County Jail Site Real Estate Due Diligence Training
Corrections Standards Authority
California Department of Corrections and Rehabilitation
State Department of General Services
November 19, 2008

Questions Received From Participants

The following is a list of questions asked by participants in the above referenced training session. In some cases further clarity has been added to the responses as detailed below.

1. Do you have a list of appraisers on contract with the Department of General Services (DGS)?

No. The appraiser must hold a valid "Certified General License" issued by the State of California Office of Real Estate Appraisers. You may contact them to assist in finding a certified appraiser in your area.

2. If counties need help selecting an appraiser, can DGS help and who should they contact?

Yes, DGS may be able to provide assistance in selecting an appraiser. Diana Frederick at the California Department of Corrections and Rehabilitation (CDCR) (916-255-3397) is available to assist the county with contacting the appropriate DGS appraisal review support staff.

3. Our county has not had an appraisal done yet. When should we do it?

You should get the appraisal done as soon as possible, as it is required for the initial due diligence submittal. The appraisal should reflect a value as of March 18, 2008 (to coincide with the submittal time of the county's jail construction proposal).

4. Will the appraisal be revisited at the time of the bond sale?

No. The appraisal is a point-in-time value, and the previously reviewed appraisal will not be re-reviewed at the time of the bond sale.

5. Do we need to create a separate parcel for only the property we intend to build on?

No. Only a legal description is necessary.

6. **Must we provide an exclusive right of access to the jail construction site?**

   No. It can be non-exclusive.

7. **Does the preliminary report need to cover the smaller parcel (footprint) or the greater parcel?**

   The preliminary report must cover the greater parcel area.

8. **Does the county actually turn over ownership of the site to the state for the term of the bonds?**

   No. The state maintains a lease-hold in the property primarily through a Ground Lease as further sublet through a series of lease agreements between the State Public Works Board (SPWB), CDCR and the county until the bond debt is paid off.

9. **Does DGS want to see all of the exceptions plotted?**

   Yes, all geographically locatable exceptions reflected on the preliminary report and encumbrances discovered during the on-site inspection must be plotted on the Title Exceptions Map. The Map is to be included with the Initial County Package Submission Documents.

10. **Does DGS want the chain, or value, of water and mineral rights?**

    All available recorded or unrecorded documents and all information discovered during the on-site inspection related to water and mineral rights should be included with the Initial County Package Submission Documents.

    Valuations of water and mineral rights are generally only required if there is a potential to acquire or condemn any of the interests.

11. **How long does it take to get a preliminary report?**

    Generally, a few weeks up to several months, depending on a number of variables.

12. **Will title reports be reviewed at the time of the bond sale?**

    Yes. It will be the county's responsibility to order an update of the preliminary title report prior to the sale of any bonds. The state will notify the county when this update is required.

13. **Who is drafting the Facility Lease and Ground Lease agreements?**

SPWB staff, in consultation with outside counsel, is modifying their standard form of ground lease for bond-funded projects to adapt it to this situation where the state is neither constructing nor occupying the project. The Facility Lease between the SPWB and CDCR for the AB 900 jail financing program is a standard form agreement used in the SPWB's lease-revenue bond program, examples of which are available from CDCR.

14. Are you going to accept a county staff person's signature approving the two unrecorded certified letters as opposed to having the letters approved by the Board of Supervisors?

The local facility property manager and the county property manager must each be authorized to sign an Unrecorded Rights Certification letter.

Authorization shall be by Board of Supervisors resolution, existing authority within County Code, or by prior Board delegation of authority.

15. If the counties do not know what to include in the footprint for the legal description, who can they call?

They can call Diana Frederick at CDCR (916-255-3397) who will work with the county, DGS and SPWB to determine the correct footprint for the project. Note that a legal description of the footprint is not required for the initial submittal. The initial submittal will help determine the precise area that will need to be included in the legal description of the project footprint.

16. Is it just the footprint or the greater parcel area that cannot change during the three-year period before the bonds are sold? Will the county be able to do anything on the greater parcel area?

There is discretion. Whatever is done to the greater parcel area would have to be analyzed in case it impacts the area to be encumbered by the bonds. Prior to the sale of any bonds, DGS will update its due diligence to ensure the site remains suitable for lease revenue financing.

Prior to any change, the county should contact Diana Frederick at CDCR (916-255-3397) who will resolve the concern with the county, DGS and SPWB.

17. Can you give a ballpark figure as to what the due diligence process will cost the county?

The initial real estate title due diligence costs charged by DGS could run between $10,000 and $12,000, but could be as low as $8,000 in some cases. The DGS typically charges between $1,000 and $1,500 for an *appraisal review. The DGS typically charges approximately $2,500 for the updated due diligence that occurs just prior to bond sale.*

In total, the DGS due diligence costs could range from $11,500 to $16,000.

18. Is the state going to sign off on the property so the county does not get three years down the road to find out there is a problem?

