

PACTS Complex Projects Task Force

Friday, March 18, 2022

MEETING NOTES

Attendance

- Attendees: Jeremiah Bartlett, Jim Bennett, Jessa Berna, Erin Courtney, Eamonn Dundon, Tom Milligan, Christian MilNeil
- GPCOG staff: Chris Chop, Aubrey Miller, Elizabeth Roberts, Harold Spetla
- Other: Steve Bodge, MaineDOT
- Absent: Darryl Belz

1. Public Comment

- There was no public comment.

2. PACTS Complex Projects Task Force Survey

- There was no public comment on this item.
- Per a request made at the last meeting, the Task Force began by discussing the Project Cap Policy--#15 in Attachment B. A few items to note:
 - PACTS is required to maintain a minimum balance—a fixed amount of *about* \$240,000 in federal funds and \$60,000 in state funds—in the Holding WIN. PACTS does not budget for the Holding WIN; funds are added when projects come in under budget or are withdrawn. PACTS had around \$1 million in the Holding WIN, but the balance has been depleted by recent overruns.
 - When adopting the current cap policy, the Executive Committee recognized that allowing for overages up to 20% may not be feasible with Holding WIN funds and may impact existing or future projects.
 - Developing a contingency fund is contrary to the goal of keeping money in the economy.
- The current policy of 20% for any project with few guardrails is an invitation for scope creep. Without budgeting for 120% in future years, it is also bad financial management. My preference would be to eliminate the cap policy and budget for inflation. Since PACTS is required to have a Holding WIN balance, it would be a good line item to budget on an annual basis and treat as a contingency fund that could be awarded on a competitive basis for extenuating circumstances.
[Christian]

- I like it, but would like the flexibility to not add to the Holding WIN in a given year if it's not necessary. I would also like to allocate the funds competitively. Would we use the framework? [Eamonn]
- The funding framework is a possibility. For the group's knowledge, funding isn't available for several years. This year (2022) we're allocating funds for 2025. If we earmark \$300,000 and a project comes forward with an overrun and is out to bid now, they can't access those future funds. It might be challenging to work out. [Chris]
- I am concerned with a competitive process for Holding WIN funds, since those projects have already gone through a competitive process. [Tom]
- What do folks think about having a more consistent, and conservative, approach for how we incorporate cost contingencies into the cost estimate? That might help ensure financial sustainability to some extent. [Chris]
- Yes, we need something more coherent and consistent. [Jeremiah]
- A set policy works for the market at that time, but may not work down the road. It may make more sense for the Policy Board to determine parameters annually based on current market conditions. [Jim]
- Answering Chris and extending Jim's argument—it depends on what numbers you start with. Here we look at recent bid costs and add a contingency depending on when we think the project is going to hit and what we think the overall economic conditions are. It's a floating number. [Tom]
- We need a framework for putting together estimates. If we can make educated choices based on national or local guidance and document that, fine, but I want to be careful that we're not fluctuating drastically with the market, since we're talking about projects that take place over a period of years. You can use MaineDOT or a community's unit prices and adjust them, but adjustment needs to be based on something you can demonstrate. [Jeremiah]
- I agree, and my suggestion is that that's an annual process—that staff makes a recommendation based on market conditions and the governing board modifies the policy. [Jim]
- An ad hoc, year-by-year look at things makes some sense. I also think the uncertainty about construction costs should apply more at the conceptual stage when applying for PDR. Once you have a PDR in place, construction costs should be more certain. Should we have more rounds of funding—PDR and construction—and make them two separate programs with two separate budgets and two separate scoring processes? The problem with our current process is that we're committing to build a project at the conceptual stage when we don't know the cost, and we are committing funds 5-10 years out. There's a lot of inflation over that time and changing needs in the transportation system. [Christian]
- It seems as though you can get a project through PDR, have an idea of what the estimate should be, but that doesn't take into account that the market is going to dictate construction prices. It doesn't mean there's been scope creep. The number of bidders and cost of materials

are going to impact cost of construction. If there is some way to determine, on an annual basis, what we're going to use for contingency for that year's projects, it would help ensure everyone is operating on the same level for that year. [Erin]

