



Office of Health Care Access

Modification of Previously Authorized Certificate of Need

Applicant: Yale-New Haven Hospital

Modification Docket Number: 09-31125-MDF

Modification Project Title: A request to modify a previous Certificate of Need authorization to increase the authorized capital cost for the project by \$7,340,000, from \$83,227,138 to \$90,567,138

Original Project Docket Number and Title Docket Number 08-31125-CON
The Construction of the Howe Street Garage and Multipurpose Facility

Statutory Reference: Sections 4-181a(b), Connecticut General Statutes

Filing Date: January 16, 2009

Decision Date: January 30, 2009

Staff Karen Roberts

Project Description: Yale-New Haven Hospital proposes a modification of the Certificate of Need (“CON”) authorization issued under Docket Number 08-31125-CON, in order to increase the authorized capital cost by \$7,340,000, from \$83,227,138 to \$90,567,138. The CON authorization was for the construction of the Howe Street Garage and Multipurpose Facility in New Haven Connecticut at a total capital cost of \$83,227,138, granted pursuant to Section 19a-639 of the Connecticut General Statutes.

Findings of Fact

1. On October 16, 2008, under Docket Number 08-31125-CON, the Office of Health Care Access (“OHCA”) granted a Certificate of Need (“CON”) to Yale-New Haven Hospital (“Hospital”) for the construction of the Howe Street Garage and Multipurpose Facility in New Haven Connecticut at a total capital cost of \$83,227,138, pursuant to Section 19a-639 of the Connecticut General Statutes. Condition #2 of the CON order states the following:
 - “2. *The Hospital shall not exceed the approved capital cost of \$83,227,138. In the event that the Hospital learns of potential cost increases or expects that final project costs will exceed those approved, the Hospital shall immediately notify OHCA.*”
2. The authorized capital cost of \$83,227,138, included \$5,840,500 for fit-out building costs, \$14,227,138 representing three years of estimated lease payments on the capitalized lease and \$63,159,500 for the property purchase at the end of a three year period.
3. OHCA made the following findings of fact in the CON decision under Docket Number 08-31225-CON:
 - “ 2. *The Hospital is proposing to undertake a project that will fit-out, lease and eventually buyout a building that will serve as the Howe Street Garage and Multipurpose Facility. The building will consist of three separate, but interconnected structures: a parking garage, an office and retail building component and a residential building component.*”
 - “20. *The Hospital will provide rental payment for the space it utilizes through a capital lease arrangement to Intercontinental¹ for a three year period from March 2010 through March 2013.*”
 - “22. *At the end of the third year the Hospital will purchase the garage and multipurpose facility under a purchase obligation negotiated with Intercontinental for \$63,159,500. At that time the unamortized capital lease obligation and the related asset will be replaced on the Hospital’s books by the \$63,159,500 purchase price of the garage and multifunctional facility.*”
4. On page 27 of the original CON application, the Hospital states the following related to the \$63,159,500 property acquisition cost at year three: *“The Hospital will not be borrowing these funds until sometime in FY 2013...” The final financing arrangement and structure will not be determined until sometime in late FY 2012 ...”*
5. On January 16, 2009, OHCA received the Hospital’s request for an increase in the authorized total capital cost, by \$7,340,000, from \$83,227,138 to \$90,567,138. The modification request is being considered under Docket Number 09-31125-MDF.

¹ Intercontinental Lot E, LLC is the building developer.

6. According to the Hospital, the project is *“well underway with significant construction activity. The foundations for the garage, multi-purpose facility and residential facility are completed. Steel has been erected to the third floor of the multi-purpose facility and has already been ‘topped off’.* The Hospital also indicates that *“Framing for the residential facility has started with significant results already in place on the first floor of this structure. Actual erection of the garage is expected to begin in February 2009. The Developer has reported that approximately \$12,000,000 of equity has been spent for this project and the construction loan funds are now needed to complete the project.”*

