

**SUPPLEMENT TO THE
INITIAL STATEMENT OF REASONS**

**LOCAL YOUTHFUL OFFENDER REHABILITATIVE FACILITY
CONSTRUCTION FINANCING PROGRAM
TITLE 15-CRIME PREVENTION AND CORRECTIONS
DIVISION 1, CHAPTER 1, SUBCHAPTER 7**

Title 15, Division 1, Chapter 1, Subchapter 7, 2007 Local Youthful Offender Rehabilitative Facility Construction Financing Program. The Division 1, Chapter 1, Subchapter 7 title has been modified to remove “2007”. The title, which originally read “2007 Local Youthful Offender Rehabilitative Facility Construction Financing Program” was originally named for the enabling statute which passed in 2007. The program has since been expanded and split into a “Round One” and a “Round Two” of Local Youthful Offender Rehabilitative Facility Construction Financing Programs. Removing the “2007” will avoid any possible misunderstanding or confusion about whether this program is only for those proposed or awarded projects that related to the original 2007 program, now retitled “Round One”.

Section 1806. Definitions.

The definition “2007 Local Youthful Offender Rehabilitative Facility Construction Financing Program” was removed from the beginning of these definitions and inserted farther down as “Local Youthful Offender Rehabilitative Facility Construction Financing Program”. Removing “2007” from the definition of “2007 Local Youthful Offender Rehabilitative Facility Construction Financing Program” will allow the term to apply to both the Round 1 and Round 2 programs.

The definition of “Applicant” was modified to remove “2007” for clarity and consistency with the modified definition of “2007 Local Youthful Offender Rehabilitative Facility Construction Financing Program”, and to make the definition of “Applicant” applicable to both Round One and Round Two of the Local Youthful Offender Rehabilitative Facility Construction Financing Program.

The definition “Architectural drawings” is proposed to clarify that during the design and construction process, drawings are referred to and differentiated by either their size/scale or their percentage of completeness. There are several different terms for different sized drawings. This term was added to provide clarity that architectural renderings at a 1/8’ scale are known as, and referred to as, “architectural drawings”.

The definition “Cash match” was modified by adding a reference to section 1814 in order to provide a more user-friendly definition that could be easily applied within these proposed regulations.

Section 1840.1 Round Two Proposal Evaluation Criteria.

Section 1840.1 was added to provide an outline of the proposal evaluation criteria for Round Two of the Local Youthful Offender Rehabilitative Facility program (LYORF). The original 2007 LYORF program, now known as “Round One”, was awarded in 2009. All of the counties that had applied for Round One have been awarded, returned their award, or rejected an award offer. The remaining funds had to be awarded as soon as possible so that projects may be commenced before the funds revert, according to Welfare and Institutions Code 1973(d), “This section shall become inoperative on June 30, 2017. No projects shall be commenced after that date, but projects already commenced may be completed and financed through the issuance of bonds pursuant to this article.”

To award the remaining funds BSCC had to release another Request for Proposals (RFP). The BSCC created a new RFP that would address the current needs of counties who would apply for these remaining funds. The needs of a county and the proposed project must be described in the proposal submitted to BSCC. Section 1840.1 was added to the regulations to provide an outline of how the projects would be evaluated for Round Two, using updated criteria that was relevant to current needs. Section 1840.1 added several new criteria for review, which were rated and scored for Round Two, that were not part of section 1840 or the rating and scoring of Round One. For example, the factor, “Readiness to proceed” was not part of section 1840, so not rated or scored for Round One: with the deadline rapidly approaching, the county’s readiness to proceed was of utmost importance. In addition, the factor, “Method of youthful offender rehabilitation” was added, so that the Round Two counties needed to describe how their particular ways of proposing to rehabilitate youthful offenders would be met if the applicant county would be chosen for the Round Two funds. The counties needed to show how their methods justified their facilities being financed with state lease revenue bonds, so they had to show why their program methods met the current needs. Finally, the “Need for new and/or renovated facility and/or program space” was added in section 1840.1, and was not part of Round One. The addition of program space was key to the Round Two proposal evaluations. Youthful offenders needed programs to assist in their rehabilitation more than adults; the counties needed to show how they planned their facilities to provide the extra space necessary to house the programs that would be shown to be more effective at rehabilitation than just adding cells or beds. This was a critical factor in the Round Two proposal rating and scoring.

