



Children and Family Justice Center Project Design-Build Contract Needs Council Approval



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Executive Summary

The Children and Family Justice Center project experienced a seven-month schedule delay to make major scope changes addressing neighborhood input, Seattle city code, and federal detention requirements. Facilities Management Division forecasts that it can mitigate potential cost increases from this delay. Additionally, the County Executive is seeking approval to contract for the shell of two additional floors to the courthouse, adding approximately \$6 million to the cost. County Council approval of the project scope and design-build contract is the next major project milestone.

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Children and Family Justice Center Project Design-Build Contract Needs Council Approval

Report Highlights

January 21, 2015

The Children and Family Justice Center (CFJC) project experienced schedule delays because of scope changes needed to meet zoning rules and to better align with federal detention regulations. Facilities Management Division (FMD) forecasts staying within budget despite cost impacts of the delay. Our recommendations focus on upcoming County Council design-build contract consideration and minimizing impacts from future regulatory issues.

▼ Scope

Scope changes made to better align with community input and city and federal regulations include:

- Created a 20 foot setback from 12th Avenue
- Reduced parking by 80 stalls
- Reduced and reconfigured detention dorms

In addition to these changes, the County Executive is requesting authority for specific scope additions, most importantly constructing the shell for two additional courthouse floors that is part of long-term plans for Superior Court. However, forecasts of operations costs and other long-term implications of these changes are not fully quantified at this time.

▼ Schedule

The project experienced a seven-month delay in selecting a design builder to make changes to gain approvals from the City of Seattle. The cost impacts of this delay are offset by scope reduction and FMD forecasts they expect to recover delay during the construction phase. The current forecast for opening of the new court and detention facilities is April 2018.

● Budget

The current project cost estimate remains unchanged at \$210 million, but could increase if the County Council approves the County Executive's requested scope additions.

Recommendations

Our recommendations focus on improving the information available to decision-makers about the long-term implications of proposed scope changes and identifying lessons learned from FMD's experience addressing permitting and regulatory requirements in order to expedite future actions influenced by external parties.

Table of Contents

1. Project Scope	1
2. Project Schedule.....	5
3. Project Budget	7
4. Project Risks.....	9
Appendix I: Implementation Status as of January 2015.....	12



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I. Project Scope

Section Summary

The proposed design build contract for the Children and Family Justice Center (CFJC) project incorporates significant scope changes, the long-term implications of which are not fully known. Facilities Management Division (FMD) made several changes to the scope of the project based on new information and more thorough understanding of the regulatory environment. The County Executive seeks County Council approval to add a shell of two additional floors to the courthouse at a cost of \$6 million now to facilitate future construction of seven more courtrooms consistent with Superior Court plans. There could be more project scope changes in the future, including the addition of the Alder Academy.¹ Up-to-date forecasts of operating costs and other long-term implications of these scope changes are not fully quantified at this time.

FMD made scope changes to align with regulations

The design-build contract for the CFJC includes three major scope changes, the net effect being a scope reduction. King County's plan in December 2013, was based on assumptions that the County would be successful obtaining zoning code changes and approval of a parking structure based on current staff parking utilization rates and that planned operation strategies would satisfy federal detention staffing ratio requirements. Since that time, the project oversight committee and the County Executive have revised the scope to make it more likely to be permitted by the City of Seattle and allow for meeting federal detention regulations more cost effectively. This revised scope is the basis for the county's request for a best and final offer, also referred to as BAFO, from design builders.

Exhibit A: Three scope changes provide better alignment with regulations and have some uncertain implications.

Scope Changes	Request for Proposals Scope (Dec. 2013)	Best and Final Offer Scope (Aug. 2014)	Implications
1. Increase setback from 12th Avenue	Zero setback, might have needed to accommodate some retail in courthouse	Landscaped 20 foot open space between courthouse and sidewalk	Increased design and landscaping cost. Likely increase in maintenance cost. May reduce surplus property by 1,500 sf with uncertain impact on value.
2. Reduce parking	440 stalls in four levels	Reduced to 360 stalls	Lower construction cost. Need to reduce employee parking demand. May require changes to parking policy and labor contracts.
3. Reconfigure and reduce detention housing	98,031 sf, 154 dorms, 14 per housing unit, including 56 transitional dorms	92,526 sf, 144 dorms, 16 per housing unit, including 32 transitional dorms	Lower construction cost. Impact on operating costs and capacity of the facility uncertain. May require changes to labor contracts.

