AB 900 Jail Construction Financing Program
Contractual Agreements -- Frequently Asked Questions

The following list of questions has been compiled from the AB 900 Contractual Agreements Workshop held February 25, 2010, as well as other recently received questions. In some cases there has been clarity added to the responses to questions from the workshop.

PROJECT DELIVERY AND CONSTRUCTION AGREEMENT (PDCA) SECTION

Q1. The state prepared and posted the primary documents in connection with the AB 900 Jail Financing Program on the Corrections Standards Authority (CSA) website on 2/09/10. However, it is unclear if these are merely sample documents, the basic terms and conditions of which can be modified through negotiations between the state and the county, or if they are the actual documents to be used without further modification except for the unique terms specific to each county?
R. The state has received a number of comments subsequent to its posting from various county representatives requesting that it reconsider various portions of the Project Delivery and Construction Agreement (PDCA). Based on these comments, the state worked diligently to make clarifications and revisions to the PDCA. That revised agreement has been posted to the CSA website at: http://www.cdcr.ca.gov/Divisions_Boards/CSA/CFC/AB900_Program.html. The basic structure of the program is set by law, but we are open to comments on the documents, and look forward to continued discussions with each county about these documents and each county's unique circumstances.

Q2. In addition to the agreements that are attached to and made a part of the PDCA, there are other agreements referenced in that document, such as Site Lease and Facility Lease Agreements. When will those documents be available for county review?
R. Samples of a CDCR Site Lease and Facility Lease from a recent lease revenue bond transaction for state projects are posted on the CSA website at: http://www.cdcr.ca.gov/Divisions_Boards/CSA/CFC/AB900_Program.html. The Site Lease and Facility Lease in the jail transaction will be substantively similar.

Q3. CDCR is funded through the Pool Money Investment Board (PMIB) which is comprised of the State Treasurer, the State Controller, and the Director of Finance. The PMIB manages investment programs to realize maximum return through safe and prudent investments of the state's idle money and designates the amount of money temporarily available for investment. When CDCR gets funded, this is called an "Interim Loan" or "Interim Financing". Is this correct?
R. The PMIB approves a CDCR request for an interim loan from the Pooled Money Investment Account (PMIA). The loan is good for one year and can be renewed at any time during that term for more funding. The amount of the original loan will be equal to the project amount of state reimbursement for the first 12 months of the construction, and then a subsequent renewal would increase the loan as needed for a second 12 month period.

Q4. Upon or about 90% of completed construction, onds are sold (hopefully), however I am unsure how the money flows back to the Investment Board. Does it travel through the Public Works Board (PWB) to CDCR, back to the Investment Board?

R**.** Historically, the sale of bonds has not occurred until projects are approximately 90% complete. It is possible, however, that the bonds may be sold sooner in the construction process. The State Treasurer's Office is the entity that sells the bonds, and the State Treasurer's Office is also the entity that provides staff to the PMIB. Thus, repayment of any interim loans is performed by the same entity that sells the bonds, and it is done as a component of the bond sale.

Q5. Is my understanding of the process correct?

1. **County and CDCR enter into a Ground Lease (the purpose is to secure the ground under the construction in order to sell the bonds);**
2. **Then CDCR enters into a site lease with the PWB (the purpose is to allow the PWB to demonstrate control of the asset to bond holders);**
3. **Then the PWB enters into a facility lease with CDCR (the purpose is to secure control of the facility so the property is used in accordance with the bond interest holders terms);**
4. **Then CDCR enters into a facility sub-lease with the County (the purpose is to secure control of the facility so the property is used in accordance with the bond interest holders terms).**

R. The description above is consistent with the lease and financing arrangements.

Q6. During the workshop an "Option Agreement" was mentioned. Where do I find this?

R**.** The Reentry Site Option Agreement is posted on the CSA website along with the other agreements to date.

Q7. With so many different state agencies involved in this process, how will the counties know who to contact to seek assistance in advancing their respective jail projects?

R. Each state agency involved in this process brings a unique skill set and/or serves a distinct job function that, when combined with other agencies' representatives, ensures a well-balanced team necessary to proceed from due diligence and financing through construction. The state will be establishing project teams for each county representing those necessary functions to ensure a successful outcome for the county.

Q8. Will interim financing be skipped in favor of moving directly to bond sales?

R. At the time of working drawings approval, a decision will be made on whether interim financing or a bond sale will be pursued as the source of funding for the state financing. Ultimately, the final factor for receiving funding will be a determination that the state will be able to successfully sell lease revenue bonds for the project.

Q9. What is the difference between interim and permanent financing? Will financing, (interim loan or bond sales), occur for the entire state sum ($100M) at once or will it be broken into blocks ($25M, $50M etc.)?
R. Interim financing is a short-term loan (one year) from the PMIB that is used for expenditures and later reimbursed by the sale of the bonds. The amount of the loan would be equal to the expected cash flow of the state share during the term of the loan. This loan would be renewed on an annual basis, or more often if necessary, until it is retired from the sale of bonds for the project. The project could be started using interim financing. Permanent financing refers to the sale of bonds, which could occur at any time after working drawings are approved for the project without regard to whether interim financing is provided or not. The sale of bonds would be sufficient to cover the entire state share of the project.

Q10. After committing to an interim loan, how can the state no longer have the obligation to provide further financing?
R. The appropriation of lease revenue bonds is predicated on the sale of the bonds. It may be possible to start the process with interim financing. However, if it becomes apparent that the sale of bonds will not be completed, the state could be precluded from further expenditure of interim financing on the project. The state will not commit to interim financing unless there is a high degree of confidence that bonds will be sold.

