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Sheriff-Coroner



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County of Mendocino Office Of The Sheriff-Coroner

MEMORANDUM

DATE: October 31, 2023
TO: Honorable Supervisors of Mendocino County
FROM: Sheriff Matt Kendall 
SUBJECT: New Jail Facility Behavioral Health Wing

Summary: On September 14, the County received a single bid for construction of the new jail facility's behavioral health wing. This bid was submitted from Broward Builders, in the amount of \$35,859,000. To proceed with this critical project, an additional \$6,786,062 in General Fund will need to be committed by the Board, bringing the total County share for this critical project to \$18,999,800 while the State's contribution commitment remains static at \$25,000,000.

Subsequent to the State's 2017 commitment of \$25 million in funding toward a new jail facility in Mendocino County, construction costs continued to escalate for a number of reasons that could not have been foreseen. Specific factors include:

- Shortages of construction materials, parts and equipment.
- Increased cost of steel and other construction materials due to tariffs.
- Manufacturers unable to keep up due to supply chain disruptions.
- Shortage of craft workers and subcontractors from pent up demand for construction work.
- Lack of competition.

The cost of this new jail facility was originally forecast at just over \$26 million, in 2017 when the California Construction Cost Index (CCCI) was at 3.5% and US Inflation Rates were at 2.1%. The CCCI subsequently began increasing, up to 13.4% in 2021, and remaining at 9.3% for 2022. The US Inflation Rate also increased, up to 7% in 2021 and remaining at 6.5% in 2022. In this climate of dramatically escalating construction costs and overall inflation rates, there were also significant project delays, two of which can be directly attributed to State processes.

Background: On June 20, 2014, the Governor signed Senate Bill 863. The bill authorized the State Public Works Board to issue up to \$500,000,000 in revenue bonds, notes, or bond

anticipation notes to finance the acquisition, design, and construction of approved adult local criminal justice facilities, and would continuously appropriate the funds for those purposes. The purpose of this funding was to build custodial housing, reentry, program, mental health, or treatment space necessary to manage the adult offender population. In 2016, SB 844 was adopted which increased the funding by an additional \$270,000,000 through the Adult Local Criminal Justice Facilities Construction Financing Program, to be distributed to counties that had not previously been funded through the program.

In 2017, the Mendocino County Board of Supervisors authorized the Sheriff's Office submittal of a proposal for SB 844 funding for additional specialty housing and expanded program, training, and mental healthcare space at the County jail, and authorized an appropriation for the local match portion of the project which staff estimated at \$1.047 million. The County's proposal was ultimately successful in securing \$25 million in state reimbursement. This project has been developed and pursued in a time that became historically significant; namely, because of the COVID-19 global pandemic. Employees at County and State Offices were put in the unprecedented situation of "Sheltering in Place", adapting to remote workplaces, and fractured workflow processes, without benefit of advance planning. Additionally, this pandemic played a large part in the global supply chain problems and labor shortages that all projects are experiencing at this time. Overall, the situation is further exacerbated by California Construction Cost Index increases and general rates of inflation that could not have been anticipated. This plight is not unique to Mendocino County; numerous other counties are in the same situation.

Project Description: As a designated "small" jurisdiction, Mendocino County applied for and received a maximum award for design and construction of a 21,000 square foot stand-alone, one story building with a sloped roof system. The project is adjacent to the existing jail facility and it will serve as a behavioral health wing, providing housing, programming, medical and mental health treatment space and a new public visiting center. Housing will include 60 maximum-security beds, a safety cell, recreation yards, central control, medical exam room, dental exam room, clinical suite, program/group rooms and staff support space.

The County contracted with Nacht & Lewis for architectural services, and selected Vanir Construction for construction management. From the outset of this project, the County has worked diligently with its design team to contain costs, while maintaining the design of the new special needs housing unit to be consistent with its intended mission as a correctional medical and mental health housing and treatment facility.

The State's funding contribution required State approval prior to the County proceeding to bid and constructing the project. To date, the County of Mendocino has completed all major tasks required for approval to proceed to bid; tasks and completion dates are:

1. Project Establishment, approved on 10/30/2018
2. Executed Project Design and Construction Agreement with BSCC on 10/30/2018
3. Completed Real Estate Due Diligence on 1/14/2020
4. Preliminary Plans Approval, Approved on 4/7/2021
5. Executed Ground Lease documents on 4/13/2021
6. Working Drawings Approved by BSCC and State Fire Marshal.

7. Working Drawing Proceed to Bid Approval received from BSCC June, 2023.

Project Delays: Minor processing delays should be expected with any project, but in this case, two specific delays in State processes were quite significant. These delays caused the project's schedule to be extended by approximately two years, which has contributed substantially to the projected cost overrun for the project. Details of the delays are included in the attached exhibit.

Project Cost Increases & Related Board Actions: The original 2017 budget submitted with the grant application for this project was estimated by staff as \$26.047 million. When the County contracted with Nacht & Lewis in December of 2017, project cost escalation was immediately seen as a factor. The project location was altered as a cost reduction strategy. The Board increased the local match by another \$955,804, for a new estimated cost of \$27,047,804.

