

**JUDICIAL COUNCIL OF CALIFORNIA
ADMINISTRATIVE OFFICE OF THE COURTS**

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Report

TO: Members of the Judicial Council

FROM: Office of the General Counsel
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SUBJECT: Court Facilities: Delegate Development of Criteria for Evaluating Project Delivery Methods to the Administrative Director of the Courts; Authorize Actions Taken in Connection with the New Long Beach Courthouse Project (Action Required)

Issue Statement

Government Code section 70391.5 (added by Sen. Bill No. 82 [Committee on Budget and Fiscal Review], Stats. 2007, ch. 176) and Senate Bill 77 (Stats. 2007, ch. 171) together set out a procedure by which the Judicial Council may evaluate and, if determined to be in the best interests of the State, enter into agreements for court facility development that include alternate methods of project delivery, including a public-private partnership component.

SB 77 authorizes the Administrative Office of the Courts to gather information for a public-private partnership agreement for the delivery of the new Long Beach courthouse and authorizes the Judicial Council to enter into a multiyear agreement for delivery of the courthouse, provided the agreements meet “established performance expectations.” Government Code section 70391.5 requires the Judicial Council to “develop performance expectations for court facility proposals, including benchmark criteria for total project life-cycle costs, project cost comparisons to traditional delivery and financing options, project risk assessments and allocations, utility and energy conservation requirements that meet or exceed state standards, and court security operations cost controls and reduction goals.”

It is necessary for the council to delegate responsibility to the Administrative Director of the Courts to enable the Administrative Office of the Courts (AOC) to develop the

performance expectations and benchmark criteria for court facility proposals required by Government Code section 70391.5 and SB 77. Using the performance expectations and benchmark criteria developed, the Administrative Director of the Courts will select a method for the delivery of the new Long Beach courthouse project, implement a solicitation for developers, evaluate and select responses, and may determine it appropriate to enter into a multiyear agreement for the delivery of the new Long Beach courthouse. The performance expectations and benchmark criteria developed will be used by staff in the future to determine whether capital projects may be most beneficially delivered via alternate or traditional methods of project delivery.

Recommendation

Staff recommends that the council take the following actions:

1. Delegate to the Administrative Director of the Courts or a designee the council's authority under article VI of the California Constitution and sections 70391 and 70391.5 of the Government Code to develop performance expectations for court facility proposals, including benchmark criteria for total project life-cycle costs, project cost comparisons to traditional delivery and financing options, project risk assessments and allocations, utility and energy conservation requirements that meet or exceed state standards, and court security operations cost controls and reduction goals (together, the "Performance Expectations"). The Performance Expectations will assist the AOC in determining the project delivery method most advantageous to the State for any specific facility.
2. Confirm the authority of the Administrative Director of the Courts or a designee to take all actions necessary or desirable to develop qualifications and proposal solicitation documents, which may be issued separately or combined, and to implement a procurement for the delivery of the new Long Beach courthouse according to the selected project delivery method. Such actions would be subject to the Office of Court Construction and Management's contracting policies and procedures to be submitted to the council for approval at its meeting on December 7, 2007, and subject to any additional requirements or procedures deemed by the Director or a designee to be necessary or desirable. Specific actions would also be subject to applicable provisions of the existing Site Selection and Acquisition Policy for Court Facilities, and rule 10.184 of the California Rules of Court, which require the AOC to establish and consult with an advisory group formed for each court construction or major renovation project.
3. Confirm the authority of the Administrative Director of the Courts or a designee to take all actions necessary or desirable for completion of the new Long Beach courthouse, which may include: (a) selecting the firms best qualified to submit proposals and evaluating qualifications submittals and proposals received in response to the solicitations in recommendation 2, based on the criteria identified

in the solicitation documents; (b) selecting a proposal that in his or her judgment represents best value and is the most advantageous to the State; (c) negotiating with the firm or firms submitting the proposals ranked highest based on the selection criteria; and (d) executing and delivering, on behalf of the Judicial Council and the Administrative Office of the Courts, a lease-purchase agreement or other multiyear agreement with a firm submitting a proposal that in his or her judgment represents best value and is the most advantageous to the State and all related documents and instruments for the delivery of the new Long Beach courthouse.