Section 1847.1. Steps to Proceed with Construction for Design-Build Projects.

Section 1847.1 was added to provide the steps that are necessary to successfully proceed with a Design-Build project. When the original round of financing (Round One) was awarded in 2009, the Design-Build delivery method of construction was not an allowable delivery method for Capital Outlay projects that are awarded via lease-revenue bonds. Design-Build is now an accepted method of delivery and it is necessary to provide awarded counties with the steps they need to complete if they want to proceed with construction of their project. The requirements outlined in this section are necessary to receive approval from the State Public Works Board to proceed with construction, and they are not readily or easily available to counties outside of these regulations. Without the clarification and information provided in 1847.1, many projects would not be prepared

to proceed to construction and would not receive approval by the State Public Works Board. Disapproval of the Board means the county could not proceed with construction. All of the deadlines would crash, the timelines would need to be re-approved, escalation costs, including fines and penalties, would be levied. All of these calamities to construction financing are extremely costly to awarded counties, as their budgets did not take into account such delays. The new delivery method had to be described so the counties knew the steps that needed to be followed, which are different from the design-bid-build requirements of section 1847. In addition, the lease revenue bond financing deadlines are different for section 1847.1 projects, as shown in the new regulation.

Section 1849.1. Submittal of Performance Criteria and Architectural Drawings and Specifications for Design-Build Projects.

Section 1849.1 was added to the regulations to provide clarity regarding submittals of performance criteria and architectural drawings and specifications. When the original round of financing (Round One) was awarded in 2009, the Design-Build delivery method of construction was not an allowable delivery method for Capital Outlay projects that are awarded via lease-revenue Bonds. Design-Build is now an accepted method of delivery and it is necessary to provide awarded counties with a detailed outline of what submittals are required. The information provided in this section is not readily or easily available to awarded counties in any other location. The requirements set forth in this section are a combination of requirements for State projects, local projects, and lease-revenue bond processes. This section provides an easy guide as to what the requirements are, who reviews documents, and by which standards they will be evaluated, approved, or disapproved. As discussed above, for section 1847.1, the Design-Build delivery method was new for Round Two; the steps were not included in section 1847 or section 1849. Design-Build is different from the existing Design-Bid-Build, and these regulations are the only way the counties could find out what requirements they would be subject to under this new delivery method for state lease revenue bond financing.

Section 1850.1. Operational Program Statement/Staffing Plan/Operating Cost Analysis for Design-Build Projects.

Section 1850.1 was added to the regulations to provide clarity regarding the operation program statement, staffing plan, and operating costs analysis for Design-Build projects. When the original round of financing (Round One) was awarded in 2009, the Design-Build delivery method of construction was not an allowable delivery method for Capital Outlay projects that are awarded via Lease-Revenue Bonds. Design-Build is now an accepted method of delivery and it is necessary for the requirements to be outlined in these regulations in order to avoid confusion. The requirements in Section 1850.1 are specific to these types of project only because they are unique to any other currently outlined in regulation. Due to the financing mechanism (Lease Revenue Bonds), county projects awarded through the LYORF program are considered to be State projects and must be recognized during certain phases by the State Public Works Board. Costs reported are submitted via agenda item to the State Public Works Board, and each cost must be substantiated by cost analysis report. Other requirements of Section 1850.1 are requirements of Title 15 and Title 24 for the safe operation of a juvenile facility. It was necessary to provide this section as an outline of required information that must be

submitted for Design-Build projects as this information may not be found in any other regulation. Again, for Round Two, Design-Build was now an acceptable delivery method for the lease revenue bond financing. This method contains additional, different steps and requirements from section 1850, and this section was added so the counties could see what their new requirements would be.

Section 1854. Facility Sublease.

