

SB 1022 Bidders' Conference Questions

August 12, 2013

1. Question:

Papagni - Regarding the certification required by the RFP related to leasing beds, does the prohibition against leasing beds include leasing to the State of California (parolees) and the U.S. Marshal (federal pre-trial inmates)?

Answer: Yes, the language in the statutes says any public or private entities which would include state and federal. That will apply only to the new facility, anything financed with SB 1022 financing authority, and does not apply to existing facilities, unless the existing facility is being included as part of the project due to an addition or renovation and in turn within the project boundary defined in the Ground Lease.

2. Question:

Papagni - Can a county encumber a like property of equal or greater value instead of the jail for the collateral against the lease revenue bonds to be sold by the state?

Answer: No, we don't think so. The State Public Works Board has very specific asset transfer authority for its use. We don't think the authorization for this program allows us to be able to do that, but it can be discussed if requested with State Public Works Board counsel.

3. Question:

Papagni - If at any time during the 30+ years of the lease revenue bond the county is unable to keep open any part of the jail encumbered by said bond, will the state find the county in substantial default of the agreement? If yes, what actions if any would the state take against the county?

Answer: It depends on the definition of "unable to keep open part of the facility." The facility always needs to be available for occupancy. If it means that funding is not available for maintenance, repair and operation, then that is a problem because there is a facility sublease that is part of the financing structure. In this financing program the county will be committing to operate, maintain and repair the facility. If the county is unable to do so, that would be a default under the agreement and the first course of action would be a 60-day

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notice of default on the agreement. If the county does not comply, the BSCC has the right re-enter and re-let. The financing is based on the ability to have a rental stream to pay the principal and interest on the bonds. The maintenance, repair, replacement and utilities obligations in the Facility Sublease are fundamental to keeping the facility available for occupancy and providing security on the bonds.

4. Question:

Mendocino County - By what mechanism can small counties petition the BSCC Board for a reduction in its county match?

Answer: The proposal serves as the petition for a county's match provided the county abides by all terms and conditions of this SB 1022 RFP process and receives a conditional award. Page 4 of the proposal form addresses this and includes a check box that the county is required to check for the petition.

5. Question:

Orange County - Are the fees charged by the State Fire Marshal excluded or exempt in state financed projects?

Answer: No. The State Fire Marshal charges the BSCC for their plan review and inspection services. The BSCC is passing along those costs to the counties.

6. Question:

Orange County - Related to the preference of preparedness to proceed, what is the preferred document required by the state to evidence a county's CEQA compliance?

Answer: There are two ways to finalize compliance with CEQA. One applies to situations when the project falls under a categorical exemption and files a Notice of Exemption (NOE), which has a specific statute of limitations period. In this case, submit a copy of the NOE stamped as received by the entity it was filed with and the date on which it was received, and provide written confirmation from county counsel indicating the statutes of limitation period has expired without challenge. For all other situations, once all required

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environmental study and/or report documentation (i.e. initial study, negative declaration, mitigated negative declaration, environmental impact report) have been filed with the appropriation entity or entities and the associated public review period(s) have been completed, the county must file a final Notice of Determination (NOD) with the county clerk and/or State Clearinghouse. In these situations, submit a copy of the final NOD stamped as received by the entity it was filed with and the date on which it was received, and provide written confirmation from county counsel indicating the statutes of limitation period has expired without challenge.

7. Question:

Orange County - Regarding the environmental requirements on page 26 of the RFP, is the timing for the complete resolution of CEQA litigation required prior to issuance of NTP for construction?

Answer: State Public Works Board policy requires that for design-bid-build delivery method, CEQA is completed before approval of Preliminary Plans. For design-build delivery method, CEQA will need to be complete before approval of performance criteria or performance criteria and concept drawings. Projects not able to meet this criterion due to litigation or other condition will be reviewed on a case-by-case basis.

8. Question:

Orange County -The Project Timeline in the RFP indicates that the Notice to Proceed must be issued within 42 months of award. Does award in the context of this statement refer to project establishment?

