

**State of California  
Office of Administrative Law**

**In re:**  
Board of State and Community Corrections

**Regulatory Action:**

**Title 15, California Code of Regulations**

**Adopt sections:** 1712.4, 1714.4, 1730.4,  
1740.4

**Amend sections:** 1700, 1706, 1731, 1747,  
1747.1, 1748, 1748.5, 1749,  
1749.1, 1750, 1750.1, 1751,  
1752, 1753, 1754, 1756,  
1760, 1766, 1767, 1768,  
1770, 1772, 1776, 1778,  
1788, 1790, 1792

**Repeal sections:**

**NOTICE OF APPROVAL OF CERTIFICATE OF  
COMPLIANCE**

**Government Code Sections 11349.1 and  
11349.6(d)**

**OAL Matter Number: 2017-0922-02**

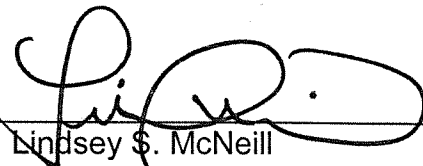
**OAL Matter Type: Certificate of Compliance  
Resub (CR)**

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This certificate of compliance submitted by the Board of State and Community Corrections makes permanent the prior emergency actions (OAL File Nos. 2016-1223-03ER and 2017-0622-02EE) that amended twenty seven sections and adopted four sections in title 15 of the California Code of Regulations. The regulations add eligibility requirements, matching fund requirements, a proposal process, and evaluation criteria for the construction financing program for adult local criminal justice facilities pursuant to Senate Bill 844.

OAL approves this regulatory action pursuant to section 11349.6(d) of the Government Code.

**Date:** November 3, 2017

  
Lindsey S. McNeill  
Attorney

**For:** Debra M. Cornez  
Director

**Original:** Kathleen T. Howard  
**Copy:** Lindsay Tu

# CERT RESUBMITTAL

STATE OF CALIFORNIA—OFFICE OF ADMINISTRATIVE LAW

## NOTICE PUBLICATION/REGULATORY ACTION

(See instructions on reverse)

For use by Secretary of State only

STD. 400 (REV. 01-2013)

OAL FILE NUMBERS	NOTICE FILE NUMBER 2017-0406-01	REGULATORY ACTION NUMBER 2017-0922-02CR	EMERGENCY NUMBER
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**ENDORSED - FILED**  
in the office of the Secretary of State  
of the State of California

NOV 03 2017  
11:45 P.M.

For use by Office of Administrative Law (OAL) only	
NOTICE	REGULATIONS

2017 SEP 22 A 9:43  
OFFICE OF  
ADMINISTRATIVE LAW

AGENCY WITH RULEMAKING AUTHORITY Board of State and Community Corrections	AGENCY FILE NUMBER (if any)
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### A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)

1. SUBJECT OF NOTICE	TITLE(S)	FIRST SECTION AFFECTED	2. REQUESTED PUBLICATION DATE
3. NOTICE TYPE <input type="checkbox"/> Notice re Proposed Regulatory Action <input type="checkbox"/> Other	4. AGENCY CONTACT PERSON	TELEPHONE NUMBER	FAX NUMBER (Optional)
OAL USE ONLY <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn	ACTION ON PROPOSED NOTICE	NOTICE REGISTER NUMBER 2017-16-2	PUBLICATION DATE 4-21-17

### B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S) Construction Financing Program	1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S) 2016-1205-02E; 2016-1223-03ER; 2017-0622-02E
2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (including title 26, if toxics related)	2017-0615-03C

SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)	ADOPT See Attachment	per agency LM request 10/21/2017
	AMEND See Attachment	
	REPEAL N/A	

3. TYPE OF FILING			
<input type="checkbox"/> Regular Rulemaking (Gov. Code §11346)	<input checked="" type="checkbox"/> Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §§11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute.	<input type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h))	<input type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100)
<input checked="" type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4)	<input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1)	<input type="checkbox"/> File & Print	<input type="checkbox"/> Print Only
<input type="checkbox"/> Emergency (Gov. Code, §11346.1(b))		<input type="checkbox"/> Other (Specify)	per agency LM request 10/21/2017

4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §44 and Gov. Code §11347.1)
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5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100)			
<input type="checkbox"/> Effective January 1, April 1, July 1, or October 1 (Gov. Code §11343.4(a))	<input checked="" type="checkbox"/> Effective on filing with Secretary of State	<input type="checkbox"/> §100 Changes Without Regulatory Effect	<input type="checkbox"/> Effective other (Specify)

6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY			
<input checked="" type="checkbox"/> Department of Finance (Form STD. 399) (SAM §6660)	<input type="checkbox"/> Fair Political Practices Commission	<input type="checkbox"/> State Fire Marshal	
<input type="checkbox"/> Other (Specify)			

7. CONTACT PERSON Lindsay Tu, Associate Capital Outlay Analyst	TELEPHONE NUMBER (916) 324-1959	FAX NUMBER (Optional)	E-MAIL ADDRESS (Optional) Lindsay.Tu@bscc.ca.gov
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8. I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

SIGNATURE OF AGENCY HEAD OR DESIGNEE <i>Kathleen T. Howard</i>	DATE 9/11/17
TYPED NAME AND TITLE OF SIGNATORY Kathleen T. Howard, Executive Director, Board of State and Community Corrections	

For use by Office of Administrative Law (OAL) only
ENDORSED APPROVED
NOV 03 2017
Office of Administrative Law

**ATTACHMENT TO NOTICE PUBLICATION/REGULATIONS SUBMISSION**

**(STD. 400)**

**TITLE 15, DIVISION 1, CHAPTER 1, SUBCHAPTER 6**

**ADOPT:**

Sections 1712.4, 1714.4, 1730.4, and 1740.4

**AMEND:**

Sections 1700, 1706, 1731, 1747, 1747.1, 1748, 1748.5, 1749, 1749.1, 1750, 1750.1, 1751, 1752, 1753, 1754, 1756, 1760, 1766, 1767, 1768, 1770, 1772, 1776, 1778, 1788, 1790, and 1792

**TITLE 15, DIVISION 1, CHAPTER 1, SUBCHAPTER 6  
BOARD OF STATE AND COMMUNITY CORRECTIONS**

**CONSTRUCTION FINANCING PROGRAM**

**ARTICLE 1. GENERAL PROVISIONS**

**§ 1700. Purpose.**

The purpose of these regulations is to implement and specify Chapters 3.11, 3.12, 3.13, 3.131, and 3.132 of Title 2, Division 3, Part 10b of the California Government Code.

Note: Authority cited: Sections 15820.906, 15820.916, 15820.925, 15820.935 and 15820.945, Government Code; and Section 6030, Penal Code. Reference: Sections 15820.90, 15820.901, 15820.902, 15820.903, 15820.905, 15820.906, 15820.907, 15820.91, 15820.911, 15820.912, 15820.913, 15820.915, 15820.916, 15820.917, 15820.92, 15820.921, 15820.922, 15820.923, 15820.924, 15820.925, 15820.926, 15820.93, 15820.930, 15820.931, 15820.932, 15820.933, 15820.934, 15820.935, 15820.936, 15820.94, 15820.940, 15820.941, 15820.942, 15820.943, 15820.944, 15820.945, 15820.946 and 15820.947, Government Code.

**§ 1706. Definitions.**

The following words, where used in this subchapter, shall have the meaning hereafter ascribed to them in this article, unless the context of their use clearly requires a different meaning.

“Local Jail Construction Financing Program” means the requirements set forth in Chapters 3.11 and 3.12 of Title 2, Division 3, Part 10b of the California Government Code to finance the construction of local jails.

“Adult Local Criminal Justice Facilities Construction Financing Programs” means the requirements set forth in Chapters 3.13, 3.131, and 3.132 of Title 2, Division 3, Part 10b of the California Government Code to finance the construction of adult local criminal justice facilities awarded under SB 1022, SB 863, and SB 844.

“Adult local criminal justice facility” means a facility or portion thereof which may include any improved housing with an emphasis on expanding program and treatment space, and which may include any custodial housing, reentry, program, mental health, or treatment space, as are necessary to manage the adult offender population consistent with the legislative intent described in Sections 17.5 and 3450 of the Penal Code under the jurisdiction of the sheriff or county department of corrections.

“Administrative work plan” means a comprehensive plan for designing, performing and managing the proposed project.

“Applicant” means the participating county that is applying for financing through the Local Jail Construction Financing Program or the Adult Local Criminal Justice Facilities Construction Financing Programs.

“Application” means the document prepared by a county, or two or more counties if a common application, by which a request is made to participate in Phase II of the Local Jail Construction Financing Program or the Adult Local Criminal Justice Facilities Construction Financing Programs.