Q11. On a scale of 1-10, what is the likelihood of the state not be being able to sell bonds after construction has started?
R. The risk is low. When the project is established at the PWB and the PWB signs the PDCA, the PWB has made a determination that the project is suitable for lease revenue financing. Prior to this, the state will have made efforts to identify issues and will have worked with the county to resolve any significant issues that could be an impediment to lease revenue bond financing. All known issues that would pose an impediment for lease revenue financing will be resolved prior to the approval of working drawings. However, as outlined in the PDCA, there are numerous subsequent steps necessary to successfully complete the financing of the project.

Q12. What types of costs/expenses would be eligible for an interim loan?
R. The entire state portion of the project.

Q13. Would the state consider language killing the PDCA and sub-agreements if the state does not follow through with financing?
R. There is a termination clause in the PDCA that speaks to the counties' right to terminate.

Q14. What is the state's obligation if financing is temporarily interrupted, (e.g. the State Controller stops paying bills)?
R. Proceeds from bond sales are not available for general state cash needs, and therefore would remain available regardless of the state's overall cash position. Interim financing loans are made from the PMIA; a pool of state funds. Theoretically, payments from

interim loans could be affected by the state's overall cash position. However, the PMIB has been prudent in authorizing interim loans; when they approve an interim financing loan they have a high degree of confidence that disbursements will continue to be made for that loan.

Q15. Once a construction agreement is executed between a contractor and the county, and authorization to proceed is given by the state, is the state at risk for failure to follow through with financing?
R. The ultimate success of the program is predicated on the sale of bonds to finance the project. When the project is established at the PWB and the PWB signs the PDCA, the PWB has made a determination that the project is suitable for lease revenue bond financing. Prior to this, the state will have made efforts to identify issues and will have worked with the county to resolve any significant issues that could be an impediment to lease revenue bond financing. All known issues that would pose an impediment for lease revenue financing will be resolved prior to the approval of working drawings. However, as outlined in the PDCA, there are numerous subsequent steps necessary to successfully complete the financing of the project.

Q16. In Article 2, what "Applicable laws (as defined in the CSA Agreement)" is the state considering?
R. The Applicable Laws are defined in Article 3, Subsection B. of the CSA Jail Construction Agreement. This Agreement is posted on the CSA website at: http://www.cdcr.ca.gov/Divisions_Boards/CSA/CFC/AB900_Program.html. **Updated 03-16-10.**

Q17. There is no option for the county to terminate the agreement for failure to perform on the part of the state.
R. There is a termination clause in the PDCA that speaks to the counties' right to terminate.

Q18. At what stage of this process does the state finally commit to the Maximum State Financing for the project? Pages 4 and 5, Section 1.3 – Even after the county has been certified, even after the project has been approved, even after interim loans have been provided, there is no guarantee or commitment by the state to provide all or a portion of the Maximum State Financing for the project.
R. The ultimate success of the program is predicated on the sale of bonds to finance the project. When the project is established at the PWB and the PWB signs the PDCA, the PWB has made a determination that the project is suitable for lease revenue bond financing. Prior to this, the state will have made efforts to identify issues and will have worked with the county to resolve any significant issues that could be an impediment to lease revenue bond financing. All known issues that would pose an impediment for lease revenue bond financing will be resolved prior to the approval of working drawings. However, as outlined in the PDCA, there are numerous subsequent steps necessary to successfully complete the financing of the project.

Q19. Shouldn't the pro-rata savings be a percent of state funding versus total project cost (state, hard, soft)?
R. The CSA Jail Construction Request for Proposals (RFP) dated December 2007 and also July 2009, stipulates match is calculated as a percentage of Total Eligible Project Costs, which is the aggregate of Maximum State Financing, in-kind match and cash match.

Q20. What happens if the Department does not approve scope changes; does state funding cut off?
R. It is the intent of CSA and CDCR to assist counties in the successful construction and beneficial use of the jail project. In that effort, CSA and CDCR will review any scope changes to determine if it is consistent with the intent of the program, and does not jeopardize any existing financing provisions. As provided for in Article 4 of the PDCA, it is important for counties to consult with CSA and CDCR early when potential scope changes are contemplated, in order to minimize the risk that the proposed change could jeopardize project completion and bond sale. Please note that although CSA and CDCR review the scope change request, final approval of the scope change must be made by the PWB. Additionally, as provided for in Section 2.2 (a) (ii) of the PDCA, substantive alteration of the PWB-approved scope, cost or schedule without prior approval of the PWB is grounds for termination of the agreement.

Q21. How does the county ensure that all hard cash is encumbered before funding? There is obvious risk in this agreement that the Sheriff could spend pre-construction costs and then have the state not fund. RE: 3.1 (b): "Encumbrance" in this instance would mean what?
R. The county is required to have secured its entire cash (hard) match before proceeding to bid.

Q22. Are edits to documents allowed?
R. Yes, the state views this as a collaborative process and will consider edits to the documents.

Q23. What is the ability to back-out of the project without any penalty, seizure of lands, etc. following Project Delivery and Construction Agreement approval by the county, taking into account the current financial circumstances?
R. Once bonds are sold there is an absolute commitment from the counties through the various lease agreements. Prior to the expenditure of state funds, the county may terminate consistent with the terms of the PDCA termination clause.

Q24. How at risk is the cash match if the county discovers (X) months following signing of the PDCA that it cannot continue the project? Can the state go after it? How much notice does county have to give?
R. Once bonds are sold there is an absolute commitment from the counties through the various lease agreements. Prior to the expenditure of state funds, the county may terminate consistent with the terms of the PDCA termination clause.

