



# Memorandum

**TO:** HONORABLE MAYOR  
AND CITY COUNCIL

**FROM:** John Aitken  
Matt Cano  
Julia H. Cooper

**SUBJECT:** SEE BELOW

**DATE:** June 4, 2018

Approved D. D. SyL Date 6/14/18

**SUBJECT: APPROVE RANKING AND AUTHORIZATION TO NEGOTIATE AND AWARD DESIGN-BUILD CONTRACT FOR THE INTERIM FACILITY – FOUR GATES AT THE NORMAN Y. MINETA SAN JOSE INTERNATIONAL AIRPORT**

## RECOMMENDATION

(a) Adopt a resolution:

- (1) Approving an Addendum to the Final Environmental Impact Report for the Norman Y. Mineta San Jose International Airport Master Plan Update, as supplemented and addended, all in accordance with the California Environmental Quality Act (CEQA), as amended.
- (2) Finding that the award of the proposed design-build contract for the Interim Facility - Four Gates Project (the "Project") at the Norman Y. Mineta San Jose International Airport will result in lower costs and faster Project completion than if the City used the traditional design-bid-build method of project delivery;
- (3) Approving the final ranking of the Design-Build (D-B) Entities that responded to the RFP for the Project;
- (4) Authorizing the Director of Public Works to negotiate a D-B Contract for the Project as follows:
  - (a) Begin negotiating with the highest ranked D-B Entity,
  - (b) Begin negotiating with the next highest D-B Entity, if after having negotiated with highest ranked D-B Entity, the Director determines that the City's interests are best served by beginning negotiations with the next highest ranked D-B Entity,
  - (c) Begin negotiating with each of the other D-B Entities in order of their ranking as the Director determines is appropriate;

- (5) Authorizing the Director of Public Works to award and execute the D-B Contract for the Project to the highest ranked D-B Entity that successfully completes D-B Contract negotiations with the City;
  - (6) Authorizing the Director of Public Works to negotiate and execute Task Orders up to the Contract not to exceed amount as necessary to meet project completion; and
  - (7) Approving a D-B contingency in the amount of fifteen percent of the negotiated D-B Contract for City-approved changes to the design scope and construction services and authorizing the Director of Public Works to execute Contract Change Orders up to the contingency amount.
- (b) Adopt a resolution declaring the City's official intent to reimburse expenditures for the Project from the proceeds of the City of San José, Norman Y. Mineta San José International Airport, Subordinate Commercial Paper Notes.

### **OUTCOME**

Council resolution authorizing the Director of Public Works to negotiate and award the Design Build contract as described in this memorandum will allow the development of the Project.

Council resolution authorizing the reimbursement of expenditures for the Project will allow the City to be reimbursed costs from the proceeds of the City of San José, Norman Y. Mineta San José International Airport, Subordinate Commercial Paper Notes.

### **EXECUTIVE SUMMARY**

The Airport's unprecedented growth of passenger traffic has led to increased demand for additional aircraft gates. In order to address this demand, Airport staff has concluded the Design-Build RFP process for the construction of an Interim Facility, which would include four (4) additional gates with accompanying hold room space, restrooms and concession space is appropriate.

### **BACKGROUND**

On May 1, 2018, the Council approved the finding that the Project will exceed \$5,000,000, and that the use of the design-build delivery method process is likely to save money and/or result in faster project completion than if the City used the traditional design-bid-build method of project delivery for the Project. In addition, the Council approved the RFP for the Interim Facility, and the RFP was advertised on May 3, 2018 with a submittal deadline of June 1, 2018. The RFP included the selection procedures utilized and the information required from the potential Design-Build Entities, description of the Project, the exemplar design-build agreement and the necessary

forms for the submittal. A Technical Evaluation Panel (TEP) comprising City staff and industry partners will evaluate the written submittals and conduct interviews with the most qualified Design-Build Entities.

Sealed cost proposals from each Design-Build Entity will also be evaluated by the City, after the written proposals and interviews, to establish the best value for this project. The City will begin negotiations with the highest ranked D-B Entity. Consideration will be given to profit and overhead, general conditions, design fees, project/construction management, construction acceleration concepts, and stakeholder engagement methods. The selection process will result in acquiring the services of a highly qualified Design-Build Entity that will ultimately lead to an efficient project delivery.

