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NAPA COUNTY BOARD OF SUPERVISORS Board Agenda Letter

TO: Board of Supervisors
FROM: Minh Tran - County Executive Officer
County Executive Office
REPORT BY: Susan Kuss, Management Analyst II - 707.253.4826
SUBJECT: Napa County Replacement Jail Update

RECOMMENDATION

Director of Public Works and County Executive Officer to provide update on the Replacement Jail Project (Project) and recommend the Project be bid and constructed without the requirement for a Project Labor Agreement (PLA).

EXECUTIVE SUMMARY

Staff and our architectural team from Lionakis, with review by our construction management team from Vanir, will be finalizing the construction documents for the replacement jail project for submission to the Board of State and Community Corrections (BSCC) in February 2020 for approval, with the intent to release a Request for Bids (RFB) to pre-qualified contractors in June 2020. Staff is requesting the Board authorize the completion of the construction bid documents without the requirement for a Project Labor Agreement (PLA).

Since 2009, the Board has held several discussions regarding PLAs. During those discussions, the single highest priority for the Board has been to increase employment opportunities for Napa County residents. In separate discussions, the Board has been just as clear that the \$128 million estimated cost for the replacement jail shall not be exceeded. Through extensive research, staff has been unable to identify a way that would ensure that a PLA would accomplish either of these goals. To the contrary, besides not providing any direct local hiring benefit to Napa County, Lionakis, our architectural consultant on this project, indicates that a PLA requirement would likely increase our construction cost estimate by 10% to 15%. This has been confirmed by Vanir Construction Management, Inc., our Construction Management consultant, and their in-house estimator.

Direction from the Board regarding a PLA for the replacement jail is essential at this time for the project to remain on schedule. In order to remain on schedule, we must provide a final bid package to the Board of State and Community Corrections (BSCC) by February 28, 2020. A PLA would need to be negotiated prior to this submission, as it would be considered a bid specification. Based on the cost escalation factor mandated by the BSCC, project

delays will increase the engineer's estimates by approximately \$370,000 per month.

PROCEDURAL REQUIREMENTS

1. Staff reports.
2. Public comments.
3. Motion, second, discussion and vote on the item.

FISCAL & STRATEGIC PLAN IMPACT

Is there a Fiscal Impact? No
County Strategic Plan pillar addressed: Effective and Open Government

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

A. Planning, Conceptual and Schematic Design

In 2004, the need to replace the existing downtown Napa jail was identified and the Adult Correction Master Plan was developed with collaboration between Napa County Department of Corrections, the Probation Department, the Sheriff's Office, the Offices of the District Attorney and Public Defender, Health and Human Services Agency, Napa County Courts, and the Napa Police Department. After community meetings and discussions, the Board of Supervisors determined that a replacement jail should be located outside of downtown Napa, and subsequently a site on Napa Vallejo Highway, near Syar Industries, was purchased to house the replacement jail and a re-entry facility. As part of the overall realignment of State corrections, the Board of State and Community Corrections (BSCC) initiated a variety of funding opportunities that counties could access as replacement of aging and outdated jails became necessary. Napa County was successful at obtaining over \$35 million from these sources to support the replacement jail (\$23 million) and re-entry facility (\$12 million).

On August 14, 2018, the Board was presented with a status of the Jail Replacement Project and approved and authorized the Chair to sign an agreement with Lionakis for architectural/engineering and associated services for the Napa County Jail Replacement Project. Since the August 2018 update to the Board, design of the project has been progressing in coordination with staff from the Department of Corrections, Department of Public Works, County Executive Office, and ITS/Communications Department.

At the December 4, 2018 update to the Board, staff provided an overview of the schematic design process, staff's input, and significant design decisions to date.

At the April 23, 2019 update to the Board, staff provided information regarding completion of the schematic design process and a preliminary cost estimate. In addition, staff provided information about the beginning of the design development project phase. Staff also provided an update on the project schedule, budget, and financing. Lastly, staff provided the project's proposed change order process to be implemented during construction.

At the August 27, 2019 update to the Board, staff, in collaboration with the State, agreed to revise the project boundaries as related to SB 844/863 funding. The Board of State and Community Corrections (BSCC) advised that the original SB 844/863 boundaries for the proposed project were drawn very narrowly in order to provide the collateral needed for debt financing for the project. The State Department of Finance had concerns with the State being able to exercise its rights related to lease revenue bond financing in the future with the project boundaries as originally submitted. Given that debt financing is no longer necessary, staff agreed to the revised project boundaries to facilitate timely state approval, which in turn will avoid additional cost escalation were the project delayed. The Board approved two resolutions, one for each funding source to facilitate this process. The resolutions recognized the scope change that resulted from the revised project boundaries and affirmed the Board's commitment to the project, including but not limited to its financial commitment to the project with its revised scope/boundary change.