“Application assessment factors” means criterion by which applications will be assessed, as stipulated in Sections 1712.1, 1714.1, 1730.1, 1731, and 1740.1 of these regulations, for financing through Phase II of the Local Jail Construction Financing Program or the Adult Local Criminal Justice Facilities Construction Financing Program.

“Architectural drawings” means full-size architectural renderings that shall be prepared at least 1/8” scale.

“Assist the State in siting mental health day treatment and crisis care, and/or a continuum of care for parolees” means a Board of Supervisors’ resolution outlining the county’s intent to assist the State in siting mental health day treatment and crisis care, pursuant to Penal Code Section 3073, and/or a continuum of care at the conclusion of an offenders parole period in Phase I of the Local Jail Construction Financing Program.

“Assist the State in siting reentry facilities” means a Board of Supervisors’ resolution outlining the county’s intent to assist the State in siting a reentry facility, pursuant to Penal Code Section 6270 in Phase I of the Local Jail Construction Financing Program.

“Board” means the State Public Works Board.

“Board of State and Community Corrections agreement” also known as the BSCC agreement means the written agreement and any amendments thereto which outline roles and responsibilities between the participating county and the BSCC as it relates to the oversight of the project.

“Board of Supervisors’ resolution” means a written resolution by a County Board of Supervisors.

“BSCC” means the Board of State and Community Corrections.

“CCR” means California Code of Regulations.

“CDCR” means the California Department of Corrections and Rehabilitation.

“Cash match” and “hard match” are used interchangeably and mean cash dedicated to the project by the applicant for eligible expenditures as defined in Section 1714, 1714.1, 1714.2, 1714.3, and 1714.4 of these regulations.

“Concept drawings” means, with respect to a design-build project, any drawings or architectural renderings that may be prepared, in addition to performance criteria, in such detail as the participating county determines necessary to sufficiently describe the participating county’s needs.

“Conditional award” means the maximum amount of state reimbursement a participating county may receive for a project through the Local Jail Construction Financing Program or the Adult Local Criminal Justice Facilities Construction Financing Programs, subject to or conditioned upon certain requirements including, but not limited to: 1) each participating county’s project must be approved by the BSCC and the Board at various stages throughout planning and construction as required by these

regulations; 2) each participating county must enter into the state/county agreements as required by these regulations; and 3) the financing mechanism of lease-revenue bonds are able to be sold for each selected project.

“Construction bid” means a construction bid price.

“Construction documents” means architectural plans and specifications that are one hundred percent (100%) complete and generally include: completed specifications with bid proposal documents; completed construction drawings; and special interest items (corrections, modifications, or additions made to the documents).

“Construction management” means a specialized, multidisciplinary function provided by a firm or individual acting as the county’s representative with the responsibility to guide the county through all phases of delivery of the construction project.

“Cost effectiveness” means a computed factor that is the state dollar cost per net gain in beds, to be computed as the total amount of state funds requested divided by the total net gain in beds.

“County” means a legal subdivision of the State of California as defined in subsection (a) of Section 1 of Article XI of the California Constitution.

“Design-bid-build” means a construction procurement process independent of the design process and in which the construction of a project is procured based on completed construction documents.

“Design-build” means a construction procurement process in which both the design and construction of a project are procured from a single entity.

“Design capacity” includes all housing areas, even those specialized units that are not included in the rated capacity. It does not, however, include temporary holding cells, such as those in the reception and booking areas of the facility. Design capacity is used in calculating costs per bed and square foot.

“Design development” means architectural plans and specifications that are fifty percent (50%) complete and generally include: outline specifications (detention hardware, equipment, and furnishings); floor plans (to scale with dimensions, room designations, references, wall types, and ratings); building sections (heights and dimensions); interior elevations; and preliminary structural, mechanical, and electrical drawings.

“Detention alternatives” means programming efforts designed to reduce jail crowding as well as recidivism among local offenders.

“EIR” means environmental impact report; a report as defined in the California Environmental Quality Act (CEQA) as implemented in Title 14, CCR, Public Resources Code, Sections 21000-21177.

“Evaluation and rating process” means the method by which each county’s proposal will be evaluated using the criteria stipulated in Sections 1712, 1712.2, 1712.3, 1712.4, 1714, 1714.2, 1714.3, 1714.4, 1730, 1730.2, 1730.3, 1730.4, 1731, 1740, 1740.2, 1740.3, and 1740.4 of these regulations resulting in a rank ordered list for financing consideration.

“Facility administrator” means the sheriff or other official charged by law with the administration of a local jail or Adult Local Criminal Justice Facility.

“Facility lease” means a lease-revenue bond financing document in which the Board leases the site and the Board-financed local jail facility project to CDCR or BSCC. The term of the bonds are subject to availability for use and occupancy. CDCR or BSCC agrees to pay rent and fulfill other related obligations.

“Facility sublease” means a sublease of the Board-financed facility from CDCR and/or BSCC, with the consent of the Board, to a participating county, for its use, operation and maintenance, as described in Section 1754.

“Fixed equipment and fixed furnishings” means furniture, fixtures, and equipment that are physically attached to an immovable object, such as a floor or wall.

“Ground lease” means a lease between a participating county and CDCR or BSCC with the consent of the Board, to place possession and control of the real property upon which the Board-financed project will be constructed with CDCR or BSCC as described in Section 1752.

“Hard match” and “cash match” are used interchangeably and mean cash dedicated to the project by the applicant for eligible expenditures as defined in Sections 1714, 1714.1, 1714.2, 1714.3, and 1714.4.

“In-kind match” and “soft match” are used interchangeably and mean local funds in the form of property value or management/administrative services dedicated to the project by the applicant for eligible expenditures as defined in Sections 1714, 1714.1, 1714.2, 1714.3, and 1714.4.

“In-person visit” and “In-person visitation” means a visit or visitation during which an incarcerated person has contact with a visitor, is able to see a visitor through glass, or is otherwise in an open room without physical contact with a visitor.

“Interim Financing” is a loan or loans that the CDCR and the Board, or the BSCC and the Board, obtain for the state’s share of the project and which may be obtained pursuant to: i) Sections 16312 and 16313 of the California Government Code (Pooled Money Investment Board loans), (ii) Section 15849.1 of the California Government Code (General Fund loans), or iii) any other appropriate source.

“Large county” means a county with a general county population from 700,001 and above as estimated by the State Department of Finance for January 1, 2007 for Phase I, January 1, 2011 for Phase II, May 1, 2013 for SB 1022, July 1, 2014 for SB 863 and January 1, 2016 for SB 844.

“Lease-revenue bonds” and “state bond financing” are interchangeable and means lease-revenue bonds issued by the State Public Works Board for jail facilities as authorized in Chapters 3.11, 3.12, 3.13, and 3.131 of Title 2, Division 3, Part 10b of the California Government Code, as may be amended from time to time.

“Local jail” means Type II, III and IV facilities as defined in Title 15, CCR, Section 1006 and Title 24, CCR, Part 1, Section 13-102. Pursuant to Sections 1712, 1712.1, 1712.2, 1712.3, and 1712.4, only county-owned and operated local jails are eligible for state bond financing. Temporary and court holding facilities are not eligible for state bond financing.

“Match” means local funds in the form of cash, property value, or management/administrative services contributed by a county on a state bond financed project in the ratio described in Sections 1714, 1714.1, 1714.2, 1714.3, and 1714.4.

“Medium county” means a county with a general county population from 200,001 to 700,000 as estimated by the State Department of Finance for January 1, 2007 for Phase I, January 1, 2011 for Phase II, May 1, 2013 for SB 1022, July 1, 2014 for SB 863, and January 1, 2016 for SB 844.

“Moveable equipment and moveable furnishings” means furniture, fixtures, and equipment that are not fixed equipment and fixed furnishings, not including consumable items beyond those included in the initial construction contract.

“Needs assessment study” means a compilation of data that substantiates and justifies the scope of the project proposed to be funded.

“Net gain in beds” means the number of beds (rated capacity and special use beds) to be added, minus the number of existing beds (rated capacity and special use beds) to be eliminated in the county (if any) as a result of the project constructed.

“Operational program statement” means a description of the intended operation of a local jail or Adult Local Criminal Justice Facility.

“Participating county” means any county or regional consortium of counties within the state that has been certified to the Board by the CDCR and/or BSCC as having satisfied all of the requirements set forth in Chapter 3.11, 3.12, 3.13, 3.131, or 3.1312 of Title 2, Division 3, Part 10b of the California Government Code, respectively, for financing the construction or renovation of a local jail facility pursuant to those chapters.

“Performance criteria” means, with respect to a design-build project, the information that fully describes the scope of the proposed project and includes, but is not limited to, the size, type, the desired design character of the project, performance specifications covering the quality of materials, equipment, workmanship, preliminary plans or building layouts, or any other information deemed necessary to describe adequately the participating county's needs; including documents prepared pursuant to paragraph (1) of subdivision (a) of Section 22164 of the Public Contract Code.