Source: King County Auditor's Office analysis

¹An alternative high school operated by Seattle Public Schools. This is separate from the mandated school facilities within detention.

I. Project Scope

Additional scope changes requested

The County Executive is requesting authority to make specific scope additions increasing the project cost by approximately \$6 million.² The proposed contract identifies the base project scope and performance specifications that the design builder must deliver within the guaranteed maximum price, also referred to as GMP, of \$154 million, as requested in the best and final offer. Design builders were also requested to provide cost proposals for four potential scope alternates to add.

The County Executive is requesting authority from the County Council to accept all four alternates in the design-build contract. Acceptance of Alternate 4 for the Alder Academy would be upon reaching a binding agreement with Seattle Public Schools providing for full cost recovery.

Exhibit B. The County Executive requests approval to contract for alternates that could add \$6 million to the project cost. Not all implications of these potential scope additions are known at this time.

Potential Changes	Scope Covered in the GMP	Potential Additions to Contract Scope	Implications
1. Add courthouse space	136,992 sf	Added 12,281 sf for larger lobby areas	Nominal increase in the contract price. Space can be used at opening. Incremental operating cost for this 9% size increase not quantified.
2. Add detention space	92,526 sf	Added 4,115 sf for support functions	Nominal increase in the contract price. Space can be used at opening. Incremental operating cost for this 4% size increase not quantified.
3. Add shell of two additional courthouse floors	136,992 sf	70,061 sf shell and core in two additional floors	<ul style="list-style-type: none"> \$5,708,000 added to the contract price.³ Additional budget appropriation needed to pay for this change. Contingent upon obtaining Seattle comprehensive plan amendment for additional height. Space not useable until a Phase II to finish the space and add parking is funded and built. FMD states that at the proposed price, building now will provide a savings of over \$10 million. Incremental operating cost for the unfinished/unconditioned space (a 51% increase in size) is not quantified. Source of funding, timing, and cost for Phase II is uncertain. Updated operating cost estimates for finished Phase II facilities are not available.
4. Add Alder Academy	Not included	5,544 sf, dependent upon Seattle Public Schools committing to funding	<ul style="list-style-type: none"> \$2,000,000 added to the contract price. Students benefit from security screening and proximity to services. Impacts to county programs if school is not co-located with courts are uncertain.

Source: King County Auditor's Office analysis

²Proposed Ordinance 2014-0486 transmitted from the County Executive to the County Council on December 4, 2014.

³Contract prices do not include sales tax. The \$5.7 million contract price increase with tax would be \$6.24 million, referred to as approximately \$6 million elsewhere in this report.

I. Project Scope

Implications to scope changes not fully quantified

Although the County Executive considers the scope changes justified, comprehensive analysis quantifying the long-term implications of these changes was not evident. The project oversight committee recommended and the County Executive confirmed the importance of making three changes to better align with City of Seattle land use regulations and federal detention regulations. The County Executive requests authority to accept all four of the alternate scope enhancements based on the prices in the best and final offer. In the Exhibits A and B, we have identified known and unknown implications that may be of interest to the County Council; however, the extent to which FMD has analyzed these implications is uncertain. For instance, we have not seen analysis, based on current understanding of federal detention regulations for staffing ratios that the changes in detention configuration will allow the County to keep staffing and operating costs at levels previously presented to result in a \$1.5 million annual savings.

The change of greatest uncertainty is the shell for two additional floors on the courthouse, adding approximately \$6 million to the design-build contract. Construction of the shell now would decrease disruption to court operations during construction of a future Phase II addition of seven courtrooms to the courthouse. Although FMD has not performed a comprehensive life-cycle cost analysis of the value of constructing the shell at this time, FMD states that the best and final offer price proposal is approximately one third of the estimated cost and represents an initial cost savings of more than \$10 million. However, construction of this addition is dependent upon the Seattle City Council approving an amendment to the Seattle comprehensive plan to allow the additional height.⁴ The source of funding, timing, and capital and operating costs for Phase II of the courthouse and required parking is uncertain at this time.

