

From: Jacob Patterson <jacob.patterson.esq@gmail.com>
Sent: Thursday, May 22, 2025 12:19 PM
To: City Clerk
Cc: Whippy, Isaac
Subject: Public Comment -- 5/27/25 CC Mtg., Item No. 5B, City Hall Flooring Change Orders

City Council [via BCC] & Staff,

I recommend pulling Item No. 5B from the Consent Calendar so the following issue can be addressed before you approve the change orders. The Council should still approve it but only as modified to remove the inappropriate charges. It is better to do this right up-front rather than having to ask for money back like we are doing for Jones & Mayer's egregious overbilling that no one caught for nearly a year and a half.

Why are we paying for their travel and lodging costs in Change Order #2? That was not in the executed contract and is properly their overhead, IMO. The amount, \$5,268.00, is significant. In fact, the only mention in the contract of us paying for any travel costs is in Clause #22 of their proposal, as amended and approved. It reads as follows:

~~22. Labor Rates and Working Conditions – Seller's price is based on working full time and continuously without interruption on normal work days at straight time hourly rates prevailing in the area where the Work is to be performed. If Buyer requests overtime, off-hours Work, or multiple mobilizations, the price shall be equitably adjusted to cover Seller's additional costs, including any increase in wages, taxes, insurance, set-up, or travel costs, plus overhead at 15% and profit at 10% thereon.~~

As edited per our specific negotiations about this provision:

22. Labor Rates and Working Conditions – If Buyer requests overtime, [or] off-hours Work, the price shall be equitably adjusted to cover Seller's additional costs, including any increase in wages, taxes, insurance, set-up, or travel costs, plus overhead at 15% and profit at 10% thereon.

This means we would have to pay for travel expenses but only if NOT related to the normal work schedules. We agreed to pay travel costs only if we request their crew work overtime or time beyond the "normal business hours, 8-hour shifts" defined in the contract as when they are supposed to be working. That makes sense because if they are working overtime or earlier or later than normal business hours, they may need to stay here rather than return home to their business location in Santa Rosa. If they chose to stay here rather than returning to Santa Rosa, that is their choice but not anything we agreed to pay for absent a special request that they work outside normal business hours. This change order includes four days of additional work at eight hours per day so, at most, it would have involved three or four nights in a hotel here. I don't see how that could cost nearly \$6,000. I would expect backup documentation for these costs even if they were something we agreed to pay for before I approved any payment on the relevant invoices. (Even Barron provided his plane tickets as attachments to their invoices when J&M inappropriately charged us for his travel expenses to attend meetings in person--how could a lawyer not even know how to read his own contract with us?)

The relevant question is did we request overtime or unusual hours for this project? It doesn't look like it based on the rest of the change order details, which divides out the hourly work as normal, time and a half, and double time. All the 32 hours in the description of work are normal hours with nothing in the overtime categories. The additional labor in this change order is for their foreman for 32 hours total installing the additional (rather expensive) underlayment. The objectionable extra costs are for travel time, another thing we didn't agree to pay for, the hotel costs, and food (aka "subsistence"). We should deduct \$5,268.00 from any payment we send to them because they are not appropriate charges under the contract. Contractor's can't just add extras on that aren't contemplated in the original contract without a contract amendment.

Am I the only person checking contract terms when we get bills from our contractors? If so, that is concerning since most bills don't get presented to the Council or Public unless they involve something that requires Council approval. Who knows how many invoices we are overpaying?

Regards,

--Jacob

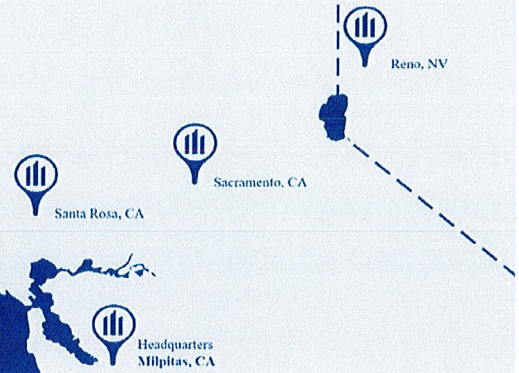
Paoli, Diana

From: Jacob Patterson <jacob.patterson.esq@gmail.com>
Sent: Thursday, May 22, 2025 12:22 PM
To: City Clerk
Subject: Re: Public Comment -- 5/27/25 CC Mtg., Item No. 5B, City Hall Flooring Change Orders
Attachments: 24-1058 - B.T. Mancino Co., Inc. Contract.pdf

Here is the actual contract excerpt with the details since it isn't included in the agenda materials for the change order.