DGS will prepare a memo to the SPWB, with copies to the county and CDCR, outlining the finding of the due diligence process and any significant issues that need to be resolved (Summary of Conditions). ***The SPWB will not establish the scope, cost, and schedule of the project if there are significant issues outstanding that affect the project.*** *In some instances, the SPWB may allow a project to proceed through the SPWB process with minor issues outstanding, with the understanding that the issues must be resolved prior to approval of working drawings and proceeding to bid.*

The real estate due diligence analysis is a point-in-time review and the county will need to ensure no further encumbrances that could jeopardize its eligibility for lease-revenue financing attach to or impact the site. Prior to the bond sale, DGS will update its due diligence analysis to ensure the site remains suitable for lease-revenue financing.

19. Will the county get anything in writing that says the property is acceptable?

DGS will prepare a memo to the SPWB, with copies to the county and CDCR, outlining the finding of the due diligence process and any significant issues that need to be resolved (Summary of Conditions). ***The SPWB will not establish the scope, cost, and schedule of the project if there are significant issues outstanding that affect the project.*** *In some instances, the SPWB may allow a project to proceed through the SPWB process with minor issues outstanding, with the understanding that the issues must be resolved prior to approval of working drawings and proceeding to bid.*

The real estate due diligence analysis is a point-in-time review and the county will need to ensure no further encumbrances that could jeopardize its eligibility for lease-revenue financing attach to or impact the site. Prior to the bond sale, DGS will update its due diligence analysis to ensure the site remains suitable for lease-revenue financing.

20. Will the lease agreements be finished and ready for review soon?

Those and other documents are currently being crafted. We hope to have them ready in the next few months.

21. Will the Department of Finance recommend borrowing money from the Pooled Money Investment Board if there are outstanding issues on the site?

No. Issues with the site must be resolved prior to proceeding to bid. Since the state is only providing financing for the construction phase of the project, all due diligence issues must be resolved prior to obtaining any interim financing.

22. Our county made it clear they will not sign an option agreement for a reentry site until they know their jail project is approved.

In order for a county to maintain eligibility in the AB 900 jail financing program, the county must enter into an option agreement for the state to acquire a reentry site prior to the jail project going before the SPWB. It is important to note that an approved jail project does not constitute an agreement from the state to fund the project. Counties should perform their own independent risk analysis to determine whether they can still make the financial commitment to the jail project under these circumstances.

23. Does due diligence have to be finished before the county can submit their preliminary plans to the SPWB?

Yes. See #18.

24. What is the term of the lease-revenue bonds?

The terms of the lease-revenue bonds are determined at the time of sale. It could be up to 35 years. Recently, terms of bonds have been for 25 years.

25. If the county is acquiring the property how can they meet the 90-day jail site assurance requirement and still comply with CEQA requirements?

The Corrections Standards Authority staff will work individually with any county that has concern with this issue.

26. Will an access easement be required as part of the leasehold to the state, or is a road to the carve-out sufficient?

Access over the county's greater parcel could be incorporated in the Ground Lease, Site Lease and Facility Lease documents. This will be decided on a case-by-case basis.

27. If the new jail addition will be attached to the existing jail, should the carve-out then include the existing jail?

Generally, if the addition is physically attached to the existing facility, then the entire facility (existing and new) should be included in the footprint. This will be decided on a case-by-case basis.

Upon completion of DGS's initial review of recorded and unrecorded rights affecting the Greater Parcel Area, the county will be advised of what should be included in its written legal description and supporting sketch submission requirements.

28. In the Request for Proposals on page 7 it is stated that bonds are being sold and paid off (approximately 25 to 30 years). On page 31 the recommended term for the ground lease is 50 years, in no event less than 35. Please clarify why there is a difference in these terms.

The terms of the lease-revenue bonds are determined at the time of sale. It could be up to 35 years. Recently, the terms of the bonds have been for 25 years. The Ground Lease will commence prior to construction, and could be several years before bonds are sold. The 50-year term is long enough to include this period, possible abatement periods that will extend the term of the bonds, as well as the life of the bond. When the bonds are retired, the Ground Lease will terminate.

29. It was stated that DGS's rate for services is $117 per hour. What triggers a charge for service? For example, will counties be charged for questions asked over the phone?

The initial point of contact for the counties is Diana Frederick at CDCR (916-255-3397). The DGS will charge for all of its time spent working on the county's due diligence project.

30. Will the state assure the county that if bonds do not sell, then the state will not withhold payment to the county for any remaining state dollars yet to be paid out on the project?

The state cannot give such an assurance. It is important to note that an approved jail project does not constitute an agreement from the state to fund the project; rather, it means that a county is eligible to participate in the jail financing program authorized by AB 900. The state's participation in financing a jail project is conditioned on the SPWB's determination that it is able to issue the bonds in its normal and customary fashion and, the ability to complete the bond issuance and sale process. Counties should perform *their own independent risk analysis to determine whether they can still make the financial commitment to the jail project under these circumstances.*

31. Given situations in which counties have contracts for services to benefit the inmates and meet Title 15 regulations, and this does not involve leasing space within jail facilities to outside vendors, and that some services such as the telephones and commissary are revenue generating and benefiting the Inmate Welfare Fund, does this pose a problem with the lease-revenue bond financing process?

A limited amount of private use is permissible with consent by the SPWB, pursuant to the terms of the Facility Sublease. Revenues from such private use do not need to be remitted to the state, and no change to the process described herein would be needed.