Q25. What is the "security" referenced in 1.2 (b)? Please define.
R. "Security" in this context is the backing of the funds the county is providing.

Q26. Can you provide us with an estimated timeline for the necessary PWB approvals particularly for the PWB to make a determination to seek an interim loan in reference to Section 1.2 (h) and (i)?
R. At the time of working drawings approval a decision will be made on whether interim financing or a bond sale will be pursued as the source of funding for the state financing. Ultimately, the final factor for receiving funding will be a determination that the state will be able to successfully sell lease revenue bonds for the project. Interim financing requires approval of the PMIB, which meets monthly. Bond sales generally occur in the Fall (September through November) or Spring (March and April). The exact timing of bond sales is determined in cooperation with the State Treasurer. Projects must have completed working drawings before being considered for inclusion in a bond sale.

Q27. Can you provide any information or an explanation of what is meant by the second paragraph of 1.3, specifically, the PWB's authority not to seek the interim loan or issue and sell bonds based on "the current condition of financial markets or the state's ability to obtain access to the financial markets at reasonable rates as determined by the Board?" Is there a historic ceiling on rates that we can look to determine the risk?
R. This evaluation is done in conjunction with the financing team each time the state considers selling bonds.

Q28. Section 5.4 addresses project access; we would like to verify that construction will be performed on a secured site and access would have to be coordinated?
R. In the same manner that access to state prison facilities is limited and requires prior approval and security clearance, it is understood that project access must be coordinated with the county to ensure similar security clearances can be obtained.

Q29. The Agreement contains multiple clauses that would indicate the state may withhold funding of a project to construct a local jail facility under AB 900 at any point in the process. Counties will need an ironclad assurance that the state will provide funding.
R. The ultimate success of the program is predicated on the sale of bonds. When the project is established at the PWB and the PWB signs the PDCA, the PWB has made a determination that the project is suitable for lease revenue financing. Prior to this, the state will have made efforts to identify issues and will have worked with the county to resolve any significant issues that could be an impediment to lease revenue bond financing. However, as outlined in the PDCA, there are numerous subsequent steps necessary to successfully complete the financing of the project.

Q30. Time frames for approvals play a large part in all agreements. The Agreement identifies multiple approval processes by the state. What assurance can be offered that these processes will be timely?

R. Part of this commitment is demonstrated by the CSA workshop on February 25 which demonstrated the state's commitment to moving forward expeditiously. Staff resources will be dedicated to moving these projects forward and it will also help the state to have an understanding of each of the county projects. The counties will also have an understanding of the state's processes which will in turn help move projects forward. The state is identifying multi-disciplinary project teams for each county, with a dedicated project manager. This will provide counties with both a point of contact, and identified team members that can answer their questions. Specific timelines for state review of county information are currently being developed and will be published in user-friendly how-to documents during the next 4-6 weeks.

Q31. Insurance – Page 14, Section 5.5 is confusing. How does this relate to the insurance requirements contained in Section 7 of the Facility Sublease Agreement? It's unclear who pays for this if the builder's risk insurance policy terminates.
R. As discussed in Section 5.5 of the PDCA, builder's risk insurance is part of the construction contract and thus is borne as a part of total construction costs. Section 7 of the Facility Sublease outlines the insurance obligations of the state and the county once the facility is completed.

Q32. What might be a cause to not sell the bonds?
R. Section 1.3 of the PDCA lists some of the conditions that could lead to an inability to sell bonds. One example would be if the PWB bonds are rated below investment grade, the PWB could be precluded from accessing the market.

Q33. Are there any plans to sell bonds early to alleviate any cash flow problem?
R. At the time of working drawings approval a decision will be made on whether interim financing or a bond sale will be pursued as the source of funding for the state financing. Ultimately, the final factor for receiving funding will be a determination that the state will be able to successfully sell lease revenue bonds for the project.

Q34. There is a certain amount of time to wait in line with PMIB for money and how it coordinates with the construction process. Do you expect the county to enter into a construction contract prior to this process?
R. At the time of working drawings approval a decision will be made on whether interim financing or a bond sale will be pursued as the source of funding for the state financing. Ultimately, the final factor for receiving funding will be a determination that the state will be able to successfully sell lease revenue bonds for the project. Interim financing requires approval of the PMIB which meets monthly. Bond sales generally occur in the Fall (September through November) or Spring (March and April). The exact timing of bond sales is determined in cooperation with the State Treasurer. Projects must have completed working drawings before being considered for inclusion in a bond sale. The state will not approve a county to proceed to the bidding process until the source and timing of cash availability is determined. **Updated 03-16-10.**

Q35. After the interim financing is approved, is there a 20% retention?

R. Yes, per the CSA Jail Construction RFP and the CSA regulations, the last 20% of state financing is withheld until the building is completed, occupied and operating, and the CSA has accepted the county's audit of project costs.

Q36. If the state can't sell bonds, is the county stuck with, for example, their $20 million commitment?
R. The ultimate success of the program is predicated on the sale of bonds. When the project is established at the PWB and the PWB signs the PDCA, the PWB has made a determination that the project is suitable for lease revenue financing. Prior to this, the state will have made efforts to identify issues and will have worked with the county to resolve any significant issues that could be an impediment to lease revenue bond financing. However, as outlined in the PDCA, there are numerous subsequent steps necessary to successfully complete the financing of the project.

