CALIFORNIA TRANSPORTATION COMMISSION

PROPOSITION 1B LOCAL BRIDGE SEISMIC RETROFIT ACCOUNT GUIDELINES

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Background

1. **Authority and purpose.** A Local Bridge Seismic Retrofit Program (Program) was initially mandated by emergency legislation Senate Bill (SB) 36X (Kopp, Chapter 18, Statutes of 1989) after the October 17, 1989 Loma Prieta earthquake. In total 1,235 local bridges in need of seismic retrofit work were identified and included in the Program. Funds for the Program come from federal, state and local sources. Funds received through the federal Highway Bridge Program, administered by the Department of Transportation (Department), cover up to 88.53 percent of the cost to seismically retrofit a local bridge. The other 11.47 percent, referred to as the required local match, must come from non-federal, state or local sources. Since the Program was a state mandate, state transportation funds were provided to local agencies through the annual state budget process for use as the 11.47 percent required local match. With the passage of Assembly Bill (AB) 2996 (Committee on Budget, Chapter 805, Statutes of 2002) the Program became a discretionary program and local agencies had to secure the 11.47 percent required local match from the State Transportation Improvement Program (STIP) or from other local funds under their control.

   The Highway Safety, Traffic Reduction, Air Quality, and Port Security Bond Act of 2006 (Proposition 1B), approved by the voters on November 7, 2006, established a $125 million Local Bridge Seismic Retrofit Account (Account). Account funds are state funds dedicated specifically to provide the 11.47 percent required local match for the seismic retrofit work on local bridges, ramps, and overpasses remaining in the Program. The entire $125 million is available for projects, less a $2.5 million set-aside to cover bond administrative costs per the Department of Finance.

   The Account is subject to the provisions of Government Code Section 8879.23(i), as added by Proposition 1B, and to Section 8879.62, as enacted through implementing legislation SB 88 (Committee on Budget and Fiscal Review, Chapter 181, Statutes of 2007). The implementing legislation designated the California Transportation Commission (Commission) as the administrative agency responsible for programming Account funds and authorized the adoption of implementing guidelines.

   At the time Proposition 1B was approved, the Department reported that local agencies had completed retrofit work on 756 of the 1,235 bridges leaving 479 local bridges in need of seismic retrofit and initially eligible for Account funding. There were 227 Bay Area Rapid Transit (BART) bridges over local streets and roads included in the Program to ensure the protection and safety of the motoring public on the affected local streets and roads. The Department converted $201.2 million of federal Highway Bridge Program funds to Surface Transportation Program (STP) funds to allow programming of the 88.53% federal portion for the 227 BART bridges.

In May 2008, the Department formed the Highway Bridge Program Advisory Committee (Committee) to obtain input and advice from stakeholders and to provide a forum to confer with cities and counties on local bridge funding and programming matters within the Highway Bridge Program. The Committee is comprised of the Department Local Assistance Division Chief and technical staff from the California State Association of Governments, the California State Association of Counties, the League of California Cities, the Federal Highway Administration, the California Association of Councils of Governments and the Commission. Between 2008 and 2018, the Department, working with the Committee, removed 104 bridges from the Program that were retrofitted with other funds, demolished or removed, or found to be privately owned.

In January 2018, the Department reported that of the 479 bridges initially eligible for Account funding, 104 bridges were removed from the program, construction was completed on 311 bridges, 47 bridges were in various stages of the design and pre-strategy phase, and 17 bridges were in construction. Commission and Department staff, in conjunction with the Committee, reviewed the project list to identify bridge owners who had shown little to no progress on the work necessary for these bridges to achieve seismic safety. In May 2018, the Commission sent letters to bridge owners asking them to work with the Department to develop a work plan for each project.

As of June 30, 2019, there are 59 bridges remaining on the Local Bridge Seismic Retrofit Program project list with 16 of these bridges currently in construction. The Commission has allocated $79.65 million of the available $122.5 million in Proposition 1B Bond funds and $24.30 million of the $32.9 million of State match funds to the Department. The Department has sub-allocated $90.07 million of the $103.95 million available and anticipates the remaining Account funds will be sufficient to complete all 59 bridges remaining in the program.

The purpose of these amended guidelines is to revise the existing Proposition 1B Seismic Retrofit Account Guidelines to incorporate new project delivery requirements and policy for the Program, identify Commission policy for use of Account funds, and to provide guidance to the Department, the Committee, and local agencies in carrying out their respective responsibilities.

Project Programming

2. **Schedule.** The Commission intends to implement the revised Account Guidelines on the following schedule:

Commission notices Account Guidelines	August 14-15, 2019
Account Guidelines submitted to the Legislature	September 6, 2019
Commission adopts Account Guidelines	October 9, 2019

3. **Eligibility.** Projects eligible to use Account funds are limited to the remaining 59 Program bridges, ramps and overpasses. The Commission intends to allocate Account funds only to the construction phases for the seismic retrofit work of eligible projects.