- How do we budget? We haven't budgeted and all these construction costs are coming in higher than we expected eight years ago. [Christian]
- Another tool municipalities have is cutting scope. [Aubrey]
- So far I'm hearing:
 - Regular check-ins on what the policy is.
 - Possibly a small budget to prepare for extreme circumstances.
 - Concerns about scope creep increases vs. construction cost increases, and we may want to address those separately. [Aubrey]
- And project delay increases. [Chris]
- As far as scope creep, it depends on the reason. There's a difference between a MaineDOT requirement for safety and adding 50 feet to a project. [Tom]
- A discretionary increase in scope caused by a local municipality should be 100% funded by the municipality. If it's a scope increase because of a federal or state request, there should be some ability for the municipality to recapture those funds. [Jim]
- Adding to my list earlier—guidance each year on setting cost estimates and adding cost contingencies. [Aubrey]
- At MaineDOT we review bids every week, and bids are coming in 20% above the estimates we've already bumped up. There are not enough contractors to go around. We review projects on a yearly basis, even if they're planned for far in the future, and if the project is over budget due to acceptable or required scope, we add funding off the top, before we fund anything new. I don't know if that's something you can implement or not. [Steve Bodge]
- I believe we're always going to have to find money to cover these things. Instead of recommending a percentage, I'm more comfortable saying there has to be some policy, and that policy needs to be adjusted each year by the PACTS governing body. [Jim]
- We have that process and it's the annual budget. The problem is that we can't budget for things that got committed five years ago because they go through PDR and then they're 50% over budget. The 20% cap policy creates a situation where we're required to spend money on projects that were approved five, ten years ago because they're over budget and their scope has gone up and they've gone through delays and inflation. Responsible budgeting requires that if we commit to a project, we're not also committing to a percentage on top of that. When we make a funding commitment to a project, we want stakeholders to make their best efforts to hold to that budget and not add 20% just because they can. The current policy is a blank check that makes it difficult for PACTS to budget. [Christian]

- I don't necessarily disagree. I think I was the only one who was voting not to move any projects forward because we didn't have the cash to do the ones we already had in place. The problem is that the random 20% factor only depends on the particulars of your project. The way it gets applied doesn't recognize the different factors that cause the issues that go up. I think the number has to be adjusted based on whatever the conditions are and whatever's going on. [Jim]
- The specific conditions are the responsibility of the project applicants. That's not a PACTS issue. For me, this is the biggest problem in PACTS budgeting, that we're committing this extra 20% and there's no incentive to meet budgets. And nobody is budgeting for that. If we want to keep 20%, then it needs to be a line item. We're going to fund 20% fewer complex projects in future years because we have this cap policy. [Christian]
- I largely agree with what I'm hearing from Jim, Jeremiah, Tom, in terms of the fact that there's a lot of risk to municipalities to apply for projects and have inflation mean they can't get done. And then they're on the hook for PDR funds if they can't get built. If that can't somehow be guaranteed, it's too risky for municipalities to seek this funding. I don't think we should just remove the 20% without looking into the reason behind the overruns. Scope creep and inflation need to be treated differently. It's important to acknowledge that not all overages are equal. [Jessa]
- Currently, if someone requests 20%, they don't automatically get it, right? They have to ask Policy/Executive right? [Erin]
- Correct. Also, not all municipalities return to PACTS for funding when they face overruns. [Aubrey]
- Let's return to the idea of PACTS providing guidance on cost contingencies. Would that help address the situation each year? [Aubrey]
- That means each year we would have the Policy Board determine what contingency rate applicants should use before they submit? [Erin]
- Or we could apply it after submittal. At least it would be consistent. [Chris]
- That makes sense. [Erin]
- Do PACTS staff do a reality check on project estimates on the applications? The Boston MPO hires a consultant to do that, though I'm not sure at what stage. [Christian]
- No, staff doesn't check the cost estimates on the applications. [Aubrey]
- We do more work on the collector paving side, going out with municipal and MaineDOT staff for ground truthing. The complex projects are more complex, but we could bring consultant expertise on board, though obviously at a cost. [Chris]
- From what I hear, the group agrees that if scope creep is attributed to the municipality, the municipality should cover the added cost without additional funds from PACTS. I also hear about increases due to unanticipated federal or state-driven scope changes. [Aubrey]

