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September 6, 2023

San Francisco Board of Supervisors Budget and Finance Committee
The Honorable Connie Chan, Chair, Budget and Finance Committee
The Honorable Rafael Mandelman, Member, Budget and Finance Committee
The Honorable Ahsha Safai, Member, Budget and Finance Committee
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102

Re: **Agenda Item #8:** Repairs at Laguna Honda Hospital — Estimated Cost of Repairs Exceeds \$250,000

Dear Chair Chan and Budget and Finance Committee Members,

The Budget and Finance Committee should reject outright the proposed Resolution sponsored by Mayor Breed and Supervisor Myrna Melgar. The Laguna Honda Hospital so-called “*emergency repair*” projects are projected to cost a total of at least \$40.5 million, not the mere \$250,000 threshold for projects needing emergency contracting.

The Resolution claims the eight LHH projects are all necessary for LHH to obtain recertification as a CMS provider. That appears to be a lie, because on January 15 2023, I specifically placed records request (Next Request 23-295) to obtain a list of all LHH capital projects then currently underway, or required, to obtain CMS recertification.

On January 25, SFDPH responded, saying there were **only four** Capital Improvement projects required for recertification: “[Kitchen] Freezer #3; Courtyard Resurfacing around the LHH Loading Dock; Conversion of Triples [Rooms] to Doubles [Rooms]; and Kitchen Floor Remediation Phase 2.”

Of the now 8 projects, only 2 were identified as for recertification necessary in January.

In January 2023, there was no mention of these six projects: an “*Emergency Power Replacement*” project, a “*Water Tank Replacement*” project, a “*Stationary X-Ray Replacement*” project, a “*Pharmacy HVAC Upgrade*” project, a “*Fuel Line Replacement*” project, or a “*Hospital HVAC Controls*” project as being necessary or required to obtain CMS recertification. Only two of the 8 projects were identified in January 2023 as necessary for recertification.

And indeed, missing from the eight project listed in this proposed Resolution is a “*Simon Auditorium Cooling Center*” project of \$1.5 million, and another potential project to ensure fire suppression doors close completely missing from the list.

As well, the eight listed projects are seeking to buy sympathy and public support as necessary for Laguna Honda Hospital’s recertification as Medicare and Medicaid providers. Given that four of the eight proposed repairs date back to 2010 to 2018, it’s clear these are long-standing capital improvement projects that have been neglected and deferred for years and years, and do not meet the definition of “*emergency projects*” under Administrative Code §6.60.

LHH obtained its Medicaid (Medi-Cal) recertification on August 16, and the BLA notes LHH is submitting its Medicare recertification application on September 17. These eight projects are not needed to obtain recertification, and the majority of the projects will not be completed until late 2024 or later, well *after* recertification occurs.

The eight projects are not necessary to obtain recertification, and so aren’t “*emergencies*.”

“ On January 25, SFDPH provided a list of 4 capital projects for recertification. Of the now 8 projects, only 2 were identified as recertification necessary in January. ”

“ LHH obtained Medi-Cal recertification on August 16. The BLA notes LHH is submitting its Medicare recertification application on September 17. ”

These eight projects are not needed to obtain recertification, and the majority of the projects will not be completed until late 2024 or later, well after recertification has occurred.”

In reality, using emergency authority provisions of the Administrative Code is simply an end-run attempt to circumvent the City's competitive bidding processes on construction projects.

The Budget and Legislative Analyst (BLA) report posted on-line as background materials to this agenda item (Board File #230811) notes that Administrative Code Section 6.60 defines "emergency authority" as a "*sudden, unforeseeable and unexpected occurrence or a discovery of a condition involving a clear and imminent danger, demanding immediate action (emphasis added) to prevent or mitigate loss or damage to life, health, property or essential public services.*"

In the "Policy Options" section on page 33 the BLA says that rather than approving **an open-ended emergency declaration** for all repair work related to LHH, the Board should consider limiting the scope of this emergency contracting authority.

But that doesn't go far enough. The Board of Supervisors should reject this Resolution outright and completely, and require competitive bidding for all eight of these projects that have been neglected for years as capital funding projects. And they should **not** be funded using the so-called "*Certificates of Participation*" funding, but instead seek Capital Project funding through the City's regular financing processes, or use the planned Public Health general obligation bond in 2024.

"The Board of Supervisors should reject this Resolution outright and completely, and require competitive bidding for all eight of these projects."

If you don't reject this Resolution outright — or alternatively, add an additional stipulation to it — all of these projects will likely be granted sole-source contracts, further driving up the costs of each project.

Background

The kitchen floor replacement project dates back to a related problem in September 2011. Just a year after the LHH replacement building opened in June 2010, in September of 2011 LHH staff discovered a leak in the kitchen cart wash leak that required repair and associated mold abatement. Elevator maintenance staff had discovered water in the elevator machine room on the floor below the new kitchen, which LHH staff traced back and found the water was due to a leak in the kitchen food-cart wash room on the floor above. In his [Budget Analyst June 5, 2013 report](#), (Board File 130473) the BLA noted that the wash cart room leak problem was **not** an "*Emergency Project*" under Administrative Code Section 6.60.

