

File No. 130473

Committee Item No. 8
Board Item No. _____

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

Committee: Budget and Finance Sub-Committee Date: 06/05/2013

Board of Supervisors Meeting Date: _____

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| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Budget and Legislative Analyst Report |
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Completed by: Victor Young Date May 31, 2013
Completed by: Victor Young Date _____

1 [Emergency Contract - Laguna Honda Hospital Cart Wash - Not to Exceed \$595,367]

2
3 **Resolution approving funding increase for an emergency public work contract under**
4 **Administrative Code, Section 6.60, to repair a kitchen cart wash leak and related mold**
5 **abatement at Laguna Honda Hospital in an amount not to exceed \$595,367.**
6

7 WHEREAS, The Laguna Honda Hospital Replacement Program team was informed of
8 a leak which occurred in the kitchen of the Pavilion Building at Laguna Honda Hospital. The
9 leak went undetected for an extended period of time which resulted in extensive mold growth
10 in several rooms located below the kitchen and cart wash area; and

11 WHEREAS, San Francisco Administrative Code, Chapter 6, Article IV, section 6.60,
12 authorizes department heads responsible for public work to award and proceed with an
13 emergency contract, exempt from the competitive bidding process, if the estimated cost of the
14 emergency work is less than or equal to \$250,000, in the event of an actual emergency which
15 includes an, ". . . unexpected occurrence involving a clear and imminent danger, demanding
16 immediate action to prevent or mitigate loss of or damage to, life, health property or essential
17 public services;" and

18 WHEREAS, On June 6, 2012, the Director of the San Francisco Department of Public
19 Works declared an emergency to allow immediate repair of the kitchen cart wash room and
20 mold abatement in the affected areas below, with an estimated construction cost less than
21 \$250,000; and

22 WHEREAS, Section 6.60(D) requires that the San Francisco Board of Supervisors
23 approve emergency work with an estimated cost in excess of \$250,000; and
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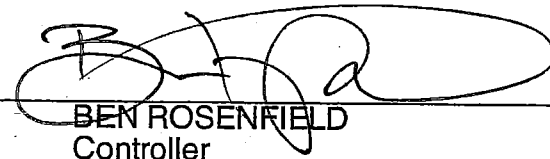
1 WHEREAS, During the course of the cart wash repair and abatement emergency work,
2 as a result of necessary scope increases, the Department of Public Works determined that the
3 estimated cost of emergency repairs would total approximately \$595,367; and

4 WHEREAS, The Controller has certified that funds are available for this emergency
5 contract; now, therefore, be it

6 RESOLVED, That the Director of the San Francisco Department of Public Works is
7 authorized to proceed with all work necessary to repair and abate the Laguna Honda Hospital
8 cart wash room and area below, for a commercially reasonable sum, with an increased
9 contract amount not to exceed \$595,367; and, be it

10 FURTHER RESOLVED, That any action to date by the Department of Public Works to
11 secure such emergency contract and resolve the emergency condition is hereby ratified.

12
13 Certified Funds
14 Available:


BEN ROSENFELD
Controller

15 Index Code: PWA595LPFLOC CHLSNF SNUN88
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Item 8 File 13-0473	Departments: Department of Public Works (DPW) Department of Public Health, Laguna Honda Hospital (LHH)
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EXECUTIVE SUMMARY

Legislative Objectives

- The proposed resolution would approve a funding increase for an emergency public work contract under Administrative Code Section 6.60 to repair a kitchen cart wash leak and related mold abatement at Laguna Honda Hospital (LHH) for a not to exceed \$595,367.

Key Points

- In September of 2011, LHH staff discovered a leak that had gone undetected for several months, causing extensive damage and mold in several rooms in LHH.
- On June 6, 2012, the Director of DPW declared an emergency to allow immediate repair and mold abatement, in accordance with Administrative Code Section 6.60, without undergoing the City's regular competitive bidding procedures. On June 12, 2012, DPW awarded a not-to-exceed contract for \$80,000 to Belfor USA Group, Inc. to perform the demolition, related mold remediation and reconstruction work at LHH.
- In June 2012, Belfor began demolition, water damage repair and mold clean-up work, which extended until November 2012. As the work progressed, significantly more water damage and mold were found. In January of 2013, Belfor submitted invoices totaling \$328,644 and estimates additional costs of \$266,723, or a total cost of \$595,367.

Fiscal Impacts

- The total project costs of not-to-exceed \$595,367 are \$515,367 or 644% more than the original not-to-exceed \$80,000 contract with Belfor. To date, Belfor has incurred expenditures totaling \$328,644. DPW has not yet paid Belfor any funds.
- All of the expenses would be funded from the LHH Replacement Program budget.