Q37. Paragraph 3.3 – Project Cost Savings will be shared with the PWB and the county on a pro rata basis determined by the costs financed by the state and costs financed by the county. How does that work?
R. The county has committed to a percentage of match on the project, and there is a corresponding percentage of state dollars. If the project costs less than originally anticipated, those percentages would still be in effect resulting in fewer state dollars paid out on the project than the full conditional award amount, and fewer match dollars expended by the county.

Q38. Can the counties amend their estimated costs?
R. The county will need to provide updated project cost estimates utilizing the Project Cost Summary format when project approvals are required from the PWB or Department of Finance (DOF). This includes initial establishment of scope, schedule and cost, approval of preliminary plans, and approval to proceed to bid. As detailed in Article 3 of the PDCA, any increases in county project cost will not result in any increase in the Maximum State Financing.

Q39. If the county has begun construction and a building is partially completed, what happens if the state cannot sell the bonds? Would we get our land back?
R. If this situation occurs, the specifics will require careful analysis to determine how to proceed. If the PWB determines it will not be able to sell bonds to repay the interim loan, the CDCR would be required to repay the interim loan from its support budget and the Ground Lease would terminate, giving the county its land back. However, this would be a last resort.

Q40. Article 5.1 – Construction Covenant of Participating County – this talks about the county being agent for the PWB, so is the county the agent for the PWB when it goes out for bid? Does this change the county's responsibility?
R. The county is agent for the PWB for purposes of construction of the project because the PWB is issuer of the bonds and owns the project pursuant to the Ground Lease and

site lease. This does not change the construction contract language or the responsibilities of the county under that contract.

Q41. Are "recognition" and "approval" of the board the same thing?
R. Actions of the PWB are referred to in a variety of ways. For instance, the PWB "establishes" a project, "recognizes" a scope change, "approves" a lease, and "adopts" an interim financing resolution. In the end, all these actions require a positive action from the PWB.

Q42. How do the required scope, cost and schedule get established, and what information will the county need to provide to proceed with project approval?
R. CDCR will draft a PWB agenda item based on information provided by the county. Typical things necessary in this submittal will include description of scope, projected costs, projected schedule, project cost estimate, completed due diligence package, state review of cash and in-kind match, and various signed agreements. CDCR will work with each county to ensure that their package is complete as required prior to submittal.

Q43. At what point in the process will the PWB confirm that the county's project is adequate and ready for the AB 900 Jail Financing Program?
R. When the project is established at the PWB and the PWB signs the PDCA, the PWB has made a determination that the project is suitable for lease revenue financing. Prior to this, the state will have made efforts to identify issues and will have worked with the county to resolve any significant issues that could be an impediment to lease revenue bond financing. However, as outlined in the PDCA, there are numerous subsequent steps necessary to successfully complete the financing of the project.

Q44. What is the final precipitating factor that determines when the county will receive funding, and whether an interim loan or a bond sale will be the source for funding?
R**.** At the time of working drawings approval a decision will be made on whether interim financing or a bond sale will be pursued as the source of funding for the State Financing. Ultimately, the final factor for receiving funding will be a determination that the state will be able to successfully sell lease revenue bonds for the project.

Q45. If interim financing is not an available funding mechanism for a county project, is there a different approach the county must take with its documents to prepare for a potential up-front bond sale?
R. There is no difference**.** The documents will be the same in either scenario**.**

Q46. When financing from the state is made available to the county, either through an interim loan or the sale of bonds, what is the timeline for receipt of funds after invoices are submitted?
R**.** Approximately 30-60 days will be required for reviewing and approving reimbursement requests and processing payment.

Q47. What are a Tax Certificate and a Continuing Disclosure Agreement (as defined in the PDCA) and what is the county's obligation to complete them?
R. These documents are signed by state entities at the time of the bond sales and outline the continuing obligations that the state has to communicate material events to the bond holders and to maintain the tax-exempt status of the bonds. Each county will have an obligation under the Facility Sublease to respond to CDCR's request for updated information regarding use of bond proceeds and the jail project so the state can meet these obligations.

Q48. What procedures will the county be required to follow in order for the state to determine the Cash (hard) Match is acceptable for lease revenue financing?
R. The state will require detailed information regarding the source of the county's cash and in-kind match funding which is further detailed in the CSA Jail Construction RFP dated December 2007 and subsequently July 2009. Each county will be required to develop this information and include it as an exhibit to the PDCA. This information will be reviewed prior to establishment of the project at the PWB by CDCR and DOF to ensure the source of the county's matching funds are compatible with lease revenue bonds. It is worth noting that this information can be submitted earlier to the CDCR than the actual preparation and execution of the PDCA, and several counties have already submitted this and received DOF approval.

Q49. What is the process by which the state and the various agencies determine the Maximum State Financing allowable on a county project?
R**.** The Maximum State Financing, as defined in the PDCA, is equal to the conditional award provided by the CSA.

Q50. Can a county reduce the amount of match it committed in its jail construction proposal to CSA?
R. Inasmuch as the county's proposal upon which Conditional Awards were based served as its commitment to fund the county's portion of the jail project, the county must continue to be committed to the match amounts as specified in the county's proposal. Any permissible modifications to the county match requirements must adhere to the terms and conditions as outlined in Article 3.1.(a) and (b) of the PDCA, and will be addressed on a case-by-case basis.

Q51. What is the expected timeline for the county to receive approval from the various state agencies at each project milestone?
R. Approximately 60-75 days will be needed at each project milestone for review and approval of information by CSA, CDCR and DOF/PWB.