The final ranking and the results of the RFP Evaluation process will be provided as part of a supplemental memorandum to be issued by staff after the City has received proposals, any proposer interviews have been completed, and the period to protest the final rankings has expired.

## **ANALYSIS**

### **A. Environmental Approvals**

The Director of Planning, Building and Code Enforcement approved an Eleventh Addendum to the Airport Master Plan Environmental Impact report (EIR) on April 4, 2018, a copy of which is posted on the City's website at <http://www.sanjoseca.gov/index.aspx?nid=2435>. The Director of Planning, Building and Code Enforcement determined that the Project will not have any significant environmental impacts not previously disclosed in the Airport Master Plan EIR, nor changes with respect to the circumstances under which the Project is undertaken, that would indicate that the Project's impacts will be any greater than those previously analyzed. Therefore, no new mitigation is required to implement the Project and no subsequent or supplemental EIR is warranted or required.

### **B. Design-Build Delivery Method**

On May 1, 2018, the Council adopted Resolution No. 78571 approving the use of the design-build project delivery method for the Project pursuant to Section 1217 of the City's Charter and Chapter 14.07 of the San José Municipal code. To date, staff has advertised the RFP for the Project with a submittal deadline of June 1, 2018.

The design-build project delivery method allows for a greater collaboration between the designer and the contractor. This methodology allows for a single procurement phase, the guaranteed maximum price of the project is known, and fast tracking is accomplished by paralleling design and construction activities. This method of project delivery includes one entity (design-builder) and a single contract with the owner to provide both architectural/engineering design services and construction. The key considerations in favor of this method include:

- Cost efficiencies can be achieved since the contractor and designer are working together throughout the entire process.
- Fewer design changes, fewer claims and less litigation.
- Earlier knowledge of firm costs.
- Change orders typically limited to owner changes.
- Design-build can deliver a project more quickly than conventional design-bid-build.
- Ability to enhance project coordination.
- Ability to reduce project claims.

In addition, the benefits of design-build include:

- Builder input during design
- Requires minimal time commitment from the owner throughout the process.
- Price guaranteed, less cost risk for early projects
- Single point of responsibility for construction
- Fast-track delivery opportunity, fastest project delivery method of large project types
- Minimizes owner's involvement in any conflict between contractor and design team.

As part of the design-build delivery method, the contracts include a guaranteed maximum price ("GMP"). Under a GMP contract, the Contractor guarantees that the City will pay no more than the GMP for completion of the work. Savings on the project is the difference between the GMP and the final cost of the work plus the Contractor's fee.

By default, the City benefits from savings. The City is obligated to pay no more than the cost of the work plus the fee. So, if that amount is lower than the GMP, the City owes no more and enjoys all the savings. To offer the Contractor extra incentive to minimize the cost of the work – thereby maximizing savings – some GMP contracts set up a sharing of any savings.

An analysis study completed by Leland Saylor Associates in March 2018 found that design-build delivery method provides a 6.1% lower cost compared to the traditional design-bid-build method. In addition, design-build construction speed is 12% faster than design-bid-build methodology with an overall delivery speed of 33.5% faster than design-bid-build. There is also 5.2% less of a chance of cost growth potential for design-build over the entire construction period when compared to the design-bid-build.

The price proposals received for this Project will be evaluated against the independent cost estimates compiled by the City to assist in negotiating a GMP. The comparative analysis of the price proposals versus the City's independent estimates will be summarized in the supplemental memorandum.

### **C. RFP Evaluation and Ranking Process**

The RFP scoring criteria used to rank the Proposals include: experience and qualifications; project team; project approach; design narrative; design rendering; schedule and phasing; safety and security approach; local business enterprise, small business enterprise (if local) and on-site interviews. The evaluation elements for this RFP are as follows:

**Step 1**

Public Works Procurement Team will provide the initial screening of proposals received in response to the RFP to ensure the submitted documents meet the RFP minimum qualifications and are determined to be responsive. Submittals that meet the RFP minimum qualifications will be forwarded to the TEP to review and ranked independently as described in Step 2 below.

