



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: October 7, 2014
Placement: Departmental
Estimated Tme: 60 Minutes
Continued Item: No
If Yes, date from:
Vote Required: Majority

TO: Board of Supervisors

FROM: Department Matthew P. Pontes, General Services Director, 568-2626
Director(s)
Contact Info: Scott D. McGolpin, Public Works Director, 568-3010

SUBJECT: Establishment of a Pilot Project Stabilization Agreement for the Northern Branch Jail AB 900 Phase II Project; Third Supervisorial District

County Counsel Concurrence

As to form: Yes

Auditor-Controller Concurrence

As to form: N/A

Recommended Actions:

That the Board of Supervisors:

- A. Receive report on the status of negotiations for the development of a framework for a Pilot Project Stabilization Agreement for the Northern Branch Jail AB 900 Phase II Project;
- B. Receive evidence and find that a Pilot Project Stabilization Agreement furthers a legitimate governmental interest consistent with competitive bidding law by preventing costly Project delays, assuring contractors access to skilled labor, and avoiding the potential for labor strife during the life of the Project; if finding made, then
- C. Approve and authorize the Chair to sign the Pilot Project Stabilization Agreement for the Northern Branch Jail AB 900 Phase II Project; or
- D. Direct staff to move forward with this project utilizing your Board's previously approved Joint Labor Compliance Program on July 10, 2012, in lieu of with the Pilot Project Stabilization Agreement;
- E. Find that the proposed action does not constitute a "Project" within the meaning of the California Environmental Quality Act (CEQA), pursuant to 14 CCR 15378 (b)(5), in that it is a government administrative activity that will not result in direct or indirect physical changes in the environment.

Summary Text:

On Tuesday, July 8, 2014, your Board re-affirmed its direction from April 15, 2014 - to develop a framework for a Project Stabilization Agreement (PSA) for the Northern Branch Jail; for staff to proceed with the necessary coordination, negotiation, and preparation of documents needed to establish such an agreement; and, to return to your Board for further direction.

To fulfill your Board's direction, staff conducted over 6 weeks of meetings with the Tri-County Building and Construction Trades Council (TCBT) to negotiate a proposed PSA. Per your Board direction, staff also met with other potential stakeholders in this timeframe to discuss information that would be important to them if the County were to approve a PSA, and which elements, if any, they would like to see included within a PSA. The stakeholders were invaluable in informing your County negotiating team throughout these negotiations. These stakeholders were:

- Tri-Counties District of The Associated General Contractors (AGC)
- Santa Maria Valley Contractors Association (SMVCA)
- Santa Barbara Contractors Association (SBCA)
- Southwest Regional Council of Carpenters (SRCC) - through the process SRCC actually took a seat at the negotiation table with TCBT.

As staff stated on July 8, 2014, the County's goal was to negotiate a balanced PSA that aimed to maximize the potential number of bidders and local participation on the Northern Branch Jail AB 900 Phase II Project. This goal, if achieved, would maximize competition and potentially provide a bid in the range of the Engineer's Estimate of \$69,427,890 (Attachment #1) to construct this Project.

After more than six weeks of negotiations, your negotiating team and TCBT have reached Tentative Approval (TA) on the Agreement Points discussed with your Board on July 8, 2014. At this time, TCBT has been provided a deadline to deliver the approvals of the trades and affiliates that have jurisdiction in Santa Barbara County, are eligible to refer labor to the Project, and are affiliated with or represented by TCBT for the proposed Pilot Project Stabilization Agreement for the Northern Branch Jail AB 900 Phase II Project. The signatory parties to the agreement represent the anticipated trades and crafts necessary to construct the project so as to minimize the risk of strikes and labor unrest. Today, staff is asking your Board to consider the proposed Pilot Project Stabilization Agreement for the Northern Branch Jail AB 900 Phase II Project and if adopted, make the Findings necessary to allow implementation of the agreement.

Background:

Hundreds of PSAs have been negotiated across this state and nation - each of which is uniquely designed and negotiated for the particular project to be constructed. On July 8, 2014, your Board provided direction to staff prior to commencing negotiations around seven Agreement Points (Attachment #2). In 2012 the County of Ventura concluded a process to negotiate a PSA with TCBT where agreement could not be reached around these same points. In July, staff predicted that similar provisions would take the majority of the time in our negotiations since we would be negotiating with the same players as Ventura County. This prediction came true shortly after commencing our negotiations.

