

Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Katy Allen
William F. Sherry, A.A.E
Larry D. Lisenbee

SUBJECT: SEE BELOW

DATE: 09-27-06

Approved

Date

10-2-06

COUNCIL DISTRICT: Citywide

SUBJECT: APPROVAL OF A CONTRACT WITH HENSEL PHELPS CONSTRUCTION FOR THE DESIGN AND CONSTRUCTION OF THE AIRPORT TERMINAL AREA IMPROVEMENT PROGRAM

RECOMMENDATION

- (a) Approval of a contract with Hensel Phelps Construction for the design and construction of the Airport Terminal Area Improvement Program in the amount of \$488,211,000, including a City-controlled design and construction contingency in the amount of \$24,560,000, for a total contract amount not to exceed \$512,771,000.
- (b) Approval of a City-controlled program reserve for additions to the scope of the Program, in an amount not to exceed \$55,965,000.
- (c) Adoption of a resolution finding that the contract with Hensel Phelps for the design and construction of the Airport Terminal Area Improvement Program will result in faster project completion than if the City used a traditional design-bid-build procurement process.
- (d) Adoption of a resolution:
 - (1) Authorizing the City Manager to negotiate and execute contract change orders for the City-controlled design and construction contingency pursuant to the terms of the contract with Hensel Phelps in an amount not to exceed \$24,560,000.
 - (2) Authorizing the City Manager to negotiate and execute contract change orders for the City-controlled program reserve in an amount not to exceed \$55,965,000.
 - (3) Authorizing the City Manager to negotiate and execute a first amendment to the agreement with Lamberson Koster & Company, a wholly owned subsidiary of Arthur J. Gallagher & Company, dba Gallagher Construction Services, to provide insurance broker services for an Owner Controlled Insurance Program for the Airport Master Plan projects, to include the administration of the Owner

Controlled Insurance Program for the Airport Terminal Area Improvement Program, to extend the term of the agreement from October 27, 2006 to October 26, 2011, and to increase the compensation by \$1,500,000, from \$1,575,000 to a not-to-exceed amount of \$3,075,000.

- (4) Authorize the City Manager to negotiate and execute the extension of the City's current OCIP program with American International Group from March 31, 2007 to March 31, 2012 including the purchase of Builders Risk and Owners Protective Professional Indemnity with an increase in premium and loss reserves in a total amount not to exceed \$19,500,000.
- (e) Adoption of the following Appropriation Ordinance Amendments in the Airport Revenue Bond Improvement Fund:
 - (1) Establish the Terminal Area Improvement, Phase II appropriation in the amount of \$26,799,000.
 - (2) Increase the Public Parking Garage appropriation in the amount of \$8,187,000.
 - (3) Decrease the Ending Fund Balance by \$34,986,000.
- (f) Approval of a sublease agreement between the City and Hensel Phelps for up to 15,288 square feet of space in the Airport administrative offices at 1732 No. First Street commencing October 18, 2006, for a year-to-year term that shall not extend beyond December 31, 2009, with initial monthly rent of \$35,114, with rates increasing \$.05 per square foot every July 1. Hensel Phelps will be responsible for a pro rata share of operating expenses, including taxes, insurance, utilities and parking.
- (g) Direct staff to implement comprehensive reporting to Council on a regular basis as described in this report.

CEQA: Resolution Nos. 67380 and 71451, PP 06-162.

OUTCOME

A finding that the contract with Hensel Phelps for the design and construction of the Airport Terminal Area Improvement Program (TAIP) will result in faster project completion than if the City used a traditional design-bid-build procurement process is a condition for approval of the proposed contract with Hensel Phelps. Approval of this contract will allow the City to implement the Airport TAIP. Authorizing the City Manager to negotiate and execute change orders for the City-controlled design and construction contingency and the City-controlled program reserve allows the City Manager to address changes in condition and scope throughout the design and construction of the TAIP.

EXECUTIVE SUMMARY

On May 23, 2006 Council authorized the City Manager to negotiate a design-build contract with Bechtel Infrastructure Group for the TAIP. On August 14 the City and Bechtel mutually terminated negotiations due to an impasse and the City began negotiations with the next ranked firm, Hensel Phelps Construction. Negotiations are complete and the contract is being presented for Council approval. Major issues have been resolved and are presented herein.

The contract provides that Hensel Phelps will design and construct the following major elements of the TAIP:

- Modifications to Terminal A
- Complete design of Terminal B
- Construction of Terminal B - Phase 1
- Construction of Temporary Terminal C
- Demolition of Terminal C
- New public parking garage
- New rental car garage
- New roads and bridges
- Terminal A inline baggage screening system and building
- Furniture, fixtures, equipment and signage for the North Concourse building

The not to exceed contract cost of these improvements is \$512.8 million, which consists of \$488.2 million for construction, and \$24.6 million for an owner-controlled contingency. The not to exceed cost includes \$294.1 million in base projects and \$218.7 million in optional projects.

Optional projects were identified in the Request for Proposals as projects that may be added to the design-builder's contract if cost savings, time savings and improved coordination could be realized. Staff has analyzed which optional projects would receive benefits from the design-build contract method and recommends inclusion of the following projects.

The optional projects are the Terminal A inline baggage screening system; the public parking garage; the consolidated rental car garage; and free-standing furniture fixtures, equipment, signage, security, and baggage screening system for the North Concourse Building currently under construction. These projects are consistent with the TAIP the Council conceptually approved on November 15, 2005 and formally amended into the Airport Master Plan on June 13, 2006, with the exception of the Terminal A Inline Baggage System. This optional project was added to the capital development program at the request of the airlines to provide for improved baggage screening at Terminal A. The budget for the Terminal A inline baggage system is being recommended for appropriation as part of the FY2005-2006 Annual Report. The optional projects were also selected by staff for inclusion in the design-build contract to increase efficiency and coordination.

In addition, there is a City-controlled Program Reserve of \$55.9 million, and program support costs of \$64.0 million. The costs can be broken down into the following areas:

Design & Construction	\$488.2 million
Contingency	24.6
Insurance, IT Equip, FF&E	30.1
Program reserve	56.0
Program support	64.1
Total	\$663.0 million

Design-build contracts typically utilize one of two contract methods known as progressive lump sum and guaranteed maximum price. The contract being presented for approval is a Guaranteed Maximum Price (GMP) Contract. In this type of contract, the City Council sets the budget for the project and the staff negotiates the cost and scope for the project elements. This contract will allow the City to shift risk to the contractor, cap costs and allow savings to be shared. The specific method the City will employ to control the work is as follows:

1. The City and the design-builder agree on a price to advance the design of a project element to 30%.
2. At the 30% design level,
 - a. If the parties agree to a GMP, the project element proceeds with final design and construction;
 - b. Should the parties fail to agree to a GMP, an agreement is reached to proceed to 60% design level.
3. At the 60% design level,
 - a. If the parties agree to a GMP, the project element proceeds with final design and construction;
 - b. Should the parties fail to agree to a GMP, an agreement is reached to proceed to 100% design level.
4. At the 100% design level,
 - a. If the parties agree to a GMP, the project element proceeds with construction;
 - b. Should the parties fail to agree to a GMP, the City proceeds to publicly bid and award the project element.