Answer: No. "Award" means the conditional award by the BSCC Board.

9. Question:

Orange County - With respect to the Board of Supervisors resolution language for preference criterion #1, Lawfully Available Funds, what if a county does not plan for matching funds other than State Agency Fees? Is a Board resolution still required if your cash match is approx. \$50,000?

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Answer: Yes, this requirement is more relevant to the source and availability of funds rather than how much the funds are. Regardless of the amount, the requirement still needs to be met. SPWB staff must be able to confirm any county funds will be coming from lawfully available funds.

10.Question:

Orange County - Table 7 of the Fact Sheet in the proposal asks the county to "List the offender assessments used for determining programming." Can this table include assessments used for determining treatments as well?

Answer: Yes, keeping in mind the definition of programming provided in the RFP and that further explanation can be provided in the narrative section of the proposal.

11.Question:

Orange County - In the Project Delivery and Construction Agreement (PDCA), Section 5.5(c), Disposition of Insurance Proceeds, the State Public Works Board has the discretion to direct insurance funds to repayment of the loan instead of rebuilding. Why wouldn't the State Public Works Board want to return the facility to an operational condition?

Answer: This option must always remain available. Should a loss arise, depending on the specific circumstances at that point in time, there may be scenarios where the best course of action is for the State Public Works Board to choose to pay off the financing and allow the county to take over the facility.

12.Question:

Orange County - With respect to the preference criterion points for CEQA (Preference Criterion #3: CEQA Compliance), is there a potential for a 3rd statement option to appear in a Board resolution in order to provide preference points to counties that have CEQA completed, but are dealing with legal challenges?

Answer: No. The intent behind the preference language was to be able to have preference go towards those who have been able to complete all those

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different milestones and be prepared to move forward. There are limitations on how far a project can move forward with outstanding legal challenges.

13.Question:

Santa Cruz - Our county has a facility that was closed due to budget cuts in 2010. The facility was originally designed to house up to 250 inmates. We are applying for SB 1022 financing to renovate this building and add program space (classrooms, multi-purpose rooms, staff space) and a 64-bed housing unit. Because we are building fewer beds than the building originally contained, are we still required to conduct a needs assessment?

Answer: Yes. The requirement for a needs assessment is specific to how many beds are being constructed and not whether or not there is a net gain.

14.Question:

Santa Cruz - We are considering upgrading our security system to a remote location offsite from our SB 1022 project site. We are doing this to meet the staffing model needs required for the SB 1022 application for the current facility we are applying for. Is this security upgrade at a remote site considered part of the same project (since it will operate the security functions of our project site) or is this considered two project sites?

Answer: If the work would be done at two separate project sites, we would consider this two project sites.

15.Question:

Kitchell - If the county meets its performance obligation, i.e., completes the project and opens and operates the facility as they contractually committed to the state, and for some reason the bonds were not sold by the state, what will be the ramifications for the county? It seems like the language of the RFP puts the burden of responsibility on the county if the state does not sell bonds.

Answer: If a facility is completed and operated in accordance with all of the requirements of the financing program, the county will likely have already been reimbursed for all or most of its costs eligible for state reimbursement. Any costs reimbursed up to that point would not have to be refunded by the

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county. At that point, the BSCC support budget would have to repay the state's interim loan for the project if the state is unable to sell bonds for the project. However, if there are any eligible costs that have not yet been reimbursed, the county would not be entitled to receive any additional state funding for those costs.

16.Question:

Kitchell - The RFP states that 1) counties have the performance obligation to successfully complete their project within budget and; 2) counties are solely responsible for the payment of higher than anticipated project costs. Is there a requirement that the project be within budget?

Answer: The important point in this section of the RFP is that the state will not increase state financing amounts after a conditional award notification, or approve a reduction in the proposed and accepted scope of work, should counties receive higher than expected bids or otherwise incur higher than anticipated costs. Counties are solely responsible for the payment of higher than anticipated project costs. The project does have to be completed within budget, but subject to the limitations above, the recognized budget can be adjusted from time to time.