- I would argue that federal and state requirements shouldn't be unexpected. They should be part of a project from the beginning. Maybe a bigger issue is that the projects themselves are not being reviewed as strenuously as they should be at the very beginning. I keep hearing comments about the state adding requirements and I don't know exactly what that means. I would think these things should be in the project scope and the cost estimate long before you have to think about funding it. I'm sure there's a way we could help with that, if that's something you're looking for as well. [Steve Bodge]
- And the group did already decide to recommend requiring agreement up front between the municipality, MaineDOT, and PACTS on applicable standards, pending consultation between GPCOG and MaineDOT staff. That may help with this issue. [Aubrey]
- If it's something that can be handled under a design exemption, I have a committee that looks at those. We do design exemptions when we can. Again, we could be part of that solution as well. [Steve Bodge]
- To review, I'm hearing three components:
 - Municipal-driven scope creep – not covered by PACTS funds
 - State-driven scope creep – new recommended requirement (3-party agreement before applying for PACTS funding) should address this
 - Inflation-related cost increases – perhaps best addressed with a PACTS-applied contingency that is updated on an annual basis [Aubrey]
- They way I'm seeing this, the inflationary scope adjustments will get dealt with on an annual basis based on forcing the PACTS governing body to address these issues annually. I would think the adjustments would apply to the projects being opened up regardless of when they started in the process. It shouldn't be the market conditions when you started in the process that drive what you're going to do. It should be what the conditions are when you open the bids. [Jim]
- How do we plan for that financially? [Chris]
- That becomes part of the process that you have to end up doing. Just like anything else we do, the market changes, we have to make adjustments in the budgeting process as we go through that process. We do the two-year, here's what we have available for funds, based on where we are right now, based on the projects coming forward, we're probably going to have to put more money into the contingency or for inflationary because of what's going to happen. Two years from now, if the prices are bouncing back and some other things, we may decide as a group that we don't need to put as much money in that, and we can tweak the number down, because the bids are going to be in a better position than where they were before based on the fact that they were originally scoped at a time when the prices were really high. And so you always would make those policy decisions based on staff input, prior to the time the actual budget gets approved by the committee. [Jim]
- I still wonder how a project that's funded in 2022 under certain provisions, maybe a 20% cap policy, fast forward 10 years from now, that project goes out to bid and has significant cost

overruns, and now is subject to the 2032 policy on overruns, will we have enough money to fund it at that time? [Chris]

- Maybe that begs a second question, that the rules are only good for a certain period of time. If projects are not achieved within a reasonable timeframe, they essentially get kicked back out to re compete. [Jim]
- That's a good question. [Chris]
- If we keep the current 20% cap policy, we are effectively cutting our future budgets by 20%. That's already happening. We're delaying projects because we don't have enough capital funds to fund the projects we said we'd fund 5-6 years ago. So a project gets delayed one more year, additional inflation happens, the cost goes up more. These problems keep on compounding because of the 20% cap policy. And because we don't execute these projects in a timely manner. Those are related problems. We don't execute because we don't have the funding for them. Either we keep the current policy and budget for it and fund fewer projects in the future, or we get rid of it and say the project budget is the project budget. It has to have a viable financial plan. [Christian]
- I'm not taking it as an either/or. I don't like either one of those two. Those static sort of rules don't recognize projects are not static. We need to recognize it's not that simple. We need more of a decision tree. [Jim]
- At some point, somebody has to take responsibility for what the budget is. [Christian]
- I think we are. The additional 20% is not a free check—municipalities have to put more money in as well. We're all frugal and do the best we can. [Jim]
- We're here as representatives of PACTS and PACTS has a budget. We're here to figure out how to account for obligations that aren't actually being budgeted for future years because of inflationary pressures. There needs to be more certainty and a clear policy. If we're promising funds in future years, those funds need to be budgeted. [Christian]
- We need to look at how we are going to deal with increases or decrease in cost on an annual basis so everyone is playing by the same rules. [Jim]
- Playing it by ear on a year-to-year basis doesn't feel like a substantive change. That's kind of what we're already doing and it's kind of already not working. [Christian]
- I agree that you should take a look on a yearly basis to know where you are at any given time. If you have projects scheduled for years out and they're already over, you don't gain anything by ignoring that. You almost need to get those back to at least par, or where you think par might be a few years from now, before you fund anything new. It's almost irresponsible to continue to add new projects when you don't have enough money to pay for the ones you already have. [Steve Bodge]
- Steve, for additional perspective on that, the PACTS Policy Board elected to fund more projects for PDR in 2021 due to the fact that, in our region, we don't have projects that are shovel ready