At the August 27, 2019 update to the Board, staff also provided an update regarding completion and review of the design development process and cost estimate. In addition, staff provided an update on the procurement process for construction management services for the project. Staff also provided an update on the project schedule, budget and financing and project next steps.

B. Today's Update

Today's update will cover the following:

1. Project progress to date

The following progress has been made since the August 27, 2019 update:

- | Completion of the 50% construction documents phase;
- | Completion of the 50% construction documents cost estimate; and
- | Completion of qualifications based selection process for construction management services.

2. Project Schedule

The project is on schedule in accordance with the following schedule presented to the Board on August 14, 2018, December 4, 2018, April 23, 2019 and August 27, 2019:

Design	August 2018 to June 2020
Pre-qualification process	December 2019 to April 2020
Review/Approval by State	February 2020 to June 2020
Construction bids	June 2020 to October 2020
Construction	October 2020 to March 2022
Occupancy	March 2022 to June 2022

3. Project Budget

The project is on budget in accordance with the budget presented to the Board on August 14, 2018, December 4, 2018, April 23, 2019, and August 27, 2019. A project budget update that includes expenses to date is included as

attachment A to this report.

On August 27, 2019 staff advised the Board that the design development phase had been completed and that the construction cost estimate associated with the completion of that process showed the project being approximately \$1 million over the planned construction cost. Staff advised the Board it would continue to implement a value engineering process during the construction documents phase of the project to close this \$1 million gap.

A construction estimate has been prepared as part of the completion of the 50% documents phase and it shows the construction cost being approximately \$860,000 over the planned construction cost. Staff will continue to implement a value engineering process during the completion of the construction documents phase of the project to close this gap. (A final construction cost estimate will be prepared at the conclusion of the construction documents phase and just before the project is let out for construction bids.)

4. Project Financing

The total project budget remains at \$128 million. A final construction cost estimate will be prepared at the conclusion of the construction documents phase and just before the project is let out for construction bids and would not include costs associated with a Project Labor Agreement.

An updated table identifying sources of financing to complete the project is included as attachment B to this report.

5. Construction Management (CM) Services

The qualifications based selection process for CM services has been completed and in a separate staff report today staff recommend award of a Professional Services Agreement by the Board to Vanir Construction Management, Inc.

6. Project Labor Agreement

A Project Labor Agreement (PLA) is a pre-hire collective bargaining agreement negotiated between a construction project owner and trade unions that is subsequently imposed upon and signed by the contractors that perform work on the job. A negotiated PLA would be considered a construction contract requirement in a design-bid-build project, such as the replacement jail, and therefore must be included as part of the bid package. In order to meet the requirements for the State Lease-Revenue Bond financing for the replacement jail, the bid package must be submitted to the Board of State and Community Corrections for approval in February 2020 in order for the project to remain on schedule.

The reasons to use a PLA may include:

1. Ensure that there are no work stoppages on construction projects, thus avoiding potentially costly project delays;
2. Ensure that workers are paid fair wages and benefits; and
3. Encourage local hiring.

The reasons NOT to use a PLA may include:

1. Increased costs;
2. Reduced competition in the bidding process; and
3. No guarantee of local hiring.

Project costs and fair wages and benefits: Most of the studies available regarding PLAs indicate that a PLA increases the costs of a project, while at least one study shows that they reduce costs. Cost estimators currently working on this project state that a PLA will increase the engineer's estimate by approximately 10% - 15%.

PLA proponents argue that there are no increased costs, largely because the union wages and prevailing wages are substantially the same. California Labor Code Section 1773 requires that the Director of Industrial Relations establish prevailing wage rates for each trade or type of work. These wage rates are established based on the collective bargaining agreements in the locality of the project. Non-union contractors are legally obligated to pay their workers at least the prevailing wage rate, which is based on the rates agreed upon for union workers. Therefore, California law ensures the payment of **fair wages and benefits**, even on projects without a PLA. Based on a comparison of the prevailing wage rates established by the Department of Industrial Relations for non-union workers and bargaining unit agreements for union workers for the Napa-Solano area, there is not a significant difference in the wages paid, regardless of union status.

While prevailing wage law creates a level playing field for wages, a PLA significantly increases labor costs to contractors that are not signatories of the unions' Master Labor Agreements (MLAs), including non-union contractors and union contractors from other parts of the state. The two most significant reasons are summarized below:

1. PLAs include a provision that requires the payment of union dues, union health and welfare fees, and union pension benefits for all laborers. These costs are in addition to the benefits already paid by a non-union contractor for their employees. A PLA would result in the duplicate payment of these costs. The fact that a non-union contractor is required to make a duplicate payment into the union trust fund does not necessarily benefit the employees, as the non-union employees may never vest to receive the union benefits. These extra costs will be added to their bid, assuming they are willing to bid at all.
2. In a project without a PLA, the prevailing wage is based on the location of the project. In a project with a PLA, the wages are determined by the bargaining unit agreements of the union hall that dispatches the workers. Therefore, if the Napa-Solano union hall does not have sufficient employees to assign to the Napa County project, employees must be dispatched from another union hall, such as San Francisco. The union wages in San Francisco are currently approximately 25% higher than the wages for the same trade in Napa-Solano. All subcontractors preparing bids for this project will need to make an estimate of the available labor pool and bid accordingly.

