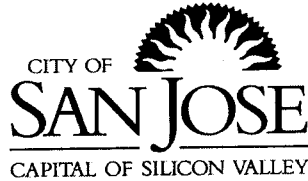


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Memorandum

TO: HONORABLE MAYOR AND
CITY COUNCIL

FROM: Katy Allen
William F. Sherry

SUBJECT: TERMINAL AREA
IMPROVEMENT PROGRAM—
DESIGN/BUILD STATUS REPORT

DATE: 01-06-06

Approved  Date 1/9/06

INFORMATION

BACKGROUND

On November 15, 2005, Council approved recommendations to proceed with planning a Terminal Area Improvement program using a design/build project delivery method. Council further directed that outreach be conducted with the design/build stakeholder group to solicit input on the process and the draft Request for Proposals (RFP). A staff team from Airport, Public Works, Finance, City Attorney, City Manager and other groups are working together to move this item forward. This document provides a status report and provides a "road map" of the next steps in the design/build process.

DESIGN/BUILD OPTIONS

Staff review of design/build industry data and various design/build strategies indicates that for complex design/build projects, the owner is better served to issue a more general scope of work for the RFP, and to select the design/build contractor primarily on the basis of their qualifications, track record and demonstrated ability. This is true because schedule and design factors are generally the dominant factors in determining total project costs for complex design/build projects.

The Terminal Area Improvement Program is a highly complex design/build project, involving many elements that are very dependent on each other. Schedules for each of the elements must be closely coordinated and monitored. Construction staging areas are significant factors, because each of the construction elements is in the same general area. There are many design options

that must be evaluated and prioritized in order for the program to be delivered within the budget constraints imposed by the availability of funds.

After reviewing the complexity and options, staff is recommending a qualifications based / progressive lump sum model which is considered the “state of the art” for a highly complex design/build project. The model would give the Airport the maximum control possible over the design process, while still obtaining the benefits of the design/build approach. Staff is continuing to look at other design/build options as well, but currently believes that this model may represent the best opportunity for success here in San José. A synopsis of this contracting methodology is attached as Exhibit A and additional information about the RFP will be posted on the Airport’s web site at www.sjc.org. Staff intends to use this model as the starting point for drafting the RFP for San José’s project. The primary modifications will be to include San José’s local requirements and values for the qualifications based selection criteria.

PREQUALIFICATION

The design/build implementation ordinance provides the option for the Director of Public Works to use a prequalification process prior to the issuance of a request for proposals. The staff report that went to Council on 11/15/05 indicated that a prequalification process would be used. However, staff has since reconsidered the need for a prequalification process for this project. Prequalification processes are primarily used for low bid contracts to filter out contractors that don’t have the technical or financial qualifications to perform the project. However, since staff will most likely be recommending a design/build approach using a selection method that is primarily based on qualifications, a “prequalification” phase is no longer necessary. Contractors that do not meet the minimum qualifications can be screened out at the beginning of the review phase for the proposals. By eliminating the prequalification phase, there is the major added benefit of giving design/build contractors the opportunity to review the RFP requirements prior to finalizing their team. This should result in significantly better teams being formed for the project.

After the Council has selected a design/build team, the prequalification process will be used by the City to insure that subcontractors brought in to do work are highly qualified.

PROHIBITED CONFLICT

The City currently has agreements and contracts with a number of consultants and contractors working at the Airport. Many of them have expressed interest in participating in a design/build team for the project. The design/build implementation ordinance provides specific language relating to prohibited conflicts, as follows:

- A. Any person who substantially participated in the preparation of a request for proposals is prohibited from participating in the preparation of a proposal by, or otherwise being a part of, any design/build entity responding to that request for proposals.

- B. A design/build entity is prohibited from including as a member or using on a project any person who substantially participated in the preparation of the request for proposals for that project.
- C. The prohibition set forth in this section does not apply to a person who prepares a foundational report or study, such as a master plan, soils report, or environmental clearance document, that is subsequently used by another person to prepare the design requirements for a project.
- D. The City shall disqualify from further consideration the proposal of any design/build entity violating this section.