BACKGROUND

On November 4, 2003, Council authorized the City Manager to negotiate and execute a contract for construction insurance brokerage services for an Owner Controlled Insurance Program (OCIP) for the Airport Master Plan projects in an amount not to exceed \$1,575,000 with Gallagher Construction Services, which included the construction of the North Concourse project. This agreement will be modified with this action to allow Gallagher to provide services for this contract on the TAIP.

Based on the broker services performed by Gallagher, on March 16, 2004 (Item 8.3), the Council authorized the City Manager to procure an Owner Controlled Insurance Program (OCIP) from American International Group ("AIG") with the insurance premium of \$3,943,972. Council further established a claims loss reserve in the amount of \$3,900,000 to pay deductibles and procure builders' risk coverage and owners' protective professional indemnity insurance including contractor's pollution liability coverage, with aggregate insurance premiums not to exceed \$1,350,000.

On March 2, 2004, voters passed Measure D, which amended the City Charter to add a new exemption from the bidding and award requirements for design-build contracts, if certain requirements were met.

On December 14, 2004, Council approved an ordinance to implement Measure D. This ordinance established the process to be used for design-build projects. The process requires Council approval of a Request for Proposals (RFP) and the criteria and process by which the City may select a design-build entity.

On November 15, 2005, Council approved recommendations to proceed with the Airport Terminal Area Improvement Program (TAIP) 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 proposed RFP. Council further approved a general schedule leading to award of a contract in August 2006. Based on that action, staff has developed a more specific schedule to move through the RFP process. All milestones prior to contract award were met on schedule. Due to the impasse reached in the Bechtel negotiations, the award date was delayed to October 17.

- March 7 Approval of the RFP and Advertisement
- April 18 Proposals Due to City
- April 19-28 Evaluation of Proposals and Interviews
- May 23 Council Authorization to Negotiate
- June and July Contract Negotiations
- October 17 Council Award of Contract

On March 7, 2006, Council made a preliminary finding that the cost of the proposed design-build contract for the TAIP is likely to exceed \$5,000,000, and that the design-build procurement process is likely to result in faster project completion than if the City used a procurement process involving its normal competitive bidding process. Accordingly, City Council authorized the advertisement of the RFP for the TAIP design-build project.

On May 23, 2006, the Council ranked the qualified firms that responded to the RFP. Bechtel Infrastructure Group was qualified first, followed by Hensel Phelps Construction. Council authorized the City Manager to negotiate the contract and terminate negotiations should an agreement not be reached. The City and Bechtel mutually terminated negotiations on August 14 due to an impasse. The City immediately began negotiations with Hensel Phelps.

The schedule is being driven by the City’s commitments to the airport stakeholders who helped redefine the program in 2005. Therefore, achievement of these milestones is predicated on developing and awarding a design-build contract within the timeframe listed above.

ANALYSIS

Design Build Ordinance Finding

In order to meet the requirements of the City’s Design-Build Ordinance, staff analyzed the time required to deliver the TAIP using traditional design-bid-build and design-build construction management systems. A detailed report of the analysis is contained in Attachment A – Schedule Analysis for Design-Build.

The contract that has been negotiated with Hensel Phelps requires the project to be completed within 55 months from the November 2005 commencement of staff’s work on the Design-Build RFQ. The project would have required approximately 60 months using design-bid-build. Due to the loss of time associated with the unsuccessful negotiation efforts with Bechtel, the project is now scheduled for completion by the second quarter of 2010, however the contract does include an incentive to Hensel Phelps to bring the project in on the original schedule. Using design-build to deliver the TAIP could save a total of 5 months. A summary of the study findings is shown below.

TAIP Schedule Comparison for Municipal Code Conformance Findings (Tabular by Activity)			
Process	Design-Bid-Build		Design-Build
Acquire Designer	7	7	10
Design	12	53	45
Acquire Contractor	5		
Construct	36		
Total	60	60	55

The TAIP schedule analysis was performed using industry standards for construction scheduling and was reviewed for accuracy by Gilbane Building Company, the City’s construction management consultant for the North Concourse building. Since the schedule analysis shows that design-build project delivery saves time over the City’s normal project delivery process, a finding of conformance with the City’s Design-Build Ordinance may be made.

Subject: Approval of a Contract with Hensel Phelps Construction for the Design and Construction of the Airport Terminal Area Improvement Program

The analysis compared the two delivery methods as if both started simultaneously, in keeping with the Design-Build Ordinance requirements. However, staff has been working since November 2005 on the preparation of the RFQ and the subsequent negotiations, and the City therefore has a ten-month investment in design-build. A comparison of the two delivery methods on a going forward basis indicates that the design-build project delivery would be fifteen months sooner than the design-bid-build because a design-bid-build start up period would be needed. A fifteen month earlier delivery will result in substantial cost savings from avoided cost escalation and be a major positive impact on Airport revenues, airlines and customer service. The following chart shows the comparison.

TAIP Schedule Comparison if Process is Switched to Design-Bid-Build		
Process	Design-Bid-Build	Design-Build
Start	September 2006	November 2005
Acquire Designer	April 2007	October 2006
Design	April 2008	June 2010
Acquire Contractor	September 2008	
Construct	September 2011	
Beneficial Use	September 2011	June 2010

The detailed analysis of the timesavings is shown in Attachment A.

Cost Information

A specific cost analysis of the TAIP using the design-build or the design-bid-build is not possible using the information available today, because the scope of work for the project is not fully developed. However, staff expects that there will be cost savings using design-build due to the shorter schedule resulting in a corresponding decrease in costs due to avoided escalation, overhead, inspection, construction management and administration. In addition, there should be cost reductions by avoiding architect/contractor conflicts that would increase owner costs.

In order to further provide information to the Council, staff reviewed available studies regarding delivery methods. The most comprehensive study on this subject was completed in 1997 by Penn State University. The results of the study were published by the Construction Industry Institute and included a statistical analysis of 351 projects by both public and private owners.

The primary results of the study are presented as follows:

<u>Factor</u>	<u>Design-Build vs. Design-Bid-Build</u>	<u>Level of Certainty</u>
Cost	6% Lower	99%
Construction Speed	12% Faster	89%
Delivery Speed	33% Faster	88%

Design-build contracts generally save money by eliminating conflicts between the designer and builder that are inherent to design-bid-build contracts. In addition, the design-builder has an incentive to finish sooner because the design-builder is limited to a fixed fee.

Negotiation Strategy

Upon approval of the proposer rankings, the City formed a team to negotiate the contract with Hensel Phelps. The team developed a negotiation strategy that sought to achieve the following goals:

- Obtain a fixed fee consistent with industry standards that ensures the City receives services commensurate with cost;
- Develop a contract that minimized risk and provided the necessary insurance coverage at a low price;
- Achieve scope, schedule and budget requirements;
- Equitably allocate risk and reward;
- Maximize transparency of cost, and
- Allow for a fair fee.

To achieve these goals, the negotiating team used third party estimating and contract professionals when needed. In addition, the team reviewed other design-build contracts language for best practices. The City also sponsored a design-build peer review seminar hosting nine experts in the design-build industry to obtain best practice information.