Local hiring: Proponents of PLAs suggest that they increase local hiring, and during previous discussions, the Board has been very interested in increasing employment opportunities for Napa County businesses and residents. The County's past PLA negotiations were accordingly focused on securing requirements that would give locals priority in the unions' referral process. Despite that focus, staff was told by the local trade unions that they could not alter their referral lists to provide Napa residents priority.

It is important to note that when the Board started these discussions in 2009, the unemployment rate in Napa was 8.2%. This grew to 11.4% in January of 2010, and rose again in January 2011. Currently, the unemployment rate in Napa County is 2.3%. Staff's experience in attempting to negotiate a PLA, the current low unemployment rate, and data provided in the Labor Market Study presented to the Board by the Craft Consulting Group on July 12, 2016, support staff's conclusion that not only would a PLA not increase the number of Napa County residents working on the replacement jail, it could, in fact, reduce the number of local subcontractors willing to bid on the project, as discussed further below.

Collective bargaining agreements almost always require contractors to utilize their current workers (if the contractor is union) or workers who are referred from a union hiring hall in a specified order. In addition, under a PLA, contractors obtain their workers from the local union hall. The "local" hall for this area is actually located in Solano

County and serves both Napa and Solano County. There is no provision in a PLA for selecting Napa workers first to work on our project, thus Napa workers are not prioritized over non-local workers.

Without a PLA, roughly \$5 million (approximately one-third) of the construction costs for the re-entry facility went to local subcontractors.

Reduced competition in the bidding process: Unlike the environment during and after the recession, there is plenty of work for the construction industry. Numerous contractors in various situations have stated that they would not bid on a project that had a PLA due to the increased costs and the complexities introduced. Data shows that reduced competition leads to higher bids. There are two examples in which a project was bid without a PLA, then was subsequently re-bid with a PLA. A power plant being built in Pasadena in 2003 showed an increased cost of 15%, even with the removal of some work items from the project. A school renovation in 2004 in Oakland resulted in a 22% increase in costs, and a reduction in responsible bids from eight to three.

In today's economy with low unemployment and a considerable amount of construction work, contractors and subcontractors can be much more selective about which projects they bid on. In general, contractors choose to bid on projects that have fewer contractual requirements and restrictions. As Napa County moves to pre-qualify general contractors for the replacement jail project, we should recognize that there are already a small number of general contractors that have the requisite experience in jail construction in California, and that any reduction to the pool of contractors interested in bidding could result in higher bids. In an analysis conducted by three different construction estimator firms, projects that received fewer than four bids are more likely to receive bids that are significantly higher than the engineer's estimate. It is presumed that a reduction in the number of subcontractors providing bids to the general contractors would have similar impacts.

PLA Negotiations related to the re-entry facility: On August 9, 2016, the Board gave staff direction on key provisions to consider in the negotiation of a PLA for the re-entry facility. One such provision directed staff to include in any negotiated PLA the added purpose of increasing the number of local Napa County residents who are employed as a result of entering into a PLA.

1. Purpose: The draft PLA provided by the union states the purpose of the PLA is to promote the efficiency of construction operations and to provide for peaceful settlement of labor disputes without strikes or lockouts.
2. Referral Process and Core Workers: The Union's draft PLA requires all tradespeople to come from the applicable union hiring hall. The only limitation to this requirement is that supervisors above the level of general foreman can be hired without going through the union hiring halls. These requirements would apply not only to the general contractor, but also to all sub-contractors. If this language were adopted, local non-union subcontractors, which is the bulk of Napa County's contracting community, would not be able to utilize their existing employees on this project. The inability to use their own workforce is a major reason many non-union contractors and subcontractors do not bid on projects with a PLA. Those firms that do bid are impacted in that their current workforce (most likely local workers) could be excluded from the project in lieu of out of town workers from the union hall. They are also impacted in that they have to integrate new people into their workforce, who may or may not mesh with the current workforce and be able to provide the same level of efficiency and quality. In addition to not supporting local hire, these workforce factors likely increase the overall project cost as subcontractors consider the added cost of hiring a workforce with which they are unfamiliar. The Board gave staff direction that a PLA should contain these provisions:
 - a. The unions shall provide to contractors the names of Napa County residents that could be hired by contractors working on the re-entry facility and that contractors be allowed to hire these local residents if they wish; and
 - b. Napa County contractors shall be allowed to utilize their existing workforce on this project.
3. Union fees and benefits provision: The Board directed staff to negotiate a PLA that would eliminate any disincentive for local contractors to bid on the project.
4. No strike provision: The Board directed staff to negotiate a clear enforceable no strike clause.