**Step 2**

Using the evaluation criteria defined in the RFP, each member of the TEP will independently evaluate each submittal and score the submittals according to the following:

| <b>Description</b>                  | <b>Points Assigned</b> |
|-------------------------------------|------------------------|
| Minimum Qualifications              | Pass/Fail              |
| Cover Letter                        | Pass/Fail              |
| Experience and Qualifications       | 100 pts                |
| Project Team and Subcontractor List | 100 pts                |
| Project Approach                    | 100 pts                |
| Design Narrative                    | 75 pts                 |
| Design Rendering                    | 75 pts                 |
| Schedule and Phasing                | 75 pts                 |
| Safety and Security Approach        | 75 pts                 |
| <b>MAXIMUM TOTAL</b>                | <b>600 pts</b>         |

The results of the evaluation will be summarized in the supplemental memorandum.

**Step 3**

Following the evaluation, the City will conduct oral interviews with D-B Entities from Step 2 based on the TEP's recommendation. The oral interviews will be based on a presentation and a predetermined set of situation based scenarios that could occur during the project. The TEP will evaluate the D-B Entities on their ability to collaboratively provide solutions to the situations under a predetermined rating matrix. After the interviews are completed, the TEP will collectively rate the D-B Entity's performance and assign scores up to a maximum of 500 points.

The results of the oral interviews will be summarized in the supplemental memorandum.

**Step 4**

The price proposals for the Project will be received by the Public Works Procurement Manager on the day of the interviews. The Public Works Procurement Team will evaluate the price proposals by the predetermined RFP criteria. The lowest rough order of magnitude (ROM) price will receive one hundred percent (100%) of the points assigned to the price proposal (250 points) while the remaining Proposers will receive a reduction in points equal to the percentage difference between their total ROM price and the lowest ROM as outlined in the RFP price proposal evaluation criteria.

The results of the price proposal will be summarized in the supplemental memorandum.

The scores for each of the steps will be combined to determine the final ranking. The final ranking results will be summarized in the supplemental memorandum.

| <b>Description – RFP Written and Oral Proposal Evaluation</b>    | <b>Points Assigned</b> |
|------------------------------------------------------------------|------------------------|
| Technical Proposal                                               | 600 pts                |
| Oral Interview                                                   | 500 pts                |
| Price Proposal                                                   | 250 pts                |
| <b>Local Business Enterprise (5%)</b>                            | <b>75 pts</b>          |
| <b>Small Business Enterprise (5%) (only applicable if local)</b> | <b>75 pts</b>          |
| <b>MAXIMUM TOTAL</b>                                             | <b>1500 pts</b>        |

#### **D. Commercial Paper Financing Plan**

##### **Financing Plan**

Commercial paper is an efficient mechanism for providing financing for capital projects. Staff recommends an increase in the aggregate size of the Airport Commercial Paper (CP) program from \$38 million to \$75 million to provide a funding source for the Project. Staff has issued a Request for Proposals seeking a letter of credit to support the increased Airport CP program and anticipates presenting recommendations to the City Council regarding the increased Airport CP program in August 2018.

##### **Declaration of Intent**

Federal tax regulations allow issuers of tax-exempt debt, such as the Airport CP notes, to use the Airport CP notes for reimbursement of certain prior expenditures for the project to be financed. However, such reimbursement can only occur if the City, as the issuer, has adopted an official resolution declaring its intent to reimburse the expenditures with the note proceeds. The City's declaration of intent to reimburse itself from proceeds of debt obligations will apply to construction expenditures made up to 60 days prior to the adoption of the resolution. In general, any such reimbursement of construction expenditures must be made no later than three years after the cost is originally paid. "Soft Costs" (such as architectural, engineering, surveying, soil testing, inspections, costs of issuance and similar costs) may always be reimbursed whether or not a resolution was adopted and regardless of the timing of the reimbursement.

The declaration of official intent is intended solely for purposes of complying with the requirements of the Internal Revenue Code and associated Treasury Regulations, and do not bind the City to make any expenditure, incur any indebtedness, or proceed with the Project or any portion thereof.

