

**REPORT/RECOMMENDATION TO THE BOARD OF SUPERVISORS
OF SAN BERNARDINO COUNTY
AND RECORD OF ACTION**

January 24, 2023

FROM

DON DAY, Director, Project and Facilities Management Department

SUBJECT

Continuation of Emergency Related to Procurement of Emergency Project Necessary to Recover from Unplanned Mechanical Failures at 157 and 175 W. 5th Street

RECOMMENDATION(S)

1. Continue the finding, first made by the Board of Supervisors on September 13, 2022, that there is substantial evidence that the unplanned mechanical failures at 157 and 175 W. 5th Street on August 22, 2022 created an emergency pursuant to Public Contract Code section 22050 requiring immediate action to prevent or mitigate the loss or impairment of life, health, property, and essential public services, necessitating overhaul or replacement of portions of the mechanical system at 157 and 175 W. 5th Street, San Bernardino, to allow staff to provide services, and will not permit the delay resulting from a formal competitive solicitation of bids to procure an urgent mechanical system overhaul or replacement (Four votes required).
2. Approve Resolution amending Resolution 2022-183, adopted by the San Bernardino County Board of Supervisors on September 13, 2022, to decrease the not to exceed amount from \$2,000,000 to \$1,250,000, and authorize the Chief Executive Officer to direct the Purchasing Agent to issue purchase orders and/or execute contracts, in a total amount not to exceed \$1,250,000, for any emergency remediation, construction, and modifications of internal and external structures related to the mechanical failures, finding that the issuance of these purchase orders and/or contracts is necessary to respond to this emergency pursuant to Public Contract Code sections 22035 and 22050 (Four votes required).

(Presenter: Don Day, Director, 387-5000)

COUNTY AND CHIEF EXECUTIVE OFFICER GOALS & OBJECTIVES

Provide for the Safety, Health, and Social Service Needs of County Residents.

FINANCIAL IMPACT

Approval of this item will not result in the use of additional Discretionary General Funding (Net County Cost). The cost for the urgent mechanical system overhaul or replacement caused by the mechanical failure and loss of building cooling is \$1,250,000 and will be funded by the Minor Capital Improvement Program (MCIP) (WBSE 10.10.1411). No budget adjustments are requested at this time but may be presented to the Board of Supervisors (Board) for consideration at a future date. At this time, Project and Facilities Management Department (PFMD) does not anticipate the final value of work exceeding \$1,000,000.

BACKGROUND INFORMATION

The buildings located at 157 and 175 W. 5th Street, San Bernardino were built in 1957 and are in an aging condition. The mechanical systems which feed heating and cooling into these buildings have undergone extreme stress from consistent daily temperature extremes, which have contributed to major failures. Currently, executive leadership and numerous employees from the San Bernardino County Probation Department (Probation), San Bernardino County Fire Protection District (County Fire), and the Human Resources Department (Human Resources)

occupy this building along with their management teams. Sheriff's Court Services also manages an operation in this building.

On August 22, 2022, the County experienced a major emergency in which vibration from an aging and undersized cooling system caused a large refrigerant leak which resulted in the shutdown of cooling to the entire building for one week. Office temperatures ranged from an average of 80°F – 86°F and staff were forced to either leave the building before afternoon heat or work in unproductive, uncomfortable, and potentially unsafe conditions.

PFMD, Facilities Management Division, contracted with an on-call contractor to fix the leak and provide a comprehensive written assessment of the heating and cooling systems. Preliminary written reports from the contractor indicated that the cooling system feeding the building is insufficient compared to the size and occupant load the building feeds. The building remains at risk of another major mechanical failure due to the age and size of the system.

On September 13, 2022 (Item No. 43), the Board found that major mechanical failure on August 22, 2022, created an emergency pursuant to Public Contract Code section 22050, requiring immediate action to prevent or mitigate the loss or impairment of life, health, property, and essential public services, necessitating an urgent mechanical system overhaul or replacement at 157 and 175 W. 5th Street in San Bernardino, to allow staff to continue to provide services and will not permit the delay resulting from a formal competitive solicitation of bids to procure construction services. The Board also approved Resolution No. 2022-183 authorizing the Chief Executive Officer (CEO) to direct the Purchasing Agent to issue purchase orders and/or execute contracts, in a total amount not to exceed \$~~1,250~~1,2500,000, for any remediation, construction, and modifications of internal and external structures related to the mechanical failures, found that the issuance of these purchase orders and/or contracts is necessary to respond to this emergency pursuant to Public Contract Code sections 22035 and 22050.