“Phase I” means the process and awarding of financing pursuant to Chapter 3.11 of Title 2, Division 3, Part 10b of the California Government Code.

“Phase II” means the process and awarding of financing pursuant to Chapter 3.12 of Title 2, Division 3, Part 10b of the California Government Code.

“Preliminary plans” means a site plan, architectural floor plans, elevations, outline specifications and a cost estimate for each utility, site development, conversion, and remodeling project. The drawings shall be sufficiently descriptive to accurately convey the location, scope, cost and the nature of the improvement being proposed.

“Program space” means space in which offenders receive services in the form of programming or treatment to reduce recidivism or as an alternative to incarceration.



“Project” means the construction or renovation of a local jail facility or adult local criminal justice facility proposed to be financed through the Local Jail Construction Financing Program or the Adult Local Criminal Justice Facilities Construction Financing Programs.

“Project delivery and construction agreement” also known as PDCA, means the written agreement and any amendments thereto between the Board, the CDCR, or the BSCC, and the participating county supplying the terms, provisions, and conditions governing the delivery of the project, as well as other supplemental terms and conditions that are deemed necessary to the project by the Board as described in Section 1748.

“Proposal” means the document prepared by a county, or two or more counties if a common application, by which a request is made to participate in Phase I of the Local Jail Construction Financing Program or the Adult Local Criminal Justice Facilities Construction Programs.

“Proposal evaluation criteria” means criterion by which proposals will be rated.

“Rated capacity” means the number of inmate occupants, as determined by the BSCC, for which a facility’s single and double occupancy cells or dormitories (excluding those areas dedicated for medical or mental health care or disciplinary isolation housing), were planned and designed in conformity with the standards and requirements contained in Title 15, CCR, Division 1, Chapter 1, Subchapter 4 and Title 24, CCR, Part 1, Section 13-102 and Part 2, Section 1231.

“Reentry preference” means preference given to counties in Phase I of the Local Jail Construction Financing Program that agree to assist the State in siting reentry facilities pursuant to Government Code Section 15820.907.

“Regional consortium of counties” means two or more counties bound together by a memorandum of understanding or a joint powers agreement identifying the terms, conditions, rights, responsibilities, and financial obligations of all parties.

“SB 844” means the process and awarding of financing pursuant to Chapter 3.132 of Title 2, Division 3, Part 10b of the California Government Code.

“SB 863” means the process and awarding of financing pursuant to Chapter 3.131 of Title 2, Division 3, Part 10b of the California Government Code.

“SB 1022” means the process and awarding of financing pursuant to Chapter 3.13 of Title 2, Division 3, Part 10b of the California Government Code.

“Schematic design” means architectural plans and specifications that are thirty percent (30%) complete and generally include: a site plan; floor plan; exterior elevations and cross sections; type of construction; and actual gross floor area.

“Scope of work and project impact” means a description of the project and the impact the project will have on the county’s detention system.

“Site” means the property on which the Board-financed local jail facility is located, including a buffer zone. Roadways or areas serving functions other than the jail shall not be considered part of the site.

“Small county” means a county with a general county population of 200,000 or fewer as estimated by the State Department of Finance on January 1, 2007 for Phase I; January 1, 2011 for Phase II; May 1, 2013 for SB 1022, July 1, 2014 for SB 863, and May 1, 2016 for SB 844.

“Soft match” and “in-kind match” are used interchangeably and mean local funds in the form of property value or management/administrative services dedicated to the project by the applicant for eligible expenditures as defined in Sections 1714, 1714.1, 1714.2, 1714.3, and 1714.4.

“Special use beds” means beds for the purpose of appropriately housing offenders in medical, mental health or disciplinary rooms, cells or units that are planned and designed in conformity to the standards and requirements contained in Title 15, CCR, Division 1, Chapter 1, Subchapter 4 and Title 24, CCR, Part 1, Section 13-102 and Part 2, Section 1231.

“Staffing plan” means an assessment and identification of staffing levels needed to operate the proposed project.

“State bond financing” and “lease-revenue bonds” are used interchangeably and mean lease-revenue bonds issued by the State Public Works Board for jail facilities as authorized in Chapters 3.11, 3.12, 3.13, 3.131, and 3.132 of Title 2, Division 3, Part 10b of the California Government Code, as may be amended from time to time.

“State reimbursements” are payments made to the county for costs deemed eligible for state financing as provided in Sections 1712 through 1712.4.

“Working drawings” means a complete set of plans and specifications showing and describing all phases of a project, architectural, structural, mechanical, electrical, civil engineering and landscaping systems to the degree necessary for the purposes of accurate bidding by contractors and for the use of artisans in constructing the project.

Note: Authority cited: Sections 15820.906, 15820.916, 15820.925 15820.935 and 15820.945, Government Code; and Section 6030, Penal Code. Reference: Sections 15820.90, 15820.901, 15820.902, 15820.903, 15820.905, 15820.906, 15820.907, 15820.91, 15820.911, 15820.912, 15820.913, 15820.915, 15820.916, 15820.917, 15820.92, 15820.921, 15820.922, 15820.923, 15820.924, 15820.925, 15820.926, 15820.93, 15820.930, 15820.931, 15820.932, 15820.933, 15820.934, 15820.935, 15820.936, 15820.94, 15820.940, 15820.941, 15820.942, 15820.943, 15820.944, 15820.945 and 15820.946, Government Code.

## **ARTICLE 2. ELIGIBILITY REQUIREMENTS**

### **§ 1712.4. Eligibility Requirements for SB 844.**

- (a) To be eligible for participation in the SB 844 Adult Local Criminal Justice Facilities Construction Program, a county shall:
- (1) Submit the required proposal described in Section 1730.4 of these regulations;
  - (2) Complete or update a needs assessment study as prescribed in Section 1731 of these regulations. A county shall not be required to submit a new needs assessment if the county previously submitted a needs assessment for a request under the financing program described in Section 1712.3;
  - (3) Provide match as specified in Section 1714.4 of these regulations;

- (4) Provide documentation of the percentage of pretrial inmates in the county jail from January 1, 2015 to December 31, 2015, inclusive, and a description of the county's current risk assessment-based pretrial release program;
  - (5) Include all work necessary for the existing facility to meet current fire and life safety standards and meet or exceed building standard seismic level 3 performance standards, applicable only to renovation projects or new construction that is physically attached to an existing facility.
  - (6) Include a description of efforts to address sexual abuse in its adult local criminal justice facility constructed or renovated pursuant to Part 10(b), Division 3, Title 2, Chapter 3.132 of the Government Code.
  - (7) Include space to provide onsite, in-person visitation capable of meeting or surpassing the minimum number of weekly visits required by state regulations for persons detained in the locked facility constructed or renovated with the state funding awarded under the SB 844 program.
  - (8) Have previously received only a partial award or have not received an award from the state within the financing programs authorized in Chapter 3.11 (commencing with Section 15820.90) to 3.131 (commencing with Section 15820.93) of the California Government Code under AB 900 Phase I, AB 900 Phase II, SB 1022, and SB 863.
- (b) If the conditions in subsection (a) of this regulation are met counties may apply, up to their award amount, for reimbursement of the following:
- (1) Costs for the design and construction of the BSCC-approved Adult Local Criminal Justice Facility project, incurred after establishment of the project by the Board, including site preparation, fixed equipment and fixed furnishings, installation of fixed equipment and fixed furnishings necessary for the operation of the facility, costs for real estate due diligence review, preparation of full or focused environmental reports necessary for compliance with CEQA by consultants or contractors, moveable equipment, and moveable furnishings necessary for the activation and operation of the facility. Reimbursable costs cannot exceed ninety percent (90%) of the total project costs or the county's award amount. Costs in excess of ninety percent (90%), including higher than expected construction bids, unanticipated costs, and cost overruns, shall be funded by the county.
- (c) Projects or items not eligible for state reimbursement under these regulations shall include, but not be limited to, the following:
- (1) Temporary holding or court holding facilities.
  - (2) Local jail facilities or portions thereof operated by jurisdictions other than counties. City, state and federal facilities are not eligible.
  - (3) Purchase, lease, or rent of land; personnel or operational costs; excavation of burial sites; public art; off-site costs (outside of the encumbered project area) including access roads, power generation and utilities development; supplies; bonus payments; and debt service or interest payments on indebtedness required to finance the county's share of project costs.

Note: Authority cited: Section 15820.945, Government Code; and Section 6030, Penal Code. Reference: Sections 15820.94, 15820.945 and 15820.946, Government Code; and Section 3073, Penal Code.

#### **§ 1714.4. Matching Fund Requirements for SB 844.**

- (a) County matching funds for projects proposed to be financed under these regulations shall be no less than the minimum amounts specified in Section 1714.4(a)(1) and (2), pursuant to California

Government Code Section 15820.946. County matching funds may be any combination of cash and/or in-kind match.