The City's negotiating team consisted of:

Katy Allen
David Maas
Terry Roberts
David Brush

Director of Public Works (Lead)
Deputy Director of Aviation
Airport Consultant
Airport Construction Consultant

The team developed self-imposed milestones to ensure that negotiations were progressing on schedule. The negotiation team regularly briefed the Director of Aviation and the City Manager of progress throughout the process. The team consulted with the Director of Aviation and the City Manager on a regular basis throughout the negotiation period. The City Attorney's Office has participated in the negotiations and the drafting of the contract.

The City strongly negotiated for a Guaranteed Maximum Price (GMP) contract. This type of contract allows the City to fix the contract price as early in the process as is agreeable to the parties, thus minimizing the risk of escalation through design and construction. This contracting method also typically allows for a contractor-controlled contingency, shared savings, incentives and liquidated damages.

Contract Terms and Conditions

In general the contract is structured to allow the City flexibility to move elements of the project to a low bid environment if costs come in over the budget established for any project element. The contract is also structured to reduce risk of cost escalation. The contract fixes Hensel Phelps' profit, establishes change order process, and provides a framework for dispute resolution. Key elements of the contract are as follows:

1. GMP – The GMP contract allows the City to negotiate a time and materials (not to exceed) cost for the design of a project element up to the 30% design level. Should the design-builder and the City agree to a GMP at this point the project would proceed with final design and construction. Should the parties not agree, the process would be repeated at 60% design and 100% design. If the parties do not agree at 100% design to a GMP to construct the project element, the City may, at its discretion, publicly bid and award that project element.
2. Contingencies - There are three contingencies available for unexpected conditions. The contract contains a “Design-Builder Contingency” to cover unforeseen/unforeseeable cost that neither the architect/engineer nor the contractor could predict when the GMP was established. The use of these contingency funds is controlled by the design-builder, but will be monitored by the City pursuant to the terms of the contract. The contract also provides for a City controlled contingency to cover costs arising from the unforeseen issues arising during the Project that are not within the control or responsibility of Hensel Phelps, such as differing site conditions, force majeure events and change order work necessary to construct the project. Expenditure of the City controlled contingency will require a change order to be negotiated and executed by the City Manager. Any cost in excess of the GMP and Design-Builder Contingency that are not eligible for a City controlled contingency are the responsibility of the design-builder.
3. Contract Change Orders – In general, should unexpected conditions be encountered and a contract change order be issued by the City, Hensel Phelps will be entitled to extended overhead charges and additional working days. However the Contractor will be responsible for the first \$150,000 of cost incurred for differing site conditions per occurrence.
4. Liquidated Damages and Limitation of Consequential Damages - The Contract contains liquidated damage provisions in the event that a project element is not completed on time. The liquidated damages vary by project element and range from

\$6,000 to \$28,500 per day and are capped at a maximum of 90 days. The contract caps liquidated damages at a maximum amount of \$9.9 million.

In consideration for establishing liquidated damages and incentives for the project elements, the contract provides that the City and Hensel Phelps each waive any claims for consequential damages to which they might otherwise be entitled as a result of a breach of the contract. Consequential damages are losses or injuries that are not the direct result of a breach of contract, but rather are an indirect consequence or result of the breach of contract. An example of consequential damages that the City might incur would be the loss of airline and other tenant revenue and rentals resulting from the design-builder's failure to complete a project element on time. Staff considered these types of consequential damages in setting the liquidated damages amounts for the project elements, and the City therefore should be able to recover any such losses through the collection of liquidated damages.

5. Incentives - Incentives for early completion of the work are capped at 25% of the liquidated damages for a project element up to a maximum of 90 days. If all of the project elements are completed 90 days ahead of schedule, the maximum incentive the contractor will receive is \$2.475 million.
6. Shared Savings – The contract contains provisions for cost savings to be shared between the City and Hensel Phelps. Should the GMP for any project element be negotiated for a cost that is lower than the budgeted amount for that project element, the City would retain the full amount of any such savings. Should the actual cost to complete a project element be less than the GMP, inclusive of the design-builders contingency, the cost savings for the project element will be shared with 75% to the City and 25% to Hensel Phelps.
7. Profit - Hensel Phelps' profit is a fixed fee of \$34 million for the entire 3-1/2 year duration of the Terminal Area Improvement Program. The fixed fee can increase, but only in limited situations. The first is a change order resulting from a City-directed change or a City-caused delay. The second is a change order that draws upon program reserves to increase the scope of a project element. The \$34 million fee is approximately 6½ percent of the total award amount. Staff has performed an extensive review of public contracts of this nature and determined that Hensel Phelps' profit is reasonable for the very complex and multi-phased work that Hensel Phelps will be undertaking at an operating international airport. In addition, third party consultants familiar with Hensel Phelps contracts have confirmed that the fee is within range of similar projects.
8. Dispute Resolution – Consistent with the City's Dispute Avoidance and Dispute Resolution Policy for public works projects, the contract provides for a formal partnering program and a dispute resolution process. As provided in the Policy, a dispute resolution board will be convened for disputes between the parties.

9. Insurance Program - To provide for a comprehensive insurance program, the contract provides that the TAIP will be included in the City's Owner Controlled Insurance Program (OCIP) for the Airport Master Plan Projects. The City will secure the coverage for the OCIP liability at a minimum of \$150 million for General Liability, Statutory Workers' Compensation coverage. The City will acquire Builders Risk for completed project value, Owners Protective Professional Indemnity (OPPI) and other appropriate coverages that may be needed. OPPI protects the City above and beyond the limits of professional liability provided by consultants, for services such as design, structural engineering, and other construction related professional services. The OCIP and Builders Risk coverages will be purchased and placed into effect prior to the beginning of any construction and/or at the time of the first contract award. The OPPI will be placed upon the completion of the conceptual design of the TAIP Building project.

For any insured losses on the TAIP that are attributable to Hensel Phelps, the contract provides that Hensel Phelps will pay a per loss maximum deductible of \$10,000. Any deductibles for insured losses in excess of the first \$10,000 per loss deductible to be paid by Hensel Phelps will be paid by the City from the claims loss reserve.

Budget and Scope

The budget for the project is approximately \$663.0 million. Of that amount, \$512.8 million will be awarded to Hensel Phelps to design and construct the project elements described below. The remainder of this project funding authorization is for Contingency, Program Reserve, Insurance, Freestanding FF&E, IT Equipment, and Program Support.

- Contingency is to be used pursuant to the terms of the Contract for change orders resulting from differing site conditions, utility conflicts, hazardous materials, force majeure events and third party delay.
- Program Reserve would be used for alterations in the scope of work that result from new or restated needs of one of the Airport stakeholders, such as the airlines, airport concessionaires, the Federal Aviation Administration, and the Transportation and Security Administration. Use of Program Reserve would be at the discretion of the City Manager. The use of program reserve is restricted to TAIP projects. Any use of program reserve will be reported to the City Council in quarterly financial and progress reports.
- Program Support pays for staff, outside consultants and outside contractors. Use of funds requires additional approvals in the budget process or by award of separate contracts.