On January 10, 2023 (Item No. 30), the Board approved a modified recommendation to continue the emergency but remove the delegation language authorizing the CEO and Purchasing Agent to approve new contracts, effectively temporarily suspending the delegated authority in order to allow the Board additional time to evaluate the status of the emergency and action taken to date.

Approval of this item will decrease the not to exceed original budget from \$2,000,000 to \$1,250,000 for any remediation, construction, and modifications of internal and external structures related to the mechanical failures, which will be used to cover contracts signed, and to be signed, before the next Board meeting.

PFMD continues to evaluate the emergency situation. As the contractor progresses, the scope of work has and may continue to change. Any changes will be addressed in a contract amendment. Continuation of the emergency is recommended as immediate action. The continuation of emergency action is required to provide a safe working environment and maintain essential services for Probation, County Fire, Sheriff's Court Services, and Human Resources employees, and to continue to provide essential public services. Continuation of the delegation to the CEO and Purchasing Agent to approve contracts is recommended so that urgently required work may continue and the need for additional scope of work can be addressed if necessary. Emergencies related to Public Contract Code section 22050, once ordered, must be re-affirmed at each subsequent meeting until the emergency is terminated. The action in the Recommendation will meet this requirement.

PROCUREMENT

Upon approval of the recommendations, the County will not be required to formally solicit competitive bids for the repair of the mechanical failure. For any projects necessary to address the effects of the mechanical failure, PFMD will prepare a scope of work, quote, and/or contract

to be approved by the CEO and then signed by the contractor. A purchase order will then be requested and finalized by the Purchasing Department (Purchasing) to engage the architect, engineer, and/or contractor to provide the required construction services. Applicable provisions of the Government Code and Public Contract Code shall not apply.

On September 28, 2022, the Interim Director of Purchasing under the direction of the CEO, approved contract No. CAE-072 with ABM Building Solutions, LLC (ABM) to conduct repairs and replacements necessary to resolve identified problems in the amount of \$75,601.02. ABM will develop a scope of work and bid documents for expedited construction services to replace critical components of the mechanical systems, which were found to cause system failure and continuous unplanned automatic shutdowns. ABM will also perform necessary work to resolve the issues found.

On December 19, 2022, the Purchasing Manager on behalf of the Interim Director of Purchasing, under the direction of the CEO, approved Amendment No. 1 to contract No. CAE-072 with ABM to conduct additional repairs and replacements found through additional investigation in the amount of \$745,761.55, for a total contract amount of \$821,362.57. ABM will provide labor, materials and equipment to repair leaking tubes in existing condenser, replace contaminated refrigerant and oil, provide structural engineering, and replace eastside rooftop cooling tower and related components. An allowance is also included in the event structural modifications are required to accommodate the new cooling tower.

A second amendment is in negotiation with ABM currently, and is expected to be the final contract adjustment necessary to ensure the system can be kept online with confidence and provide appropriate cooling to all rooms in the building. This work consists of installing split-cooling units to two areas on the first floor which are not being adequately served by the system, as well as replacing the film on the south side of the building with new ultraviolet (UV) heat reflective film. The south side of the building faces directly into the sun on hot summer days.

REVIEW BY OTHERS

This item has been reviewed by County Counsel (Katherine Hardy, Deputy County Counsel, 387-5455) on December 21, 2022; Purchasing (Bruce Cole, Supervising Buyer, 387-2148) on December 27, 2022; Project and Facilities Management (Robert Gilliam, Chief of Project Management, 387-5000) on December 27, 2022; Finance (Yael Verduzco, Principal Administrative Analyst, 387-5285) on January 3, 2023; and County Finance and Administration (Valerie Clay, Deputy Executive Officer, 387-5423) on January 3, 2023.