Recommendation 6⁵

The County Executive should clearly communicate to the County Council what is known about the impacts of scope changes under consideration with the design-build contract including: changes to operating costs, the need for labor contract or policy changes, and changes to the value of surplus property on the site. For those impacts not quantified at this time, the County Executive should advise the County Council of the planned timeline for analysis and additional communication.

⁴ The Seattle City Council has placed the county's request on the annual docket for consideration of comprehensive plan changes. The county's request is to allow flexibility for height of public facilities needed to accommodate the two additional courthouse stories. Action on the docket amendments is expected in June 2015.

⁵ The December 13, 2013 Auditor's Office report on the Children and Family Justice Center included Recommendations 1 through 5. See Appendix 1 for the status of implementation of these recommendations.

I. Project Scope

**FMD
responsible to
administer the
Council-
approved
design-build
contract**

The County Council has a unique role in this project to determine “exact project specifications,” which they will perform through review and approval of the county’s contract with the selected design builder. The County Executive is also asking for approval to accept the alternate scope enhancements and will request additional project appropriation from the County Council, if any are needed. Beyond these actions, FMD does not anticipate any other future County Council actions related to the design-build contract. FMD is responsible for administration of the contract and meeting the specifications and other requirements of the design-build contract, as approved by the County Council.

As the project moves forward through the 120-day design verification period and into the design and construction phases, the project team could identify scope or specification changes that are necessary to meet regulatory requirements, to respond to other new information, or to seize opportunities. For example, moving walls or adjusting space allocations among programs to better meet operational objectives, or toward the end of the project, if actual costs are lower than estimated, as occurred on the Ninth and Jefferson Building project, the County may choose to use cost savings to enhance scope. Through our oversight we will monitor and report to the County Council on any substantive scope changes as the project moves forward.

2. Project Schedule

Section Summary

Delay in getting City of Seattle land use amendments and the need to re-scope the project to gain Seattle approval forced additional steps and costs associated with the design-build procurement and may delay the forecast openings of the new facilities. While FMD states that they do not know the full impacts of this delay at this time, they forecast that construction could take less time than originally planned.

Delay caused by significant changes to scope	<p>A seven-month delay in selecting a design builder resulted from the need to extend the procurement to have a best and final offer from design builders on the changed project scope. FMD made significant changes to the project scope to better align with neighborhood input, City of Seattle code and development guidance and federal detention staffing regulations. FMD used the best and final offer process to ensure that the County considered competitive design-build proposals based on the revised scope. Obtaining the City Council approval for necessary zoning code text amendments took longer than anticipated and resulted in some of the scope changes prompting the request for a best and final offer and adding seven months of delay to the design-build procurement process This issue is more fully discussed in Section 4 Project Risks.</p>
The impact of seven-month delay will not be known for some time	<p>The seven-month delay increases the cost of the preliminary design phase as well as risk of higher costs due to inflation during final design and construction. To satisfy a recommendation from our earlier report, FMD estimated that a month of schedule delay could result in a \$500,000 cost increase in the project, \$325,000 of which is estimated construction inflation costs. Using this estimate, our assessment is that the costs of delay could be approximately \$3 million. The reductions in scope of the detention facility and parking garage offset much of the potential cost increase. FMD also took steps to mitigate the cost impacts of the delay by limiting county staff and consultant effort during portions of the delay.</p> <p>The County Executive’s transmittal of the design-build contract for County Council consideration was a month later than expected, thus constraining the time available for County Council to consider the contract without putting the contract pricing at risk. The County Executive kept the County Council posted on the anticipated schedule and transmitted the contract in early December, too late for consideration before the County Council’s scheduled holiday recess and prior to the County Council’s annual reorganization of its committee structure. The pricing in the design build best and final offer is</p>

2. Project Schedule

guaranteed if the County executes the contract and gives notice to proceed by February 13, 2015. This deadline constrains the County Council's time to consider the contract.