The BLA recommended back then that the then-proposed Resolution sponsored by then-Supervisor Norman Yee for emergency repairs not to exceed \$595,367 be reduced to not to exceed to \$328,644 and also require the Department of Public Works be required to forgo a sole-source contract and seek competitive construction bids instead to award a subsequent contract to the lowest responsive bidder for the remaining needed repair work. The Board adopted both recommendations.

It's painfully obvious that the \$595,367 cart was leak was never properly fixed between 2011 and 2013, and it eventually led to needing the entire kitchen floor be replaced, at a cost now projected to be \$8.1 **million** — 13.4 times higher!

The new Resolution before you is accompanied by a new BLA report dated June 5, 2023.

The BLA report now recommends on page 33 that the Board of Supervisors amend the proposed Resolution in two ways: a) To **amend** the Resolution to **explicitly name each of the eight projects** that will qualify under this emergency contracting procedures, and/or b) **Add a not-to-exceed amount of \$28.4 million** (actually, it should list not to exceed \$28.6 million, due to a BLA error).

Problems With the BLA Report

- From public records responses, the "*Kitchen Freezer #3*" project costing approximately \$0.7 million appears to have been completed already, by June 30, 2023 at a cost of \$753,557. If it's already done, why is it on this list of emergency projects?
- The summary of estimated emergency work for the eight projects listed on numbered page 31 of the BLA report contains a mathematically-incorrect total on the range of Emergency costs. It actually adds up to \$28.6 million, not \$28.4 million.

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- Page 31 of the BLA report asserts LHH’s *Water Tank Replacement* project is estimated to cost \$3.2 million. However, on page 26 of the BLA report itemizing projects being funded with \$77 million in “*Certificates of Participation*” lists LHH’s *Water Tank Replacement* project as costing \$5.6 million, a difference of \$2.4 million, which should be considered as being under-reported on page 31.
- Page 31 of the BLA report also asserts LHH’s *Emergency Back-Up Power* project is estimated to cost \$5.6 million. However, on page 17 of the BLA report itemizing projects being funded with \$77 million in “*Certificates of Participation*” lists LHH’s *Emergency Back-Up Power* project as costing \$8.2 million, a difference of \$2.6 million, which should be considered as being under-reported on page 31.
- Page 31 lists when each project’s “*deficiency*” had been identified (except for the *Emergency Power Replacement* project, which strangely does not list when the deficiency was identified). It’s not known whether the BLA is referring to when the California Department of Public Health (CDPH) may have identified the deficiencies, and perhaps issued a citation to LHH for a violation of State regulations, or if the BLA is referring to a date when the “*deficiency*” was brought to the City’s attention via some other method.
- Interestingly, the “*Hospital HVAC Controls*” project deficiency is listed as having been identified in the same year that the replacement LHH facility opened — in 2010. And the “*Kitchen Floor Replacement*” project is listed as having been identified in 2021. The BLA reported “*the flooring system in kitchen areas on the second level of the Link Building ... is causing leaks in the ceiling of the first-floor cafeteria.*”

The BLA is factually incorrect: The kitchen floor problem surfaced within the first year after LHH opened the Link Building in 2010. I first wrote an article — “[Of Mold and Men](#)” — about the kitchen flooring in the *Westside Observer* in July 2013, noting that the kitchen floor leak was actually causing a mold problem in the building, which had begun long before 2021 as the BLA wrongly asserted.

In addition, I also reported in my July 2014 [article](#) that in 2011, the City of San Francisco filed a Superior Court case against Anshen + Allen and Stantec Architecture alleging \$70 million in defective performance building the LHH replacement facility. The City eventually settled that lawsuit in 2014 and recovered \$15 million, which unfortunately was returned to the General Fund and wasn’t used to fix many of the LHH replacement project construction problems, including not repairing the LHH kitchen floor. Had that \$15 million been used back then, the \$8.1 million price tag could have been reduced significantly, given known escalation costs of construction expenses in the intervening 13 years since.

I recommend that the Budget and Finance Committee not only amend this proposed resolution by **incorporating *both* of the BLA’s recommendations** as a policy matter subject to your discretion, but you should also add a stipulation that all of the eight projects be put out for competitive bids rather than allowing the Department of Public Works to award sole-source contracts, similar to the BLA’s recommendations regarding Supervisor Yee’s Resolution back in 2013. That might help significantly reduce the now probable \$40.5 million cost of anticipated repairs.

If you don’t, it won’t surprise me if LHH uses this emergency contracting authority for other projects and purposes.

Respectfully submitted,

Patrick Monette-Shaw
Columnist/Reporter,
Westside Observer Newspaper

“ The Board of Supervisors should amend this proposed resolution by incorporating *both* of the BLA’s recommendations *and* add an additional stipulation requiring use of competitive bids. ”

cc: The Honorable Aaron Peskin, President San Francisco Board of Supervisors
Angela Calvillo, Clerk of the Board
Alisa Somera, Legislative Deputy Director
Brent Jalipa, Clerk to the Budget and Finance Committee