4. Authorize the Administrative Director of the Courts or a designee to consult with the Director of Finance, to notify the Joint Legislative Budget Committee as required in Government Code Section 70391.5, and to do all other acts consistent with, or in furtherance of, recommendations 1–3, to the extent that doing so is in the best interests of the State of California and the judicial branch.
5. Require the Administrative Director of the Courts or a designee to report to the council periodically throughout the development of the new Long Beach courthouse.

Rationale for Recommendations

Recommendation 1

The Project Feasibility Report for the proposed new Long Beach Court–Phase I (S) dated September 8, 2006, and revised June 28, 2007, was prepared as a supplement to the Judicial Council’s Five-Year Infrastructure Plan, Fiscal Year 2007–2008. The Feasibility Report recommended public-private partnership as the financing and delivery method for the new courthouse, upon confirmation that this approach will provide a greater benefit to the State than the traditional financing and delivery method in which the State finances, designs, constructs, and operates the facility. The AOC sought legislative authority to enter into a multiyear agreement with a legal entity to develop and construct a new courthouse to accomplish the recommended option.

SB 77 provides the authority to enter into such an agreement, subject to notice to the Legislature and Department of Finance approval that the agreements meet “established performance expectations.” As noted above, Government Code section 70391.5 requires the Judicial Council to develop the Performance Expectations, which are required to establish the parameters by which the Judicial Council and the Department of Finance can determine the overall costs of alternate project delivery, taking into consideration risk assessment and allocation. Like traditional delivery methods, alternate project delivery methods under consideration must be capable of providing court facilities that meet state facility performance requirements, including utility and energy conservation goals. Staff

will use the Trial Court Design Facilities Standards adopted in April 2006 in the development of the Performance Expectations. Once developed, the Performance Expectations will be used to evaluate alternative project delivery methods for future capital projects, as well as for the Long Beach courthouse project.

Recommendations 2 and 3

Recommendations 2 and 3 confirm the Administrative Director's existing authority to evaluate facility projects, issue solicitation documents, and take all actions necessary or desirable to execute project delivery. Following the development of the Performance Expectations, the Administrative Director of the Courts or a designee will evaluate potential project delivery methods, using consultants Ernst & Young Orenda Corporate Finance, Inc. as necessary. The staff of the AOC will then recommend a preferred delivery method for the new Long Beach courthouse and a request for qualifications and request for proposals from developers for the project may be issued. The staff will then evaluate proposals and determine whether the preferred proposal meets the Performance Expectations.

If a selected proposal meets the Performance Expectations and is advantageous to the State of California, the Administrative Director or a designee will negotiate and enter into agreements with the selected developer and other parties as necessary to initiate the new Long Beach courthouse project.

Recommendation 4

Government Code Section 70391.5 requires the Director of Finance to review any court facility proposal that includes a public-private partnership component. In addition, the section requires the Judicial Council to notify the Joint Legislative Budget Committee, following Department of Finance approval of a facility proposal, of the performance expectations and benchmark criteria at least 30 days before the release of the initial solicitation documents. Staff anticipates numerous meetings with the Department of Finance regarding the methodology used in creating the Performance Expectations, as well as meetings with the staff of the Governor's Office and individual legislators regarding the methodology and components of the Performance Expectations.

Recommendation 5

Staff will report to the council periodically on developments in the new Long Beach courthouse project, and upon request.

Alternative Actions Considered

Because SB 77 and Government Code Section 70391.5 require the Judicial Council to develop Performance Expectations, no alternatives to recommendations 1 and 4 were considered.

The confirmation of authority in recommendations 2 and 3 is recommended to facilitate due diligence and other reviews necessary for the transactions contemplated in connection with the new Long Beach courthouse project, and no alternatives were considered.

Staff anticipates that the methodology used to create the Performance Expectations will be complex and time-consuming, and individual milestones are difficult to identify and to schedule for completion. As such, staff anticipates reporting to the council periodically but not on a fixed schedule. For this reason no alternatives to recommendation 5 were considered.

Comments From Interested Parties

None.