B.T. Mancini Co., Inc.

2985 Dutton Ave Unit 1
 Santa Rosa CA 95407
 (707) 568-5300 Fax: (707) 568-5302
 CA Contractor's License #: 229210
 NV Contractor's License #: 0010497
 DIR #: 1000002989
 www.btmancini.com

**BID PROPOSAL - FLOORING****Contact:** Kevin McDannold**Date:** 11.14.2024**Company:** City of Fort Bragg**Project:** Fort Bragg City Hall Flooring Update**Project Address:** 415 N. Franklin Street, Fort Bragg, CA 95437**BID OVERVIEW:**

B.T. Mancini Co., Inc. to furnish and install materials listed below in accordance with plan sheet(s) "A2.1" of plans prepared by Levethal, Scholsser, Newberger Architects and dated 07.30.2008 wherein all provisions listed on this proposal are honored.

- > (1) Addendum(s)
- > All work to be completed only in areas, with materials, and in the proposed layout, shown on the attached colored plan, entitled: "BTM HIGHLIGHTED WORK PLAN – "Fort Bragg City Hall takeoffs" in order to maintain listed pricing.

MATERIALS INCLUDED:

1. **SPC:** Gemcore 7"x48"x5mm SPC w/20mil wear layer, style Opal, color TBD
2. **Qtr Rnd:** Gemcore Qtr Round, style Opal, color TBD @ existing wood base boards
3. **Adhesive, sundries & transitions**

ADD ALTERNATE OPTIONS (add cost to base bid if desired):

1. Add (2) office per attached plan sheet to include demo of existing flooring & installation of new flooring as detailed above
2. Add Underlayment: Furnish & install Powerhold 4x5x6mm underlayment at existing substate
3. Add Underlayment @ (2) additional offices to furnish & install
4. Moving Furniture in multiple phases

OTHER SERVICES INCLUDED/KEY NOTES:

1. **Demo & Disposal of existing floor coverings**
2. **Normal Floor Prep:** See attached definition of "Normal Floor Prep" as compared to "Major Floor Prep."
3. **Work to take place on regular business hours of Mon-Fri 5:30AM – 5:30PM**
4. **(4) Mobilizations**

EXCLUSIONS: (To be made part of the Contract Documents)

1. Thresholds, Extruded metal edgings, resilient flooring, ~~moving of furniture~~, paint touch ups, removal/replacement of existing wood base, Wood base at Phase 4 corridor where carpet base will be removed. All IT to be handled by the City and boxing up personal items, removing files from cabinets for furniture moving if elected. Repairs to existing wood substrate once carpet/pad is removed.
2. ~~The removal and relocation of furniture, counters, equipment or any other items inhibiting continuous flooring installation.~~
3. Demo of any existing adhesive, and/or any other materials or residues existing on slab.
4. Asbestos and/or mold removal (including, but not limited to, floor covering and adhesives)
5. Major floor preparation (including, but not limited to: cleaning and filling of saw cuts, ramping and leveling of concrete, unforeseen sub floor repairs, and any grinding of concrete to make flat or to remove existing adhesives.) Please see final page under heading "Major and Normal Floor Preparation" for a more detailed explanation of included and excluded services regarding floor preparation.
6. Any demo or removal of other trades' construction materials, including, but not limited to: marking pen, paint, oils, grease, curing compounds, release agents, sealers, taping mud, fire caulking.
7. Demo, Preparation, and Replacement of rejected mock-up locations. Work of this nature can be performed only as an "ADD" to the **BASE BID**.
8. Final cleaning and waxing/polishing of resilient flooring and/or vacuuming of carpet.
9. Additional cost for the hoisting of materials to above-grade floors if traditional elevators are not available and/or the fees associated with the oversight of a dedicated lift operator.
10. Floor protection, dust/infectious containment, post-installation traffic control.
11. ~~Cost of bonds~~, permits or fees.
12. ~~Liquidated damages.~~
13. Waiver of subrogation.