Staff has been very careful to “distance” each of the current consultants working for the Airport from the RFP development process, so as to ensure that they have an equal opportunity to compete on this project. Staff will be working closely with the City Attorney’s office to ensure that a fair and open process is used and that no one has an unfair advantage by virtue of having access to “inside” information.

OUTREACH

Outreach for the design/build process needs to be conducted with stakeholders, industry groups and potential design/build contractors. Staff has already initiated contact with the following stakeholders:

- Airlines
- Silicon Valley Chamber of Commerce
- Building Trades Council
- Architects & Engineers Association (AEA)
- Municipal Employees Federation (MEF)

Other stakeholders that will be contacted and provided a copy of this status report include the League of Women Voters, each of the Ethnic Chambers of Commerce, and the Small Business Development Commission (SBDC).

Staff has initiated contact with the following industry groups:

- Design Build Institute of America
- American Public Works Association

Other industry groups that will be contacted and provided a copy of this status report include: the Construction Management Association of America, the American Institute of Architects and the Consulting Engineers and Land Surveyors of California.

Staff has received inquiries from about a half dozen potential design/build contractors and we anticipate inquiries from other potential design/build contractors and potential subconsultants and subcontractors. In order to maintain a fair and equal process, staff will not be meeting individually with potential proposers. Instead, staff intends to use an information management system to post periodic status reports (such as this one) on the web to keep all stakeholders informed. In addition, staff has requested that the Design Build Institute of America (DBIA) assist the City with outreach efforts to potential contractors by using their extensive electronic mailing list to issue periodic bulletins regarding the progress of the RFP development.

Staff intends to conduct three noticed meetings in January and February that will be open to all potentially interested stakeholders in order to solicit input on the RFP process and requirements. The three meetings will have a focus of stakeholder, industry or potential design/build contractor groups. The minutes from these meetings will be published and circulated, and the results will be summarized for Council review.

CONTRACTING IN

The City has adopted a policy to ensure that “contracting in” analysis is conducted prior to outsourcing work. During development of the design/build implementation ordinance, Council provided direction to staff to work closely with City employee unions on the preparation of the analysis to ensure the appropriateness of the work that was being outsourced. Staff is now beginning work on a detailed staffing analysis and will be coordinating with union representatives.

This project is a very large, complex undertaking. Regardless of the type of delivery method, outside resources will be necessary to provide expertise not available by City staff. As is the case with the entire capital program, employees represented by AEA, ABMEI and MEF will be needed to provide oversight of the design/build entity, plan check, construction planning, administration, inspection and contract administration.

LOCAL AND SMALL BUSINESS

The design/build implementation ordinance also considers local and small businesses. Staff will follow the local and small business preference ordinance adopted in June 2004. This policy states that when the selection is based upon factors other than price, then the local and small business preference ordinance requires a preference of 5% of the total points for a “local” business and another 5% for a “small” business. Under the current ordinance, no preference is given for the use of local and small subconsultants.” While it is not possible for the City to set a “goal” or “quota” for local and small business participation, staff intends to work closely with the SBDC to craft language in the RFP that addresses these concerns yet still meets the legal requirements for a fair and open competitive process.

LABOR PEACE

The City and Building Trades Council has negotiated a project labor agreement (PLA) for the Airport program. This PLA was designed to prevent work stoppages to the program associated with labor actions. However, a Presidential Executive order was issued soon after the PLA was executed which prohibits the use of this type of PLA if there are federal grant funds associated with the project. Since the City does not want to preclude the eligibility of these projects for potential future federal grants, precedent has been set on prior Airport projects to not use the PLA for the majority of the Airport Improvement Program. For these reasons, staff recommends that the PLA also not be used for the Terminal Area Improvement program. In lieu of the PLA, the Airport has been using Labor Harmony provisions in Airport construction contracts to address Labor Peace. These provisions put the onus on the contractor to promote labor peace, and the contractor is at risk if the contractor does something that jeopardizes labor peace.