The County's FY 19-20 budget included an additional \$500,000 in local match to provide assurance that there would be enough funding for the project in face of continuing cost increases. The Board did elect to incorporate electric heat pumps as a carbon reduction strategy, and committed \$250,000 in additional local match intended to address the additional upfront expense of the heat pumps.

On September 28, 2021, the Board was informed that project costs were continuing to increase, and the California Construction Index (CCI) had increased 14.5% since June 2019. The latest project cost estimate at that time reflected a shortfall of \$3.6 million. Value engineering since the project's inception was reflected as having included physically moving the project to reduce construction costs, modifying the roof and wall structures, along with reduced square footage. In response to the request for an additional \$3.6 million, the Board elected to commit \$4 million to address the possibility of further cost escalation.

On February 8, 2022, the Board adopted a Resolution declaring Mendocino County's intent to use proceeds of indebtedness to reimburse itself for General Fund expenditures related to the jail expansion project. At that time, debt obligations were not anticipated to exceed \$4 million. Certificates of Participation (COP) are the debt tool utilized.

On August 2, 2022, the Board was informed the total project cost estimate had again increased, now showing a likely project cost range of between \$33.7 million and \$35.7 million.

On August 16, 2022 the Board elected to proceed with a COP scenario that would provide \$10 million in new money to reimburse the County's General Fund expenditures related the new jail's behavioral health facility, and potentially be utilized for additional projects including the Ag & Farm Advisor Building roof replacement and the Fort Bragg Justice Center HVAC replacement.

By January 10, 2023, that high end of the new jail facility total project cost estimate had increased to \$36.9 million, with another \$1.43 million needed as increased local match.

On February 28, 2023 the Board provided direction to staff regarding COP appropriations for Capital Projects. On March 14, 2023 the Board authorized the use of \$300,000 in COP proceeds

for the Ag & Farm Advisor Roof Replacement project. The same day, the Board elected not to contribute Carbon Reduction Funds toward the cost of the Fort Bragg Justice Center's new high-efficiency heat pump but elected to use COP proceeds in the amount of \$1,069,552.

With a fixed price bid and most other costs under contract, project costs are now much more accurately estimated at \$43,999,800, with a total local commitment of \$18,999,800. This will require the commitment of an additional \$6,786,062 in General Fund.

Mendocino County SB844 Jail Project Budget/Funding Summary to date, excluding all in kind department costs and completed parking project:

1. Funding Sources:

a. SB844 award	\$ 25,000,000
b. General Fund Match	\$ 3,496,740
c. COP Bond Financing	\$ 8,630,448
d. Interest	<u>\$ 86,550</u>
e. Total available	\$ 37,213,738

2. Project Costs encumbered or estimated through completion:

a. Design Nacht & Lewis	\$ 3,350,830
b. CM Vanir	\$ 1,861,306
c. Fit Out by County	\$ 652,572
d. Test, Inspect, Fees	<u>\$ 1,200,322</u>
e. Total Soft Costs	\$ 7,065,030

3. Construction Base Bid	<u>\$35,859,000</u>
4. Reserve for Contingency	<u>\$ 1,075,770</u>
5. Total Project Costs	\$43,999,800
6. Funding Shortfall	<u>\$ 6,786,062</u>

Considerations for Award:

1. Award must be made promptly in order for the Bureau of State and Community Corrections (BSCC) to complete their funding appropriation process for the Department of Finance (DOF) to secure final funding approvals and authorize the Contract. The contractor has indicated that they cannot hold their bid beyond the target approval date from the Department of Finance of January 26, 2024.
2. None of the alternates are required to complete the project.
3. After award, value engineering has the potential to provide savings that could approach \$1,500,000, however, BSCC and DOF will require funding commitments for the award amount; any value engineering savings will follow after award to reduce the final project cost. Savings will be the result of changes to the project standards or requirements and must be considered on a case-by-case basis.
4. Not included in the above costs are in kind staff costs associated with GSA staff County counsel, Executive Office and the Sherriff's Office. Documented Staff resource costs are \$130,000 to date; staff has estimated an additional \$150,000

through project completion for GSA construction administration, while external funding is not required to cover these costs, they will affect the general fund budget in the coming years.

5. Also not included in the above funding summary are the parking replacement and related projects totaling approximately \$575,000 that was funded separately from this project.

It is possible that the Board reject this bid, and direct staff to attempt to redesign the project and reduce costs. This option is not recommended. Any redesign process would negatively impact the functionality of this facility. It would take at least an additional year to allow for design, approvals and bidding; adding two years to the timeline is not unreasonable. Design savings for an inferior facility will likely be offset by additional design fees and escalating construction costs. In combination with the above redesign, it is possible to remove or modify the prequalification requirements to possibly increase general contractor and subcontractor competition. Regardless of the County's intention to realize sufficient savings to permit award within our available funding, it is likely that final costs for a delayed facility would equal or exceed the current costs if we were to award the contract now.