Exhibit C: Schedule forecasts recovering most of the delay through shorter construction phase.

Milestone	Target from Dec 2013 Report	Current Forecast	Length of Delay
Select winning design-build team	May 2014	December 2014	7 months
Begin facility construction	Mid-2015*	April 2016	9 months
Substantially complete courthouse and detention facility	Mid-2018*	April 2018	No delay, 3 months early
Substantially complete parking structure	Mid-2019*	August 2019	1.5 months

*Midyear interpreted as July for calculation purposes.

Source: King County Auditor's Office analysis; Children and Family Justice Center Project Oversight Report dated December 13, 2013; and FMD's October 2014 project status report

Current forecast anticipates shorter construction schedule

FMD's current schedule forecast shows a shorter construction period than the previous forecast, recovering most of the delay. One of the benefits of the design-build project delivery method is that, often, the design and construction schedule can be shortened. The current forecast shows a reduction in construction schedule of approximately nine months. However, the forecast target for beginning construction by the second quarter of 2016 is dependent upon obtaining a master use permit and building permit from the City of Seattle. FMD plans to set a baseline schedule shortly after the end of the 120-day design verification period, using detailed schedule input from the design builder. The baseline schedule will provide a basis for accountability for the project through completion.

3. Project Budget

Section Summary

Project cost estimate remains at \$210 million, but could increase by approximately \$6 million if the County Council approves requested scope additions. The selected design builder agreed to the guaranteed maximum price of \$154 million for the base project scope, with scope reductions offsetting the estimated cost of the seven-month schedule delay. FMD is covering other costs of delay within the current appropriation, predominately by reducing staff and consultant efforts where possible and identifying some areas of underspending. If the County Council approves adding the shell for two more floors on the courthouse, it is anticipated that the County Executive would need to seek additional budget appropriation, supported by revenue. FMD will focus on strengthening its project cost estimate to set a baseline for accountability in mid-2015.

Working cost estimate remains consistent with appropriation

FMD is currently projecting that project decisions will result in costs staying within the \$210 million appropriation, but approximately \$6 million more could be needed if the County Council approves adding the shell for two more floors on the courthouse.⁶ FMD anticipates that they can find ways to absorb the anticipated costs of the delay within the current project appropriation. However, the County Executive is requesting the County Council approve constructing the shell for two more floors on the courthouse increasing the proposed design-build contract amount by approximately \$6 million. If approved, the County Executive has indicated he will seek additional budget appropriation for the project and has identified potential sources of revenue for the addition, including using levy proceeds that are higher than originally forecast, contingency funds that are not needed to complete the project, proceeds from the sale of surplus properties on the site, and general obligation bonds. The most recent levy projections indicate the potential for additional revenue of approximately \$7.2 million over the nine-year levy. The anticipated cost for interim borrowing that will need to be supported by levy revenue is still uncertain.⁷ Better understanding of the levy revenue forecasts and the timing and costs of interim borrowing may be needed to inform future appropriation requests. Shortly after the end of the design verification period, in mid-2015, FMD intends to set the baseline cost estimate for the project. This will provide a basis for accountability for the project through completion.

⁶ Three project appropriations totaling \$210,000,000 have been made. These occurred in the 2013 and 2014 annual budgets and in a December 2013 amendment to the 2013 budget.

⁷ The March 20, 2012 staff report for Ordinance 17304 that approved the vote to fund the project, stated that interim borrowing costs could be as high as \$6 million.

3. Project Budget

FMD monitoring budget status effectively

FMD prepares monthly expenditure and earned value reports that project oversight committee members state are very useful for monitoring budget status. To date, project expenditures appear to be exceeding the working cost estimate in a few areas such as legal support, project management consultant, and honorarium for the best and final offer procurement process. FMD has found some offsetting cost reductions and has obtained approval from the project oversight committee to adjust anticipated spending among categories. Earned value reporting is showing actual costs higher than anticipated to achieve the accomplishments to date, as would be expected with the delay experienced. As recommended in our previous report, FMD is now showing its working cost estimate in the standard phase breakdown and recording costs by phase and work breakdown as well. This disciplined approach provides greater accountability and will help FMD identify areas where spending needs closer scrutiny.