- (1) Counties with a general population of 200,000 and above shall provide a minimum of ten percent (10%) of the total project costs in matching funds.
  - (2) Upon petition to the BSCC, counties with a general population below 200,000 may request to reduce the required match to an amount not less than the total non-state reimbursable project costs as defined in Section 1712.4.
- (b) Expenditures eligible as cash match for Adult Local Criminal Justice Facilities may include the following:
- (1) Items eligible for state financing;
  - (2) Project and construction management by consultants or contractors, prior to the establishment of the project by the Board;
  - (3) Architectural programming and design by consultants or contractors, prior to the establishment of the project by the Board;
  - (4) Preparation of full or focused environmental reports necessary for compliance with CEQA by consultants or contractors, prior to the establishment of the project by the Board;
  - (5) Off-site costs which are outside the encumbered project area but are related to or required for project development and which are within the greater parcel area; (examples: easements, power generation, utilities development);
  - (6) Public art;
  - (7) Real estate due diligence review costs, prior to the establishment of the project by the Board;
  - (8) State Fire Marshal fees as billed to the county by the State;
  - (9) Costs for appraisals and/or land valuation fees and services by consultants or contractors, prior to the establishment of the project by the Board;
  - (10) Audit of state interim or permanent financing at the conclusion of the project by a contracted auditor;
  - (11) Needs assessments performed by consultants or contractors;
  - (12) Transition planning performed by consultants or contractors after June 27, 2016.
- (c) Expenditures eligible as in-kind match for Adult Local Criminal Justice Facilities shall be limited to any of the following:
- (1) Audit of state interim or permanent financing at the conclusion of the project as performed by an independent county auditor;
  - (2) A needs assessment study as performed by county personnel;
  - (3) Current fair market value supported by an independent appraisal of on-site land value only of new facility construction, or on-site land value of a closed facility that will be renovated and reopened, and/or on-site land used for expansion of an existing facility. Land value cannot be claimed for land that is under an existing operational local jail facility. Multiple appraisals may be required during the course of a project and the county is responsible for any and all appraisals and/or land valuation fees and services. Additional services may be used as in-kind match;
  - (4) County administration costs for staff salary/benefits associated only with staff work directly related to the design and construction of the project, for activities after June 27, 2016. These costs may only be claimed as a project cost if all applicable county administration costs are claimed. Staff must have been hired specifically for the SB 844 project. Existing staff salary/benefits may be eligible as match if the county reports information such as the number of positions, salaries, and benefit costs. Detailed, itemized back-up documentation must be provided to support these costs if they are claimed as in-kind match; and,

- (5) Transition planning, including staff salary/benefits directly related to the design and construction of the project, for activities after June 27, 2016. Staff must have been hired specifically for the SB 844 project. Existing staff salary/benefits may be eligible as match if the county reports information such as the number of positions, salaries, and benefit costs. Detailed, itemized back-up documentation must be provided to support these costs if they are claimed as in-kind match.

(d) To qualify as match, local expenditures must be directly for the SB 844 project.

Note: Authority cited: Section 15820.945, Government Code; and Section 6030, Penal Code. Reference: Sections 15820.945 and 15820.946, Government Code.

### **ARTICLE 3. APPLICATION TO PARTICIPATE IN CONSTRUCTION FINANCING PROGRAMS**

#### **§ 1730.4. Proposal Process for SB 844.**

- (a) Proposals for the SB 844, Adult Local Criminal Justice Facilities Construction Financing Program shall be submitted to the BSCC office at 2590 Venture Oaks Way, Suite 200, Sacramento, CA 95833, no later than 5:00pm on February 28, 2017. Proposals received after 5:00pm on February 28, 2017 will be deemed ineligible and will not be reviewed.
- (b) Proposals shall consist of, but not be limited to the following:
  - (1) One original signed proposal form, which is the document applicants use to apply for the SB 844 funds, and which contains:
    - (A) Applicant information and proposal type;
    - (B) Brief project description;
    - (C) Scope of work;
    - (D) Beds Constructed;
    - (E) Applicants' Agreement;
    - (F) Designated county Construction Administrator;
    - (G) Designated county Financial Officer, and
    - (H) Designated county Contact Person.
  - (2) One fully executed Board of Supervisors' resolution as referenced in Government Code section 15820.946(b)(1);
  - (3) One original of the formal needs assessment study as prescribed in Section 1731 of these regulations or a copy of the needs assessment from a prior submission for the SB 863 financing program;
  - (4) All necessary documentation related to the criteria as provided in Section 1740.4; and,
  - (5) One electronic copy of the items listed in Section 1730.4(b)(1)-(4), which may be submitted with or before the original signed proposal but no later than the proposal due date, and may be submitted on a compact disk or flash drive to the BSCC office at 2590 Venture Oaks Way, Suite 200, Sacramento, CA 95833, or via e-mail to [ConstructionProgram@bscc.ca.gov](mailto:ConstructionProgram@bscc.ca.gov).
- (c) Following the BSCC technical review, proposing counties shall submit the following upon request:
  - (1) One original signed and 16 copies of the proposal, consisting of, but not limited to the items listed in Section 1730.4(b)(1)-(4) and including any changes requested during the technical review; and,
  - (2) One electronic copy, which must be submitted before or with the original signed and 16 copies of the proposal, and may be submitted on a compact disk or flash drive to the BSCC office at

2590 Venture Oaks Way, Suite 200, Sacramento, CA 95833, or via e-mail to ConstructionProgram@bscc.ca.gov.

Note: Authority cited: Sections 15820.945, Government Code; and Section 6030, Penal Code. Reference: Sections 15820.945 and 15820.946, Government Code; and Section 6030, Penal Code.

**§ 1731. Needs Assessment Study.**

(a) Any county or regional consortium of counties intending to construct or renovate a Type II, III or IV (as defined in Title 15, CCR, Section 1006 and Title 24, CCR, Section 13-102) jail facility, or add 25 beds or more to an existing facility shall complete a needs assessment study pursuant to Title 24, CCR, Part 1, Section 13-102(c)2. The needs assessment study shall be submitted with the Phase I proposal or Phase II application. The needs assessment study for SB 1022 must reflect current needs and needs through the year 2014 and shall be submitted with the SB 1022 proposal. The needs assessment study for SB 863 must reflect current needs and needs through the year 2019; with an emphasis on expanded program and treatment space, and shall be submitted with the SB 863 proposal. The needs assessment study for SB 844 must reflect the current needs and needs through the year 2019; with an emphasis on expanded program and treatment space. A County shall not be required to submit a new needs assessment if the county previously submitted a needs assessment for a request under SB 863, but must include the SB 863 needs assessment in the SB 844 application. Counties intending to construct beds must justify their determination of housing capacity deficiency which shall include any construction projects for which the county is conditionally awarded by or through the BSCC, and any other construction projects which the county is undertaking.

Note: Authority cited: Sections 15820.906, 15820.916, 15820.925, 15820.926, 15820.935, 15820.936, 15820.945 and 15820.946, Government Code; and Section 6030, Penal Code. Reference: Sections 15820.906, 15820.916, 15820.925, 15820.926, 15820.933, 15820.935, 15820.936, 15820.945 and 15820.946, Government Code.

**§ 1740.4. SB 844 Proposal Evaluation Criteria.**

In order to assist in compliance with California Government Code Section 15820.945 and 15820.946, the criteria by which proposals shall be rated shall include the below listed factors.

Evaluation Criteria		Scoring Method	Percentage	Total
1	Statement of Need	0-12	15%	18
2	Scope of Work	0-12	15%	18
	SF A/B: Feasible plan to replace compacted housing/expand program/treatment space	0-4		4
3	Offender Programming and Services	0-12	25%	30
	SF A: Documents pretrial inmate percentage	0/4		4
	SF B: Describes risk assessment-based pretrial release process	0/4		4

4	Administrative Work Plan	0-12	10%	12
5	Budget Narrative	0-12	10%	12
6	A. Readiness: Board Resolution	0/12	10%	12
	B. Readiness: CEQA Compliance	0/12	15%	18
<b>TOTAL POINTS</b>		<b>96</b>	<b>100%</b>	<b>132</b>

Note:

SF	Special Factor
0-12	Scored on a 0 to 12 pt. range
0-4	Scored on a 0 to 4 pt. range
0/4	Scored 4 if pass, 0 if fail
0/12	Scored 12 if pass, 0 if fail

Note: Authority cited: Section 15820.945, Government Code; and Section 6030, Penal Code. Reference: Sections 15820.945 and 15820.946, Government Code.