After months of negotiations, staff was unable to negotiate a PLA to meet the Board's goals, and in December 2016, the Board approved the plans and specifications for the re-entry facility project without a PLA.

Concerns with PLA for the replacement jail: In addition to increased costs and a limited ability to increase employment opportunities for Napa County residents, staff have other concerns in considering a PLA for the replacement jail project which support today's recommendation to the Board.

The first concern is related to what the PLA refers to as "Covered Work" and the cost of construction. The design of the replacement jail includes pre-fabricated modular cell units constructed off-site and shipped to Napa for installation. This has been proven to be a very cost-effective construction method and was one of the recent value engineering approaches for the project. One provision that is included in most draft PLAs proposed by the unions is the provision that the PLA defines "Covered Work" as all construction, including off-site fabrication and the installation of components fabricated off-site. Applying the provisions of a PLA to off-site construction would, at best, increase the costs of this fabrication, and at worst make it a non-viable option should the manufacturers be unwilling to work under a PLA.

A recent example of this can be found in Selma, California where the City Council approved a PLA for the construction of a new police station. After the first round of bids came in too high and the Council rejected all bids, staff then attempted to reduce costs through the use of pre-fabricated components. Additional analysis was completed by staff and Vanir, the construction management company for the project. Since the PLA, as written, applied to any off-site fabrication, it was estimated that it would add at least \$2 million to the current \$8 million construction budget.

The second concern is timing. The County, working with Lionakis, will be submitting our bid package to BSCC for approval in February 2020 in order to have it approved and ready to be approved by your Board and released to the public in June 2020. Inclusion of a PLA, which would need to be included in the bid package, would cause delay.

With annual cost escalation of 5% built into the cost estimates, each month of delay increases costs approximately \$370,000.

Historical review: Project Labor Agreements have been discussed by the Napa County Board of Supervisors several times since 2009.

October 6, 2009 - The County Executive Office presented information regarding Local Vendor Purchasing Preference, First Source Hiring, and Project Labor Agreements. The Board directed staff to do additional analysis and bring a recommendation back to the Board supporting the primary goal of creating jobs for Napa County residents. Unemployment in Napa County was 8.2% in October 2009.

June 8, 2010 - Staff from multiple departments presented information based on their research, which included convening a group of community stakeholders. At that time, the Board agreed with the staff recommendation not to pursue the creation of Project Labor Agreements at that time, as they do not necessarily facilitate the hiring of local residents. Unemployment in Napa County was 9.8% in June 2010.

October 20, 2015 - As a result of a Future Agenda Item request from a Board member, the staff report summarized information regarding Project Labor Agreements as well as future capital projects that were being planned. The Board directed staff to begin the development/negotiation of a draft PLA for the Staff Secure Facility (now known as the re-entry facility). Unemployment in Napa County was 4.3% in October 2015.

December 15, 2015 - Staff discussed strategies the Board could use to increase local hiring, regardless of the use of a PLA. The Board directed staff to commission an analysis of the construction labor market in Napa County, which could be used to support a legally defensible local hire ordinance. Unemployment in Napa County was 5.1%

in December 2015.

July 12, 2016 - The Board received the Labor Market Analysis, completed by Craft Consulting Group. The Board directed staff to draft a local hire ordinance and to negotiate a PLA for the re-entry facility. Unemployment in Napa County was 4.2% in July 2016.

August 9, 2016 - Staff requested and received direction from the Board on key provisions to be considered when negotiating a PLA for the re-entry facility, as described above. Unemployment in Napa County was 4.1% in August 2016.

Recommendation: Based on increased costs, fewer competitive bids, and no increase in employment opportunities for Napa County residents, staff is requesting the Board authorize the completion of the construction bid documents without a PLA.

7. Next Steps

Next steps include:

- | Completion of construction documents phase;
- | Prequalification of Contractors; and
- | Solicit and award contract for soil stabilization and site preparation.

8. Project Updates

Staff will continue providing quarterly project updates to the Board through the design phase of the project and will initiate more frequent reporting once construction is underway. Updates will include the following:

- | Progress to date;
- | Project budget/change order status;
- | Project schedule;
- | Project financing; and
- | Next steps.

SUPPORTING DOCUMENTS

- A . Replacement Jail Budget Update 12-17-19
- B . Jail Financing Plan
- C . PLA Literature & Resources

CEO Recommendation: Approve

Reviewed By: Leigh Sharp