or even close to it, to be eligible for discretionary grants. One of the Policy Board charges is to bring more money to the region. We don't have the luxury of having a large stable of projects waiting in the wings to submit to the feds. We need to get projects ready so we can leverage more federal funding, but I get your perspective. [Chris]

- Aubrey, your summary at the beginning of this conversation of those three separate buckets, in terms of how this should be addressed, was right on. [Jessa]
- Chris's comment triggered an aha moment for me. Should we go back, knowing we did this to line up for a specific pot of money, and identified which projects were in that category, so they didn't automatically feel like they were going into the other line, which we knew we didn't have enough funding for. If we don't get discretionary funds, we just spent the next decade of funds before we do any other projects. If we had made separate queues, this might be a little easier. It's a rhetorical question, but worth thinking about. [Jim]
- It might provide a bit of comfort to know that we do anticipate receiving additional formula funds as well. As you know, the President just signed the spending bill that authorizes funding through the end of the federal fiscal year (end of September). You may know that MPOs around the state have been flat funded for a least a decade, which is something we're working with the DOT to help remedy. Project costs have gone up, but our funding has not changed, despite funding changing at the federal level over the last decade or so. We're talking with MaineDOT about that. [Chris]
- We are not likely to reach a final decision on the cap policy in the time we have left, and we only have four task force members remaining at this point, so let's go through a few of the smaller items. [Aubrey]
- Looking at #8 in Attachment B—The survey asked, should PACTS require project sponsors (municipalities) facing cost overruns to present to the PACTS governing board an explanation of the amount and cause of the overruns? Seven of eight task force members were in favor of this idea. The eighth responded I don't know / Other and commented that presenting may not be necessary, but documenting makes sense. Staff's suggestion is to require PACTS governing body approval of all requests for additional funding, noting that the municipality would need to provide documentation of the amount and cause of the overrun *at least* two weeks prior to the governing board meeting. This provides some visibility and accountability. [Aubrey]
- [All four task for members present (Jim, Erin, Eamonn, Tom) were in favor of this idea.]
- Jumping to #10, which is similar—The survey asked, should PACTS require project sponsors to obtain approval from the PACTS governing body before making any changes in scope that impact cost? Four task force members were in favor of this idea, two were opposed, and two responded I don't know / Other. Staff's suggestion is to require PACTS governing board approval of scope changes only if they (1) impact PACTS' cost or (2) impact the purpose and need of the project. Again, this primarily provides visibility and accountability. [Aubrey]
- [All four task for members present (Jim, Erin, Eamonn, Tom) were in favor of this idea.]