17.Question:

Kitchell - Can this financing be used for a non-custodial facility, outside of a secure perimeter?

Answer: Yes.

18. Question:

Kitchell - Can the Sheriff or County Department of Corrections contract with either another county department or a non-profit to not only provide rehabilitative services but be responsible for its daily operations?

Answer: Yes, as long as the Sheriff or County Department of Corrections remains ultimately responsible for the facility. However, the state financing requires consent from the State Public Works Board for any agreements the county wishes to enter into in regards to the SB 1022 financed facility before

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the agreements are finalized and executed. This is necessary because of the potential tax implications to the financing. For more details review the form of Facility Sublease and then contact the BSCC to arrange any necessary discussion with State Public Works Board staff.

19.Question:

Kitchell - What is required to establish need for a proposal that is only program space (no beds)?

Answer: The need will be established by responding to all of the criteria in narrative portion of the proposal.

20.Question:

Kitchell - What is a "comprehensive targeted summary of need"?

Answer: A complete, summarized digest that articulates the need for the proposed project.

21.Question:

Kitchell - How will both types of proposals (beds and program space proposals and program space proposals) be evaluated and/or compared to one another?

Answer: The ESC will evaluate, rate and rank the proposals using the criteria in Section 5 of the narrative.

22.Question:

Kitchell - It appears that counties using the design-build method of construction cannot be reimbursed for architectural costs until 100% working drawings have been approved by SPWB and DOF. Is this accurate?

Answer: Yes, as the statute currently reads, this appears to be the case. There are certain certification requirements that the BSCC is going to have to make to SPWB per the statutes that authorize this program. One of the certifications is that the 100% construction drawings are complete and approved by both the BSCC and the State Fire Marshal. This part of the statute may not entirely accommodate design-build in the sense of being able to make reimbursements for the eligible design and construction costs incurred up to that point in the

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process. For all projects, it currently appears reimbursement of eligible costs will only begin once the BSCC is able to make all of the necessary certifications to the SPWB. DOF is working with SPWB counsel to determine whether these certification requirements can be structured any differently when considering projects being completed using the design-build delivery method.

23.Question:

Kitchell - The RFP requires that for design-build projects, the following submittals are required: performance criteria (or performance criteria and concept drawings) and construction document drawings. The construction industry does not recognize construction documents as being an element of the design-build process. What will be required for plan review by the BSCC and SFM?

Answer: The BSCC and the State Fire Marshal will need sufficient drawings to review and determine that the project meets all applicable Title 15 and Title 24 regulations.

24.Question:

Kitchell - On page 15 of the proposal, the county is asked to detail the cost effectiveness of this construction project. Title 15, Section 1706, describes cost effectiveness as 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 total net gain in beds. Is there a reason that this definition is not in the RFP?

Answer: Yes. The definition cited pertains to AB 900 Phase I, when a net gain in beds was an evaluation factor. In SB 1022 there is no requirement that counties must add beds, so the definition does not apply to this financing program. (The regulations will be amended to reflect the requirements of this SB 1022 financing program.) In the Budget Review and Reasonableness section of the narrative, counties are required to describe how their project is cost effective.

25.Question:

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Mariposa County - Are permanent prefabricated structures eligible for reimbursement under this program?

Answer: It would depend on their design and lifespan. Bonds are going to be used to finance the project that has a 20 to 30 year term. Whatever is being financed would have to have a useful lifespan of at least that long. The bonds also do have seismic requirements of a DGS level 3 rating or greater.

26.Question:

Napa County – If CEQA and land purchase are being completed for this facility and a future new jail, how should it be reflected in the budget summary table?

Answer: From a land value standpoint, an appraisal should cover the amount of land that will be used for this project. Responsibility is on the county to determine a prorata share of the cost and include that amount in the budget table, and save the documentation for audit purposes.