Agreement Points:

- *Core Workforce* – defined in the negotiated PSA as employees on a contractor’s payroll who have been employed 60 of the last 100 working days.
 - Negotiated Agreement: Contractor/Employer may initially use up to six (6) core workers. When Contractor/Employer requires employees for covered work in addition to his/her initial six core workers, Contractor/Employer shall utilize the Signatory Union(s) referral system.
- *Exemption from the PSA requirements for offsite fabrication facilities* - On a project the size of the Northern Branch Jail AB 900 Phase II Project, there will be many off site facilities fabricating materials to be utilized in the construction of this facility. If the facility is not working exclusively for this Project (i.e., also fabricating materials for other customers around the state and nation) then as a matter of policy, they should not be held to the requirements of the proposed PSA.
 - Negotiated Agreement: This Agreement shall not apply to off-site fabrication and off-site supervision of such work unless such work is conducted in facilities established specifically for this Project. In addition, this Agreement shall not apply to transporting materials to or from the Project.
- *Exemption from the PSA for all Professional Services* – General Services has contracts in place to provide the professional services necessary to construct the Northern Branch Jail AB 900 Phase II Project at this time, which do not include a PSA. To include these services within the scope of the proposed PSA would require more time to renegotiate the contracts or to go through another RFP process prior to going to construction and delay the overall AB 900 Phase II Project.
 - Negotiated Agreement: This Agreement shall not apply to any contracts for professional services, whether established prior to or after this Agreement, for the Project, including, but not limited to, architectural, engineering, construction management services, unless services are included as an item in the AB900 Phase II construction bid package for the construction contract. Any work performed by Contractor/Employer as part of the construction contract which may qualify as professional services, will be covered under this Agreement.
- *Exclusive use of apprentices from a locally approved apprenticeship program* – This issue revolved around whether any State-approved apprenticeship program may be utilized, or only “Union” apprenticeship programs may be used on the Northern Branch Jail AB 900 Phase II Project.
 - Negotiated Agreement: Contractors/Employers will employ apprentices from Joint Labor/Management Apprenticeship and/or training Programs, to the extent permitted by law.

Below are other provisions of your Board’s direction from July 8, 2014 from which staff benefited:

- *Union Dues* – If non-Union contractors participate in the construction of the Northern Branch Jail AB 900 Phase II Project, will they have to become Union members and/or pay Union dues?
 - Negotiated Agreement: No employee covered by this Agreement shall be required to join any Union as a condition of being employed, or remaining employed, for the completion of this Project work. However, any employee who is a member of a Signatory Union, at the time the Union refers the employee, shall maintain that membership in good standing while employed on the Project. The Contractor/Employer shall require all employees working on the Project...[to render] payment of representation fees equal to the monthly and working dues as uniformly required of all craft employees while working on the Project and represented by the applicable Signatory Union. The Union agrees to inform non-Union workers, working on the

Project who are required to pay representation fees, in writing, of their right to remain non-Union workers and their ability and how to object to the full payment of Union dues.

- *Union Benefits* - If non-Union contractors participate in the construction of the Northern Branch Jail AB 900 Phase II Project, will they have to pay Union benefits?
 - *Negotiated Agreement:* Any non-signatory Contractor/Employer employing a core worker shall compensate the core worker for benefits in excess of the basic hourly wage rate in accordance with the applicable prevailing wage determination established by the Department of Industrial Relations pursuant to the California Labor Code. Contractor/Employer may: (1) directly compensate the core worker, or (2) contribute to Contractor/Employer’s benefit plans on behalf of the core worker, or (3) contribute to the Union’s established employee benefit plans on behalf of the core worker.
- *Local Participation* – County Counsel stated in open session on April 15, 2014, that there are “local hire” provisions that can exist inside the bid documents, the contract and a PSA. A possible example includes establishing “Good Faith” efforts to encourage local labor participation.
 - *Negotiated Agreement:* The Unions shall use good faith efforts to refer a minimum of 45% of the labor and craft positions from local residents. Contractor/Employer shall use good faith efforts to employ a minimum of 45% of labor and craft positions from local residents.