Policy Consideration

- Although the emergency was discovered in September 2011, the emergency was not officially declared until June 6, 2012 and the work did not commence until late June 2012, over eight months after the emergency was discovered. In addition, DPW delayed for four months to submit the proposed resolution to the Board of Supervisors. Therefore, the Budget and Legislative Analyst questions whether the subject emergency request for not-to-exceed \$595,367 meets the definition of an emergency, thereby authorizing a sole source contract award without undergoing the City's regular competitive bidding process.

Recommendations

- Amend the proposed resolution to reduce the requested emergency authorization from a not-to-exceed \$595,367 to \$328,644, the amount that has already been incurred.
- Request DPW to seek competitive construction bids and to award a subsequent contract to the lowest responsive bidder for the remaining reconstruction work at LHH.

MANDATE STATEMENT/BACKGROUND**Mandate Statement**

In accordance with Administrative Code Section 6.60, an emergency contract awarded by a City department that exceeds \$250,000 requires approval by the Board of Supervisors. Administrative Code provisions also authorize department heads responsible for such emergency work to award and proceed with emergency contracts, which are not subject to the City's regular competitive bidding procedures. The Administrative Code defines an emergency as a sudden, unforeseeable and unexpected occurrence or a discovery of a condition involving a clear and imminent danger, demanding immediate action to prevent or mitigate loss or damage to, life, health, property or essential public services.

Background

The Laguna Honda Hospital (LHH) Replacement Program comprises demolition, construction, and renovation of LHH, which includes (a) construction of four new buildings, including a Pavilion Building, (b) renovations of existing facilities, and (c) demolition of existing older facilities, for a total cost of \$584,946,602. According to Mr. John Thomas, Project Manager for DPW, the new LHH buildings were completed and occupied in December 2010, renovations of the existing facilities will be completed by September, 2013, and the demolition of the older facilities is anticipated to be completed by the end of 2014.

In September of 2011, elevator maintenance staff working in the new Pavilion Building at LHH discovered water in the elevator machine room. LHH staff then traced the water to find that there was a leak in the hospital cart wash room¹ in the floor above, which resulted in water traveling down to damage several rooms on the floor below. Mr. Thomas estimates that this leak had gone undetected for several months, such that extensive damage had occurred and mold had grown in several rooms.

On June 6, 2012, the Director of DPW declared an emergency to allow immediate repair of the LHH kitchen cart wash room and mold abatement for an estimated cost of up to \$250,000, in accordance with Administrative Code Section 6.60, which authorizes department heads to award emergency contracts, without undergoing the City's regular competitive bidding procedures. Mr. Thomas advises that an independent assessment, provided by Cooper Pugeda Management², estimated a cost of up to \$80,000, based on what DPW knew regarding the extent of the damage at LHH at that time. On June 12, 2012, DPW awarded a not-to-exceed sole source contract for \$80,000 to Belfor USA Group, Inc. to perform the demolition, related mold remediation and construction work at LHH. According to Mr. Thomas, Belfor USA Group (Belfor) is a private firm that specializes in disaster recovery and property restoration, which was recommended by the City's insurance representatives.

¹ The hospital cart wash room is where LHH staff washes the mobile carts that are used to transport food from the adjacent main kitchen to the 780 patients throughout the Hospital.

² Cooper Pugeda Management is a private construction management firm that was retained to provide estimates for the overall Laguna Honda Hospital Replacement Program.

In late June 2012, Belfor began the demolition, water damage repair and mold clean-up work. Mr. Thomas advises that as the demolition, water damage repair and mold clean-up work progressed, more water damage and mold were found, necessitating additional demolition, repair and further clean-up and remediation. In January of 2013, Mr. Thomas advises that Belfor submitted invoices totaling \$328,644 for the initial demolition, water damage repair and mold remediation work, completed through November 2012. In addition, Mr. Thomas advises that Belfor estimates costs of up to an additional \$266,723 to reconstruct the facilities, for a total cost of not-to-exceed \$595,367. According to Mr. Thomas, DPW has not paid Belfor for any of the work completed through November 2012, at which time Belfor ceased working. Mr. Thomas advises that after Belfor is paid for their initial \$328,644, Belfor estimates they can complete the remaining work by September 2013.

DETAILS OF PROPOSED LEGISLATION

Since the emergency contract has exceeded the \$250,000 threshold, as required by Administrative Code Section 6.60, the proposed resolution would approve a funding increase for an emergency public work contract to repair a kitchen cart wash leak and related mold abatement at Laguna Honda Hospital in an amount not-to-exceed \$595,367.

As noted above, on June 6, 2012, the Director of DPW declared an emergency to allow immediate repair of the LHH kitchen cart wash room and mold abatement for an estimated cost of up to \$250,000. Under Administrative Code Section 6.60, an emergency contract awarded by a City department that exceeds \$250,000 requires approval by the Board of Supervisors. As discussed above, Belfor, the selected contractor, currently estimates a total cost of not-to-exceed \$595,367 to complete the necessary work.

