

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

December 19, 2023

FROM

DON DAY, Director, Project and Facilities Management Department

SUBJECT

Termination of Emergency Related to Recovery from Unplanned Mechanical Failures at 157 and 175 W. 5th Street

RECOMMENDATION(S)

Terminate the finding originally made by the Board of Supervisors on September 13, 2022 (Item No. 43) that there is substantial evidence that the unplanned mechanical failures at 157 and 175 W. 5th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 services.
(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

The action to terminate this emergency will not require the use of additional Discretionary General Funding (Net County Cost). The Project and Facilities Management Department (PFMD) closely monitored and evaluated mechanical system overhaul and replacement costs associated with the mechanical system failure which occurred on August 22, 2022, at 157 and 175 W. 5th Street (Premises). The costs associated with addressing the effects of the mechanical system failure were applied to the Minor Capital Improvement Program (MCIP) (WBSE 10.10.1411). This WBSE was established to track remediation costs. No budget adjustments are required, and PFMD is proceeding with the termination of the emergency without any financial modifications.

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.

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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 was insufficient compared to the size and occupant load. The building remained 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 of Supervisors (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 (Purchasing) 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 removed the delegation language authorizing the CEO and Purchasing 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 Purchasing 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 by the Board on January 24, 2023, to increase the not to exceed amount from \$1,250,000, and authorize the CEO to direct Purchasing 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.

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The main contract scope of work is complete and PFMD has determined that emergency conditions no longer exist and continuation of the Emergency Proclamation pertaining to the 157 and 175 W. 5th St. is no longer needed. As a result, it is recommended that the Board terminate the existence of this emergency in accordance with Government Code section 22050.

PROCUREMENT

On September 28, 2022, Purchasing 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 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, 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 continued to provide labor, materials and equipment to repair leaking tubes in the existing condenser, replace contaminated refrigerant and oil, provide structural engineering, and replace the eastside rooftop cooling tower and related components. An allowance was also included in the event structural modifications were required to accommodate the new cooling tower.

On March 7, 2023, 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 consisted of installing split-cooling units to two areas on the first floor which were 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 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. On May 16, 2023, PFMD issued an Order to Take Extraordinary Measures to ABM, and closely monitored the performance of work through completion, along with any resequencing of work and overtime ABM needed 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 had failed to achieve Final Completion of the Project by the contractually established day of May 26, 2023.

On October 23, 2023, the CEO directed Purchasing to execute Amendment No. 3 to Contract No. CAE-072 with ABM in the amount of \$155,090, increasing the total contract amount from \$1,087,596.57 to \$1,242,686.57, in order for ABM to complete the unforeseen corrosion and build up repairs. Purchasing executed Amendment No. 3 with ABM on November 14, 2023.

After evaluating the impact of the schedule delay on the County, and ABM's efforts employed to ensure County staff were not inversely impacted by delays, PFMD negotiated a final contract settlement which did not apply liquidated damages.

No further projects are necessary to address the effects of the emergency due to the recommended termination of this emergency.

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REVIEW BY OTHERS

This item has been reviewed by County Counsel (Julie Surber, Principal Assistant County Counsel, 387-5455) on November 29, 2023; Purchasing (Leo Gomez, Purchasing Manager, 387-2063) on December 4, 2023; Project and Facilities Management (Jennifer Costa, Chief of Facilities Management, 387-2920) on November 30, 2023; Finance (Yael Verduzco, Principal Administrative Analyst, 387-5285) on December 4, 2023; and County Finance and Administration (Valerie Clay, Deputy Executive Officer, 387-5423) on December 4, 2023.

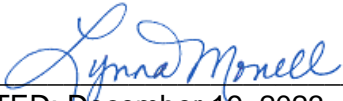
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Record of Action of the Board of Supervisors
San Bernardino County

APPROVED (CONSENT CALENDAR)

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

Lynna Monell, CLERK OF THE BOARD

BY 
DATED: December 19, 2023



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

CCM 12/22/2023