1. The Hospital indicates the following in its modification request to explain the requested capital cost increase of \$7,340,000:
 - a. The Hospital requests that the authorized capital cost be modified to specifically allow the Hospital to be obligated for the full twenty-five year term of the lease. The twenty-five year lease term was negotiated before the submission of the original CON filing and documents submitted to OHCA during the original CON process reflect this.
 - b. At the time of filing the CON, the Hospital only requested a specific capital cost authorization reflective of three years of the capitalized lease. At that time, the Hospital and the developer believed that the terms of the loan and the Hospital’s obligation to purchase the project after three years, would suffice as security for the loan.
 - c. The Hospital *“has received feedback from the two Connecticut-based banks”* who will be the lender(s) for this project and those lenders are *“uncomfortable moving forward with the loan for this project without clarification that the Hospital will be authorized to make lease payments over the life of the debt obligation to Intercontinental Lot E, LLC.”* This concern is apparently related to the current economic downturn.
 - d. The Hospital indicates that the *“collateral for the loan is based on the value of the capital lease to the Hospital and the lender requires that the authorization to make lease payments at a minimum match the life of the debt”*, which is twenty-five years.
 - e. The Hospital indicates that *“the lenders are concerned with the security of the loan in the event that the Hospital is unable to meet its purchase obligation after three years since the collateral for the loan is the lease rather than the purchase obligation.”*
 - f. The Hospital notes that its intended purchase obligation at the end of three years remains unaffected by this modification request. The Hospital further indicates that the changes are requested as *“contingent authorization in the event that the Hospital, due to extraordinary economic conditions, does not actually purchase the property.”*
 - g. The Hospital indicates that, *“in the unlikely circumstance that the Hospital would continue to lease the building for 25 years and not purchase the building in year 3, the additional capital cost for the project would be \$7.34 million.”*

- h. The additional amount of \$7,340,000 is the difference between the estimated capitalized lease cost over the twenty-five year lease of approximately \$70,500,000 and the amount that would be expended at year three to purchase the property of \$63,159,500.

Discussion

OHCA has reviewed this request for a modification to a previously authorized CON and finds that the relationship of the CON authorized under Docket Number 08-31125-CON, to Section 19a-637, C.G.S., is not significantly altered by this request for a modification under Docket Number 09-31125-MDF. The modification proposal does not alter the intended scope or timeframe for the project originally reviewed and acted upon by OHCA and the increased costs appear to be for circumstances that were unanticipated by the Hospital at the time of the original CON filing and beyond the Hospital's control. The request for an additional \$7,340,000 appears to be reasonable and this modification is to clarify for purposes of the necessary financial lending arrangements that the Hospital has authorization to be obligated for a lease arrangement that has twenty-five year term. According to the Hospital's modification request submission, it remains the Hospital's intent to purchase the property at year three as originally proposed to and reviewed by OHCA in the original CON filing.

Order

Based on the above discussion and the reasons provided in the Hospital's modification request, OHCA hereby grants the request and modifies the CON authorized under Docket Number 08-31125-CON. With this modification OHCA clarifies that Yale-New Haven Hospital is authorized by OHCA for a capital cost that assumes lease payments over the life of the debt obligation, which is twenty-five years. Condition #2 of the CON authorization under Docket Number 08-31125-CON is modified as follows:

2. The Hospital shall not exceed the approved capital cost of \$90,567,138. In the event that the Hospital learns of potential cost increases or expects that final project costs will exceed those approved, the Hospital shall immediately notify OHCA.

OHCA inserts a new Condition #4 related to the financing of this project, as follows:

4. The Hospital shall report to OHCA subsequent to the finalization of the acquisition of the property at year three and shall indicate the acquisition price and the form of financing related to such acquisition. Such report shall be due to OHCA within sixty days following the property acquisition. If the acquisition does not occur at the end of the third year of the lease, the Hospital shall immediately notify OHCA of such.

All other conditions set forth in the CON authorization issued under Docket Number 08-31125-CON not modified herein, will remain in full effect.

By Order of the
Office of Health Care Access

Signed by Commissioner Vogel on January 30, 2009

Date

Cristine A. Vogel
Commissioner

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