



Agenda Date: 11/15/2005
Agenda Placement: 6Q

NAPA COUNTY BOARD OF SUPERVISORS Board Agenda Letter

TO: Board of Supervisors
FROM: Michael Stoltz for Robert Peterson - Director
Public Works
REPORT BY: Juan Arias, Civil Engineer , 259-8374
SUBJECT: Juvenile Justice Center - Acceptance of Phase I and Partial Release of Retention

RECOMMENDATION

Director of Public Works requests the following actions relating to the "Juvenile Justice Center Project," PW 02-17, per Public Contract Code Section 7107:

1. Acceptance of Phase I as complete; and
2. Authorization for the Director of Public Works to release partial retention.

EXECUTIVE SUMMARY

Phase I of the Juvenile Justice Center Project, which consisted of the construction of the new Juvenile Justice Center, has been completed to the satisfaction of the Public Works and Probation Departments per Public Contract Code Section 7101. The facility has been turned over to the Probation Department for occupation and beneficial use of the improvement. Public Contract Code Section 7107 requires release of retention to Flintco, Inc. for the work performed under the completed Phase I. The amount of retention due and released to the Contractor will reflect subtraction of liquidated damages due to the County as provided for in the construction contract and per Public Contract Code Section 10226.

FISCAL IMPACT

Is there a Fiscal Impact?	Yes
Is it currently budgeted?	Yes
Where is it budgeted?	Capital Improvement Program
Is it Mandatory or Discretionary?	Mandatory
Is the general fund affected?	Yes

Future fiscal impact: none

Consequences if not approved: The County will be out of compliance with the Public Contract Code for not accepting Phase I and not releasing partial retention to Flintco, Inc.

Additional Information:

ENVIRONMENTAL IMPACT

ENVIRONMENTAL DETERMINATION: The proposed action is not a project as defined by 14 California Code of Regulations 15378 (State CEQA Guidelines) and therefore CEQA is not applicable.

BACKGROUND AND DISCUSSION

On March 11, 2003 the Board of Supervisors awarded the construction contract for the "Juvenile Justice Center Project," PW 02-17, to Flintco, Inc. of Rancho Cordova, California, for their low bid of \$11,949,000 and authorized the Chair to sign the construction contract. Construction of the Juvenile Justice Center consists of two phases. Phase I is the construction of the new 42,000 square foot Juvenile Justice Center adjacent to and west of the existing Juvenile Hall. Phase II is the demolition of a portion of the existing Juvenile Hall and construction of an exercise area adjacent to and east of the new Juvenile Justice Center.

The contractual completion date for Phase I was January 10, 2005. On Tuesday April 26, 2005 the Director of Public Works granted substantial completion with conditions for Phase I to Flintco Inc. The 40 day shakedown period began on May 3, 2005 and was to conclude on June 27, 2005. The 40 day shakedown period provided for County Juvenile and Probation Staff to train in the new facility prior to occupying it, and for the Contractor to address the punch list items. Public Works provided Flintco with a list of interior conditions that needed to be corrected by June 13, 2005 and a list of exterior conditions to be corrected by June 27, 2005.

Public Works staff has determined that all punch list items and closeout items required by the construction contract have been completed by the Contractor. Therefore Phase I of the new Juvenile Justice Center Project can be considered complete and Public Works requests that the Board of Supervisors accept the work for Phase I as complete.

For progress payments due monthly to the Contractor for complete work, the County has been withholding 10% as retention funds and has been forwarding this amount to an escrow account as provided for in the construction contract. Section 7107 of the Public Contract Code stipulates that within 60 days after the date of completion of the work of improvement, the retention held by the public entity shall be released. Completion, per Section 7107, means the occupation, beneficial use, and enjoyment of work of improvement, excluding any operation only for testing, startup, or commissioning, by the public agency, or its agent, accompanied by cessation of labor on the work of improvement. The Director of Public Works therefore requests authorization to release all retention due the Contractor for Phase I of the Juvenile Justice Center Project - such release being considered a partial release of retention for the "Juvenile Justice Center Project," PW 02-17 per Section 7107 of the Public Contract Code.

The amount of retention due and released to the Contractor will reflect subtraction of liquidated damages due to the County as provided for in the construction contract and per Public Contract Code Section 10226. The construction contract provides that \$2,500 per day, for each calendar day Phase I remains uncompleted beyond the time for completion, as and for liquidated damages and not as penalty. The contractual completion date for Phase I was January 10, 2005 and the actual completion date for Phase I was April 26, 2005; which represents a difference of 106 calendar days. The Contractor is currently disputing the assessment of liquidated

damages. Public Contract Code Section 7107 states that in the event of a dispute between the public entity and the original contractor, the public entity may withhold from the final payment an amount not to exceed 150 percent of the disputed amount.

- | Public Works has determined that 150% of the disputed liquidated damages amount will be withheld (\$397,500)
- | 10% retention being withheld in the escrow account for Phase I is \$1,241,313
- | Actual retention released to Flintco for Phase I will be \$843,813.

A Notice to Proceed, effective August 8, 2005, was issued to Flintco for Phase II. The contractual completion date for Phase II is December 6, 2005. Retention for this phase of the Project is also being held at 10%.

SUPPORTING DOCUMENTS

None

CEO Recommendation: Approve

Reviewed By: Andrew Carey