Exhibit D: Through October 2014, 13% of the preliminary design phase budget remains. Based on average expenditures in recent months, spending in this phase may exceed the budget.

Phase	Working Cost Estimate	Expenditures to Date	% Working Estimate Spent
Preliminary design	\$5,035,268	\$4,395,143	87%
Final design	14,162,661	412,818	3%
Implementation	190,319,443	123,058	0.06%
Close out	482,628	-	0%
Total	\$210,000,000	\$4,931,019	2%

Source: King County Auditor's Office analysis, FMD's October 2014 project status report, and the from county's financial system through October 2014

4. Project Risks

Section Summary

FMD actions to mitigate risks of obtaining timely approvals from external agencies were not adequate. The schedule delay and scope changes resulting from complications in obtaining an amendment to the City of Seattle zoning code were not effectively mitigated. Escalating mitigation actions did not occur until quite late in the process. Similarly, the County Executive was unable to obtain timely commitment from Seattle Public Schools to fund Alder Academy. FMD used a comprehensive risk assessment process to guide preparation of procurement and contract documents that mitigate risks. We recommend incorporating lessons learned from the difficulty obtaining City of Seattle approval into future project activities.

Risk mitigation activities were not enough to avoid impacts to project

FMD and the project oversight committee mitigation activities were not adequate to obtain approvals from other government entities as planned, resulting in scope changes, delay, and added costs. As we introduced in Section 2 Project Schedule, despite relatively little progress, efforts by FMD and the County Executive to obtain the text amendment from the Seattle City Council and gain Seattle Public Schools' commitment on the Alder Academy were not escalated until months after original deadlines had passed. FMD retained the services of land use and legal consultants to strategize and assist in obtaining the necessary city actions early in the planning phase. The project efforts were guided by input from city staff and engagement of Seattle City Council, however, despite this considerable effort, elected city officials wanted greater neighborhood outreach that took time and resulted in the need for scope changes. Additionally, public input regarding larger issues around juvenile detention and racial disparity resulted in more meetings and longer approval times.

FMD's assessment of the willingness and timing for external parties to support project concepts and act on necessary approvals in according to the project schedule was optimistic. This assessment led the team to proceed with design-builder procurement despite not having the critical city zoning code approvals in place when planned. Eventually, deploying effective intergovernmental relations with the city and abandoning some relatively minor conceptual scope elements, allowed the County to obtain the critical approvals necessary to proceed with the project.

Efforts to encourage the Seattle Public Schools to commit to funding the Alder School have not been effective, with limited evidence of escalating the level of attention to this matter. Finally, it is uncertain whether there is City Council support for the comprehensive plan amendment that provides greater

4. Project Risks

flexibility in height restrictions for public uses. This amendment is needed to permit the two additional floors on the courthouse.

Ongoing coordination with City of Seattle is important to project success

The project is dependent upon future approvals from the City of Seattle and ongoing coordination with the city is important to project outcomes.

The Seattle City Council granted the zoning code text amendment for the project in October 2014, after both the City and County agreed to a racial equity assessment. Conducting this assessment does not require another vote by the Seattle City Council; the text amendment will become effective on April 1, 2015. The County will coordinate with the City to study equity and racial disparity in the court and juvenile detention system; however, FMD does not anticipate that changes will be needed to the project design as a result of the study. The County Executive has assigned staff to direct this work, and there is effective coordination between the study effort and the project oversight committee. As the project enters the final design phase, it will be important to consider the cost and schedule impacts of desired project changes, if any are identified by the study. Effective ongoing coordination with the City is needed to obtain future city approvals in a timely manner. These include a comprehensive plan amendment to allow the additional two floors on the courthouse; a master use permit; and numerous administrative approvals for demolition, street use, utility, and building permits.