Q52. If the county does not receive its jail funding, will it continue to be obligated to support the CDCR Reentry Facility in the county?
R**.** Yes. Supporting the reentry program is a prerequisite to starting the formal PWB process for the jail project. However, the state agencies involved in implementing the AB 900 Jail Financing Program are committed to an effort that would result in the

funding of the conditional awards to each respective county. Each county was required to execute a Siting Agreement in order to be eligible for its conditional award and subsequently required to enter into various purchase documents outlining the terms of an acquisition of real property. The state and the county will each be bound by the terms of those agreements. To access these documents, click on http://www.cdcr.ca.gov/Divisions_Boards/CSA/CFC/AB900_Program.html. For more information on the CDCR Secure Reentry Facilities, click on http://www.cdcr.ca.gov/Reentry/docs/ReentryFAQ.pdf

Q53. What happens if the Legislature does not annually appropriate the state general funds to CDCR's budget to pay the bond debt?
R. Rental payments will continue to be made by the state. There is a continuous appropriation for rental payments for lease revenue financed facilities that can be utilized in the case of a late budget or if the Legislature inadvertently does not include an appropriation for lease revenue rental payments. In the absence of a specific appropriation, the CDCR is obligated to make rental payments with the first legally available funds.

Design Phase (Preliminary Plans, Working Drawings) Subsection

Q54. What deliverables will be required from the county for preliminary plan approval?
R**.** A set of architectural drawings that meets or exceeds the requirements of State Administrative Manual (SAM) Section 6851, along with evidence of compliance with the California Environmental Quality Act, must be provided to the CSA. In addition, the county will need to update information regarding the project's scope, cost and schedule that were contained in the initial project recognition by the PWB, including the project cost summary. CDCR will review these documents and utilize this information in drafting the PWB agenda request for approval of preliminary plans, and permission to proceed to working drawings. The SAM can be found at the following link: http://sam.dgs.ca.gov/default.htm.

Q55. What would constitute a "minor change" vs. a "substantive change" as defined in the PDCA?
R. Scope changes are generally considered on a case-by-case basis. The review of scope change requests is guided by the SAM Section 6863. The SAM can be found at the following link: http://sam.dgs.ca.gov/default.htm.

Q56. What if a county has already proceeded to working drawings without first obtaining the approval of the PWB?
R. The county's current set of plans (even if they exceed the level of detail normally provided on preliminary plans) will need to be submitted as preliminary plans for approval by the PWB. There is no need to provide an outdated or prior version of the plans if work has progressed beyond the preliminary plan phase. Please note that this answer is intended to address the situation where working drawings commenced prior to

the establishment of the project by the PWB. If a county's project has already been established by the PWB, the working drawings phase must not commence until after the preliminary plans have been reviewed and approved by the PWB.

Q57. Are all project approvals subject to PWB action?
R. The DOF serves as staff to the PWB. Certain actions require formal action by the PWB, (for example: establishment of project scope, cost, and schedule, approval of preliminary plans, approval of Ground Lease, scope changes); some actions are delegated to PWB staff (for example: changes in project cost); and other actions are handled only by the DOF, (for example: approval of working drawings, approval of proceed to bid, approval of contract award).

Construction and Occupancy Phase Subsection

Q58. The Insurance provision of the PDCA requires that the county provide builders risk insurance in a form and substance and with a carrier satisfactory to the Board. How can the county determine whether or not it meets this requirement?
R. Section 5.5 of the PDCA requires the county to require the contractor to procure and maintain a builder's risk insurance policy. This requirement will be in the Construction Contract. As a general rule, insurance carriers acceptable to the state generally have a current AM Best Company rating of no less than A-VII.

Q59. At what point in the process will the PWB confirm that the county will actually receive the financing that it has been conditionally awarded through CSA?
R. At the time the DOF reviews and approves working drawings, a decision on how to provide the state financing (interim loan or bond sale) will be made. Every effort will be made to complete the financing of a project once its scope, cost, and schedule are established at the PWB. However, as outlined in the PDCA, numerous steps, up to and including the sale of bonds, are required to complete the financing of the jail project.

Q60. In order to deal with cash flow issues, can a county invoice the state for reimbursement of its costs more often than quarterly?
R. Quarterly invoicing does not preclude a more frequent invoicing schedule. CSA staff can work with any individual county that would like to consider an invoicing schedule that better suits the county's needs.

Q61. Will the state consider reducing the retention amount to something less than the 20% stated in the RFP?
R. Since this is memorialized in Section 1756(e) of the Final Emergency Jail Construction Regulations, changing the retention amount will require CSA Board approval, and the amendment of the regulations, but the state is willing to consider a reduction on a case-by-case basis.

Q62. If construction bids come in less than expected, can the county expand its scope of work to include additional work and thereby still receive the full state financing award?
R. The county's proposal served as its commitment to a defined project. Accordingly, expanding the scope of work to expend the entire conditional award is not authorized. Should there be project savings realized, the county and state will share in the savings on a pro-rata basis. See Article 3 of the PDCA.

Q63. Is it possible that the state could maintain control of the jail facility once it is built and use it for state purposes including but not limited to the housing of state prisoners?
R. The intent of all the agreements is to facilitate the financing of a county jail project. The Facility Sublease provides that the county will operate the jail facility. If, for some reason, the county is unable or unwilling to maintain occupancy of the facility during the term of the bonds, it could be in material breach of the Facility Sublease, in which case the CDCR would control the facility under the terms of the Facility Lease. The state and the county will enter into a number of agreements relative to the jail facility, including but not limited to a Ground Lease and Facility Sublease. As long as the county is meeting its obligations under the Facility Sublease, the state cannot gain operational control of the jail facility without the county's consent.

