



CENTER FOR ADVOCACY &amp; POLICY

Telephone: (916) 442-1036

Fax: (916) 442-1743

May 14, 2015

Board of State and Community Corrections  
 2590 Venture Oaks Way  
 Sacramento, CA 95833  
[kathleen.howard@bscc.ca.gov](mailto:kathleen.howard@bscc.ca.gov)  
[linda.penner@bscc.ca.gov](mailto:linda.penner@bscc.ca.gov)

Dear BSCC Members,

The ACLU has been closely following the work of the SB 863 Executive Steering Committee as they have drafted the Request for Proposals (RFP) to be used in connection with awarding \$500,000,000 in financing to counties for the construction of local adult criminal justice facilities. The RFP describes the types of facilities that are eligible to receive financing, and is therefore critical in determining what the next generation of local criminal justice facilities, and practices, will be. Accordingly, the ACLU has a strong interest in ensuring that the RFP, and the subsequent financing, conform to the letter and intent of SB 863. We have had concerns with portions of the RFP throughout the drafting process. We have provided comments and suggestions to the ESC, both in person and in writing, and we appreciate the consideration that the Committee has given to our input to date.

Having reviewed the complete draft RFP that you will now be considering for approval at your meeting on June 10, 2015, the ACLU continues to have serious concerns about some of its language, its fealty to the statute, and its potential to invite challenges to any financing awarded under its terms. We have four specific proposals for amendments to the RFP that we respectfully submit for your consideration. They do not involve major rewrites or additions, but we believe they are crucial to keeping the RFP in conformity with the authorizing statute.

Suggested amendments:

1. Under Question 2. Scope of Work, the word "or," which appears at the end of Special Factor (A), should be amended to read "and."
2. Under Question 3. Programming and Services, General Merit Factors (B) and (C) should be combined and the language, "If improvements are designed to replace compacted, outdated, or unsafe housing capacity" should be deleted.
3. Under Question 5. Budget Narrative, after the first sentence, insert the language "Include operational cost projections for the facility, including provision of programming and treatment,"
4. Under Needs Assessment Study/Letter of Intent, clarify that all proposals require a needs assessment.

ACLU OF NORTHERN CALIFORNIA  
 Abdi Solani, Executive Director  
 39 Drumm Street  
 San Francisco, CA 94111  
 (415) 621-2493

ACLU OF SOUTHERN CALIFORNIA  
 Hector Villagra, Executive Director  
 1313 West Eighth Street  
 Los Angeles, CA 90017  
 (213) 977-9500

ACLU OF SAN DIEGO & IMPERIAL COUNTIES  
 Norma Chavez-Peterson, Executive Director  
 P.O. Box 87131  
 San Diego, CA 92138  
 (619) 232-2121

Emphasis on Programming and Treatment Space

The RFP begins, appropriately, by quoting the following legislative language from SB 863: “The county adult criminal justice system needs improved county adult criminal justice housing with an emphasis on expanding programming and treatment space to manage the adult offender population under its jurisdiction. Improved county adult criminal justice housing with an emphasis on expanding program and treatment space will enhance public safety throughout the state by providing increased access to appropriate programs and treatment. By improving adult criminal justice housing with an emphasis on expanding program and treatment space, this financing will serve a critical purpose by promoting public safety.”

While the RFP includes several references to the Legislature’s intent that this financing be utilized to build facilities with an emphasis on programming and treatment space, the RFP in other critical places indicates that the emphasis on programming and treatment space does not apply to proposals intended to “replace compacted, outdated, or unsafe housing capacity.” If that were the case, all counties could assert that they are under no obligation to provide programming and treatment space because all counties are seeking to replace compacted, outdated, or unsafe facilities. This would nullify the clearly expressed intent of the statute. It also creates confusion that may well lead to challenges by counties on the basis that their proposals were not fairly graded because they chose to accept either one of these two contradictory requirements. The language of the RFP can be easily modified to remove this contradiction.