27.Question:

Napa County – Is an irrevocable lease option on a property in which the seller cannot back out of the sale considered site possession for the purposes of the proposal?

Answer: Yes. The county should state that they have necessary rights to convey to the state that the county is planning to acquire the property within 90 days of conditional award. Since the ground lease will be signed in the near future, hypothetical considerations in an appraisal are not unusual and the state is flexible, more so than typical, for an evaluation of this preference.

28.Question:

Butte County – Regarding cash match, can the counties consider financing that would not in any way encumber the facility itself?

Answer: Yes, however, if the county is going to use any form of financing the SPWB requires a copy of the financing documents associated with the transaction for review to make sure there were no terms in the proposed county financing that are incompatible with the state financing.

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29.Question:

Butte County – Cash match, can the counties use impact fees as match?

Answer: Yes. The State requires the counties to have the citations in the statute that allow for those types of uses. As long as the documentation is available for review, and it is legal, then it is acceptable.

30.Question:

Santa Clara County – If county were to have building construction at one site and have facility security enhancements in a nearby city, would that be considered two projects?

Answer: Yes.

31.Question:

Orange County – Regarding preference, what is the situation if CEQA has been completed, but with legal action against county. This is the sixth occurrence, and in all prior cases the county prevailed with no additional changes to the environmental document.

Answer: The state recognizes there are challenges, but concern lies in outstanding litigation that may require things to be changed. In resolution of lawsuits, the county may be required to make accommodations/mitigations and decide if they can't/won't do them, and then the project would go away. The state will take this into consideration and review it as it relates to the preference.

32.Question:

Sonoma County – Regarding connection of the proposed facility to existing facilities, the RFP makes it clear that they have to be seismically separated, but it is not clear regarding the connection of utilities from one building to the next.

Answer: There are two options. First, the facilities must be seismically separated so that the state can finance only the new part. Second, if there is some obstacle to the seismic separation then the state would be encumbering

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the entire existing facility and the addition. The state would require the existing building to meet a seismic requirement of DGS level 3 rating or better. With regard to utilities, the financing structure is such that the state needs to have a defined facility that can be leased and operated independently. If the county and state end up in what is sometimes refer to as the "Armageddon scenario" where there is a default under the financing leases and the BSCC or the State Public Works Board has to re-enter and re-let the Facility to some other entity, there has to be a way to ensure continued utility services and to determine that entity's utility usage and associated costs. The BSCC and the State Public Works Board must be able to ensure the Facility remains available for occupancy and can be operated and maintained independently. This will be evaluated on a case-by-case basis because there are so many different sets of circumstances. For example, if a county is attaching improvements to an existing facility and the entire existing facility has to be encumbered, the subject of the leases will be the existing jail and whatever is attached to it. If for some reason there is a default under those agreements and the BSCC or the State Public Works Board has to re-enter and re-let, then what you are re-entering and re-letting is the existing facility and all improvements the county added to it using SB 1022 financing. Those are the types of considerations that really have to be thought through carefully. If existing structures/building are to be included as part of a project to be financed in this program, then those structures/buildings must meet the same seismic requirements as any proposed new construction. Any existing building(s) to be incorporated into a project financed in this program cannot be encumbered with existing financing. There must be a way to operate any facility financed in this program independently of any other existing facilities.

33.Question:

Ventura County – The county has a centralized chiller plant that will provide cooling for the proposed new building. Will the county be required to include the central plant as part of the footprint for the project or be required to upgrade the existing central plant?

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Answer: Depending on the configuration of the project, the central plant may not need to be included in the footprint of the proposed project, but we would need to include language in the leases to make sure that if the proposed facility would have to be operated independent of the county, that the state is guaranteed continuation of any and all services provided by the central plant. Leases would have to guarantee the state access to those utilities for any necessary maintenance, repair, or replacement.

34.Question:

Napa County – If the county had a programming facility at a future jail site, would a clean utility title be accomplished by having a separate utility metering.