   The useful life of an Account funded project shall not be less than the required useful life for capital assets pursuant to the State General Obligation Bond Law, specifically subdivision (a) of Section 16727 of the Government Code. That section requires that projects have an expected useful life of at least 15 years.

4. **Program.** The Department may program the remaining 59 eligible projects per baseline scope, cost and schedule commitments outlined in project delivery agreements entered into in accordance with these guidelines. In developing the Program, the Department will also consider the availability of federal Highway Bridge Program funds and the federal fiscal year in which local agencies request funding for their seismic retrofit projects. Federal regulations limit the amount of Highway Bridge Program funds that can be programmed in each year of the Federal Transportation Improvement Program (FTIP).

   In addition to funding Program projects, federal Highway Bridge Program funds are used for the federally-mandated Bridge Inspection, Bridge Rehabilitation, Bridge Replacement and Preventive Maintenance Programs. To the extent both federal Highway Bridge Program and Account funds are available, the Department will use the flexibility available in the FTIP to advance projects if requested by a local agency. It is anticipated that in some years the need for federal Highway Bridge Program funds could exceed the available capacity. Thus, some projects may have to be delayed until future years of the Program to coincide with the available federal Highway Bridge Program funds. Local agencies are encouraged to expedite project delivery ahead of Program established schedules to take advantage of the “first come, first served” sub-allocations.

   The Department will annually exchange a portion of the local share of funds received through the federal Highway Bridge Program for state funds, as needed, to accommodate the current remaining required local match needs, up to a total of $32.9 million. This exchange, along with the available $122.5 million Account bond match, will fully fund the current Program needs for the required local match at $155.4 million.

Project Delivery

5. **Project Delivery Agreements.** For all projects that have not advanced to the construction phase by December 31, 2019, the Department and the local agency responsible for the delivery of the local seismic retrofit project will execute a project delivery agreement, which shall supersede existing baseline agreements and which will set forth the project scope, cost and delivery schedule. These project delivery agreements must be adopted by the governing board responsible for approval of projects for the local agency. Executed project delivery agreements shall be delivered to the Department and Commission within three months of the adoption date of these guidelines.

   Agencies that do not comply with this requirement will be ineligible to receive new obligations in the Highway Bridge Program in accordance with Section 106 of Title 23, United States Code, until the project delivery agreement is executed or the bridge project enters the construction phase. Additionally, agencies may be required to repay any Federal funding expended on preliminary engineering in accordance with Federal Highway Administration Order 5020.1A.

6. **Project Delivery.** Local agencies are expected to deliver their project in the Federal Fiscal Year programmed or earlier. Local agencies will submit to the Department the request for authorization of Highway Bridge Program funds in accordance with the procedures developed by the Department. The Department will date stamp the request, if it is found to be complete and correct. This date and time will establish priority for sub-allocation of the 11.47 percent required local match from the Account.

   Local agencies will provide a project status update to the Department on a quarterly basis through the Local Assistance Online Data Information System. Agencies that fail to meet a milestone in an executed project delivery agreement (environmental clearance process completion, design completion, right-of-way certification, ready for construction advertisement) will be ineligible to receive new obligations in the Highway Bridge Program until the conditions of the project delivery agreement are met. Additionally, agencies may be required to repay any Federal funding expended on preliminary engineering in accordance with Federal Highway Administration Order 5020.1A. Funding for projects within the Highway Bridge Program that are prioritized by the Committee to be more at risk than a project in the Program will not be subject to these restrictions.

7. **Project Amendments.** The Department shall not add bridges to the remaining 59 bridges, ramps and overpasses in the Program. The

Department may not change the delivery schedule for any project in the fiscal year in which it is programmed. Projects in the delivery year of the Program can seek an extension from the Commission per the timely use of funds provisions in these guidelines.

8. **Account Allocations.** In accordance with Government Code Section 8879.62(b), the Commission will annually allocate Account funds to the Department based on a funding request submitted on or before September 30 of each year. The Commission may allocate Account funds up to the appropriation level provided in the State Budget Act.

   The Department will sub-allocate funds to local agencies for project implementation based on completed final Plans, Specifications, and Estimate (PS&E phase), where appropriate, and only after verifying that the project is eligible to receive federal Highway Bridge Program funding through an approved Authorization to Proceed from FHWA for each phase of work and is ready to proceed with right-of-way or construction phase work.

