

**AB 900 Jail Construction Financing Program
Questions from the Corrections Standards Authority
Jail Construction Agreement Conference Call
April 29, 2010, 11:00 AM
Sacramento, CA**

The following are questions asked by counties currently participating in the AB 900 Jail Construction Financing Program during a conference call with state officials representing the Corrections Standards Authority (CSA); the California Department of Corrections and Rehabilitation (CDCR) Finance, Administration and Support Services (FASS); the Department of Finance (DOF); and CDCR Legal Affairs concerning the CSA Jail Construction Agreement. Any additional questions regarding the CSA Jail Construction Agreement may be directed at any time to CSA staff.

1. With regard to Article 5: Material Changes; what is the process of getting the written permission of the CSA? In processing our own change orders, what kind of timelines are we looking at with CSA adding a layer of approval in that process?

After receiving the documentation from the county, CSA would process the information and advise the county within one or two working days. However, if there are substantial changes to the project (see State Administrative Manual, Section 6863), then an agenda item must be prepared by the CDCR FASS Division, reviewed by the DOF and approved by the State Public Works Board (SPWB) at their regular monthly meeting.

2. Has there been any consideration given to defining a minor change in terms of a dollar amount so that for example, minor changes under \$100,000 would not require SPWB approval?

CDCR FASS Division will be providing the county with a "how to" booklet (AB 900 Local Jail Projects Capital Outlay and SPWB Guidelines; http://www.cdcr.ca.gov/CSA/CFC/Docs/Capital_Outlay_and_SPWB_Guidelines.pdf) that will help explain the process for scope changes. CDCR will be working closely with the county to develop the scope of the project for the SPWB. If the change order does not change the scope of the project as approved by the SPWB, then it does not have to be approved by the SPWB.

3. Will the county have to go back to the SPWB for approval if we add days to our schedule?

SPWB does not typically consider schedule or cost changes to necessarily be the trigger of a scope change that has to be recognized by the SPWB. Performing the same scope as previously authorized by the SPWB but taking a

couple of extra days does not trigger a SPWB approval. However, SPWB and CSA will need to be advised if the construction completion date or beneficial occupancy date changes.

4. Does the end date of our construction schedule have to coincide with the date we expect the contractor to complete the project?

No. When the county submits their construction schedule, the construction completion date should take into account what is necessary to complete the construction project. The state is not going to compare the county's schedule date with the milestone schedule of the construction contract as it is understood the contractor's completion date will be sooner than the completion date reported by the county to the CSA for various reasons (i.e. construction schedule float, post-construction activation activities, etc.).

5. Is it possible to strike the language in Article 1. C. 2. where it says, "prior to the State providing any amount of financing," because as currently written, if the state were to provide any kind of financing, including interim financing, and then breach, the county would have no ability to terminate or seek remedies?

This would become very problematic because once the state contributes funds whether it be interim financing or not, the repayment of the interim financing is tied to the bond sale, so if the project is never completed and bonds are never sold, the means of paying back the interim loan is compromised. However, we will confer with executive staff to determine if the language can be altered in any way that addresses the county's concerns.

6. With regard to Article 1, C. 3. about the county refunding the CSA state financing in the event of termination; from reading the CSA Agreement and the PDCA together, we have a concern about a possible scenario in that the state would do an act that the county viewed as a breach, and the county terminated the PDCA, and then the termination of PDCA results in the termination of the CSA Agreement. The concern is that if the state breached and the county terminated, could the state then turn around and demand refund of all money even if it was the state breaching?

The termination clauses of the documents do not permit this hypothetical to occur. Specifically, the participating county cannot terminate the PDCA once the state has provided financing. (See, PDCA Sec. 2.2(b).)

7. We have questions about the precedence issues as we have spotted inconsistencies in the following areas between the PDCA and the CSA Agreement: Term and Termination, Project Access, Records, Project Files, Project Scope and Bidding. We were worried that CSA and CDCR did not

coordinate their documents and we want to have more explicit deferral to the PDCA in the event of duplicate or conflicting articles.

We will make appropriate changes to the Project Access and Records portions of the Agreements so that both agreements are consistent. However, we do not see inconsistencies in the Term and Termination clauses, which differ because both agreements serve different purposes. Without more specific feedback, we do not understand the purported inconsistency with Project Files and Project Scope and Bidding. Regardless, we believe that the precedence clause contained in both agreements sufficiently address inter-document conflicts.

8. The exhibit in Article 11 in the CSA Agreement; the General Terms and Conditions in a state contract, contains some conditions regarding audit, indemnification, and termination for cause that are slightly different from the specific provisions in the CSA Agreement or the PDCA. We can leave those there assuming the more specific document controls, but then why should we have an exhibit that has a contradictory term in the exact same agreement? Can those provisions be stricken from the General Terms and Conditions document so it is clear they do not apply and the more specific provisions in the CSA Agreement do apply?

While several sections in the General Terms and Conditions are redundant, CDCR prefers to retain the incorporated reference and will edit the document to clarify precedence within the CSA Jail Construction Agreement.