PLEASE SEE PRICING ON FINAL PAGE

PROJECT CONDITIONS and SCOPE REQUIREMENTS: (To be made part of the Contract Documents)

1. Pricing is based on **normal business hours, Monday - Friday, 8 hour shifts.**
2. G. C. or Owner is responsible for all environmental conditions, including heat, lighting at no additional cost to B.T. Mancini Co., Inc.
3. Acceptable moisture emission test results are required prior to installation of flooring.
4. Pricing includes all applicable tax and freight.
5. **Pricing is valid for 30 days.**
6. Extra work is quoted as an "ADD" to this subcontract to be done during work duration. After our work is complete, these quoted prices may increase.
7. Area of installation must be a minimum of 65 degrees F; building completely constructed with doors, windows, heating and HVAC fully operational.
8. Area of installation will require free and clear access to construction areas.
9. B.T. Mancini will not honor any back charges, unless notified in writing at the time of occurrence and given the opportunity to verify and/or correct the issue within 48 hours.
10. B.T. Mancini Co., Inc. will not be responsible for any delays in obtaining special items, which are beyond our control.
11. B.T. Mancini Co., Inc. will not be responsible for any damage to finished or unfinished materials caused by other trades.
- ~~12. Prices based on material being fabricated and installed at one time.~~

INSURANCE QUALIFICATIONS, DESCRIPTIONS and KEYNOTES: (To be made part of the Contract Documents)

1. Upon award, all project and/or contractor specific insurance requirements will be reviewed by BTM prior to acceptance. If requested by the insurance documents, BTM will name the Contractor and the Owner as additionally insured. However, all other agents not contracted by BTM, such as the Architect/Engineer and other consultants, are excluded and will not be named as additionally insured. Coverage outlined will only be provided on forms CG 20 10 04/13 and CG 20 37 04/13, all other forms are excluded.
2. When any WRAP Program is implemented on a project, B.T. Mancini Co., Inc. will only provide Additionally Insured and Completed Operations Coverage for offsite operations.

QUALIFICATIONS

1. B.T. Mancini Co., Inc. shall defend, indemnify and hold harmless the Contractor and Owner from damages only to the extent such damages were caused by any negligent act or omission of B.T. Mancini Co., Inc.
2. B.T. Mancini Co., Inc. will not defend, indemnify or hold harmless any other person or entity. ~~This provision supersedes any other indemnity provision.~~

PAYMENT TERMS:

Payment to Seller is express obligation of Buyer and is not dependent upon "the condition precedent" of buyer receiving funds from other sources. Seller to be paid according to the following schedule:

1. B.T. Mancini Co., Inc. will order materials to meet your schedule. ~~We will bill for these materials when delivered to our warehouse or the job site as arranged. We shall expect payment for the materials to be paid by the tenth of the month following your receipt of our invoice.~~
2. ~~If we perform installation work, we shall expect to be paid a minimum of 95% of our invoice for installation by the tenth of the month following your receipt of our invoice.~~
3. ~~Any retention that you may have withheld shall be paid not later than thirty days following the completion of the work.~~

SPECIAL PROVISIONS:

Should a dispute arise over the provisions of the subcontract, change order, delays, or any other matters, and litigation or arbitration ensue, the prevailing party will be entitled to reasonable attorney's fees and costs.