### § 1747. Steps to Proceed with Construction for Design-Bid-Build Projects.

(a) The BSCC shall ensure that the county is ready to proceed with construction. A participating county shall be deemed ready to proceed with construction when it has done all of the following:

- (1) Met all the requirements in the proposal pursuant to Section 1730 for Phase I, ~~and Section 1730.2 for SB 1022, Section 1730.3 for SB 863, and Section 1730.4 for SB 844 Adult Local Criminal Justice Facilities~~ or the application pursuant to Section 1730.1 for Phase II of these regulations;
- (2) As required in Section 1749, obtained compliance with the operational and physical plant requirements in the Minimum Standards for Local Detention Facilities in Title 15, CCR, Division 1, Chapter 1, Subchapter 4 and Title 24, CCR, Part 1, Section 13-102 and Part 2, Section 1231 and the fire and life safety requirements in Title 24, CCR, Part 2, Volume 1, Chapter 4, Section 408;

- (3) Obtained confirmation that CDCR for Phase I and Phase II, or BSCC or CDCR for Adult Local Criminal Justice Facilities, has received the following:
  - (A) Establishment of the scope, cost and schedule of the project by the Board;
  - (B) Approval of preliminary plans by the Board and the State Department of Finance;
  - (C) Approval of working drawings by the State Department of Finance;
  - (D) Approval of proceeding to bid by the State Department of Finance; and
  - (E) Approval of construction bid award by the State Department of Finance.
- (4) Filed with the BSCC a schedule of values of expected state reimbursements, cash match, and in-kind match and other budget items, along with a construction schedule, project management plan, and names, roles and contact information of key county personnel;
- (5) Filed with the BSCC a financial plan detailing arrangements to provide its portion of project costs, including reserves for cash flow, source of matching funds, and a schedule of anticipated match expenditure that is at least proportional to the expenditure of costs that are proposed to be reimbursed by the state;
- (6) Filed with the BSCC a statement citing any exemptions from federal laws, state or local laws, regulations, ordinances, standards, or requirements;
- (7) Filed with the BSCC documentation of California Environmental Quality Act compliance; and,
- (8) Filed with the BSCC a written certification, that the county has control of the site, either through fee-simple ownership or comparable long-term possession, and right of access to the facility sufficient to assure undisturbed use and possession.

Note: Authority cited: Sections 15820.906, 15820.916, 15820.925, 15820.935 and 15820.945, Government Code; and Section 6030, Penal Code. Reference: Sections 15820.901, 15820.906, 15820.911, 15820.916, 15820.92, 15820.925, 15820.93, 15820.935, 15820.94 and 15820.945, Government Code.

#### **§ 1747.1. Steps to Proceed with Construction for Design-Build Projects.**

(a) The BSCC shall ensure that the county is ready to proceed with the design-build process. A participating county shall be deemed ready to proceed with the design-build process when it has done all of the following:

- (1) Met all the requirements in the proposal pursuant to Section 1730 for Phase I and Section 1730.2 for SB 1022, Section 1730.3 for SB 863, and Section 1730.4 for SB 844 Adult Local Criminal Justice Facilities or the application pursuant to Section 1730.1 for Phase II of these regulations;
- (2) As required in Section 1749.1(a), obtained the BSCC's approval of the performance criteria or performance criteria and concept drawings. The performance criteria or performance criteria and concept drawings shall specify the project will meet the operational and physical plant requirements in the Minimum Standards for Local Detention Facilities in Title 15, CCR, Division 1, Chapter 1, Subchapter 4 and Title 24, CCR, Part 1, Section 13-102 and Part 2, Section 1231 and the fire and life safety requirements in Title 24, CCR, Part 2, Volume 1, Chapter 4, Section 408;
- (3) Obtained confirmation that CDCR for Phase I and Phase II, or BSCC or CDCR for Adult Local Criminal Justice Facilities, has received the following:
  - (A) Establishment of the scope, costs and schedule of the project by the Board;
  - (B) Approval of performance criteria or performance criteria and concept drawings by the Board and the State Department of Finance;



- (C) Approval of proceeding to design-build proposal solicitation by the State Department of Finance; and
- (D) Approval of design-build contract award by the State Department of Finance.
- (4) Filed with the BSCC a schedule of values of expected state reimbursements, cash match, and in-kind match and other budget items, along with a construction schedule, project management plan, and names, roles and contact information of key county personnel;
- (5) Filed with the BSCC a financial plan detailing arrangements to provide its portion of project costs, including reserves for cash flow, source of matching funds, and a schedule of anticipated match expenditure that is at least proportional to the expenditure of costs that are proposed to be reimbursed by the state;
- (6) Filed with the BSCC a statement citing any exemptions from federal laws, state or local laws, regulations, ordinances, standards, or requirements;
- (7) Filed with the BSCC documentation of California Environmental Quality Act Compliance; and,
- (8) Filed with the BSCC a written certification, that the county has control of the site, either through fee-simple ownership or comparable long-term possession, and right of access to the facility sufficient to assure undisturbed use and possession.

Note: Authority cited: Sections 15820.906, 15820.916, 15820.925, 15820.935 and 15820.945, Government Code; and Section 6030, Penal Code. Reference: Sections 15820.901, 15820.906, 15820.911, 15820.916, 15820.92, 15820.925, 15820.93, 15820.935, 15820.94 and 15820.945, Government Code.

#### **§ 1748. Requirements for the Project Delivery and Construction Agreement.**

The project delivery and construction agreement between the Board, CDCR or the BSCC, and a participating county shall be executed ~~after~~before the Board establishes the scope, cost and schedule of the project. The project delivery and construction agreement shall include the roles, responsibilities and performance expectations of the parties.

Note: Authority cited: Sections 15820.906, 15820.916, 15820.925, 15820.935 and 15820.945, Government Code; and Section 6030, Penal Code. Reference: Sections 15820.901, 15820.905, 15820.911, 15820.915, 15820.92, 15820.924, 15820.930, 15820.934, 15820.940 and 15820.944, Government Code.

#### **§ 1748.5. Requirements for the Board of State and Community Corrections Agreement.**

The Board of State and Community Corrections Agreement between the BSCC and the participating county shall be executed concurrently, or as concurrently as practicable, with the execution of the project delivery and construction agreement. The Board of State and Community Corrections agreement shall include the roles, responsibilities, and performance expectations of the participating county and the BSCC as it relates to the oversight of the project.

Note: Authority cited: Sections 15820.906, 15820.916, 15820.925, 15820.935 and 15820.945, Government Code; and Section 6030, Penal Code. Reference: Sections 15820.901, 15820.905, 15820.911, 15820.915, 15820.92, 15820.924, 15820.930, 15820.934, 15820.940 and 15820.944, Government Code.

#### **§ 1749. Submittal of Architectural Drawings and Specifications for Design-Bid-Build Projects.**

(a) Architectural drawings and specifications shall be submitted to the BSCC at the schematic design phase, the design development phase, and the construction document phase, pursuant to Title 24, CCR, Part 1, Section 13-102(c)5.

(b) The BSCC will review the drawings and specifications as soon as practicable, but no later than thirty (30) calendar days for Phase I and Phase II projects and no later than forty-five (45) calendar days for Adult Local Criminal Justice Facility projects, SB 1022, SB 863, and SB 844. In the event of any major deficiencies, the BSCC will notify the county in writing. Deficiencies may be identified as either failures to comply with minimum jail standards or as design features that may pose serious safety, security, operational, or management problems if left uncorrected, even where minimum jail standards are not violated.

(c) Pursuant to California Government Code Sections 15820.906, 15820.916, 15820.925, 15820.935, and 15820.945, to enhance safety and security, BSCC may require changes in construction materials if the materials proposed with the final plans and specifications are not essential or customary, as used statewide for same security level facilities.

(d) Deficiencies in compliance with the operational and physical plant requirements in the Minimum Standards for Local Detention Facilities in Title 15, CCR, Division 1, Chapter 1, Subchapter 4 and Title 24, CCR, Part 1, Section 13-102 and Part 2, Section 1231 and construction materials shall be corrected by the county prior to advertising for bids.

(e) Architectural drawings and specifications shall be submitted to the State Fire Marshal for review and approval.

(f) The Board will have final approval of all projects, and Board approval or disapproval of any project is not subject to the appeal process as described in Article 5.

(g) No state moneys shall be encumbered in contracts let by a participating county until construction document plans and specifications have been approved by the BSCC and subsequent construction bids have been received.

Note: Authority cited: Sections 15820.906, 15820.916, 15820.925, 15820.935 and 15820.945, Government Code; and Section 6030, Penal Code. Reference: Sections 15820.901, 15820.906, 15820.911, 15820.916, 15820.92, 15820.925, 15820.93, 15820.935, 15820.94 and 15820.945, Government Code; and Section 6029, Penal Code.

#### **§ 1749.1. Submittal of Performance Criteria and Concept Drawings for Design-Build Projects.**

(a) Performance criteria or performance criteria and concept drawings shall be submitted to the BSCC for review and approval before the county issues a request for proposals for the services of a design-build entity.

