). Also, it would be very difficult for the Inspector General to know when a project is considered open to the public – which according to this wording, starts the six-month time-frame for the completion of the semi-final audit.
- o Please clarify when a Final Audit report is to be completed. Guidelines use the term "Project Completion", which was defined as meaning when a project is "open to the public". The guidelines go on to provide a different definition for project completion in the Final Audit Section, but it is not intuitive that these are different dates.

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- Finally, in the statement *“For purposes of these audits, project completion occurs after all project activities beyond the acceptance of the construction contract are completed”*. The word **“all”** needs to be clarified as there are many activities that occur—including legal and final accounting—that could be seen as needing to be included, per the above statement.

Comments relevant to entire document:

- **Specify whether the item being discussed is for all projects or projects with baseline agreements.**
- **Replace project agreements with baseline agreements.**
- **Provide clarity on what is referred to as Nominating, Sponsor and Implementing Agency.**
- **Project Baseline Agreements Templates under development should be provided to the Department and Local Agencies for comment and input before being finalized.**
- **Project Approval should be used where the document is referring to “Environmental” or “Environmental Document”.**
- **Guidelines should clarify the specific principles and practices that need to be included in the cooperative and funding agreements (template) and should be aligned to the Baseline Agreements.**