#### **E. Airline Approval**

In accordance with the Section 12.02 of the current Airline-Airport Lease and Operating Agreement for the Norman Y. Mineta San José International Airport, the Airport sent a letter notifying the airlines of the plans for this capital project and received their approval. The airlines'

share of capital expenses for the Project will be accounted for in the terminal rates and charges under the airline lease agreement and will be billed accordingly.

### **FISCAL/POLICY ALIGNMENT**

The San Jose Municipal Code requires that capital projects at the Airport be consistent with the adopted Airport Master Plan. The proposed Interim Facility is a near term interim project that addresses the challenge the Airport is experiencing until Phase II of the Terminal Area Improvement Plan is constructed which is identified in the Airport Master Plan (“Project T-13”), and is therefore consistent with the Master Plan pursuant to Municipal Code Section 25.04.210 (B)(2).

### **EVALUATION AND FOLLOW-UP**

Staff will issue a Supplemental Memorandum to report on the proposals received after the protest period and proposer interviews.

### **PUBLIC OUTREACH**

The general concept of an Interim Facility was presented at the January 23, 2018 City Council meeting. This topic of the Airport terminal constraints was discussed at the August 14, 2017 Airport Commission meeting, which was open to the public. The topic of the airline leases, including Airport needs and potential of an Interim Facility, was discussed at a Special Airport Commission meeting on January 22, 2018. The Airport Commission reviewed the Interim Facility at their meeting on May 14, 2018, which was open to the public. At the City Council meeting on May 1, 2018, the Airport requested and received approval to advertise a Design-Build RFP for the Interim Facility – Four Gate project. The public documents released at this Council meeting included the RFP used to solicit proposals. The RFP was posted on BidSync, SJC website, FAA Opportunities, AMAC, NATA, ACI-NA and the Minority Business Development Agency on May 3, 2018. A Pre-Submittal meeting was held on May 7, 2018 at the Airport for interested proposers. This memorandum will be posted to the City’s website for the June 26, 2018 City Council meeting.

### **DBE/LBE/SBE OUTREACH**

City staff did extensive outreach to encourage DBE participation. Outreach efforts included:

Identification of 914-certified DBEs;

Email blast sent to 914-certified DBEs including project scope and subcontracting opportunities (NAICS Codes and CalTrans Work Codes);

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- Posted contracting opportunity on BidSync, SJC website, FAA Opportunities, AMAC, NATA, ACI-NA and the Minority Business Development Agency;
- Email blast and phone calls to 85 entities on our interested party list which includes local and small businesses.

### **COORDINATION**

This memorandum has been coordinated with the City Attorney's Office, Planning, Building and Code Enforcement, Finance Department and the City Manager's Budget Office.

### **COMMISSION RECOMMENDATION/INPUT**

The Airport Commission was briefed on current and future Airport terminal growth constraint issues at its August 14, 2017 Commission meeting, was briefed on Airport plans at a special meeting on January 22, 2018, and was briefed at their May 14, 2018 Airport Commission meeting.

### **BUDGET REFERENCE**

The table below identifies the fund and appropriation proposed to fund the contract and contingency costs recommended as part of this memorandum.

The Interim Terminal Facility capital project budget of \$58,000,000 is a recommended adjustment to the 2018-2019 Proposed Capital Budget which is expected to be adopted by City Council on June 19, 2018.

| Fund #                                 | Appn # | Appn. Name                | Total Appn.         | 2018-2019 Proposed Capital Budget Page | Last Budget Action (Date, Ord. No.) |
|----------------------------------------|--------|---------------------------|---------------------|----------------------------------------|-------------------------------------|
| <b>Current Funding Available</b>       |        |                           |                     |                                        |                                     |
| 527                                    | NEW    | Interim Terminal Facility | \$58,000,000        | N/A                                    | N/A                                 |
| <b>Total Current Funding Available</b> |        |                           | <b>\$58,000,000</b> |                                        |                                     |

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**CEQA**

Resolution Nos. 67380 and 71451, with Addendum, PP18-038.

/s/

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/s/

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/s/

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For questions, please contact Matthew Kazmierczak, Manager of Strategy and Policy for the Airport, at 408-392-3640.