(b) Construction documents shall be submitted to the BSCC and the State Fire Marshal for review and approval.

(c) The BSCC will review the construction documents as soon as practicable, but no later than thirty (30) calendar days for Phase I and Phase II projects and no later than forty-five (45) calendar days for Adult Local Criminal Justice Facility projects, SB 1022, SB 863, and SB 844. In the event of any major deficiencies, the BSCC will notify the county in writing. Deficiencies may be identified as either failures to comply with minimum jail standards or as design features that may pose serious safety, security, operational, or management problems if left uncorrected, even where minimum jail standards are not violated.

(d) Pursuant to California Government Code Sections 15820.906, 15820.916, 15820.925, 15820.935, and 15820.945, to enhance safety and security, the BSCC may require changes in construction materials if the materials proposed with the construction documents are not essential or customary, as used statewide for same security level facilities.

(e) Deficiencies in compliance with the operational and physical plant requirements in the Minimum Standards for Local Detention Facilities in Title, 15, CCR, Division 1, Chapter 1, Subchapter 4 and Title 24, CCR, Part 1, Section 13-102 and Part 2, Section 1231 and construction materials shall be corrected prior to completion of construction.

(f) The Board will have final approval of all projects, and Board approval or disapproval of any project is not subject to the appeal process as described in Article 5.

(g) No state moneys shall be encumbered in contracts let by a participating county until performance criteria or performance criteria and concept drawings have been approved by the BSCC pursuant to subsection (a) and a design-build contract has been awarded.

Note: Authority cited: Sections 15820.906, 15820.916, 15820.925, 15820.935 and 15820.945, Government Code; and Section 6030, Penal Code. Reference: Sections 15820.901, 15820.906, 15820.911, 15820.916, 15820.92, 15820.925, 15820.93, 15820.935, 15820.94 and 15820.945, Government Code; and Section 6029, Penal Code.

#### **§ 1750. Operational Program Statement/Staffing Plan/Operating Cost Analysis for Design-Bid-Build Projects.**

(a) Pursuant to Title 24, CCR, Part 1, Section 13-102(c)3, an operational program statement shall be submitted with the schematic design drawings and specifications.

(b) At the time the county submits the design development plans and specifications for review and approval, it shall also submit a preliminary staffing plan, along with an analysis of other anticipated operating costs, for the facility. At a minimum, this plan shall include the following:

- (1) Staffing requirements under the proposed design capacity;
- (2) Shift and post identification of staff for the proposed facility, delineated by custody and support staff;
- (3) Transition team program statement and costs;
- (4) Analysis of a thirty (30) year lifecycle operating costs and maintenance and energy costs for the proposed facility; and,
- (5) Identification of, and revenue sources for, sufficient county funds needed to support the staffing levels and operating costs for the proposed facility.

(c) Following BSCC determination that the preliminary staffing plan complies with regulations, the facility administrator or designee shall submit the preliminary staffing plan and operating cost analysis to the Board of Supervisors for review and approval.

Note: Authority cited: Sections 15820.906, 15820.916, 15820.925, 15820.935 and 15820.945, Government Code; and Section 6030, Penal Code. Reference: Sections 15820.906, 15820.916, 15820.925, 15820.935 and 15820.945, Government Code.

**§ 1750.1. Operational Program Statement/Staffing Plan/Operating Cost Analysis for Design-Build Projects.**

(a) At the time the county submits the performance criteria or performance criteria and concept drawings for review and approval with respect to a design-build project, it shall also submit an operational program statement, and a preliminary staffing plan, along with an analysis of other anticipated operating costs, for the facility. At a minimum, this plan shall include the following:

- (1) Staffing requirements under the proposed design capacity;
  - (2) Shift and post identification of staff for the proposed facility, delineated by custody and support staff;
  - (3) Transition team program statement and costs;
  - (4) Analysis of a thirty (30) year lifecycle operating costs and maintenance and energy costs for the proposed facility; and,
  - (5) Identification of, and revenue sources for, sufficient county funds needed to support the staffing levels and operating costs for the proposed facility.
- (b) Following BSCC determination that the preliminary staffing plan complies with regulations, the facility administrator or designee shall submit the preliminary staffing plan and operating cost analysis to the Board of Supervisors for review and approval.

Note: Authority cited: Sections 15820.906, 15820.916, 15820.925, 15820.935 and 15820.945, Government Code; and Section 6030, Penal Code. Reference: Sections 15820.906, 15820.916, 15820.925, 15820.935 and 15820.945, Government Code.

**§ 1751. General County Requirements.**

- (a) Pursuant to California Government Code Sections 15820.901, ~~and 15820.911, 15820.92, 15820.930, and 15820.940.~~ a participating county may acquire, design, and construct the local jail in accordance with its local contracting authority.
- (b) Pursuant to California Government Code Sections 15820.901, 15820.911, 15820.92, 15820.930, and 15820. 940, a participating county may assign an inspector during the construction of the project, notwithstanding California Government Code Section 14951.
- (c) Pursuant to California Government Code Sections 15820.901, 15820.911, 15820.92, 15820.930, and 15820.940, the participating county is the lead agency responsible for compliance with the California Environmental Quality Act.
- (d) With the consent of the Board, the CDCR and a participating county are authorized to enter into leases, subleases, contracts, or other agreements pursuant to California Government Code Sections

15820.905 and 15820.915. With the consent of the Board, the BSCC or CDCR and a participating county are authorized to enter into leases, subleases, contracts, or other agreements pursuant to California Government Code Sections 15820.924, 15820.934 and 15820.934.

(e) In all agreements related to this program, the participating county shall indemnify, defend, and hold harmless the State of California for any and all claims and losses accruing and resulting from or arising out of the participating county's acquisition, design, construction, operation, maintenance, use and occupancy of the local jail facility or Adult Local Criminal Justice Facility.

Note: Authority cited: Sections 15820.906, 15820.916, 15820.925, 15820.935 and 15820.945, Government Code; and Section 6030, Penal Code. Reference: Sections 15820.901, 15820.905, 15820.911, 15820.915, 15820.92, 15820.924, 15820.930, 15820.934, 15820.940 and 15820.944, Government Code.

### **§ 1752. Ground Lease.**

(a) A ground lease between the participating county and CDCR for Phase I and Phase II, and BSCC or CDCR for Adult Local Criminal Justice Facilities, with Board consent, will be entered into after the county has entered into the project delivery and construction agreement and the Board has determined the site is adequate for purposes of financing in accordance with Government Code Sections 15820.901, 15820.911, 15820.92, ~~and~~ 15820.930 and 15820.940.

(b) An easement (documented in a separate easement agreement) over adjacent county property for project access, utilities and repairs may also be required at the time the ground lease is initiated.

(c) Attached to the ground lease will be a legal description of the site.

(d) The ground lease shall not be terminated as long as the lease-revenue bonds are outstanding, even in the event of default.

Note: Authority cited: Sections 15820.906, 15820.916, 15820.925, 15820.935 and 15820.945, Government Code; and Section 6030, Penal Code. Reference: Sections 15820.901, 15820.905, 15820.906, 15820.915, 15820.92, 15820.924, 15820.930, 15820.934, 15820.940 and 15820.944, Government Code.

### **§ 1753. Right of Entry for Construction and Operation.**

(a) A right of entry for construction and operation between CDCR for Phase I and Phase II, and BSCC or CDCR for Adult Local Criminal Justice Facilities, and the participating county will be entered into concurrently with the ground lease.

(b) The right of entry for construction and operation authorizes the participating county and their contractors to use the site that has been leased to CDCR for Phase I and Phase II, and BSCC or CDCR for Adult Local Criminal Justice Facilities, via the ground lease for construction related activities and operation of the project upon substantial completion of construction.

Note: Authority cited: Sections 15820.906, 15820.916, 15820.925, 15820.935 and 15820.945, Government Code; and Section 6030, Penal Code. Reference: Sections 15820.905, 15820.915, 15820.924, 15820.934 and 15820.944, Government Code.

### **§ 1754. Facility Sublease.**

(a) If the facility lease between the Board and CDCR for Phase I and Phase II, and BSCC or CDCR for Adult Local Criminal Justice Facilities, is executed, CDCR or BSCC and the participating county shall enter into a facility sublease of the facility lease with Board consent. The facility sublease will describe the county's responsibilities, obligations, and other terms and conditions for the county's occupancy of the facility during the term of the facility sublease.

(b) The facility sublease is subject to and subordinate to the facility lease.

Note: Authority cited: Sections 15820.906, 15820.916, 15820.925, 15820.935 and 15820.945, Government Code; and Section 6030, Penal Code. Reference: Sections 15820.905, 15820.915, 15820.924, 15820.934 and 15820.944, Government Code.