FISCAL IMPACTS

As noted above and shown in the Table below, Belfor has submitted invoices to DPW totaling \$328,644. In addition, Belfor estimates additional expenditures of \$266,723 to complete the reconstruction work, as shown in the Table below, such that the total project costs are presently estimated at \$595,367.

Actual Expenditures to Date and Estimated Future Expenditures

Item	Actual invoices to date	Estimated additional Expenditures to be incurred	Total Estimated Expenditures
Labor	\$233,428	\$212,000	\$445,428
Equipment	83,643	w/Labor	83,643
Materials	11,573	54,723	66,296
Total	\$328,644	\$266,723	\$595,367

The total estimated project cost of \$595,367 is \$515,367 or 644% more than the originally estimated \$80,000 not-to-exceed contract with Belfor.

According to Mr. Thomas, all of the necessary demolition, water damage repair and mold remediation and restoration of the Pavilion Building will be funded from the Laguna Honda Hospital Replacement Program budget, from funds previously appropriated by the Board of Supervisors. As noted above, the total budget for the LHH Replacement Program is \$584,946,602. Mr. Thomas advises that as of April 30, 2013, the LHH Replacement Program has expended \$568,893,943, leaving a remaining balance of \$16,052,659.

POLICY CONSIDERATIONS

Recovery of Funds from Lawsuit or Insurance Policy

Ms. Louise Simpson of the City Attorney's Office advises that the City has sued Stantec, the architect for the LHH Replacement Project, for total estimated damages in excess of \$45 million. The City alleges that Stantec defectively designed the LHH Replacement Project, including the kitchen cart wash room, which is the subject of the proposed emergency resolution. In addition, Ms. Simpson advises that LHH has a separate property insurance policy which could cover some of the costs of the subject demolition and reconstruction. However, Ms. Simpson advises that the potential for recovery of funds from either the Stantec lawsuit or the LHH property insurance policy is unknown at this time.

Emergency Authorization Demands Immediate Action Without Undergoing the City's Competitive Bidding Requirements

Although the emergency was discovered in September 2011, the emergency was not officially declared until June 6, 2012 and the work did not commence until late June 2012, over eight months after the emergency was discovered. According to Mr. Thomas, the delay in declaring the emergency and commencing the work was due to (a) a lawsuit pending with Stantec Architects, the architects who designed the LHH Replacement facilities, (b) evaluation of whether Turner Construction, the prime construction contractor for the LHH Replacement Program should complete the emergency work, and (c) discussion with various insurance representatives whether the emergency work would be covered by one of several insurance policies and the requirements of each. However, Mr. Thomas advises that after the water damage and mold were discovered in September 2011, DPW working with LHH staff, immediately restricted access to the contaminated areas and installed temporary protection for LHH workers in order to continue LHH operations.

In addition, Belfor completed their initial demolition, water damage repair and remediation work in November 2012 and submitted invoices totaling \$328,644 to DPW for this work in January of 2013. Therefore, in January of 2013, DPW knew that their authorization for up to \$250,000 for this emergency work would not be sufficient and would require further Board of Supervisors approval. However, the proposed resolution for such Board of Supervisors approval was not submitted until May 2013, or over four months later.

As noted above, Belfor is now estimating it will cost up to an additional \$266,723 to reconstruct the LHH facilities, for a total cost not-to-exceed \$595,367. Belfor would complete this remaining reconstruction work by September 2013, or two years after the emergency leak was discovered.

The proposed resolution would authorize the Director of DPW to complete all work necessary to repair and abate the LHH cart wash room and area below for a not-to-exceed \$595,367 and ratify DPW actions to date to secure this emergency contract and resolve the emergency condition, without ever having undergone a competitive process for the awarded contract to Belfor.

However, in accordance with Administrative Code Section 6.60, an emergency is defined 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 accordance with Administrative Code Section 6.60, emergency contracts are not subject to the City's regular competitive bidding procedures. Given the significant delays of eight months prior to commencing the initial work and an additional four months prior to submitting this request to the Board of Supervisors, the Budget and Legislative Analyst questions whether the subject emergency request for not-to-exceed \$595,367 meets the definition of an emergency, thereby authorizing a sole source contract award without undergoing the City's regular competitive bidding process.

Therefore, the Budget and Legislative Analyst recommends amending the proposed resolution to reduce the requested authorization from a not-to-exceed \$595,367 to a not-to-exceed \$328,644, because those funds have already been incurred by the contractor Belfor. DPW should then be requested to seek competitive construction bids, and to award a subsequent contract to the lowest responsive bidder, for the remaining reconstruction work at LHH to be completed as soon as possible.

RECOMMENDATIONS

1. Amend the proposed resolution to reduce the requested emergency authorization by \$266,723 from a not-to-exceed \$595,367 to \$328,644, the amount that has already been incurred.
2. Request DPW to seek competitive construction bids and to award a subsequent contract to the lowest responsive bidder for the remaining needed reconstruction work at LHH.

