



BOARD OF SUPERVISORS  
AGENDA LETTER

Agenda Number:

Clerk of the Board of Supervisors  
105 E. Anapamu Street, Suite 407  
Santa Barbara, CA 93101  
(805) 568-2240

Department Name: General Services  
Department No.: 063  
For Agenda Of: May 25, 2010  
Placement: Set Hearing  
Estimated Tme: 20 min. on 06/01/10  
Continued Item: No  
If Yes, date from:  
Vote Required: Majority

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**TO:** Board of Supervisors

**FROM:** Department Robert Nisbet, Director (805-560-1011)  
Director(s)  
Contact Info: Paddy Langlands, Assistant Director (805-568-3096)

**SUBJECT:** **Santa Maria Court Clerk's Building, Project #8526, Award Construction Contract Fifth District**

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**County Counsel Concurrence**

As to form: Yes

**Auditor-Controller Concurrence**

As to form: Yes

**Other Concurrence:** Risk Management

As to form: Yes

**Recommended Actions:** That the Board of Supervisors:

On May 25, 2010, set a departmental hearing for June 1, 2010, to receive staff recommendations regarding the Court Clerk's EOC Building Project #8526 as follows:

- a) Reject the bid submitted by Lewis C. Nelson and Sons, Inc. ("Nelson") as non-responsive, based on the following findings to be made by your Board:
  1. The irregularities in Nelson's bid were material and render the bid non-responsive; and
  2. To the extent that the deviations from bid requirements may be considered immaterial, the Board elects to exercise its discretion by declining to waive the irregularities in Nelson's bid.
- b) Find that the non-responsiveness of Nelson's bid renders moot any requirement for a hearing on its claim of "inadvertent clerical error" regarding incorrect subcontractor listings.
- c) Award a fixed price construction contract to the lowest responsive, responsible bidder, Vernon Edwards Constructors, Inc., ("Edwards") in the amount of \$3,569,098.00, subject to the provisions of the contract and the plans and specifications applicable to the project; and

- d) Authorize the Director of General Services or his designee to approve change orders up to the limit specified in Public Contract Code Section 20142, or \$150,000.00 for this contract; and
- e) Authorize the chair to execute the construction contract upon return of the Contractor's executed contract documents, and the review and approval of the County Counsel, Auditor-Controller and Risk Manager or their authorized representatives.

**Summary Text:**

If your Board takes the recommended actions, the construction contract for the Santa Maria Court Clerks' Building will be awarded to the lowest responsible bidder submitting a responsive bid, and construction of the Santa Maria Court Clerks' Building will proceed.

Previously issued Certificates of Participation (COP) funding in the amount of approximately \$4.9 million remains appropriated under a project entitled "SB 1732 Courthouse Deficiencies Program" to fulfill the County's commitment to construct the building as agreed in the court transfer agreement between the County and Administrative office of the Courts (AOC).

**Background:**

On April 29, 2010, eight bids were opened for the Santa Maria Court Clerks' Project. All bid amounts were lower than the engineer's estimate for the project. The General Services Department received one bid protest from Edwards claiming that an unfair advantage was realized by Nelson as a result of deviations from the requirements of the bid documents.

Edwards's protest alleges that Nelson's failure to list a certified TREMCO roofing subcontractor, as required by the bid documents, may confer an unfair competitive advantage on Nelson. The potential for an unfair advantage arises from this listing because Nelson, having failed to list a subcontractor certified by the manufacturer and capable of providing the required warranty, is free to shop for subcontractor bids after the bid opening and substitute another subcontractor for the uncertified one.

After thorough review of the bid submitted by Nelson, it was apparent that Nelson had listed a roofing subcontractor who was not certified by the specified manufacturer to install its roofing and provide a twenty year manufacturer's warranty for the roofing system, as required in the solicitation for bids.

Additionally, Edwards objected to Nelson's listing of a subcontractor, CPPI Construction & Mechanical, who is not licensed to perform the sheet metal work listed in specification section 07620. CPPI Construction and Mechanical currently holds a C20 (warm air heating, ventilating and air conditioning) license but is required to hold a C43 license to fabricate and install sheet metal. Edwards objects to this subcontractor designation on the basis of the licensing deficiency and again alleges that an unfair competitive advantage is conferred on Nelson. Unless CPPI obtains the required license, Nelson is free to shop for subcontractor bids.