#### **ARTICLE 4. ADMINISTRATION OF REIMBURSEMENTS AND PROJECT MONITORING**

##### **§ 1756. Disbursement of State Reimbursements.**

(a) No state moneys shall be encumbered in contracts let by a participating county until either (i) construction document plans and specifications have been approved by the BSCC pursuant to Section 1749 and subsequent construction bids have been received, or (ii) performance criteria or performance criteria and concept drawings have been approved by the BSCC pursuant to Section 1749.1(a) and a design-build contract has been awarded.

(b) Upon approval of the participating county's proposal or application by the BSCC and execution of the BSCC agreement, a state reimbursement schedule will be established by the BSCC.

(c) Requests for state reimbursements shall include such supporting documentation as may be required by the BSCC and/or CDCR and, in the event of deficiencies in the request, the participating county shall be notified by the BSCC of the deficiencies as soon as practicable.

(d) State reimbursements shall be made in arrears on a schedule mutually agreed to by the BSCC and the participating county and established in the BSCC agreement.

(e) No state reimbursements will be made until the participating county has complied with all applicable state requirements.

(f) Participating counties including any design costs as state reimbursed costs, for one or more phases of design, may not proceed with that phase of design process until after the project scope, cost, and schedule are established by the Board.

(g) If a design-bid-build project budget includes any state reimbursements for working drawings/construction documents phase costs, the Board and the State Department of Finance must approve preliminary plans/design development drawings before the participating county can commence work on the working drawings and/or construction documents phase. If a participating county commences any working drawings and/or construction documents phase activities before obtaining approval of preliminary plans and/or design development drawings from the Board and State Department of Finance, the entire state portion of the project financing shall be forfeited and the state will not reimburse any participating county project costs.

(h) If a design-build project budget includes any state reimbursements for design-build phase costs, the Board and State Department of Finance must approve performance criteria or performance criteria and concept drawings before the participating county can commence work on the design-build phase. For any project that includes any state reimbursement of the design-build phase costs, if the participating county commences any design-build phase activities before obtaining approval of performance criteria or performance criteria and concept drawings from the Board and State Department of Finance, the entire state portion of the project financing shall be forfeited and the state will not reimburse any participating county project costs.

(i) At such time as the balance of anticipated total state reimbursements reaches five percent (5%), for Phase I and Phase II projects, the BSCC shall withhold that amount as security. When a participating county is unlikely or ineligible to draw 100 percent (100%) of the conditional award amount, the state shall withhold the final 5% of eligible state reimbursements. The withheld amount will be released to the participating county upon compliance with all of the applicable terms in the BSCC agreement, project delivery and construction agreement, other agreements applicable to the financing, and applicable conditions and requirements of law and regulation. This includes:

- (1) Final completion of the project;
- (2) Receipt and approval of the final audit and the final project summary report;
- (3) The final construction inspection and approval by appropriate officials; and
- (4) Staffing and operating the facility within ninety (90) days of construction completion.

(j) At such time as the balance of anticipated total state reimbursements reaches five percent (5%), for Adult Local Criminal Justice Facility projects, the BSCC shall withhold that amount as security. When a participating county is unlikely or ineligible to draw 100 percent (100%) of the conditional award amount, the state shall withhold the final 5% of eligible state reimbursements. The withheld amount will be released to the participating county upon compliance with all of the applicable terms in the BSCC agreement, project delivery and construction agreement, other agreements applicable to the financing, and applicable conditions and requirements of law and regulation. These requirements of law and regulations include:

- (1) Final completion of the project;
- (2) Payment of State Fire Marshal fees in full;
- (3) Receipt and approval of the final audit and the final project summary report;
- (4) The final construction inspection and approval by appropriate officials; and
- (5) Staffing and operating the facility within ninety (90) days of construction completion.

Note: Authority cited: Sections 15820.906, 15820.916, 15820.925, 15820.935 and 15820.945, Government Code; and Section 6030, Penal Code. Reference: Sections 15820.903, 15820.906, 15820.913, 15820.916, 15820.922, 15820.925, 15820.932, 15820.935, 15820.942 and 15820.945, Government Code.

## **§ 1760. Record Keeping and Accounting.**

(a) The participating county shall establish an official file for the project. The file shall contain adequate documentation of all actions that have been taken with respect to the project. The documents to be retained shall include, but are not limited to, contracts, payment of invoices, transfer of funds and other related accounting records sufficient to reflect properly the amount, receipt and disposition of all state reimbursements and county funds for contribution. The participating county will provide a copy of the official file to CDCR for Phase I and Phase II projects, and to the BSCC or CDCR for Adult Local Criminal Justice Facilities projects, upon termination of the BSCC agreement.

(b) The participating county shall protect records from fire or other damage.

(c) The official project file must be preserved a minimum of three years after the last date on which no lease-revenue bonds are outstanding.

(d) All state reimbursements received by the participating county shall be deposited into separate fund accounts, which identify the funds and clearly show the manner of their disposition.

(e) Accounting for state reimbursements shall be in accordance with generally accepted accounting principles and practices. Supporting records must be maintained by the participating county in sufficient detail to demonstrate that the state reimbursements were used for the purpose for which the award was made and in accordance with the provisions of state contracting and shall be subject to Board and BSCC audit as described in Section 1770.

Note: Authority cited: Sections 15820.906, 15820.916, 15820.925, 15820.935 and 15820.945, Government Code; and Section 6030, Penal Code. Reference: Sections 15820.906, 15820.916, 15820.925, 15820.935 and 15820.945, Government Code.

#### **§ 1766. Monitoring of Process.**

(a) The BSCC and CDCR for Phase I and Phase II, and BSCC or CDCR for Adult Local Criminal Justice Facilities shall regularly monitor the administration of the project and the distribution of state reimbursements to a participating county, in order to assess compliance and determine that the project is operating in accordance with the approved proposal and/or application, the conditions of the BSCC agreement, these regulations and the law.

(b) The BSCC, Board and the State Department of Finance shall have administrative oversight of the project.

(c) Access to the project site, county project files and contractors' records shall be provided to the BSCC, or other state officials, during all phases of construction throughout the term of the BSCC agreement.

Note: Authority cited: Sections 15820.906, 15820.916, 15820.925, 15820.935 and 15820.945, Government Code; Section 6030, Penal Code. Reference: Sections 15820.901, 15820.906, 15820.911, 15820.916, 15820.92, 15820.925, 15820.930, 15820.935, 15820.940 and 15820.945, Government Code.

#### **§ 1767. Completion of Project.**

(a) The participating county shall agree to proceed with the agreed upon construction schedule and complete the project in accordance with the BSCC agreement and the plans and specifications (with



respect to a design-bid-build project) or the performance criteria or performance criteria and concept drawings (with respect to a design-build project) and plans and specifications approved by the Board and the BSCC.

(b) The participating county's failure to proceed with the project on the agreed schedule may be a material breach of the project delivery and construction agreement and the BSCC agreement.

(c) Upon completion of the project, the participating county shall submit a final project summary to the BSCC.

Note: Authority cited: Sections 15820.906, 15820.916, 15820.925, 15820.935 and 15820.945, Government Code; and Section 6030, Penal Code. Reference: Sections 15820.901, 15820.905, 15820.906, 15820.911, 15820.915, 15820.916, 15820.925, 15820.935 and 15820.945, Government Code.

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### § 1768. Project Modifications.

(a) Project modifications proposed after the BSCC agreement is signed require advance approval of the Board and the BSCC if the modifications:

(1) Are more than minor changes which affect the scope, design, configuration, cost or schedule of the project;

(2) Are more than minor changes to the design, location, size, capacity, or quality of major items of equipment;

(3) Cause a delay or change in the date of substantial completion or final completion dates for the project; or,

(4) Cause any change that would impact the BSCC's operational or construction regulations in Title 15, CCR, Division 1, Chapter 1, Subchapter 4 and Title 24, CCR, Part 1, Section 13-102 and Part 2, Section 1231 or the State Fire Marshal's construction regulations in Title 24, CCR, Parts 2 and 9 as adopted by the Office of the State Fire Marshal, a change in the number of beds or a change which affects the security or fire and life safety of the facility.

(b) The participating county shall report, in writing, to the BSCC any modifications to the county's agreement for construction with its contractor.

(c) Summaries of all change orders shall be submitted to the BSCC with each invoice/progress report.

(d) Neither the approval of the BSCC agreement or any action of staff with respect to project changes, including approval or disapproval thereof, shall commit or obligate the BSCC to any increase in the amount of the financing conditionally awarded, except as expressly provided in writing by the BSCC.

Note: Authority cited: Sections 15820.906, 15820.916, 15820.925, 15820.935 and 15820.945, Government Code; and Section 6030, Penal Code. Reference: Sections 15820.906, 15820.916, 15820.925, 15820.935 and 15820.945, Government Code.