Subject: Approval of a Contract with Hensel Phelps Construction for the Design and Construction of the Airport Terminal Area Improvement Program

The breakdown is as follows:

Construction	\$488.2 million
Contingency	24.6
Insurance, FF&E, IT Equip	30.1
Program reserve	56.0
Program support	64.1
Total	\$663.0 million

The scope of the base project as described in the staff report from the March 7th council action remains unchanged. The base projects were selected from among all elements of the TAIP because they were particularly suited for delivery by a design-build design-builder

Modifications to existing Terminal A	\$37.7 million
New Terminal B	127.8
Roadway improvements	110.9
Temporary Terminal C	5.7
Demolition of Terminal C	8.2
Surface parking lot	3.0
Tenant relocations	0.8
Total	\$294.1 million

There are several projects that are ongoing or will become active in the near future that were not elements of the TAIP design-build program base project. They were included as optional projects in the RFP. Based on staff's assessment of improved project delivery, lower project costs or increased and more effective project coordination, staff recommends that these projects be incorporated into the design-build contract. The specific work scope negotiated with the design-builder for each of these projects was based on the status of the project and the specific work effort that best supports the program schedule and budget for completion of the total Airport development program. The optional projects recommended for inclusion are:

Consolidated rental car garage	\$101.6 million
Public parking garage	66.2
Terminal A baggage building and system	26.5
North Concourse furniture, fixtures, equipment and signs	23.0
Utilities - Feasibility	1.4
Total	\$218.7 million

The total value of the work scope negotiated for the optional projects is \$218.7 million. The total value of the TAIP Design Build Contract is \$512.8 million, which will serve the Airport's needs in 2010. This budget is consistent with the overall \$1.5 billion program outlined to Council in November 2005. The remainder of the program would be demand driven and would allow for Airport development to serve projected passenger demand in 2017.

This contract provides authority for the staff to manage all financial transactions within the approved budget. Task orders will be employed to fix the scope and cost of individual project elements. Project controls staff from both the City and Hensel Phelps will monitor and continuously forecast (so as to control) the costs and schedule of the project elements. Comprehensive reports will be issued quarterly for Council and public review of cost, scope and schedule.

Scope Validation

Hensel Phelps has invested significant resources in an effort to validate whether the entire scope could be delivered by the available budget. Preliminary findings from that effort have indicated some areas of the program that may require a value engineering process. In response to this concern staff will participate in a two-day workshop with Hensel Phelps and its design team during the week of October 2, 2006 to validate the basis of disparities between Hensel Phelps and the City's cost estimate. It is not unusual to experience discrepancies in program level cost estimates early in the design-build contract. A supplemental memo will be prepared for the City Council to report on the results of the cost validation process and any scope correction that may be necessary. Since the budget and schedule for this project are fixed, the scope will be adjusted to meet our commitments to the stakeholders.

Schedule

The schedule in the contract requires Hensel Phelps to complete the TAIP in 42 months. Beneficial use of the final building will be realized by the end of the second quarter of 2010. The approved schedule allows the City to realize the full benefit of a design-build contract. These include commencement of construction before the completion of design, and concurrent design and construction of multiple project elements. Work will commence with the construction of temporary Terminal C and complete with Terminal B. Roadways will be built to support individual project elements as those project elements are completed.

Insurance

The parties have agreed to extend the City's current Owner Controlled Insurance Program (OCIP) for the Airport Master Plan projects to include the TAIP, to ensure comprehensive insurance coverage. Gallagher Construction Services will administer the OCIP with Hensel Phelps on behalf of the City. Pursuant to the proposed first amendment to the City's agreement with Gallagher for insurance broker services, which extends the agreement with Gallagher by five years, Gallagher will administer the OCIP together with Hensel Phelps' OCIP administration. The administration of the OCIP includes but is not limited to enrolling of approved design-builders, delivering and explaining the OCIP Manual to eligible design-builders, tracking of insurance costs, administration of the Liability and Workers' Compensation claims, securing and maintaining up-to-date evidence of non-OCIP and OCIP coverage from all design-builders, and closing out the OCIP.

The extension of the OCIP (Liability/Workers' Compensation) for six (6) months past the anticipated construction schedule will take into consideration any unanticipated delays in construction. Because cost is based on actual payroll reported, the extension in time would not result in any additional premium to the City.

The purchase of two additional insurance policies: Builders' Risk and Owner's Protective Professional Indemnity including Contractor's Pollution Liability, is recommended to provide risk management for the Airport Master Plan Projects.

- Builders' Risk – Builders' Risk insurance covers fire, extended coverage (coverage for property damage caused by windstorm, hail, smoke, explosion, riot, riot attending a strike, civil commotion, vehicle and aircraft collision), vandalism, as well as other defined coverages subject to the construction limit of this project. Limits are to be calculated based on the proposed construction cost plus additional costs that could be incurred in the event of damage to the structures, such as demolition costs or additional design costs. The City will additionally need to extend coverage in the Builders' Risk insurance to include business interruption insurance. This would provide for the City's debt service payments to bondholders, to the extent the loss occurs prior to occupancy and after exhausting the capitalized interest funded from bond proceeds. The Builders' Risk policy will be procured after more information is available regarding the nature of the design and construction of the TAIP, which should enable the City to receive the most aggressive pricing for the Builders' Risk Policy.
- Owner's Protective Professional Indemnity (OPPI) including Contractor's Pollution Liability – OPPI including Contractor's Pollution Liability coverage protects the City in the event of potential damages arising from design errors and omissions and provides a source of funds for City claims against project architects and engineers. The policy applies only after the design professional's own insurance has been exhausted or does not cover the loss. Additionally, the OPPI policy affords coverage for liability caused by pollution conditions arising from covered operations at the project site. This policy can only be purchased after the completion of the conceptual design of the TAIP Building project.

It is recommended that the City Council delegate to the City Manager the authority to procure these additional insurance policies at the appropriate times for a total amount not to exceed \$19,500,000 subject to final audit based on final payrolls and final construction values.

Hensel Phelps Project Delivery Model

Hensel Phelps has proposed the following measures be implemented for the TAIP:

- Subcontracting plan – Hensel Phelps has a formal subcontracting plan that strives to use local and small business to the maximum extent possible. The plan is attached and includes outreach to small, local and disadvantaged business, and coordination with City departments such as the Office of Economic Development (OED) to develop contact

lists. Hensel Phelps has performed outreach to the Silicon Valley Chamber of Commerce and the ethnic chambers and is scheduled to present its subcontracting plan to the Small Business Development Commission on October 11, 2006. The subcontracting plan is attached as Attachment B. Hensel Phelps will provide the City with a list of named subcontractors by October 10, 2006; staff will subsequently provide that information to Council in a supplemental memo.

- Local economic stimulus – Hensel Phelps is working with OED to maximize the amount of the contract that is procured locally. In addition, the contract provides that Hensel Phelps will work with the City to capture as much use tax on out-of-state purchases as possible.
- Project Labor Agreement – Hensel Phelps has voluntarily agreed to use the existing Project Labor Agreement (PLA) that the City has in place on the Airport Master Plan. In general, the PLA provides that the unions agree not to strike or engage in other disruptive activities and the City agrees that its Contractors and their subcontractors will be bound by the terms of the Agreement. Generally, the PLA includes provisions to resolve project labor disputes and employee grievances and to establish a single set of wages, hours and working conditions for all craft workers on the project. Contractors are required to utilize the union hiring halls as the primary source of craft labor employed on the project.
- LEED certification – Hensel Phelps is very experienced in providing LEED certification. The contract requires the design-builder to prepare and provide the application for certification to the LEED council.