Q64. Could the state use any underutilized portions of the site on which the jail facility will be built to put trailers to house the state's sexually violent predators?
R. The Facility Sublease grants the county the use of the entire facility. Unless the county is in material breach of its obligations under the Facility Sublease or consents to sublet or assign a portion of that Facility, no portion of the site can be used for other purposes.

Q65. Based on the cash flow situation of the state, how long would the county, contractors, and subcontractors have to wait after submitting invoices to the state to be paid?
R. The turn-around time on payments to counties is approximately 30 – 60 days. This is the amount of time required to process the invoices and make approvals through the various entities involved in the process. Please note that the state does not provide payments to contractors or subcontractors, but only provides reimbursement to the county. The county provides payments to contractors, and the contractors provide payments to subcontractors.

GROUND LEASE SECTION

Q66. Would the Ground Lease with the state terminate if financing (interim or bond) is not available?

R. Yes. If we don't provide financing and make a determination that we are not moving forward, the Ground Lease would be terminated. Moreover, we are working on express language so stating.

Q67. To what limits can the state utilize the property under the Ground Lease? For example, could the state use the underutilized portion of the land to put trailers for predators?
R. There will be no underutilized land; the Ground Lease is for the footprint needed to secure the financing of the project being built. The purpose of the Ground Lease is for the construction of the project – it is not for other purposes.

Q68. Section 8 – Once the Ground Lease is signed, there is no commitment on the part of the state to finance the project.
R. When the project is established at the PWB and the PWB signs the PDCA, the PWB has made a determination that the project is suitable for lease revenue financing. Prior to this, the state will have made efforts to identify issues and will have worked with the county to resolve any significant issues that could be an impediment to lease revenue bond financing. However, as outlined in the PDCA, there are numerous subsequent steps necessary to successfully complete the financing of the project.

Q69. Section 10 – Ground Lease term increased from 35 to 50 years. County is tied to operate facility for duration of bonds up to 50 years. Typical jail lifespan is 30 years, increased maintenance costs borne by county.
R. The CSA Jail Construction RFP dated December 2007 and also July 2009, identified the preferred term of the Ground Lease as 50 years, but in no case less than 35 years from the sale of bonds. Fifty years is long enough to cover the period from when the Ground Lease is initiated to the sale of the bonds, for the term of the bonds and any extension that may be necessary if there are any conditions that extend the repayment of the bonds. Once the bonds are fully paid, all of the leases would terminate and the facility and the site would return to the county.

Q70. Section 17 and 18 - Department has sole right to terminate Ground Lease, no recourse by county.
R. There is additional language at the end of that Section 17 which provides that the Department can only terminate after the bonds have been fully paid or retired. This is a document strictly to facilitate the sale of the bonds. If the bonds are sold, there can be no termination, because termination would undercut lease revenue support for bond payments.

Q71. Page 7, Section 5 (b) – What is the intent and interpretation of this clause?
R. This is a standard real estate term of art. Generically, it is a promise of non-interference by the landlord regarding the tenant's use of the property as contemplated by the lease.

Q72. Is there a possibility of a site designation swap if necessary in the process?

R**.** No. The intention of the Ground Lease is to identify the footprint upon which the project will be constructed. By the time the due diligence process and preliminary plans are completed and approved, the footprint for the project will have been identified. It is at this stage that the Ground Lease will be signed. After this has occurred, the project site cannot be moved.

Q73. Page 11, Section 19 – Can we assume this clause excludes the waste storage (trash) that is typical for such a facility?
R**.** Yes. This clause does not limit the county's ability to temporarily store and remove waste, such as trash, from the county jail facility constructed through this program.

Q74. In the event that the bonds are not sold, the Ground Lease terminates, correct? Is that in the Ground Lease document?
R. The only reason for the Ground Lease is for the construction of the jail facility. If we realize that is not going to happen, we will terminate the Ground Lease. We are working on express language so stating.

Q75. The document says the county will provide parking at no cost. Please explain.
R. This provision is included to ensure the facility is supported by all customary services. It is related to standard terms in the Site Lease, and ensures that the bonds are backed by a stand-alone leasable asset.

Q76. Section 6, paragraph 2 – If the state defaults on the bond payments, would the bond holder be able to come into the facility and either replace the county or make the county make the bond payments?
R. The state has never defaulted on a bond payment. If the Legislature failed to appropriate funds for rental payments, rental payments would still continue to be made by the state. There is a continuous appropriation for rental payments for lease revenue financed facilities that can be utilized in the case of a late budget or if the Legislature inadvertently does not include an appropriation for lease revenue rental payments. In the absence of a specific appropriation, the CDCR is obligated to make rental payments with the first legally available funds. In the unlikely event the CDCR is in material breach of its obligations in the Facility Lease, the PWB would have the legal right to relet the facility to ensure a continuing stream of rental payments sufficient to make its debt service payments on the bonds.

Q77. Section 11 talks about a "nominal payment" for the Ground Lease. Would the county have to lease the land for the "nominal payment" even if there is no financing?
R. "Nominal payment" verbiage is invoked for legal purposes unrelated to your concern. In actuality, no money changes hands. The only reason for the Ground Lease is to construct the building. We are considering express language for the document so stating.

Q78. If something happens to the building, the state could use the insurance proceeds to pay off the bonds; that seems rather unilateral.