### § 1770. Audits.

(a) A participating county shall obtain an audit performed in accordance with Government Auditing Standards, issued by the Comptroller General of the United States for its project within ninety (90) days following construction completion. The audit shall be performed under the direction of a Certified Public Accountant or a county auditor that is organizationally independent from the participating county's project financial management functions.

(b) The auditor shall advise the county of any findings and recommendations. The final audit report shall be sent to the Board of Supervisors of the county and shall incorporate the county's response and plans for corrective action to any auditor findings and recommendations.

(c) A corrective action plan for each finding and recommendation must be prepared by the county (within ten days after notification of the findings) and submitted to the BSCC as part of the final audit report. The corrective action plan must include:

(1) A description of each finding and recommendation;

(2) Specific steps taken to remedy the finding or implement the recommendation;

(3) A timetable for performance of each corrective action; and,

(4) A description of monitoring to be performed, and who will perform it to ensure implementation of each corrective action.

(d) For Phase I and Phase II projects, the Board, CDCR and BSCC reserve the right to audit the accounting records of the project at any time. The CDCR or the BSCC may disallow claims for state reimbursements and/or applicable matching credit for all or part of the cost of an item determined to be ineligible and/or not in compliance with established terms and conditions.

(e) For Adult Local Criminal Justice Facilities projects, the Board and BSCC or, the Board, CDCR and BSCC, reserve the right to audit the accounting records of the project at any time. The BSCC or CDCR may disallow claims for state reimbursements and/or applicable matching credit for all or part of the cost of an item determined to be ineligible and/or not in compliance with established terms and conditions.

(f) Any state reimbursement of an improper expenditure disclosed in such audits will be recovered by the state through withholding future state reimbursements and/or repayment by the participating county, at the discretion of the BSCC.

Note: Authority cited: Sections 15820.906, 15820.916, 15820.925, 15820.935 and 15820.945, Government Code; and Section 6030, Penal Code. Reference: Sections 15820.906, 15820.916, 15820.925, 15820.935 and 15820.945, Government Code.

#### **§ 1772. Unused Conditional Awards.**

(a) In no case shall a county receive state reimbursements in excess of the amount of the conditional award approved by the BSCC.

(b) If a participating county does not use the full amount of the conditional award, the unused amount shall be available for redistribution to other counties and used for other eligible projects.

(c) Any state reimbursements determined to have been inappropriately or erroneously made, including those resulting from noncompliance as well as overpayments resulting from county plan modifications or other causes, shall, upon written notification, be repaid to the state. Such repayment may be by county warrant and/or may be withheld from subsequent payments at the discretion of the BSCC.

Note: Authority cited: Sections 15820.906, 15820.916, 15820.925, 15820.935 and 15820.945, Government Code; and Section 6030, Penal Code. Reference: Sections 15820.906, 15820.916, 15820.925, 15820.935 and 15820.945, Government Code.

## **ARTICLE 5. APPEAL PROCEDURES**

### **§ 1776. Purpose.**

The appeal hearing procedures are intended to provide a review concerning the BSCC's proposal evaluation and rating process or application assessment process. A county may appeal on the basis of the BSCC's alleged evaluation or assessment criteria misapplication, capricious enforcement of regulations, or substantial differences of opinion as may occur concerning the proper application of regulations or procedures regarding the proposal evaluation and rating process or application assessment process.

Note: Authority cited: Sections 15820.906, 15820.916, 15820.925, 15820.935 and 15820.945, Government Code; and Section 6030, Penal Code. Reference: Sections 15820.906, 15820.916, 15820.925, 15820.935 and 15820.945, Government Code.

### **§ 1778. Definitions.**

For the purposes of this article, the following definitions shall apply:

“Appeal hearing” means an administrative procedure providing an appellant with an opportunity to present the facts of the appeal for a formal decision concerning matters raised pursuant to the purposes set forth in Section 1776 of these regulations.

“Appellant” means a participating county that files a request for an appeal hearing.

“Authorized representative” means an individual authorized by the appellant to act as his/her representative in any or all aspects of the hearing.

“BSCC” means the Board of State and Community Corrections, which acts by and through its Executive Director and representatives.

“Executive Director” means the Executive Director of the BSCC.

“Filing date” means the date a request for an appeal hearing is received by the Executive Director's office at the Board of State and Community Corrections.

“Hearing panel” means a panel comprised of three members of the BSCC, who shall be selected by the chairperson of the BSCC at the time the appeal is filed. A fourth member may be designated as an alternate. Members designated to the hearing panel shall not:

- (i) Be employed by, or be residents of, the county submitting the appeal or,
- (ii) Be employed by any other county that has a funded project or is seeking qualification for disbursement of state reimbursements.

“Notice of decision” means a written statement by the Executive Director of the BSCC, which contains the formal decision of the Executive Director and the reason for that decision.

“Proposed decision” means a written recommendation from the hearing panel to the BSCC, containing a summary of facts and a recommended decision on the appeal.

“Request for appeal hearing” means a clear written expression of dissatisfaction about a procedure or action taken and a request for a hearing on the matter, and filed with the Executive Director of the BSCC.

Note: Authority cited: Sections 15820.906, 15820.916, 15820.925, 15820.935 and 15820.945, Government Code; and Section 6030, Penal Code. Reference: Sections 15820.906, 15820.916, 15820.925, 15820.935 and 15820.945, Government Code.

**§ 1788. Request for Board of State and Community Corrections Appeal Hearing.**

(a) If a participating county is dissatisfied with an action of the BSCC's evaluation and rating process or the application assessment process, it may file a request for an appeal hearing with the BSCC. Such appeal shall be filed within thirty (30) calendar days of the notification of the action with which the county is dissatisfied.

(b) The request shall be in writing and:

(1) Shall state the basis for the dissatisfaction;

(2) Shall state the action being requested of the BSCC;

(3) Shall state the desired remedy; and,

(4) Shall include as attachments any correspondence related to the appeal to and from the Executive Director.

Note: Authority cited: Sections 15820.906, 15820.916, 15820.925, 15820.935 and 15820.945, Government Code; and Section 6030, Penal Code. Reference: Sections 15820.906, 15820.916, 15820.925, 15820.935 and 15820.945, Government Code.

**§ 1790. Board of State and Community Corrections' Hearing Procedures.**

(a) The hearing shall be conducted by a hearing panel, designated by the Chairperson of the BSCC, at a reasonable time, date, and place, but not later than twenty-one (21) days after the filing of the request for hearing with the BSCC, unless delayed upon mutual agreement by the BSCC and the participating county. The BSCC shall mail or deliver to the appellant or authorized representative a written notice of the time, date, and place of hearing not less than seven days prior to the hearing.

(b) The procedural time requirements may be waived with mutual written consent of the parties involved.

(c) Appeal hearing matters shall be set for hearing, heard, and disposed of by a notice of decision within sixty (60) days from the date of the request for appeal hearing, except in those cases where the appellant withdraws or abandons the request for hearing or the matter is continued upon mutual agreement by the hearing panel and the participating county.

(d) An appellant may waive a personal hearing before the hearing panel and, under such circumstances, the hearing panel shall consider the written information submitted by the appellant and other relevant information as may be deemed appropriate.

(e) The hearing is not formal in nature. Pertinent and relevant information, whether written or oral, will be accepted. Hearings will be tape recorded.

(f) Neither the Federal Rules of Evidence nor the California Rules of Evidence apply in these administrative hearings.

(g) After the hearing has been completed, the hearing panel shall submit a proposed decision in writing to the BSCC at its next regular public meeting.

Note: Authority cited: Sections 15820.906, 15820.916, 15820.925, 15820.935 and 15820.945, Government Code; Section 6030, Penal Code. Reference: Sections 15820.906, 15820.916, 15820.925, 15820.935 and 15820.945, Government Code.

#### **§ 1792. Board of State and Community Corrections Decision.**

(a) The BSCC, after receiving the proposed decision, may:

- (1) Adopt the proposed decision;
- (2) Amend the decision with or without taking additional evidence into consideration; or,
- (3) Order a further hearing to be conducted, if additional information is needed to decide the issue.

(b) After the hearing panel's proposed decision is adopted, or an alternate decision is rendered by the BSCC or notice of new hearing ordered, the notice decision or other such actions shall be sent via certified mailed by the BSCC to the appellant.

(c) The record of the testimony, exhibits, all papers and requests filed in the proceedings, and the hearing panel's proposed decision shall constitute the exclusive record for decision and shall be available to the appellant for one year after the date of the BSCC's notice of decision in the case.

(d) The decision of the BSCC shall be final.

Note: Authority cited: Sections 15820.906, 15820.916, 15820.925, 15820.935 and 15820.945, Government Code; Section 6030, Penal Code. Reference: Sections 15820.906, 15820.916, 15820.925, 15820.935 and 15820.945, Government Code.