Lessons learned from difficulty obtaining city approvals provide opportunities to improve

Efforts to mitigate the risk that the land use text amendment would not be approved by the City Council in a timely manner were not adequate to avoid project impacts. FMD could benefit from gathering a collective understanding of what lead to the delay and impacts to the project from difficulties obtaining the city approval. Revisiting how project decisions were made while this issue was being resolved would provide valuable insight and identify opportunities for improvements to future governance decisions and project management activities, especially those related to gaining approvals from external parties needed to move the project forward.

Recommendation 7

FMD should conduct and document a comprehensive lessons learned process focused on assessing permitting and regulatory options and identify changes to approach where needed to improve the effectiveness of obtaining future approvals.

4. Project Risks

Risk assessment heavily influenced procurement and contract documents

FMD used a comprehensive risk assessment process to develop procurement and contract documents. Consistent with best practices, FMD conducted a comprehensive risk assessment then addressed identified risks in the design-build procurement and contract documents. Additionally, the County Council had the contract documents reviewed by its legal counsel and hired a consultant, Vanir, for additional independent review of the contract documents. FMD chose to handle some of Vanir's areas of concern in the final contract documents and plans to address other, more detailed technical issues as part of the 120-day design verification. One of the areas of concern identified by Vanir was the extent to which payments to the design builder will be audited. FMD indicates that its project management consultant, OAC, will be responsible for auditing the payments. We plan to review OAC's approach to invoice auditing.

Auditor's Office oversight of the project will continue

Our ongoing oversight will include monitoring scope changes and status of implementing our recommendations. We will monitor scope changes that occur during the 120-day design verification and thereafter. We will augment communication from the County Executive to keep the County Council informed of further scope changes, the setting of the baseline schedule and budget, and if forecasts show that baseline will not be met. We will encourage further progress in implementing our previous recommendations, shown in Appendix 1.

Conclusion

Construction of the new Children and Family Justice Center is a large, high-profile capital project. The County Executive has proposed the County Council consider several scope changes to this project, as it reviews the design build contract. It is important for the County Executive to clearly communicate and when possible quantify the impact of these scope changes to provide the County Council with a thorough understanding of the implications of these changes. Additionally, given the project impacts incurred by the optimistic assessment of the city approval process, it is important that FMD conduct a lessons learned exercise to inform future approvals on this project.

Appendix I

Implementation Status as of January 2015

This table reports on the status of implementation of recommendations from the previous oversight report, dated December 13, 2013, on this project.

#	Status	Recommendation	Status Detail
1	DONE	To ensure that expenditure monitoring is consistent with other county projects, we recommend that FMD's cost estimates and expenditure reporting separate the final design and construction phases.	The project working estimate and expenditures are shown in the county's adopted standard phases for capital projects.
2	PROGRESS	We recommend that as FMD develops their cash flow forecasting tool, they consult with the Oversight Committee, Finance and Business Operations Division, and council staff to ensure that the tool provides information useful for formulation of project and policy decisions.	FMD's forecasts of expenditure is well developed and will be refined once the design-build contract is signed. Revenue forecasts are not yet in place. We are not aware of outreach and work to develop a coordinated forecast of revenues to inform borrowing decisions.
3	DONE	We recommend that FMD transparently quantify the impacts of schedule risks to avoid over or under emphasizing the impact of delays on overall project outcomes.	As reported, FMD is using a cost of \$500,000 as the estimated impact per month of schedule delay.
4	PROGRESS	To maximize potential benefits from improved functionality and economy of operation at the new facilities, we recommend that the County Executive work with the Oversight Committee to continue to evaluate existing business processes and develop procedures in preparation for moving to the new buildings.	FMD has developed a list of county agency responsibilities associated with the project. The list includes coordination with user agencies during design, which could cover many, but not all, of the areas where business process evaluation and change could be beneficial.
5	PROGRESS	To ensure that the project continues on schedule, we recommend that the County Executive establish a well-defined and systematic communication process with the County Council.	The County Executive increased formal and informal communication with the County Council. This report includes recommendations for additional communication enhancements.

Status definitions:

DONE	2	Recommendations have been fully implemented Auditor will no longer monitor
PROGRESS	3	Recommendations are in progress or partially implemented Auditor will continue to monitor
OPEN	0	Recommendations remain unresolved Auditor will continue to monitor