Implementation Requirements and Costs

The development of Performance Expectations will be performed by AOC staff with the assistance of consultants. The costs of developing and applying the Performance Expectations will be borne by each individual capital project. Therefore, no separate implementation costs are associated with these recommendations.

Attachment

SB 77, Ch. 171- Long Beach specific budget bill language

Notwithstanding any other provision of law, the Administrative Office of the Courts shall gather information for a public-private partnership agreement for the Long Beach Court replacement, specify a process and criteria for developing alternative methods of project delivery, and identify variables that will be used to evaluate the alternative methods of delivery. 8. Pursuant to Section 70391.5 of the Government Code, the Judicial Council may enter into a lease- purchase agreement or other appropriate multiyear agreement, together with other related agreements, with one or more entities for the delivery of the new Los Angeles County--Long Beach Courthouse that will provide payments to the entity or entities for the state's proportional share of project costs, subject to notice to the Legislature and the Department of Finance approval that the agreements meet established performance expectations. This provision is contingent upon the execution of an agreement for transfer of responsibility of the existing Long Beach court facility to the state no later than June 30, 2007, and subsequent approval of the transfer of title by the State Public Works Board.

http://www.leginfo.ca.gov/pub/07-08/bill/sen/sb_0051-0100/sb_77_bill_20070824_chaptered.html

SB 82- Ch. 176- P3 generally

SECTION 1. (a) The Legislature finds and declares all of the following: (1) The transfer of responsibility for court facilities from the counties to the state requires that court facilities be efficiently and economically provided to the court system. (2) The State of California stands to benefit from the consideration and implementation of efficient and contemporary methods of developing and managing major capital infrastructure improvements. Significant cost increases in the real estate and construction sectors make it imperative that the state proceed with capital construction in a timely manner to best mitigate those increases. (3) The costs of maintaining and operating a building over its life span are greater than the initial construction costs, so the control of these maintenance and operations costs must be factored into any responsible infrastructure development method. (4) Project delivery methods that implement these cost control considerations should include development by an entity that provides all capital activities, including the financing, design, construction, maintenance, and operation of a building. Those methods may include some or all of the following: (A) Putting existing property to a higher and better use and leveraging redevelopment proceeds to reduce the state's cost of new replacement court projects. (B) Combining new court facilities with other appropriate and compatible noncourt uses that would provide a subsidy to reduce the state's maintenance and operation costs. (C) Utilizing competitive bids to give the state the best financing terms and possible subsidies from redevelopment of current court properties and development of new facilities. (D) Using a lease-purchase with the option to acquire any noncourt space for future growth needs. (5) The Judicial Council has established a detailed, multiyear court facilities capital infrastructure plan to acquire court facilities and provide necessary improvements for the judicial branch in the most economically feasible manner. (b) In order to implement the findings and declarations

contained in subdivision (a), the Legislature hereby enacts Section 70391.5 of the Government Code.

SEC. 60. Section 70391.5 is added to the Government Code, to read: 70391.5. (a) The Judicial Council shall develop performance expectations for court facility proposals, including benchmark criteria for total project life-cycle costs, project cost comparisons to traditional delivery and financing options, project risk assessments and allocations, utility and energy conservation requirements that meet or exceed state standards, and court security operations cost controls and reduction goals. The performance expectations and benchmark criteria shall be consistent with Chapter 1016 of the Statutes of 2002, Chapter 488 of the Statutes of 2006, and consistent with all current state building practices. (b) In reviewing any court facility proposal that includes a public-private partnership component, the Director of Finance shall take into consideration any terms in the proposal that could create long-term funding commitments and how those terms may be structured to minimize risk to the state's credit ratings. Following the approval of any court facility proposal of the Director of Finance, the Judicial Council shall notify the Joint Legislative Budget Committee of the performance expectations and benchmark criteria for the proposal at least 30 days prior to the release of initial solicitation documents for a court facility project. If the Joint Legislative Budget Committee does not express any opposition or concerns, the Judicial Council may proceed with the solicitation 30 days after giving that notice.

http://www.leginfo.ca.gov/pub/07-08/bill/sen/sb_0051-0100/sb_82_bill_20070824_chaptered.html