GENERAL CONDITIONS TO AGREEMENT

1. **Definitions** – The word "Seller" as used herein means B.T. Mancini Co., Inc. and the word "Buyer" means the purchaser of material and services ("Work") hereunder from the Seller for the specific project referenced herein.
2. **Incorporation** – Buyer agrees that these General Conditions are a material part of the agreement between Buyer and Seller for the Work ("Agreement"), will be and hereby are incorporated into any further expression of that Agreement, ~~and when in conflict with any other written terms and conditions governing Seller's performance of the Work, shall take precedence thereover.~~
3. **Prompt Performance** – Seller shall make reasonable efforts to perform the Work promptly in accordance with the terms of this Agreement, but shall not be liable for delay or schedule impacts arising from strikes, lockouts, fire, earthquake, war, governmental acts, Acts of God, or other events beyond Seller's reasonable control, whether affecting the production, loading, transportation, delivery, or installation of the Work.
4. **Warranty** – Seller warrants that the Work will be of good quality and new unless the Agreement requires or permits otherwise. For one (1) year from the date of substantial completion of the Work, Seller will at its sole discretion repair or replace any non-conforming Work under this warranty. Seller's warranty excludes remedy for damage or defect caused by abuse, alterations not executed by Seller, improper or insufficient maintenance, improper operation, normal wear and tear, and normal usage. Seller makes no other warranty, express or implied, regarding the Work, including the suitability thereof for any specific project. After substantial completion, Buyer's rights under this warranty are its sole and exclusive remedy against Seller for non-confirming Work.
5. **Delay** – In the event the Work is stopped or delayed for any cause beyond the reasonable control and not the fault of Seller, then Seller shall in addition to any remedies otherwise available, be entitled to an equitable adjustment to both the time and cost of performing the Work, and may, if such stoppage or

delay continues for thirty (30) days, terminate this Agreement and be paid for all Work performed. Stoppage or delay shall be presumed not to be the fault of Seller unless proved otherwise.

