

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

September 12, 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)

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, and delegate authority, originally by Resolution on September 13, 2022, amended July 11, 2023, to the Chief Executive Officer to direct the Purchasing Agent to issue purchase orders and/or execute contracts, in a total amount not to exceed \$1,350,000 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 the 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 estimated cost for the urgent mechanical system overhaul or replacement caused by the mechanical failure and loss of building cooling is \$1,350,000 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.

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

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Project Necessary to Recover from Unplanned Mechanical Failures at
157 and 175 W. 5th Street
September 12, 2023**

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.

Project and Facilities Management Department (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 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 \$2,000,000, for any remediation, construction, and modifications of internal and external structures related to the mechanical failures, and 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.

On January 24, 2023 (Item No. 38), the Board approved a recommendation to continue the emergency and adopted Resolution No. 2023-15, amending Resolution No. 2022-183 adopted by the Board on September 13, 2022, to decrease the not to exceed amount from \$2,000,000 to \$1,250,000, and authorize the CEO 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.

On July 11, 2023 (Item No. 27), the Board approved a recommendation to continue the emergency and adopted Resolution No. 2023-130, amending Resolution No. 2023-15 adopted

**Continuation of Emergency Related to Procurement of Emergency
Project Necessary to Recover from Unplanned Mechanical Failures at
157 and 175 W. 5th Street
September 12, 2023**

by the Board on January 24, 2023, to increase the not to exceed amount from \$1,250,000, and authorize the CEO to direct the Purchasing Agent to issue purchase orders and/or execute contracts, in a total amount not to exceed \$1,350,000, for any emergency remediation, construction, and modifications of internal and external structures related to the mechanical failures, finding that the issuance of the purchase orders and/or contracts is necessary to respond to this emergency pursuant to Public Contract Code sections 22035 and 22050.

Currently, the main contract scope of work is complete, and work is in process to address an unanticipated need for replacement of piping from the rooftop to the basement. PFMD anticipates presenting an item to the Board, in the near future, to terminate the emergency declaration after ensuring the new mechanical system is functioning reliably for a reasonable amount of time.

PFMD continues to evaluate the emergency situation. As the contractor, ABM Building Solutions, LLC (ABM) progresses, the scope of work has and may continue to change. Any changes will be addressed in a contract amendment to Contract No. CAE-072. Continuation of the emergency is recommended as immediate action. The continuation of the 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 to direct the Purchasing Agent to issue purchase orders or execute contracts is recommended so that urgently required work may continue and the need for additional scopes of work can be addressed, if necessary. At this time, the estimated project completion will occur by Fall of 2023. 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 Recommendation, 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 to conduct repairs and replacements necessary to resolve identified problems in the amount of \$75,601.02. ABM developed 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 is also performing the 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 continues to provide labor, materials and equipment to repair leaking tubes in the existing

**Continuation of Emergency Related to Procurement of Emergency
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157 and 175 W. 5th Street
September 12, 2023**

condenser, replace contaminated refrigerant and oil, provide structural engineering, and replace the eastside rooftop cooling tower and related components.

On March 7, 2023, the Interim Director of Purchasing, under the direction of the CEO, approved Amendment No. 2 to Contract No. CAE-072 with ABM to develop a work plan to further ensure efficient cooling in the building in the amount of \$266,234, for a total contract amount of \$1,087,596.57. This work consists of installing split-cooling units to two areas on the first floor which are at the end of the duct system and 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.

On May 12, 2023, PFMD received a schedule from ABM indicating that its completion date would be delayed from its original commitment date of May 26, 2023 to August 14, 2023, which has since been extended to October 31, 2023. On May 16, 2023, PFMD issued an Order to Take Extraordinary Measures to ABM, and will closely monitor the performance of work through completion, along with any resequencing of work and overtime ABM needs to accelerate its schedule.

On May 26, 2023, PFMD issued a Notice of Intention to Withhold Liquidated Damages in the amount of \$900 per calendar day commencing on May 27, 2023, as ABM has failed to achieve Final Completion of the Project by the contractually established day of May 26, 2023. PFMD will continue to assess liquidated damages until Project Final Completion is attained.

REVIEW BY OTHERS

This item has been reviewed by County Counsel (Katherine Hardy, Deputy County Counsel, 387-5455) on August 18, 2023; Purchasing (Leo Gomez, Purchasing Manager, 387-2063) on August 18, 2023; Project and Facilities Management (Jennifer Costa, Chief of Facilities Management, 387-2920) on August 18, 2023; Finance (Yael Verduzco, Principal Administrative Analyst, 387-5285) on August 23, 2023; and County Finance and Administration (Valerie Clay, Deputy Executive Officer, 387-5423) on August 23, 2023.

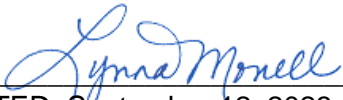
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Record of Action of the Board of Supervisors
San Bernardino County

APPROVED (CONSENT CALENDAR)

Moved: Joe Baca, Jr. Seconded: Curt Hagman
Ayes: Col. Paul Cook (Ret.), Jesse Armendarez, Dawn Rowe, Curt Hagman, Joe Baca, Jr.

Lynna Monell, CLERK OF THE BOARD

BY 
DATED: September 12, 2023



cc: File - Emergency/Unplanned Mechanical Failures at 157 and 175
W. 5th Street
JLL 09/21/2023