Section 4101 of the Public Contract Code is a part of the "Subletting and Subcontracting Fair Practices Act" and provides as follows:

The Legislature finds that the practices of bid shopping and bid peddling in connection with the construction, alteration, and repair of public improvements often result in poor quality of material and workmanship to the detriment of the public, deprive the public of the full benefits of fair competition among prime contractors and subcontractors, and lead to insolvencies, loss of

wages to employees, and other evils.

Separately, Nelson claims inadvertent clerical errors in its listing of two other subcontractors. If your Board adopts the recommendations herein, Nelson's request to substitute subcontractors is moot and need not be considered.

This was the second bidding of the Santa Maria Court Clerks' Building, as the previous bidding did not yield a responsive bid. On February 16, 2010, 16 bids were opened for the Santa Maria Court Clerks Project. Bid protests from general contractor-bidders and from a controls supplier subcontractor warranted a re-bid. On April 6, 2010, your Board rejected the bids received on February 16, 2010, and authorized the General Services Department to re-bid the project.

On December 29, 2003, the Board of Supervisors (BOS) approved the substitution, reallocation and re-appropriation of the approximate \$4.6 million, directing them to be placed in the SB 1732 Court Facilities Deficiencies Program.

On December 9<sup>th</sup>, 2008, the BOS approved court facility transfer agreements between the AOC and the County of Santa Barbara as per SB1732. Part of the agreement provides for use of these County-held Courts funds to replace certain court structures on the Cook and Miller campus and to consolidate certain court functions. The agreement is known as the "Joint Occupancy Agreement" (JOA). Upon receiving a responsive construction bid, if funds held by the County are found insufficient, the AOC has 30 business days to direct the County on whether or not to proceed with the project. The estimated total project cost is \$5.3 million. If the AOC chooses to move forward with the project, the AOC will have three weeks to deposit the difference between the estimated \$4.9 million that the County is holding and the total project cost into an escrow account. This will ensure that the project is fully funded before contract award. General Services is working with the Courts, AOC and the County Treasurer on an MOU. In the event the AOC chooses not to go forward with the project, General Services will reduce the scope of the project to a size that can be accomplished for the funds we have and meet the County's obligation as per the transfer agreement.

The proposed building will provide a permanent facility for the Superior Court Clerks Office in Santa Maria and will replace 20 plus year old modular buildings, free up 3,614 sq ft of space for needed County use and relocate Court staff out of 2,440 sq ft of leased space.

**Performance Measure:**

The new Santa Barbara County Court Clerks Building will remove and replace the existing dilapidated modular building, provide improved office space for Court employees, free up a County lease expense of \$35,000 per annum and create 3,614 sq ft of needed space for County employees.

**Fiscal and Facilities Impacts:**

Budgeted: Yes

**Fiscal Analysis:**

<b><u>Funding Sources</u></b>	<b><u>Current FY Cost:</u></b>	<b><u>Annualized On-going Cost:</u></b>	<b><u>Total One-Time Project Cost</u></b>
General Fund			\$ 4,938,000.00
State			\$ 300,000.00
Federal			
Fees			
Other:			
<b>Total</b>	\$ -	\$ -	\$ 5,238,000.00

**Narrative:**

The initial project funding (approximately \$100K) is available in Dept. 063, Fund 0030, Program 1930, Account 8700, and Project 8526. The remaining project funding (approximately \$4.8 million) will be transferred from project 8645 (SB1732 Deficiencies Program) to 8526 via re-allocation, and re-appropriation prior to award of contract. If the AOC elects to proceed with the project, the AOC will fully fund any remaining funding needed to complete the project (Estimated to be approximately \$300 thousand).

The source of the County funding contribution are COP's, issued December 2001.

**Staffing Impacts:**

**Legal Positions:**

**FTEs:**

**Special Instructions:**

Please send one (1) copy of the minute order to John Green, GS/Support Services Division and Courthouse East Wing.

**Attachments:**

1. Construction Contract

**Authored by:**

John Green, Project Manager (805) 934-6229

**cc:**

Gary Blair, Superior Court Executive Officer  
 Darrel Parker, Assistant Superior Court Executive Officer