This regulation outlines the facility sublease between the Board and CDCR. This section contained some stipulations that are not necessary and have proved to be outdated, restrictive, and duplicative of other sections of these regulations. To address these issues, 1854(c) was removed, 1854(a) was modified to remove “immediately after” and “subject to the terms of the facility sublease, the county may use and occupy the county juvenile facility or local youthful offender rehabilitative facility”. The stipulation that the Board must consent to a county entering the facility was added, as was a statement that the sublease will describe the responsibilities, obligations and other terms. There is no operational or fiscal impact for these changes. This change was necessary to remove the language that was no longer correct (section 1854(c). 1854(a)). The state lease revenue bond financing requirements that the Board consent to the lease was required to be stated in the regulation by the Board, so that the counties would be on notice of this requirement. Without the Board’s consent, a project might not be allowed to proceed, resulting in loss of millions of dollars the county had already expended in the project.

Section 1856. Disbursement of State Reimbursements.

In the Initial Statement of Reasons the statement “Sections 1856(f) through (h) were inserted to speak specifically to design-build projects” was inaccurate. Only Section 1856(h) is specific to design-build projects. Section 1586(g) is specific to design-bid-build, and (f) is applicable to all projects.

In Section 1856(c), “Authority” was replaced with “BSCC” pursuant to Penal Code 6024; the Corrections Standards Authority was replaced by the Board of State and Community Corrections effective July 1, 2012. Updating the agency name will ensure consistency with current statutes. “CDCR” was also added as an agency with authority to require supporting documentation for the request for state reimbursement, this is due to the fact that CDCR is the agency who has ownership of the actual Lease Revenue Bond accounts for these projects. CDCR manages the bonds for each project, has direct and separate contact with the county than BSCC, and makes the reimbursement payments. It is necessary that CDCR have authority to ask for documentation if needed for purposes of bond management and department accounting requirements.

Section 1856(i)(1) through (5) were added to provide clarifying information on how the State withholds 5% of the award amount as security. This is done to ensure that projects are complete, have no pending state payments (e.g., State Fire Marshal), have completed the final audit, and have safely staffed the facility as required for use and occupancy of the facility. The addition of 1856(i)(1) through (5) are necessary as to not cause confusion as to why funds are being withheld, and how and when a county may release those funds. It is essential for the counties to be able to know at the beginning stages of the project

when to expect to be able to be reimbursed. Counties expend millions of dollars on these projects, and they need to be able to plan and budget. They need to know what hurdles they must overcome in order to be reimbursed. (1) through (5) provide this notice to counties, to enable them to prove ready to participate in lease revenue bond financing.

Section 1860. Record Keeping and Accounting.

Section 1860(a) through (c) were added due to the unique nature of these projects. Due to the financing mechanism (Lease Revenue Bonds), LYORF projects are considered to be State projects and therefore must comply with record keeping guidelines for Lease Revenue Bonds, State Public Works projects, and the Government Auditing Standards issued by the Comptroller General of the United States. Section 1860(a) through (c) were added to provide clarifying information as to what the county is expected to do regarding record keeping and accounting. The county is required, pursuant to Section 1870 of these regulations, to conduct an audit. To complete the required audit the county must retain documents listed in (a), such as contracts, payments, invoices, and other related documents. In accordance with state record keeping guidelines that pertain to Lease Revenue Bonds, counties are required (as State agencies are) to establish an official file (a), protect records from fire or other damage (b), and (c), preserve the official file for three years after the Lease Revenue Bond is no longer outstanding.

Section 1870. Audits.

Section 1870(d) "CDCR" was also added as an agency with authority to require supporting documentation for the request for state reimbursement. This is due to the fact that CDCR is the agency who has ownership of the actual Lease Revenue Bond accounts for these projects. CDCR manages the bonds for each project, has direct and separate contact with the county than BSCC, and makes the reimbursement payments. It is necessary that CDCR have authority to ask for documentation if needed for purposes of bond management and department accounting requirements. CDCR is also a party to the agreements in these circumstances, and needs to be given the same rights to audit as the other contracted parties.