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 Ordinance, Council gave 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 has developed a staffing model for the management of the design-build contract. The model will require at least five new positions to manage the project. It is anticipated that some of these positions may be transferred from other locations. However it is likely that new positions will be created. Staff will work with the Budget Office to devise the strategy for filling positions.

Progress Reports to Council

Comprehensive reports will be presented to the Council as the project proceeds. The reports to Council will consist of the following:

1. Quarterly status report on budget, schedule, status, progress, and the use of the program reserve and contingency;

2. A report upon final approval of each GMP contract phase;
3. A report indicating when a planned shift of over 20% from one project element to another is needed;
4. A report on small and local business utilization within the quarterly report;
5. Quarterly reports regarding maintaining customer service at the Airport during construction.

Funding for the TAIP Project will continue to be subject to Council approval in the annual Capital Improvement Program (CIP) budget process. In addition, Council must approve all future financing actions necessary to fund the project.

Municipal Code Prerequisites

The Municipal Code sets forth a number of conditions for terminal and parking garage development, all of which have been met as described below:

- Municipal Code Section 25.04.310 provides that construction of additional gates at the Airport shall not proceed until (a) the year 2000 and after, (b) annual passenger volume exceeds 11.2 million, and (c) the transportation prerequisites specified in the Airport Security and Traffic Relief Act (ASTRA) have been met. Compliance with these conditions was completed in March 2004.
- Municipal Code Section 25.04.330-A provides that construction of Route 87 be underway prior to new terminal or parking garage construction. This condition was achieved in 1997.
- Municipal Code Section 25.04.330-B requires that all Stage 3 commercial aircraft be operating at the Airport prior to new terminal or parking garage construction. This condition was achieved in 2000.
- Municipal Code Section 25.04.330-C requires (a) a review to be conducted of the overall historical compliance of the potential airline or interested user(s) of proposed terminal facilities with the Airport Noise Control Program; and (b) that the results of this review shall be made available to Council for its consideration and deliberations prior to a decision to proceed with the development of a new terminal facility. While specific airline lease agreements or amendments related to airline use and occupancy of the new terminal facilities will be prepared at a later time, information on compliance of all airlines operating at the Airport with the Airport Noise Control Program is contained in the monthly noise reports prepared and submitted to Council as well as in the annual Airport Noise Control Program compliance reports prepared and submitted to Council

pursuant to Municipal Code Section 25.04.510 (informational memoranda). The most recent annual report was submitted to Council on September 12, 2005.

- Municipal Code Section 25.04.330-D requires that a report containing updated activity levels, including numbers of passengers, aircraft operations, cargo tonnage, and based general aviation aircraft, and a comparison of such activity levels to the Airport Master Plan forecasts be presented to Council prior to its consideration of a new terminal building. The annual status reports on the Airport Master Plan prepared and submitted to Council pursuant to Municipal Code Section 25.04.1210 (information memoranda) present, assess and compare Airport activity levels and forecasts, as required. The most recent annual report was submitted to Council on July 24, 2006. The City's Monthly Financial Report, which is submitted to Council, documents current Airport activity levels and revenue results.
- Municipal Code Sections 25.04.350-A and 25.04.350-B provide (a) that new terminal facilities shall only be constructed when the City has obtained and approved adequate written documentation which assures that the funding of the costs of development, maintenance, and operation of such facilities will be paid by the users of the facilities, in accordance with standard City-established airline rates and charges, agreements, and financing documentation, so as to continue existing City practice and policy that no City general funds are utilized for Airport development; and (b) that a review of the airline leases and rate-setting methodologies be conducted in order to assure that the agreements are appropriate to properly operate the Airport and to finance Airport projects in the Airport Master Plan. Consistent with these requirements, and as addressed under the "Cost Implications" section of this memorandum, construction of terminal development covered in this agreement will be funded through the issuance of revenue bonds backed by Airport rates and charges and by other Airport revenue sources. Operation of new terminals will be funded through fees and charges collected by the City from airlines and other users of the facilities. No City General Fund revenues will be utilized for development or operation of these facilities.

Municipal Code Section 25.04.350-A also provides that new terminal facilities shall only be constructed when the City has obtained and approved adequate written documentation which assures that the City complies with Federal law and regulations pertaining to competition and to the City's competition plan for the Airport. The federally required airline competition plan was updated and approved by the FAA in 2004.

- Municipal Code Section 25.04.710-A requires that acoustical treatment of homes in the 2010 65 CNEL as projected in 1997 to be completed prior to new terminal or parking garage development. This condition was achieved in 2002.
- Municipal Code Section 25.04.1110 provides that a status report shall be made to Council on any plans to improve or modify certain designated Airport area intersections and freeway interchanges, and potential means to fund such improvements, prior to Council consideration of new terminal buildings. The status of Airport area roadway

improvements is addressed in the annual status reports on the Airport Master Plan prepared and submitted to Council (most recently on 7/24/06) pursuant to Municipal Code Section 25.04.1210.

FAA Approval

Federal Aviation Administration (FAA) regulations, and the grant assurances with which the City has agreed to comply as a condition of receiving FAA grant funds, require that airport improvements be identified on an FAA-approved Airport Layout Plan, a technical document that displays existing and proposed airport facilities and associated data, prior to construction. Subsequent to the Council's adoption of the amended Airport Master Plan on June 13, 2006, staff initiated preparation of an updated Airport Layout Plan to reflect recent facility changes and future improvements under the current Master Plan including the TAIP projects. The mapping update also requires an update to the FAA's 1999 Environmental Impact Statement (EIS) pursuant to the National Environmental Policy Act (NEPA) as a prerequisite to FAA approval of implementation of improvements shown on the updated Airport Layout Plan. Staff, with consultant assistance and in coordination with the FAA, is completing those updates for submittal by early October.

FAA has advised that its review and action on the updated Airport Layout Plan and associated environmental clearance would take approximately 90 days to complete. This FAA process does not impact the proposed award of the City's design-build agreement with Hensel Phelps. Upon execution of the agreement, however, no task order will be issued to Hensel Phelps for construction until FAA approval is received.

Sublease Agreement

Hensel Phelps plans to sublease up to 15,288 square feet of office space from the City at 1732 No. First Street, for the term of October 18, 2006 to December 31, 2009. Either party can terminate the sublease with written notice given by August 15 of each year. The sublease agreement includes rental rates that are the same as currently paid by the City for the space to be subleased. The initial monthly rent will be \$35,114, with rates increasing \$.05 per square foot every July 1. In addition, Hensel Phelps will be responsible for a pro rata share of operating expenses, including taxes, insurance, utilities and parking. Rent and costs incurred by Hensel Phelps to sublease the office space will be a project cost that will be paid by the City to Hensel Phelps pursuant to the terms of the contract. Locating Hensel Phelps in the Airport administrative offices will provide increased synergy and efficiency throughout the TAIP project.

POLICY ALTERNATIVES

Not applicable.