   Pursuant to Public Resources Code Section 21102, the Department may not sub-allocate funds for design, right of way, or construction prior to documentation of environmental clearance under the California Environmental Quality Act (CEQA). For projects that are categorically cleared, a Caltrans determination of categorical exemption is acceptable. As a matter of policy, the Commission will not allocate funds, and therefore the Department may not sub-allocate funds for design, right of way, or construction of a federally funded project prior to documentation and/or determination as appropriate of environmental clearance under the National Environmental Policy Act (NEPA). Exceptions to this policy may be made in instances where federal law allows for the acquisition of right of way prior to completion of NEPA review and the project is not subject to CEQA or compliance with CEQA is achieved.

   At PS&E phase, the final estimate may vary from the project delivery agreement estimate. The Department is authorized to amend the project delivery agreement to reflect the revised estimate at the time of sub-allocation if it finds the new estimate is adequately justified.

   The Department is expected to use “first come, first served” as the guiding principle in the sub-allocation of funds to eligible seismic retrofit projects. Bond funds shall be sub-allocated to projects concurrent with the obligation of corresponding federal Highway Bridge Program funds.

   The Department will report to the Commission, on a quarterly basis, the status of sub-allocations made to the local agencies. The Department will adjust the sub-allocations for any contract award cost savings and will reflect those cost savings in subsequent quarterly reports.

9. **Timely Use of Funds.** Account funds sub-allocated for preliminary engineering costs must be expended by the end of the second Federal Fiscal Year following the Federal Fiscal Year in which the funds were sub-allocated. The local agency must invoice the Department for these costs no later than 180 days after the Federal Fiscal Year in which the final expenditure occurred.

   Account funds sub-allocated for construction must be encumbered by the award of a contract within six months of the date of the sub-allocation of funds. After the award of the contract, the local agency has up to 36 months to complete (accept) the contract. At the time of sub-allocation, the Department may extend the deadline for completion of work and the liquidation of funds if necessary to accommodate the proposed expenditure plan for the project.

   The local agency has 180 days after construction contract acceptance to make the final payment to the contractor, prepare the final Report of Expenditure and submit the final invoice to the Department for reimbursement.

   The Commission may extend contract award, right-of-way expenditure, or contract completion deadlines no more than one time and only if it finds that an unforeseen and extraordinary circumstance beyond the control of the responsible agency has occurred that justifies an extension. The extension will not exceed the period of delay directly attributed to the extraordinary circumstance and will in no event be for more than 20 months.

   Agencies that do not comply with these requirements will be ineligible to receive new obligations in the Highway Bridge Program. Additionally, agencies will be required to repay any Federal funding expended on preliminary engineering in accordance with Federal Highway Administration Order 5020.1A.

10. **Delivery Reports.** Local agencies will submit reports to the Department, on a quarterly basis, on the activities and progress made toward moving their projects to the construction phase, including those project development activities taking place prior to the sub-allocation of Account funds. The Department shall submit to the Commission, on a quarterly basis, delivery reports on the activities and progress made toward implementation of the remaining Program projects.

    As mandated by Government Code Section 8879.50, the Commission shall forward these reports, on a semiannual basis, to the Department of Finance. The purpose of the reports is to ensure that projects are executed in a timely fashion and within the scope and budget identified when the decision was made to fund the projects.

    After sub-allocation of Account funds, if project costs exceed the approved project budget, the implementing agency will identify alternatives to meet the cost increase or submit to the Commission a corrective plan for achieving the original benefit of the project. The Commission may either approve the corrective plan or direct the implementing agency to modify its plan.

11. **Final Delivery Report.** Within six months of the project becoming operable, the Local Agency will provide a final delivery report to the Department on the scope of the completed project, its final costs as compared to the approved project budget, its duration as compared to the project schedule in the project delivery agreement, and performance outcomes derived from the project as compared to those described in the project delivery agreement. The Department will forward this report to Commission staff within 1 month of final delivery report receipt, and ensure timely submittal of quarterly reports outlined in Section 10 of these guidelines. Operable is further defined as the end of the construction phase when the construction contract is accepted. Project completion is defined as the conclusion of all remaining project activities, after acceptance of the construction contract. The Commission shall forward this report to the Department of Finance as required by Government Code Section 8879.50.

    The Department will also provide a supplement to the final delivery report at the completion of each project to reflect final project expenditures within three months of the conclusion of all project activities.

12. **Audit of Project Expenditures and Outputs.** The Department will ensure that project expenditures and outputs are audited. For each project, the Commission expects the Department to provide a semi-final audit report within 6 months after the final delivery report and a final audit report within six months after the final delivery report supplement. The Commission may also require interim audits at any time during the performance of a project.

    Audits will be performed in accordance with Generally Accepted Government Auditing Standards promulgated by the United States Government Accountability Office. Audits will provide a finding on the following:

    - Whether project costs incurred and reimbursed comply with the executed project delivery agreement or approved amendments thereof; state and federal laws and regulations; contract provisions; and Commission guidelines.
    - Whether project deliverables are consistent with the project scope, schedule and project outputs described in the executed project delivery agreement or approved amendments thereof.