- Next, #11—The survey asked, should PACTS require that PDR be completed within a certain amount of time after signing the three-party agreement? (Note there is a delay between when a project is allocated funding and when the three-party agreement is signed.) Four task force members were in favor of this idea, and four responded with I don't know / Other. Staff's suggestion is that if PDR is not completed within two years of signing the three-party agreement, the municipality must present to the PACTS governing board an explanation of the delay. We have talked about how delays are a source of cost increases, but PACTS doesn't always have a good sense of what's causing the delays. There may be a variety of reasons, but maybe we'll notice trends and opportunities to prevent those delays. And again, this brings more visibility and accountability. [Aubrey]
- [Jim confirmed this would solely be a reporting mechanism. Erin, Eamonn, and Tom all indicated support.]
- Theoretically, requiring more design to be done before applying for PDR should help address the delay issue, too. [Eamonn]
- Briefly, #9 is about cost per point, but at a different stage in the process than we talked about at the last meeting. The group already decided that GPCOG staff will begin doing these analyses, including for past projects, to gather data, but the information will not be used to make funding decisions. [Aubrey]
- On #12, I have an update about 25% design. The survey asked, should PACTS require that a municipality complete 25% design (or PDR, which is roughly 50-60% design) before applying for funding from PACTS? Twenty-five percent (25%) design isn't a milestone that is used in Maine. GPCOG staff met with MaineDOT staff yesterday and they said, if we went this route, we could instead use a milestone called Horizontal/Vertical Alignment Complete (HVAC), which would be roughly equivalent to 25% design.
- That will be most similar to 25% design plans. On a linear project, it will lock in the horizontal and vertical alignment, as you might expect. It will tell you approximately what your cuts and fills are. It will start to tell you what some of your impacts are from an environmental standpoint or a right of way standpoint so you can start to figure those numbers in. It will tell you whether or not you need curb, or guardrail. All those things become more defined at HVAC. At PDR, they're very well defined. We talked yesterday about what it would take for some of the smaller municipalities to fund a PDR, and it might be a little much. But HVAC would give you a pretty good idea of what you're trying to build. At MaineDOT, I think we use a 30% contingency at HVAC, and that drops to 15% at PDR. By the time we get to PS&E (Plans, Specifications, and Estimates), we're hoping that's near zero, at least in a normal situation. I think both of these options are good, but I don't know the feasibility of asking some smaller municipalities to get all the way to PDR. [Steve Bodge]
- Is the thought that PACTS would pay for HVAC, or the municipality? [Tom]

- The proposal is that the municipality would pay, though there is a possibility that the money spent on HVAC (or PDR) would count toward the municipality's local match, if the project were ultimately selected for PACTS funding. [Aubrey]
- On the survey, regarding HVAC, four were in favor, two were opposed, and two responded I don't know / Other. With the Yes responses, there were a couple of comments:
 - "this will allow us to capture a much more complete picture of total construction cost before we score and approve applications."
 - "yes, municipalities should be defining project scope and coming up with a realistic financing plan before anyone funds more advanced design."
- With the I don't know / Other responses, there were a couple of comments:
 - "will this favor wealthier communities"
 - "great idea, but it would be helpful to have some level of assurance the project might be funded for final engineering and construction."
- To your point, Tom, municipalities would be funding this. There would not necessarily be a guarantee of future funding. Regarding the option to provide assurance to municipalities before they do the design work, there's a chance that could negate the goal of having more complete information before committing to a project if assurance is provided at that early stage. That's something the group may want to think about. [Aubrey]
- Who would review the 25% design plans? PACTS? MaineDOT? A consultant? Who would pay for that portion of it? We are fortunate that we could probably do 25% in-house, but who would shoulder the review cost? [Tom]
- That's a good question. We had some follow-up emails after our meeting with MaineDOT yesterday about MaineDOT's role in municipal-funded design. [Aubrey]
- I don't know how that would play out, but I provided Aubrey with all the things we check at HVAC. A lot of the consultants municipalities would use are the same consultants MaineDOT uses, so they should know the language, the design standards, what MaineDOT would be looking for. It shouldn't be a huge amount of effort. I'd hate to hire another consultant to check a consultant's work. Maybe as part of a contract you could add the checklist and have them fill it out and send it in. I don't think you would need a formal check. I think the advantage of getting to that point would cover itself in trying to estimate forward. [Steve]
- I'll share the documents Steve provided to me with the group. I will send out a Doodle poll to schedule the next meeting. As a reminder, we will need to finish our work at that meeting. I believe we have three big topics remaining—cap policy, design work before applying for PACTS funds, and bonus points for local match. If there is any additional information I can provide to help us get to the finish line at the next meeting, let me know. [Aubrey]