PUBLIC OUTREACH/INTEREST

- ✓ Criteria 1: Requires Council action on the use of public funds equal to \$1 million or greater; **(Required: Website Posting)**
- Criteria 2: Adoption of a new or revised policy that may have implications for public health, safety, quality of life, or financial/economic vitality of the City. **(Required: E-mail and Website Posting)**
- Criteria 3: Consideration of proposed changes to service delivery, programs, staffing that may have impacts to community services and have been identified by staff, Council or a Community group that requires special outreach. **(Required: E-mail, Website Posting, Community Meetings, Notice in appropriate newspapers)**

Extensive public outreach was performed during the preparation of the RFP. Parties engaged were likely design-build proposers and subdesign-builders, designers and businesses that could contribute to the project. All public outreach that took place during the preparation of the RFP was conducted in public outreach meetings that were open to all interested participants. This effort specifically included the following elements:

- Development of website for central information dissemination
- Questions could be submitted via the webpage or the outreach meetings

During the advertisement period, a pre-proposal conference was held and 66 parties attended, representing 44 firms. Questions were recorded and answers were posted on the website. A portion of the preproposal conference was used to tour the Airport with potential proposers. As a result of the public input, the RFP was modified through the use of four addenda. These addenda clarified the project and changed some project requirements.

Once the contract is awarded, Hensel Phelps will implement its Local Contracting Plan, which will consist of a number of activities designed to inform businesses interested in participating in the project. Meetings will be held with the Chambers of Commerce, and local and small design-builder groups. The Office of Economic Development has provided a database of local and small businesses to the project team to assist in these efforts. The Local Contracting Plan is attached as Attachment B.

The project will be presented to the Airport Commission on Monday October 2, 2006. The results of that meeting will be communicated to the Council in a supplemental memo. The contract terms have been presented to the airlines and they are in support of the City moving forward with the project.

COORDINATION

This memorandum has been coordinated with the Departments of Finance, Office of Economic Development, and the City Attorney's Office.

FISCAL/POLICY ALIGNMENT

The San José Municipal Code requires that capital projects at the Airport be consistent with the adopted Airport Master Plan. Eight of the ten major elements of the TAIP are projects expressly identified in the Master Plan as amended 6/13/06: modifications to Terminal A (Project "T-9"), design of Terminal B (Project "T-11" and "T-13"), construction of Terminal B/Phase 1 (Project "T-11"), construction of temporary Terminal C (Project "T-10"), demolition of Terminal C (Project "T-10" and "T-12"), new Public Parking Garage (Project "T-4"), new Rental Car Garage (Project "T-14"), and new roads and bridges (Project "T-15"). The other two major elements – Terminal A inline baggage screening system/building and North Concourse building furniture/fixtures/equipment/signage – are components of the Terminal A and North Concourse projects expressly identified in the Master Plan (Projects "T-9" and "T-5", respectively). Therefore, award of this agreement for design and construction of the TAIP is consistent with the adopted Airport Master Plan pursuant to Municipal Code Section 25.04.210(B)(1) and 25.04.210(B)(2).

This project is consistent with the Guiding Principals for Budget and Financial Management, Mayor's 2006-2007 Revised June Budget Message, in that it supports economic recovery and job creation.

This project is consistent with several initiatives identified in the Economic Development Strategy adopted by Council in November 2003, and aligns most significantly with:

- Strategic Initiative #1: Build a World-Class Airport and Air Services, and
- Strategic Initiative #5: Support the Growth (and Start-up) of Local Businesses – Small and Large (5.12 - increase access to City contracting and purchasing opportunities through improvements to communication and the procurement process).

COST SUMMARY/IMPLICATIONS

On June 13, 2006, Council approved revisions to the Airport's development plan to allow for approximately \$1.5 billion in improvements that will be constructed through the year 2017. The contract value for this design-build work contract is approximately \$512.8 million, and is consistent with the program that Council approved. The existing budget and appropriation action included in this memorandum provide for initial planning efforts for utility projects and design efforts up to 30%. This action will accelerate amounts budgeted in future fiscal years and will not increase the total budget of the 5-year Capital Improvement plan. Additional future appropriation actions may be necessary to continue the design-build effort dependent upon the schedule established by Hensel Phelps.

Subject: Approval of a Contract with Hensel Phelps Construction for the Design and Construction of the Airport Terminal Area Improvement Program

Page 21

1. AMOUNT OF RECOMMENDATION/COST OF PROJECT:

Project Delivery	\$94,200,000
Program Reserve	\$56,000,000
Contingency	\$24,600,000
Master Agreement Amount	<u>\$488,200,000</u>
TOTAL PROJECT COSTS	\$663,000,000

Prior Year Expenditures	\$611,300
REMAINING PROJECT COSTS	\$662,388,700

2. COST ELEMENTS OF AGREEMENT/CONTRACT BY APPROPRIATION:

Terminal Area Improvement, Ph I	\$297,700,000
Terminal Area Improvement, Ph II	\$24,300,000
Public Parking Garage	\$66,200,000
Consolidated Rental Car Facility	\$101,600,000
North Concourse Building (Furniture/Equipment/Signage)	<u>\$23,000,000</u>
TOTAL AGREEMENT/CONTRACT AMOUNT	\$512,800,000

- 3. SOURCE OF FUNDING:** 520 – Airport Capital Improvement Fund
526 – Airport Revenue Bond Improvement Fund*
527 – Airport Renewal and Replacement Fund
529 – Airport Passenger Facility Charge (PFC) Fund**

* Commercial paper is being used as an interim source of funding, as approved by Council on June 20, 2006.

** All necessary PFC applications and amendments will be prepared and brought forward for Council approval after the design effort has progressed to the point that PFC-eligible portions of projects have been clearly delineated. If PFC funding is needed prior to PFC application approval by the FAA, staff will return to Council with proposed budget adjustments that will allow for interim funding from commercial paper.

- 4. FISCAL IMPACT:** The project has been reviewed and was determined that it will have no significant adverse impact on the General Fund operating budget. As outlined in the FY2006-2007 Adopted CIP, when fully implemented, the estimated additional operating costs of approximately \$5.5 million will be paid for in the Airport Operating and Maintenance Fund.

BUDGET REFERENCE *

Fund #	Appn #	Appn. Name	Total Appn	2006-2007 Adopted Budget Page	Last Budget Action (Date, Ord. No.)
526 (554)	5253	Terminal Area Improvement, Phase I	\$87,996,000	V-985	6/27/06 Ord. No. 27801
527	5253	Terminal Area Improvement, Phase I	\$5,099,000	V-985	6/27/06 Ord. No. 27801
529	5253	Terminal Area Improvement, Phase I	\$24,417,000	V-985	6/27/06 Ord. No. 27801
526	4164	Consolidated Rental Car Facility	\$10,288,000	V-963	6/27/06 Ord. No. 27801
527	5246	Public Parking Garage	\$167,000	V-966	6/27/06 Ord. No. 27801
520	4657	North Concourse Building	\$14,822,000	V-980	6/27/06 Ord. No. 27801
526 (548)	4657	North Concourse Building	\$178,188,000	V-980	6/27/06 Ord. No. 27801

* Services performed by Hensel Phelps under this agreement will be authorized by Task Order. An appropriation is not required for execution of the Master Agreement, but is required for each Task Order authorized under this agreement. The appropriations listed above are included in the 2006-2007 Adopted Budget and will be utilized for the contract in 2006-2007. Funding in the out years is allocated in the 5-year Capital Improvement Program.

HONORABLE MAYOR AND CITY COUNCIL

09-27-06

Subject: Approval of a Contract with Hensel Phelps Construction for the Design and Construction of the Airport Terminal Area Improvement Program

Page 23

CEQA

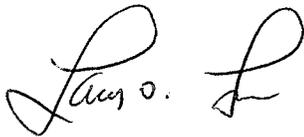
CEQA: Resolution Nos. 67380 and 71451, PP 06-162.