R. The PWB, in coordination with the State Treasurer, would determine how insurance proceeds would be used. This is the same for state facilities financed with lease revenue bonds. If the building securing the bonds is destroyed, the department could no longer make rental payments that ultimately are necessary to make debt payments. The insurance is in place to protect the bond holder. Note that regardless of the level of state and county funding for the project, the entire project is secured by the lease arrangement necessary for the bonds.

Q79. If the bond holder owns 100% of the building, and the building is destroyed, what about the county's contribution?
R. The PWB, in coordination with the State Treasurer, would determine how insurance proceeds would be used. This is the same for state facilities financed with lease revenue bonds. If the building securing the bonds is destroyed, the Department could no longer make rental payments that ultimately are necessary to make debt payments. The insurance is in place to protect the bond holder. Note that regardless of the level of state and county funding for the project, the entire project is secured by the lease arrangement necessary for the bonds.

Q80. Could you be more specific about the criteria for the "footprint"? Who has the final say?
R. The proposed project site is sometimes referred to as the "footprint". The proposed project site could be an existing stand-alone parcel or a "footprint" (portion) within a greater parcel. Generally speaking, the proposed project site is the area where proceeds are expended, that is capable of supporting lease revenue bond financing, and that provides for a fully functioning facility capable of supporting its intended use. The criteria for the proposed project site will be determined on a project-by-project basis by the project team prior to the execution of the Ground Lease.

Q81. Would the Ground Lease with the state terminate if financing (interim or bond) is not available?
R. Yes. If the project is unable to be financed, the Ground Lease would be terminated.

Q82. Section 3.(b) (11), – Subletting – talks about state having the ability to decide whether a facility can be sublet. Is that only for private uses or does it include another governmental entity? Is it because of the bonds?
R. The PWB is the lessor of the project and any subleasing is subject to PWB consent. Limiting private use is an important consideration to maintain the tax exempt status of the bonds.

DUE DILIGENCE SECTION

Q83. If a county is just beginning the process of due diligence, what is the best way to get started?

R. The state held a real estate due diligence workshop for participating counties in November 2008. For counties who could not attend, another real estate due diligence workshop is planned for early April 2010. This training provides an overview and training on specific elements of the due diligence requirements for the AB 900 Jail Financing Program. If county staff are unable to attend this training and require assistance in completing a full due diligence package, the state will provide guidance upon request.

Q84. If a county's due diligence letter has outstanding issues that need to be addressed, when will the county be required to remedy those issues?
R. Significant issues that need to be addressed before establishing the scope, cost, and schedule of the project with the PWB will be discussed with each county and their project team. On a case-by-case basis, a county's project may be established by the PWB with outstanding items identified on the due diligence review. Each county and their project team will discuss how all due diligence issues will be resolved prior to approval of working drawings.

Q85. For counties that may have issues relative to the state's pre-established setback requirements, can the county submit for early review the county's plans and site map for adequate 5 – 15' buffer before the county proceeds any further with the project?
R**.** This determination will be made when the Department of General Services, the CDCR and the DOF review project information provided during the due diligence review and preparation of project scope for PWB scope, schedule and cost recognition. These issues can be discussed with each county's project team.

Q86. Will lease revenue bond financing impede a county's ability to share infrastructure costs with the reentry site if the projects are located within the same area, but on a separate parcel?
R. This issue will require in-depth review during the due diligence phase on a case-by-case basis.

RIGHT OF ENTRY FOR CONSTRUCTION SECTION

Q87. Cooperation – County must minimize disruption to Department's access to site. No provision for county to preserve existing facility operations, such as our expansion project to existing facility.
R. As discussed above, the Ground Lease will only apply to the footprint for the project. Because the Right of Entry for Construction works in tandem with the Ground Lease, the effect of these documents on your existing jail facility should be minimized. Additionally, in the same manner that access to state prison facilities is limited and requires prior approval and security clearance, it is understood that project access must be coordinated with the county to ensure similar security clearances can be obtained.

Q88. Is there any room to negotiate terms, for example, the Attorney's Fees clause in the Right of Entry for Construction?
R. The state will work with counties to negotiate a mutually agreeable document so long as the final document meets all necessary requirements for lease revenue bond financing.

FACILITY SUBLEASE SECTION

Q89. Page 2, Section 5 – This section binds counties to the same use over the term of the lease. What is required to change the use if after a significant number of years, a county develops a new facility and wants to change the use of the facility that is the subject of this agreement?
R. The purpose articulated in the Facility Sublease is quite broad, and essentially can be used for the purpose of the project and related uses of state and local criminal justice agencies. Although unlikely to be desirable, it is possible, with PWB consent, to change the facility's use to another county purpose without interfering with state law or the tax-exempt status of the bonds.

Q90. Page 3, Section 6 (b) - What level of detail is required to satisfy the 15 day requirement to submit to the Department the authorized budget for the operation and maintenance of the facility?
R. The details of this requirement have not been determined. CDCR will work with the PWB and county to ensure that the information is requested in as simple a format as is necessary to meet this requirement.

Q91. Page 4, Section 7 (b) – Will the Department be responsible for the insurance requirements relative to the bond issuance, including rental interruption insurance?
R. The state's insurance obligation is set forth in Section 7(a) of the Facility Sublease.

Q92. Page 10, Section 11 – What is the approval process and how long will this process take relative to a participating county's desire to make improvements to the facility? Will this approval process be required if damage to the facility occurs and the county desires to concurrently repair and improve the facility?
R. Details of this process will be developed and provided to all counties prior to the completion of initial construction. As with the approvals required in the design and construction phase, approximately 60-75 days will be required for this function. Efforts to expedite this timeframe in the case of concurrent emergency facility repairs and improvements can be considered on a case-by-case basis.