The design/build approach offers opportunities to further promote labor peace, beyond the Labor Harmony provisions. The design/build implementation ordinance includes the following language related to labor peace:

“Avoiding labor disputes and disruptions is a significant factor in achieving the objective of efficiently delivering projects through the design/build procurement process. For this reason, the request for proposals shall require a proposer to include in its proposal a plan for how it will assure that no labor dispute or unrest will occur during the term of the design/build contract. The request for proposals shall indicate that the design/build contract will incorporate the details and requirements of the plan for labor peace contained in the proposal.”

Staff will meet with the Building Trades regarding the specific language for the RFP, but anticipates no problem in meeting the requirements of the ordinance.

VALIDATION COMMITTEE

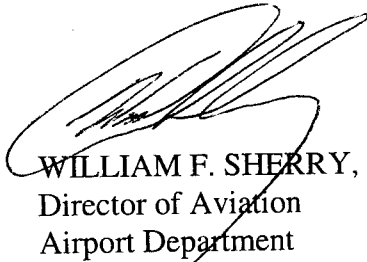
One of the lessons learned in recent procurements was the need for an outside validation committee to review City work plans, staffing plans and the actual RFP, to validate that the proposed process is fair and equitable and that the proper resources are in place to ensure an appropriate level of review. Staff has discussed this need with representatives of the Design Build Institute of America. This may be an appropriate body to provide these services. Staff will continue discussions with the DBIA regarding a specific scope of services. Staff will also review other options, and will bring recommendations to Council once a full review is complete.

The City process integrity guidelines will be included in the RFP.

NEXT STEPS

The following activities are planned for the next few months:

Develop RFP Draft	December - January 2006
Outreach Meetings	January - February 2006
Council Action to Accept Report on Outreach and Provide Input on Selection Criteria	February 2006
Finalize Recommended RFP and Selection Criteria	February 2006
Council Finding and Approval of Selection Criteria & RFP	March 2006


WILLIAM F. SHERRY, A.A.E.
Director of Aviation
Airport Department

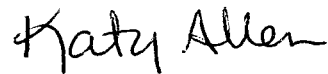

KATY ALLEN
Director, Public Works Department



EXHIBIT A

QUALIFICATIONS-BASED PROGRESSIVE LUMP SUM CONTRACTING METHODOLOGY (SUMMARY)

RFP - General

- Project scope is presented in general terms
- Evaluation criteria is based primarily on qualifications
- Proposals are submitted
- Short-listed firms are interviewed
- Final evaluation is primarily based on firm's experience, proposed personnel, project approach and performance in the interviews, combined with evaluation of proposed management fees as part of the selection criteria.

RFP - Selection Process

- A selection committee reviews the submitted proposal and qualifications in accordance with the evaluation criteria
- Selection Committee recommends a short list of firms
- Short listed firms make oral presentations to the Selection Committee
- Selection Committee makes final evaluation and ranking
- Top ranked firm is recommended—Council makes final decision and authorizes staff to negotiate a contract
- Contract award is made by Council after negotiations with selected firm

Contract

- The contract is divided into (up to) three reimbursable design phases for each project element followed by a design/build phase:
 - 30% Design Phase—advance design to 30% completion based on a City prepared Project Criteria Document, produce outline specifications, and submit a lump sum price proposal for final design and construction. If the City and the design/builder agree to the lump sum price proposal, the project continues on a design/build basis. If the City and design/builder are unable to reach agreement, the design/builder will progress to a 60% design or the City may terminate the contract.
 - 60% Design Phase—advance design to 60% completion and submit a new lump sum price proposal for final design and construction. If the City and design/builder agree to the lump sum price proposal, the project will continue on a design-build basis. The City has the option to accept the lump sum price proposal, or to require the design/builder to complete the design to 100%, or to terminate the contract.
 - 100% Design Phase—advance design to 100% completion at which point the City may solicit construction bids for the Project under a competitive bid-build approach.
 - Design/Build Phase commences once the City and design/builder agree to the lump sum price proposal for the remainder of design and the construction of the project and continues until final completion of the project.
- The scope of construction is determined during the design phase.
- City has the option throughout the design process to terminate the contract, to remove any project element from the scope, or to proceed with design.
- Budgets are established up front by the Council and costs are negotiated within these budgets.