KATY ALLEN
Director, Public Works Department



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



LARRY D. LISENBEE
Budget Director

For questions please contact KATY ALLEN, PUBLIC WORKS DIRECTOR, at (408) 535-8300.

HF:rlc

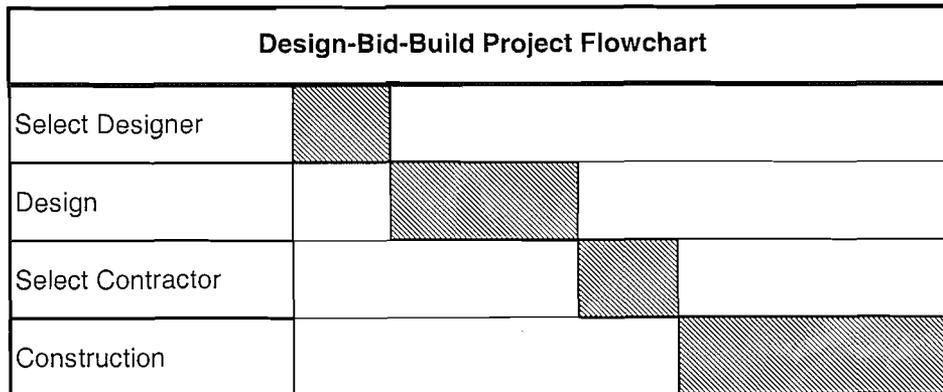
Attachments

Attachment A – Schedule Analysis for Design-Build

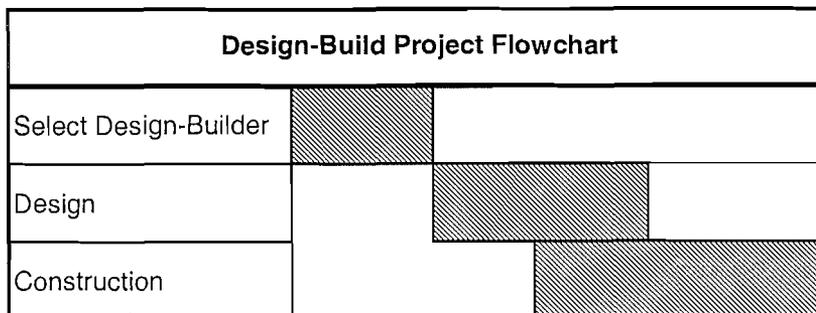
General Discussion of Project Delivery Systems

In November 2005 the City Council directed Staff to proceed with the Terminal Area Improvement Plan (TAIP) for Norman Y. Mineta San José International Airport, using design-build (DB) as the project delivery mechanism. The Council desired this project to be delivered by 2010. The Municipal Code requires that the City Council make a finding that the use of DB will save time and/or money prior to employing DB as a project delivery mechanism.

Design-Bid-Build (DBB) is traditionally used by the City to construct Public Works. DBB is a series of separate steps to deliver a project. In the typical DBB process, the City acquires a designer based on qualifications, and acquires a contractor based on low bid. As shown in the table, each step proceeds individually. This is a conservative process that yields a low price but is generally slower than more aggressive project delivery techniques. A typical DBB project timeline is shown below.



The DB process allows for the procurement of designer and builder in one step. Time is saved in two areas. The process allows design and preconstruction and in some cases construction to occur simultaneously. In addition, only one procurement process is needed. The DB process eliminates the potential for conflict between Designer and Contractor since they are one entity. In addition, DB allows the Contractor to provide input into the design, which may save money. The typical DB process is shown below.



Design Build Ordinance Findings

In order to use DB for the TAIP the City Council is required to make findings that the use of DB will save time or money. At this stage of the project it is not possible to determine with accuracy how much money using DB would save. However, the schedules for the different delivery methods are fairly straightforward. It is estimated that the TAIP can be delivered in 55 months using DB procurement. It is estimated that the project will take 60 months using DBB. The timesavings can be attributed to concurrent design and construction activities and elimination of one procurement process. The tables show that in a direct comparison DB will deliver the TAIP 5 months faster than DBB. A comparison of the two delivery models is shown below in both graphical and tabular format.

TAIP Schedule Comparison for Municipal Code Conformance Findings (Tabular by Activity)			
Process	Design-Bid-Build		Design-Build
Acquire Designer	7	7	10
Design	12	53	45
Acquire Contractor	5		
Construct	36		
Total	60	60	55

Real time Schedule Comparison

The comparison of DB and DBB delivery methods above shows both processes starting on the same day. If the Council directed staff to implement the TAIP with a DBB process today, the following schedules would be required.

TAIP Schedule Comparison if Process is Switched to Design-Bid-Build		
Process	Design-Bid-Build	Design-Build
Start	September 2006	November 2005
Acquire Designer	April 2007	October 2006
Design	April 2008	June 2010
Acquire Contractor	September 2008	
Construct	September 2011	
Beneficial Use	September 2011	June 2010

This shows that if the process were switched today an additional 15 months would be required to deliver the project via DBB. This is due to the fact that the City has already invested 10 months in the acquisition process for the design-builder

Conclusion

Analysis shows that the TAIP can be delivered faster using DB versus DBB project delivery. DB yields a 5 months savings over Design-Bid-Build. This analysis may be used by the City Council to make findings that the TAIP may be delivered by design-build in conformance with the Municipal Code.

In addition, since the Council directed staff to proceed with design-build in November 2005, an additional 10 months will be saved on the schedule. As a result, should the Council select design-build as the project delivery mechanism for the TAIP, the project will be delivered approximately 15 months sooner than if delivered by DBB.

Attachment B – Subcontracting Plan
Norman Y. Mineta
San Jose International Airport
Terminal Area Improvement Program (TAIP)

Subcontracting Plan Outline

Norman Y. Mineta
San Jose International Airport
Terminal Area Improvement Program (TAIP)

Subcontracting Plan Outline

TABLE OF CONTENTS

INTRODUCTION 3
DEFINITIONS 3
BACKGROUND..... 4
PURPOSE OF THE SUBCONTACT PLAN OUTLINE..... 5
LOCAL PARTICIPATION / OUTREACH 6
NAMED LOCAL FIRMS..... 7
HENSEL PHELPS SELF-PERFORMED CONSTRUCTION WORK..... 8
LABOR PEACE 8
PREQUALIFICATION PROCESS 8

1.0 INTRODUCTION

Hensel Phelps Construction Co. (Hensel Phelps) has been selected by the City of San Jose to design and build the San Jose International Airport Terminal Area Improvement Program (TAIP). Hensel Phelps' selection is a result of a San Jose City Council vote in May 2006 that authorized the city manager to enter into contract negotiations with the TAIP proposers in ranked order.

The initial scope of the TAIP includes the following elements, with program completion scheduled for 2010:

- Modifications to existing Terminal A
- Temporary passenger processing center for existing Terminal C
- Demolition of Terminal C
- New Terminal B
- Roadway improvements and parking lot
- Parking garages

Other members of the Hensel Phelps core team include Fentress Bradburn Architects (Architect of Record), Granite Construction (Roadway Construction), and DMJM Harris (Civil Engineering).