Q93. Page 11, Section 13 – Many counties use private vendors for telephone service and concessions for inmates housed at the facility. What specific information is required to comply with this section?
R. On an annual basis, information regarding the type of service, and the estimated annual cost, will be necessary for any private vendors providing services at the facility. The timing, format and procedures for these annual disclosures will be developed prior to the completion of construction.

Q94. Page 12, Section 14 – Does this section apply to contracted services for medical care? Will this section apply to counties that may enter into Power Provider Agreements related to onsite generation of electricity using solar technology?
R. Yes, this section does apply to contracted services for medical care. Generally speaking, the provision of utility services for the facility does not constitute a private use. However, if the power generated on site is provided by a utility to off-site customers, this would constitute a private use and would require case by case evaluation.

Q95. Our project is designed to expand up and out. Are we limited in what we can do?
R. Future facility expansion plans would need to be reviewed on a case-by-case basis to determine their compatibility with the financing mechanism. The facility constructed by this program is the collateral for the bond holders for the life of the bond. Any future expansion of a jail facility cannot limit the rights of these bondholders or diminish the value of the asset.

Q96. Codes require setbacks, so how do future expansions affect the Ground Lease?
R. This is decided on a case-by-case basis. However, this is an upfront activity that should be addressed in the original design.

Q97. Does the state expect any payments from revenue generated by subleases?
R. A limited amount of private use is permissible with consent by the PWB, pursuant to the terms of the Facility Sublease. Revenues from such private use do not need to be remitted to the state.

Q98. Section 2 – If a facility needs to be abandoned - Right of Abandonment – please explain.
R. The intent of all the agreements is to facilitate the financing of a county jail project. The Facility Sublease provides that the county will operate the jail facility. If, for some reason, the county is unable or unwilling to maintain occupancy of the facility during the term of the bonds, it could be in material breach of the Facility Sublease, in which case the CDCR would control the facility under the terms of the Facility Lease. The state and the county will enter into a number of agreements relative to the jail facility, including but not limited to a Ground Lease and Facility Sublease. As long as the county is meeting its obligations under the Facility Sublease, the state cannot gain operational control of the jail facility without the county's consent.

Q99. Section 6a, Page 3 - What is the difference between "extra-ordinary repair" and "ordinary repair"?
R. By distinguishing "ordinary repair" and "extraordinary repair," the document conveys that all types of repair, both ordinary and extraordinary, are the counties' responsibility.

GENERAL QUESTIONS SECTION

Q100. At the CSA meeting in Los Angeles, CSA Board members sought legal advice regarding whether the $132 million (out of a potential $750 million) not conditionally awarded during Phase I could be distributed to the current conditional awardees. May it?
R. This question will be addressed at the CSA Board Meeting on March 11, 2010.

Q101. When will the CSA Agreement be available for review?
R. It will be available by March 5, 2010 on the CSA web site.

Q102. What is the trigger point that the CDCR tells CSA that a county can have its money? Is it based upon once the reentry site has been determined to be buildable?
R. All counties must meet the requirements of the previously signed Siting Agreements as one factor before the scope, schedule and cost for the county jail project can be established by the PWB. (Note: as explained in other questions, access to state financing is contingent upon many factors and reimbursement would not be available until the construction phase.) For counties where the reentry site is existing state-owned property, the requirements of the Siting Agreement have been met. For counties where the reentry site is not existing state-owned land, the Reentry Site Option Agreement must be entered into by the county and state and approved by the PWB.

Q103. Does the state's reentry site need to have its building(s) built first?
R. No. For counties where land must be acquired by the state for the Reentry Facility, signature of the Reentry Site Option Agreement is one of several actions that must occur prior to recognition of the jail project's scope, schedule and cost by the PWB. Design or construction progress of the reentry facility plays no part in the approval or funding path of the county jail project after the Reentry Site Option Agreement is signed.

Q104. Can you provide information on the expected timeframe for the availability of funding to help counties develop plans to match completion of programming and the design process with the availability of funding?
R. The state is identifying multi-disciplinary project teams for each county, with a dedicated project manager. This will provide counties with both a point of contact, and identified team members that can answer their questions. Specific timelines for state review of county information are currently being developed and will be published in user-friendly how-to documents during the next 4-6 weeks.

Q105. Does CSA have agreements with the State Fire Marshal so that they can proceed on the same timelines?
R. Yes, the CSA has an interagency agreement and a dedicated Fire Marshal so that counties will not be waiting in line for approvals.

Q106. Timeframe for payments – is it 30-60 days from the time the bill is submitted?
R. It is a 30-60 day turnaround once an invoice is received by CSA until the point in time when the State Controller issues payment and it is sent to the county.

Q107. What are the kinds of documents necessary as part of the Project Documents to satisfy the records retention requirements of the PDCA for projects financed with bond proceeds?

R**.** The retention of items, documents and the like associated with AB 900 jail projects is a critical element in ensuring the financing of this project, including protecting its tax exempt status. This retention should include all project records that may precede the actual approval of the project, as well as records to demonstrate how bond funds were expended. The IRS requires records to be maintained for the term of the bonds plus six years. The IRS has prepared a FAQ regarding records retention for tax exempt debt at the following link: http://www.irs.gov/taxexemptbond/article/0,,id=134435,00.html.

Q108. What if project costs increase; will a similar document have to be executed?

R. All the county matching funds, including those for cost overruns, will need to have a certificate of matching funds. This form can be used as a template for subsequent certifications, if needed.