6. **Indemnification** – To the fullest extent of Seller's own negligence, Seller agrees to indemnify Buyer against damages arising out of Seller's performance of the Work and resulting in bodily injury or property damage other than to the Work itself.
7. **Dispute Resolution** – In any legal proceeding related to this Agreement, and in addition to any costs otherwise recoverable, the prevailing party shall be entitled to its reasonable attorneys', experts', and consulting fees. Venue for any dispute shall lie in the county where the Work is to be performed or in Santa Clara County. This Agreement shall be governed by California law without regard to its choice of law provisions.
8. **Claims** – Claims by Buyer for shortages or for improper, defective or damaged material must be made in writing specifying in detail the nature and extent of the shortage, defect or damage within five (5) days of delivery, and accompanied by the original freight bill with a notation on the face thereof by local agent of the carrier as to the items and quantity short or damaged. Risk of damage shall be on Buyer when materials are delivered to a common carrier F.O.B. shipping point. Title to material shall remain with Seller until payment in full is made by Buyer.
9. **Limitation on Claims** – Any claim by Buyer, whether for breach of contract, tort, property damage, or personal injury must be made in writing within one (1) year of substantial completion of the Work, or such claim shall be deemed forever waived. Buyer and Seller hereby waive any claim against each other for consequential, special, exemplary, or other indirect damages.
10. **Protection and Security** – Buyer shall take reasonable steps to protect the Work installed and/or stored at the job site from damage, vandalism and theft, and shall provide, as appropriate, security guards and secure storage areas. Once accepted, damaged or stolen materials shall be Buyer's responsibility.
11. **Assignment** – Buyer shall not assign its rights or obligations under this Agreement, in whole or in part, without Seller's written consent.
12. **Bankruptcy** – In the event Buyer is adjudicated bankrupt, files a voluntary petition in bankruptcy, makes an assignment for the benefit of creditors, or applies for or consents to the appointment of a trustee or receiver over a substantial part of the Buyer's property, Seller shall have the right to terminate the Agreement, and in addition to any other remedies, collect for all Work performed.
13. **Payment** – Buyer shall pay Seller according to the following schedule for the Work:
 - (a) For materials delivered, the cost of those materials to Buyer shall be paid by the 10th day of the month following delivery.
 - (b) For installation, not less than 90% of the cost to Buyer performed in any month shall be paid by the 10th day of the following month.
 - (c) Retention shall be paid within thirty (30) days of the completion and acceptance of Seller's Work. The benefit of any reduction of the retention under any agreement between Buyer and its customer (for example, from 10% to 5%), will be passed proportionally on to Seller.
 - (d) Buyer shall not make any payment to Seller in the form of a joint check, or any other type of payment other than payment solely in the name of Seller, unless agreed to by the Seller in writing. Buyer's payment shall constitute acceptance of the Work. Any sums not paid when due shall bear interest at the rate of 1 1/2 % per month, annual percent rate 18%, until paid, provided that if such rate of late charge is not permitted by law, the highest legal rate shall be charged. In the event payment is not made as provided herein, Seller shall have the right to withhold further Work until paid, or upon five (5) days' written notice to Buyer, to terminate this Agreement and seek damages.
14. **Job Conditions** – Unless otherwise stated herein, the working surfaces and job conditions shall be ready to receive Seller's Work upon issuance of Buyer's notice to proceed. Seller is entitled to rely on Buyer's notice as representation that Buyer has carefully inspected and approved the work performed by others that it is to receive, align, abut, adjoin, accept, or similarly relate to Seller's Work.
15. **Penalties and Back charges** – No back charges, penalties, liquidated damages or other deductions against the price set forth herein may be withheld from Seller unless (1) Buyer notifies Seller in writing of the basis for such charge no later than thirty (30) days after the cause for such charge is established; (2) Buyer is first provided sufficient opportunity to cure or correct any claimed defect or default in its Work; and (3) in no event will Seller be charged after payment would otherwise be due Seller per paragraph 13 hereof. Buyer's failure to strictly comply with these conditions shall constitute a waiver by Buyer of any such charge against Seller.
16. **Extra Work** – Prior to making any change in the Work, including the time for storage, delivery, or installation thereof, Buyer will provide Seller with a written change order. Unless expressly agreed otherwise, Seller will be paid for any change in the Work on the basis of its actual costs, including taxes and insurance, plus 15% overhead and 10% profit thereon. Seller is not obligated to perform any changes to the Work until it receives a written change order or written directive from the Seller agreeing to the price for and/or any time extension required by the change.
17. **Bonds** – Unless specifically included, the cost of any required surety bonds shall be paid for by Buyer.
18. **Escalation** – Seller's price is based on completion of the Work in accordance with the project schedule provided to Seller prior to this Agreement or as otherwise described herein. In the event commencement of the project or the Work is delayed through no fault of the Seller, prices for the Work shall be equitably adjusted by any actual cost increases incurred by and not reasonably avoidable by Seller.
19. **Contract and Credit Acceptance** – All agreements are subject to approval by Seller's authorized employee(s). Acceptance of this Agreement by Seller and continued performance of Work shall at all times be subject to Buyer's creditworthiness, and Seller reserves the right to require full or partial payment in advance if Buyer's financial condition creates a reasonable concern that Buyer cannot meet its financial obligations to Seller.
20. **Material Approval** – Samples or other submittals furnished by Seller, when reviewed without any noted objection or exception by Buyer, Buyer's customer, or any agent, architect, or engineer thereof, shall be deemed the correct interpretation of the Work to be furnished.
21. **Inspection and Acceptance** – Upon completion, Buyer shall promptly inspect Seller's Work and notify Seller in writing of the basis for any rejection, default, or deficiency. Buyer's failure to timely inspect or reject Seller's Work within ten (10) days after completion of Seller's Work, shall constitute Buyer's complete and final acceptance of the Work.
22. **Labor Rates and Working Conditions** – Seller's price is based on working full time and continuously without interruption on normal work days at straight time hourly rates prevailing in the area where the Work is to be performed. If Buyer requests overtime, off-hours Work, or multiple mobilizations, the price shall be equitably adjusted to cover Seller's additional costs, including any increase in wages, taxes, insurance, set-up, or travel costs, plus overhead at 15% and profit at 10% thereon.
23. **Epidemic Rider**: If as a direct or indirect result of any virus, disease, contagion, including but not limited to COVID-19 (individually or collectively, "Epidemic"), B.T. Mancini Company's work is delayed, disrupted, suspended, or otherwise impacted, including, but not limited to, by (1) disruptions to material and/or equipment supply; (2) illness of B.T. Mancini Company's workforce and/or unavailability of labor; (3) government quarantines, shelter-in-place orders; closures, or other mandates, restrictions, and/or directives; (4) Owner or Contractor restrictions and/or directives; and/or (5) fulfillment of B.T. Mancini Company's contractual or legal health and safety obligations associated with an Epidemic; then B.T. Mancini Company, Inc. shall be entitled to an equitable adjustment to the Subcontract schedule and duration to account for such disruptions, suspensions, and impacts. To the extent any of the causes identified herein results in an increase in the cost of labor, materials, or equipment used in the performance of this Subcontract, or other costs of performance of the Subcontract, B.T. Mancini Company, Inc. shall be entitled to an equitable adjustment to the Subcontract price for such increases,

Buyer

provided B.T. Mancini Company, Inc. presents documentation of such increases (including the original prices and/or estimates) and evidence of B.T. Mancini Company's reasonable efforts to find alternative sources of material or equipment supply and/or labor at the original/non-impacted prices and/or estimates.