Under the section entitled PROPOSED PROJECT AND EVALUATION FACTORS, after the explanation of the grading process, the RFP requires applicants to answer six questions.

Question two, Scope of Work, reads:

**Describe the areas, if any, of the current facility to be replaced or renovated, and the nature of the renovation, including the number of cells, offices, classrooms or other programming/treatment spaces to be replaced or added and the basic design of the new or renovated units.**

The Special Factors under this question read:

- A. Is the county plan feasible for seeking to replace compacted, outdated or unsafe housing capacity; or,
- B. Is the county plan feasible for seeking to renovate existing or build new facilities that provide adequate space for the provision of treatment and rehabilitation services, including mental health treatment.

Providing adequate space in these facilities for the provision of treatment and rehabilitation services, including mental health services, is a requirement of SB 863. Placing the “or” at the end of Special Factor (A) indicates that programming and treatment space need not be provided whenever a county is seeking to replace compacted, outdated, or unsafe housing capacity. This

clearly contradicts the statutory mandate. This can be easily remedied by replacing the word “or” at the end of Special Factor (A) with the word “and.”

Question three, Programming and Services, reads:

**Describe the programming and/or treatment services currently provided in your facility. Provide the requested data on pretrial inmates and risk based pretrial release services. Describe the facilities or services to be added as a result of the proposed construction; the objectives of the facilities and services; and the staffing and changes in staffing required to provide the services.**

General Merit Factor (B) asks appropriate questions about proposed programming and treatment space to be provided.

However General Merit factor (C) then appears as an alternative:

“If improvements are designed to replace compacted, outdated, or unsafe housing capacity:

- Are the improvements to housing deficiencies clearly described?
- To what extent will the deficiencies be remedied by the proposed construction?”

General Merit factor (C) indicates that, if the county is seeking to replace compacted, outdated, or unsafe housing capacity, then no programming or treatment space is required. This can be easily remedied by combining General Merit Factors (B) and (C) and deleting the language, “If improvements are designed to replace compacted, outdated, or unsafe housing capacity:”

#### Requirement of Staffing Cost Projections

Government Code section 15820.935(c)(4) requires the applications for SB 863 funds to provide a staffing plan for the proposed facility, including “operational cost projections and documentation that the adult local criminal justice facility will be able to be safely staffed and operated within 90 days of completion, as may be applicable.” This applies to staffing the programming and treatment proposed to be provided in the facilities as well as the custodial staff required. At the March 25, 2015 ESC meeting, the Committee voted to include a requirement for operational cost projections, including staffing costs, in the RFP. However, inexplicably, this requirement is not included in the current RFP. The Budget Narrative section of the RFP simply asks applicants to “Describe how . . . operational costs (including programming costs) will be sustained,” it does not include the requirement that applications include actual cost projections. As these projections are required by statute, we ask the Board to correct this apparent oversight.

#### Requirement for Needs Assessment

Lastly, under Needs Assessment Study/Letter of Intent, the RFP states, “Projects for renovation or program space only do not require a separate needs assessment study; however, a comprehensive documentation of need must be provided in the proposal narrative (see Section 5 of the Proposal Form).” This suggests that a project to completely renovate a 2,000 bed facility requires no needs assessment. This requires clarification.

Conclusion

It is critically important for the RFP to clearly inform applicants that the Legislature has made this financing available in order to replace their compacted, outdated or unsafe adult criminal justice facilities with new or renovated facilities that emphasize programming and treatment space. We are hopeful that these important issues will be addressed to bring the RFP in conformity with its authorizing legislation. We look forward to continuing to work with the Board and its advisory committee through the process of awarding this financing.

Respectfully,

Natasha Minsker  
Director  
ACLU of California  
Center for Advocacy and Policy

Steven Meinrath  
Advocate  
ACLU of California  
Center for Advocacy and Policy