Observations:

1. A major cost driver for this project appears to be the continuing volatility in the cost and availability of major manufactured construction equipment such as electrical gear, generators, security detention electronics, heating, cooling and water heating equipment. Even if the cost escalation is slowing, costs for this equipment will continue to increase in the near term.
2. While it is tempting to assume that the lack of competition had a major impact on the final cost of the bids, evidence suggests that there was real competition at the subcontractor level and Broward had no incentive to "pad" their bid with the likely rejection of bids if costs exceed our ability to fund the project. It is just as likely that GC competition would have validated or only marginally reduced the project bid.
3. High efficiency heat pump technology, especially on the scale of the Jail project, remains a high-cost investment in carbon reduction. As we witnessed in the Fort Bragg Justice Center bidding, the pandemic supply chain problems coupled with state and federal incentives for this type of technology means that demand is still way ahead of supply.
4. While there appears to be support from our state elected officials, the County has not received any confirmation that the state will be in a position to back-fill the county share of the project costs.

Conclusion: Despite the County's best efforts to contain costs through value engineering and scope reduction, this project was developed in a time of exceptional cost increases exacerbated by supply chain disruption due to COVID-19, tariffs, and a shortage of available construction workers. These cost increases over time, combined with overall inflation that has reached its

highest rate in decades, and approximately 2 years of project delays, have worked against the efforts to contain project costs.

There is a clear and continuing need for the behavioral health services that will be provided in this new jail building. It is the belief of staff that any attempt at redesigning the project and going through another round of approvals for a second bid process will reduce the building's functionality, take additional time, and ultimately subject the project to continued inflationary factors. History shows that costs are almost certain to continue rising; to that end, this current bid likely represents the lowest cost opportunity the County will have to build this critical facility. With the State's existing commitment of \$25 million toward this project, the County's local share of the total \$43,999,800 project cost will be \$18,999,800.

Direction from the Board is needed regarding the additional \$6,786,062 in General Fund cash match needed at this time; it is recommended the Board further adopt the Resolution assuring necessary matching funds and conditionally approving contract award to Broward Builders, Incorporated, in the amount of \$35,859,000 for construction of the SB 844 jail building as a behavioral health wing; authorizing contract execution upon funding approval by the State, and authorizing the CEO or designee to serve as Project Manager pursuant to Public Contract Code Section 20142.

Attachment:

Exhibit A- Detail of Project Delays

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Ground Lease Delay. The most significant delay occurred with the approval of the Preliminary Plans (Design Development Documents). The County submitted its Preliminary Plans to BSCC and the State Fire Marshall as scheduled, on July 24, 2019. Approval was anticipated by September 18th, 2019, but approval was not granted by the State until April 7, 2021.

This approximately 19 month delay originated at the beginning of the COVID-19 pandemic, and the County design team believe it was caused by the State altering its standard practice. Jurisdictions receiving SB 844 funding are required to complete a "Real Estate Due Diligence Process" culminating in a "Ground Lease" that allows the State's bond funding to be appropriately secured. Other jurisdictions with similar projects have been allowed to have their Preliminary Plans reviewed and approved separately from the important work of finalizing the Ground Lease. At least one other County was allowed to proceed in this manner with a Ground Lease that was significantly more complicated than Mendocino County's. However, this option was not provided to Mendocino County.

Inconsistently with the way similar projects have been handled by the State, the Department of General Services (DGS) Due Diligence process was allowed to delay BSCCs' processing of the Preliminary Plans package for Mendocino County, and the Department of Finance withheld approval of the preliminary plans while working with the County and DGS to complete the Real Estate Due Diligence and execute the Ground Lease documents.

Withholding approval in this way is inconsistent with the State's processing guidelines for Lease Revenue Bond Funded Projects. Execution of the Ground Lease is not a condition of approving Preliminary Plans. However, approval of Preliminary Plans by DOF is required before the County can proceed with the development of the working drawings. In Mendocino County, the Preliminary Plans were approved on April 7, 2021, after the Ground Lease was executed, representing a project delay of 19 months.

Office of State Fire Marshall Delay. This project's delay was further exacerbated by the State Fire Marshal's Office's review and approval of the construction documents. Construction documents were first submitted in December of 2021, 8 months after approval of the Preliminary Plans, with an anticipated approval in June of 2022. Approval was finally granted in November of 2022 after several rounds of review that delayed the County's approval by 5 months. Roughly 60% of the reviewer's comments were disputed because the reviewer misinterpreted building code requirements for the building type. Of note, the legitimate comments were cleared with the first resubmittal. However, unnecessary additional rounds of review included the disputed items that were eventually cleared, as well as new comments that were not significant. The project could have been cleared with an over-the-counter meeting and minor edits after the first round. Ultimately, the disputed comments were cleared, and all remaining comments were addressed satisfactorily without changing the project's design or modifying any fire and life safety features or systems. With the understanding of this outcome, it appears that the delay was caused by unnecessary review.