CONTRACTORS ARE REQUIRED BY LAW TO BE LICENSED AND REGULATED BY THE CONTRACTORS' STATE LICENSE BOARD. ANY QUESTIONS CONCERNING A CONTRACTOR MAY BE REFERRED TO THE REGISTRAR OF THE BOARD WHOSE ADDRESS IS: CONTRACTORS' STATE LICENSE BOARD, 9821 BUSINESS PARK DRIVE, SACRAMENTO, CALIFORNIA 95827 OR 222.cslb.ca.gov.

MAJOR AND NORMAL FLOOR PREPARATION:

Major Preparation:

The following is what BT Mancini Co., Inc. considers Major Floor preparation. If the general contractor/owner would like BT Mancini Co. Inc. address any of the following items, it will be performed on a "Time & Materials" basis. The hourly rate will be as stated on our schedule of time and material costs which will be returned with the executed contract.

Major Preparation is:

1. The clean-up or moving of other trade's materials that are left on, spilled on, dropped on, sprayed on, etc... the floor.
2. The clean-up of mud that is tracked on the floor during construction.
3. Markings or lines of any kind on slab in Resilient Flooring Areas are not acceptable (this includes but is not limited to: permanent marker, spray paint). The removal of these marks is considered major floor preparation.
4. Any work required to bring the slab to the flatness required in the specifications or by the owner. This includes slab curl at joints and key ways.
5. Any work required to create a smooth trowel finish.
6. Remediating fissures and cracks greater than 1/16"
7. Cleaning and filling of saw cuts.
8. On wood floors, the setting of nails so they are below the surface of the wood. The filling and sanding of a poor grade of underlayment. The filling or preparing of divots at nail heads. Also additional nailing. *(Note; Wood Subfloors should have Flooring Grade Subfloor installed to meet Manufacturer's Spec's)*
9. The installation of a cementitious topping over moisture mitigation system administered by others.

Normal Preparation:

The following is what BT Mancini Co. Inc. expects to do for normal floor preparation.

Normal Preparation is:

1. A final sweep to remove the fine dust that has settled after the general contractor has swept and cleaned the floor just prior to BT Mancini Co. Inc. arriving at the job.
2. The filling of small holes and normal shrinkage and/or expansion cracks in the slab which are less than 1/16".
3. Fill Normal Butt or Keyed construction joints or zip strips.
4. Fill all seams on wood subfloors.

PLEASE NOTE: Floor preparation is cosmetic only and should not be considered a structural repair.

BASE BID: \$76,936.00

Add Alt #1_Rms: \$7,258.00

Add Alt #2_Ulay @ Base Bid: \$34,076.00

Add Alt #3_Ulay @ Rm Adds: \$3,718.00

Add Alt #4_Furniture Moving: \$8,800.00

Jennifer Mills

Respectfully Submitted,
Jennifer Mills 707-568-5300

Base bid plus Add Alt #1 and Add Alt #4 - \$92,994

QUOTATION ACCEPTANCE:

This quotation, unless otherwise noted, will remain in effect for 30 days from the above date. Upon acceptance by the Buyer and credit approval by the B.T. Mancini Co., Inc. this instrument shall constitute a binding contract. In the event the Buyer elects to issue his own purchase order or contract based on this quotation, the conditions contained herein shall be deemed to be incorporated in said purchase order or contract. This proposal expressly limits acceptance to terms of The General Conditions of Sale contained herein. No terms additional or different from The General Conditions will be accepted, including, but not limited to, any terms which establish a "condition precedent" to the Buyer making payment to the Seller other than any "condition precedent" already contained in this proposal. The undersigned hereby accepts this proposal and states that he has read The General Conditions of Sale attached to this proposal.

ACCEPTED: _____

DATE: _____

PRINT NAME: _____

COMPANY: _____

PLEASE SUBMIT ALL PAGES WITH SIGNED PROPOSAL