



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: July 8, 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: Policy Direction – Establishment of a Pilot Project Stabilization Agreement (PSA) 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 considers the following recommendations:

- A. Re-affirm your Board’s direction on April 15, 2014 to develop a framework for a Pilot Project Stabilization Agreement for the Northern Branch Jail AB 900 Phase II Project; and
- B. If Recommendation A is re-affirmed; Direct staff to proceed with the necessary coordination, negotiation, and preparation of documents needed to establish such an agreement, if possible, and return to your Board in September for further direction; and
- C. 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, April 15, 2014 your Board directed the General Services Department to return with a framework for a Pilot Project Stabilization Agreement (PSA) when the Northern Branch Jail AB 900 Phase II Project is constructed.

A PSA is a contractually binding agreement negotiated between the County and the building and construction trade unions. It is a form of pre-hire agreement that guarantees uniform wages, benefits, and work rules across multiple crafts employed on construction projects; in this case potentially the

Northern Branch Jail AB 900 Phase II Project. Such an agreement guarantees skilled labor on the project and the development of learning and career opportunities through established apprenticeship programs. Once negotiated the PSA becomes part of the bid specification for the construction project and remains in effect for the duration of the project. In exchange the County receives a steady supply of highly skilled labor through the building and construction trades unions' nationwide network of referral systems and by reconciling the various work routines of the many trades. PSAs also help to assure timely completion by keeping projects free from disruptions resulting from labor disputes, grievances, or jurisdictional issues.

Background:

What is a PSA?

PSAs are a type of contract used in the construction industry to set the terms and conditions of employment on large projects of long duration and design complexity. PSAs allow the expeditious resolution of disputes that can arise in the course of the project, helping to ensure that the project is delivered on time and that quality standards are maintained. PSAs may include provisions that seek to improve conditions on the worksite and provide benefits to the community by including jobs and training opportunities for disadvantaged workers.

At times the use of these agreements has become controversial as the nonunion sectors of the construction industry has grown and as PSAs have been applied to relatively small projects. Critics argue that PSAs place nonunion contractors at a disadvantage in bidding on projects and raise overall project costs. The County of Santa Barbara has never constructed a project with a PSA. There are no guarantees that a PSA will either increase or decrease the cost of construction, nor that it will attract or detract local labor. The General Services Department has developed an Engineers Estimate to construct the Northern Branch Jail AB 900 Phase II Project (Attachment #1) that does not include the provisions required of a PSA.

Language in PSAs can be written to advance important policy goals of your Board, such as improving training, recruiting members of disadvantaged communities into high-paying jobs in construction in the future, and insuring that small businesses have an opportunity to participate.

Often PSAs, particularly those on large projects, contain health and safety provisions, including those that dictate overall safety practices, create safety committees, mandate safety training and safety meetings, and address such matters as illicit drug screening. Also, as this discussion revolves around the potential use of a PSA for a Jail, language can also be included to insure that workers that come on site meet minimum security requirements.

While nonunion contractors are the most vocal PSA opponents, PSAs accommodate nonunion firms by prohibiting discrimination in bidding based on union status and allowing nonunion firms to bring core workers with them to projects. PSAs also require that all contractors working on a project adhere to a collective bargaining agreement; even nonunion contractors must operate under negotiated rules.

On public projects all applicable state and federal bidding statutes and regulations must be followed. As public policy has developed, most courts have held that governments may use PSAs on public projects as long as bidding is open to all qualified bidders (union and nonunion). County Counsel recommended, in open session on April 15, 2014, that we start PSA negotiations within the framework of the California Supreme Court tested San Francisco Airport Commission PSA from 1996 (Attachment #2). The San Francisco Airports Commission's PSA was upheld by the California Supreme Court in *Associated Builders & Contractors, Inc. v. San Francisco Airports Comm'n.* (1999) 21 Cal.4th 352.

Next Steps:

Establishing a Project Stabilization Agreement will require discussion with various stakeholders and negotiation with the Tri-County Building and Construction Trades Council (TCBT). Other potential stakeholders to this discussion are:

- 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)

If we are successful in negotiating a draft PSA and in order to alert potential bidders to the inclusion of a PSA on the Northern Branch Jail AB 900 Phase II Project your Board's approval of this document will need to occur in September, 2014. This is a compressed schedule that will require the County, our stakeholders and the TCBT to commit the resources required for this effort. At this time it is staff's desire to conduct meetings as frequently as possible and to provide as a starting point an example PSA that has been used in the past and has been tested in the legal system as mentioned above. The goal of which is to move negotiations along and save a considerable amount of upfront time.

If no agreement can be reached in this timeframe the County has the option to move forward with this project utilizing your Board's previously approved Joint Labor Compliance Program, July 10, 2012, instead of with a PSA (Attachment #3). This program was developed when our County's last effort to negotiate a PSA was not finalized. Utilization of the Joint Labor Compliance Program would be in addition to adhering to all applicable state and federal wage laws that are in effect for all public projects.

After today's Board meeting, if the Board approves the recommended actions, staff will incorporate your comments in the County's draft negotiation documents needed to establish a PSA and commence the negotiations.

Agreement Points:

Hundreds of PSAs have been negotiated across this state and nation. Each of these are designed and negotiated for the particular project to be constructed. However, there are standard provisions within each and in California certain provisions are legislatively mandated (Attachment #4).

In 2012 the County of Ventura concluded a process to negotiate a PSA with TCBT. The negotiations there, beyond the standard provisions and the legislatively mandated ones, boiled down to a handful of

provisions where agreement could not be reached (Attachment #5). Staff believes that similar provisions may come into play in our negotiations since we will be negotiating with the same players and your Board's input will guide our County's negotiations moving forward. The challenging provisions to negotiate will likely be:

- Core Workforce – defined in many PSAs as staff member(s) on a bidding contractor's payroll that have been employed 60 of the last 100 days. Staff believes we should mirror the San Francisco Airports Commission PSA which allowed for the utilization of a contractor's entire workforce before using members of a hiring hall. This language was upheld by the California Supreme Court.
- 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 staff believes they should not be held to the requirements of the proposed PSA.
- 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 will perhaps 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.
- Exclusive use of apprentices from a locally approved apprenticeship program – This issue may revolve around whether any state approved apprenticeship program may be utilized or if only "union" apprenticeship programs may be used on the Northern Branch Jail AB 900 Phase II Project.

In addition, other provisions that staff would benefit from the Board's direction are:

- Union Dues – If nonunion 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?
- Union Benefits - If nonunion contractors participate in the construction of the Northern Branch Jail AB 900 Phase II Project will they have to pay union benefits?
- 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. Also, to encourage small business participation options such as exempting certain labor types could potentially be established.

The above examples are just that, examples of possible issues we believe may come up during our negotiations with TCBT to develop a proposed PSA. There certainly may be other issues that arise or that your Board wishes your staff to raise in the negotiations. If so, our goal through today's hearings is to have these issues brought forward.

Fiscal and Facilities Impacts:

None with this action

Attachments:

1. County of Santa Barbara, General Services Department, Northern Branch Jail AB 900 Phase II Project Engineers Estimate
2. San Francisco Airports Commission's 1996 PSA –“Project Stabilization Agreement for San Francisco International Airport's Master Plan Construction Project”
3. County of Santa Barbara, Joint Labor Compliance Monitoring Program, July 10, 2012
4. California Public Contract Code, Section 2500
5. County of Ventura Public Works Agency Memorandum – Report Back Regarding The Use Of Local Labor On The VCMC Hospital Replacement Wing Project

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)