Answer: Yes. Having separate metering for the existing and the proposed facility would accommodate the potential for the BSCC or the State Public Works Board having to re-enter and re-let the facility.

35.Question:

Kitchell – Is there any chance the State Fire Marshal can get an increase in resources to process plans quicker?

Answer: BSCC will be meeting with the SFM on Thursday, August 15, 2013 to address county concerns and take a very personal approach to resolve the issues. The meeting will include discussions regarding the possibility of getting someone back into the BSCC office to review plans.

36.Question:

Kitchell – After the county builds a new facility with SB 1022 funding and they do not lease any beds in this facility, can the county increase the number of leased beds in their existing facility?

Answer: Yes, as long as none of the beds in the existing facility are financed with SB 1022 funds.

37.Question:

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Kitchell – What is the schedule to amend the regulations in reference to SB 1022?

Answer: No timeline is currently established, but BSCC will be working diligently to put the regulations together shortly.

38.Question:

Tulare County – If the intent is to build a new facility on an adjacent site to an existing facility that will be closed, and there is no net additional increase in beds, is a needs assessment required?

Answer: Yes. If you are building 25 or more beds you will need to prepare needs assessment regardless of increased bed capacity.

39.Question:

Tulare County – The guidelines indicate all proposals will be evaluated on a 1,000 point scale, and then regardless of where a proposal rates, if it has more preference, it can be placed at the top of the list even if it scores hundreds of points down in the scoring. Is this true?

Answer: Yes.

40. Question:

San Francisco city and county – What assurance must the counties give to the state that the new facility is a replacement rather than an expansion of rated capacity?

Answer: None. The RFP does not ask for a net gain factor or if the county is taking beds off-line. The focus is on the facility being proposed and the need for that facility.

41. Question:

Fresno County – The County currently has three jail structures and a courthouse connected by a tunnel. Can the state encumber the new facility and a portion of the tunnel?

Answer: There should not be a problem as long as there is a seismic separation. Operationally, there should be a way to operate any SB 1022

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financed facility independently of and closed off from any other facilities in case the BSCC or the State Public Works Board has to re-enter and re-let the facility at some point.

42. Question:

Tulare County – The year 2014 date for project need projections is a challenge if the project will not be opened until 2020. How should the county address this?

Answer: The 2014 date was discussed by the ESC at great length and a determination made that a date in the near future would stretch the state dollars further. The county will have to factor in its assessed needs and determine the best approach.

43. Question:

Kern County – Regarding the BOS authorizing an adequate amount of available funds to meet the preference criteria, does this mean it must identify the funds and show that the funds are there, or does the county have to specifically set aside the amount to cover all of the county match? (1067).

Answer: This requirement is viewed the same as what is required for a state project. All state projects must have a valid appropriation from the Legislature for that specific project in order for the project to proceed. Consequently, for this preference criterion the BOS needs to appropriate the adequate amount for this project and it needs to be set aside for this specific project.

43. Question:

Tilton – In the build-to-suit option, is there a way that once the build-to-suit project is complete, that the county can fund their portion and the State provides their SB 1022 share for the total purchase amount?

Answer: No, the state is only authorized to reimburse a county for appropriate project costs, and cannot make any up front payments. The county must make the purchase of the build-to-suit project, and the state will reimburse through the normal invoice payment process. The timing will be

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coordinated to ensure the state can reimburse the county as quickly as possible after the purchase is completed.

44. Question:

Orange County - Assume that a project is to expand an existing facility and utilize the core functionality already within the facility. How do you address the state's position that the project must be able to function independently of the existing facilities? These shared core functions can include a central HVAC, shared laundry, dining, kitchen, etc.

Answer: Most of these items can be addressed by contracting or subleasing for these services should the SB 1022 financed facility and any existing related facilities have shared functions and then need to be operated independently. In the case of utilities, as addressed above, the requirement does not necessarily require separate utilities. Utility usage of the shared facilities can potentially be accomplished with the addition of meters.