As mentioned above, the County’s goal was to negotiate a balanced PSA that aimed to maximize the potential number of bidders and local participation on the Northern Branch Jail AB 900 Phase II Project. Staff believes that, through negotiations with TCBT, we were able to develop a PSA (Attachment #3) that will provide opportunities for small to medium sized local non-Union contractors interested in bidding this Project as a subcontractor.

The potential impact of reduced competition is a very real concern worth noting. According to the “Northern Branch Jail Project, Multiple Bid Package Determination Report”, dated August 5, 2014, (Attachment #4) prepared by Kitchell, 81% of the local contractors surveyed about potentially bidding our Northern Branch Jail Project were non-Union, and expressed mid to high interest in bidding this Project. The Kitchell report goes on to say, according to an estimating manual prepared for the construction industry by Saylor Publications Inc., project bid amounts increase as the number of bidders decrease:

Excerpt from the Saylor Estimating Manual: Examination of a large number of bids received would indicate that the deviation from engineering estimates produced from completed drawings, using the pricing in this manual, is as follows:

# of Bids	Bid Deviation from Engineer’s Estimate		
1 bid	+15%	to	+40%
2-3 bids	+8%	to	+12%
4-5 bids	-4%	to	+4%
6-7 bids	-7%	to	-5%
8+ bids	-12%	to	-8%

As an example, this factor alone could represent a 3-9% increase in bid pricing as the number of bidders decreases from seven to four. The Kitchell report further states that local subcontractors have an inherent bidding advantage over non-local subcontractors due to reduced costs to carry out the work, and they will tend to drive bid prices down. As your County negotiating team, in addition to the information

provided by the stakeholders throughout the negotiation process, the results of this survey informed staff's negotiations as well.

To move forward with the negotiated stabilization agreement on this Project, your Board must find (Attachment #5) that utilization of the PSA for the Northern Branch Jail AB900 Phase II furthers a legitimate governmental interest consistent with competitive bidding law by preventing costly project delays, assuring contractors access to skilled labor, and avoiding the potential for labor strife during the life of the Project.

If your Board cannot make the required Finding, the County has the option to move forward with this Project utilizing your Board's previously approved Joint Labor Compliance Program, July 10, 2012, in lieu of with a PSA (Attachment #6). This program was developed when our County's last effort to negotiate a PSA ended in stalemate. Utilization of the Joint Labor Compliance Program would be in addition to adhering to all applicable State and Federal wage laws in effect for all public projects.

After today's Board meeting, General Service's staff must commence the pre-qualification process for the Northern Branch Jail AB 900 Phase II Project in order to meet the proposed Project schedule.

Fiscal and Facilities Impacts:

None with this action

Special Instructions:

Please return a certified stamped Minute Order approving these actions to Public Works. If your Board approves the Pilot Stabilization Agreement, please return two fully executed originals and keep one original for your file. Return to Tawnya Chase, Public Works Admin, x3010.

Attachments:

1. County of Santa Barbara, General Services Department, Northern Branch Jail AB 900 Phase II Project Engineers Estimate
2. Agreement Points from July 8, 2014, Board of Supervisors Departmental Hearing
3. COUNTY OF SANTA BARBARA NORTHERN BRANCH JAIL - AB900 PHASE II PROJECT STABILIZATION AGREEMENT - [ftp://pwftp.countyofsb.org/PWAdmin/FTP/Master Labor Agreements 2014/](ftp://pwftp.countyofsb.org/PWAdmin/FTP/Master_Labor_Agreements_2014/)
4. Northern Branch Jail Project, Multiple Bid Package Determination Report, dated August 5, 2014, prepared by Kitchell
5. Finding to enter into a Project Stabilization Agreement
6. County of Santa Barbara Joint Labor Compliance Monitoring Program, July 10, 2012

Authored by: Scott D. McGolpin, 568-3010

cc: Bill Brown, Sheriff
Tri-County Building and Construction Trades Council (TCBT)
Tri-Counties District of the Associated General Contractors (AGC)
Santa Maria Valley Contractors Association (SMVCA)
Santa Barbara Contractors Association (SBCA)
Southwest Regional Council of Carpenters (SRCC)