This subcontracting plan provides a general overview of Hensel Phelps' proposed approach to engage subconsultants and subcontractors to support Hensel Phelps in the execution of the work. Hensel Phelps intends to maximize, to the greatest extent possible, local San Jose and Santa Clara County firms' participation in the project through an extensive outreach program that will be coordinated with and made part of the City's existing outreach program. Firms that are local will be given preference when possible, especially when the procurement with such a firm, either for goods or services, can result in tax revenues for the City. This subcontracting overview is intended to provide sufficient information on project opportunities that will be available and communicate how local firms can participate or express an interest in bidding for those opportunities.

2.0 DEFINITIONS

In this subcontracting plan, the following words shall have the following meanings:

"Hensel Phelps" means Hensel Phelps Construction Co. which is the entity that will enter into a Design-Build contract with the City and is the Design-Build Contractor responsible for overall project execution.

"City" means the City of San Jose.

"Design-Build Contract" means the contract between the City and Hensel Phelps established in accordance with the San Jose Design-Build ordinance.

“Design-Build Contractor” means the entity established as the prime contractor for the project in contract with the City of San Jose.

“Design-Build Subcontractor” means a firm that performs both design support and construction work in contract with Hensel Phelps and is named in the Design-Build Contract (e.g. Granite Construction, Rosendin Electric, Critchfield Mechanical, etc.).

“Design-Build Ordinance” means the recently enacted San Jose Ordinance No. 27323 which added Chapter 14.07 “DESIGN-BUILD CONTRACTS” of the San Jose Municipal Code to support the design-build contracting method for City projects.

“Local Subcontractor” means a firm with a current San Jose Business Tax Certificate Number and an office in Santa Clara County with at least one employee.

“Lower-tier Subcontractor” means a firm in contract with one of the Design-Build Subcontractors.

“Named Subcontractor” means a Design-Build Subcontractor, in contract with Hensel Phelps, named to perform scope identified in the Design-Build Contract.

“Project” means the San Jose International Airport Terminal Area Improvement Program (TAIP) design-build project.

3.0 BACKGROUND

Hensel Phelps submitted its proposal in April 2006 in response to the City’s Request for Proposal (RFP) advertisement for the TAIP design-build project. Hensel Phelps’ proposal identified its core team as Fentress Bradburn Architects as the project architect, Granite Construction as its design-build roadway subcontractor, and DMJM Harris as its civil engineer. Various other subconsultants, Named Subcontractors and Local Subcontractors were also named as potential firms to participate with Hensel Phelps in the performance of the work.

Hensel Phelps entered into negotiations with the City in August 2006, to develop the terms of the Design-Build Contract and reached a tentative agreement with the City in September 2006. The agreement is scheduled to receive final approval and be awarded by the San Jose City Council on October 17, 2006. The City intends to employ a progressive lump sum design-build approach whereby Hensel Phelps will first proceed with design and then submit for the City’s acceptance a Guaranteed Maximum Price (GMP) at the 30%, 60% and possibly the 100% design stage for the completion of design and construction of each project element.

Hensel Phelps intends to maximize, to the greatest extent possible, the use of local firms and Small, Disadvantaged and Women Owned Business Enterprises and make sure these companies are made aware of all opportunities available to them in-line with their interest, capabilities and areas of expertise.

Because of schedule requirements and the need to name design subconsultants of any-tier during the negotiations of and prior to the Design-Build Contract, the design team is essentially complete and little design opportunities will be available after award of the Design-Build Contract. The greatest opportunities for adding Local Subcontractors will be during the construction phase of the project. Hensel Phelps will manage all construction activities and construction scope that is not self-performed will be subcontracted either through negotiated procurements with Named Subcontractors or by competitively bidding to prequalified bidders.

4.0 PURPOSE OF THE SUBCONTACT PLAN OUTLINE

The purpose of the subcontracting plan is to provide sufficient detail to the local subcontracting community to make it aware of the current project status, communicate how best to participate in the project, and to ensure:

- Local design firms are well utilized on the project;
- A large percentage of the construction work is performed by Local Subcontractors;
- Discretionary spending for materials and supplies is directed to local suppliers and vendors;
- Local firms and Small, Disadvantaged and Women Owned Business Enterprises have ample opportunity to perform work successfully in-line with their capacity, experience, firm strengths and financial capabilities;
- Local Subcontractors have ready access to the Design-Build Contractor project team and the Design-Build Subcontractors prior to and during the procurement phase of the project;
- Qualified subcontractors for the construction work are identified, publicly solicited for inclusion, and that competitive pricing is obtained for the project; and
- Maximum collaboration with the City is undertaken to leverage and align the plan with the resources, programs, and work processes already in existence in regards to procurement and local outreach activities.

Hensel Phelps' subcontract management work processes and procedures will incorporate the relevant City requirements such as the recently added Chapter 14.07 "DESIGN-BUILD CONTRACTS" of the San Jose Municipal Code. Other relevant TAIP specific requirements, which are set forth in the Design-Build Contract, will also be incorporated.

The project procedures will, when possible and relevant, align with the City's existing work process to leverage the knowledge and familiarity local subcontractors and suppliers already have with the City's acquisition process. Aligning the project approach and methodology with the City's current processes will improve the participation of local firms already familiar with the City's process on other capital projects. Incorporating elements of City's processes such as Bid Hotline and RFP/RFQ, and leveraging Bid Line as a means to disseminate general project information and potential opportunities are examples of where the project procedures and work process will be tailored to align with existing City resources.

5.0 LOCAL PARTICIPATION / OUTREACH

Recognizing the importance and value of local participation, a major focus of the project is to establish a process to facilitate opportunities for local and disadvantaged Santa Clara County firms to participate in the project to the maximum extent possible. Our plan is intended to enhance and supplement the City's existing outreach program. Significant elements of the outreach program include:

- Coordinating with the relevant City departments such as the Office of Economic Development and Small Business Development Commission to fully understand and support their programs to promote and support local and disadvantaged firms and solicit their input and participation in the outreach effort;
- Using existing locally established methods to reach out to local subcontractors such as City's "Bid Line" and coordination with other local support organizations including the San Jose Silicon Valley Chamber of Commerce and minority/small business exchanges;
- Developing and implementing a public awareness plan to inform the local community about the differences in design-build and the City's standard approach and the process for selection of subcontractors under the design-build approach;
- Conducting public meetings and workshops to disseminate project opportunities and provide opportunities to educate local and disadvantaged firms on how to participate in the project;
- Support the City's Stakeholder Outreach processes with information and speakers;
- Forming an outreach oversight committee consisting of representatives of Hensel Phelps' Project Management, City personnel, and other important stakeholders;
- Developing and communicating a timeline of available opportunities for subcontractor participation in the execution of the project;
- Developing prequalification and award criteria for subcontractors that includes preference for local companies;
- Participation and use of Named Subcontractors in the outreach effort and their commitment to endeavor to use local firms identified through the outreach and prequalification process;
- Preferential use of local firms in "negotiated" work by Hensel Phelps and its Named Subcontractors;
- Strong commitment to use local and disadvantaged firms for discretionary items such as purchasing of office equipment and supplies and other support services and the adjustment of work packages to allow maximum participation;
- Communicating opportunities through seminars, workshops, advertising, local media, public announcements and other public functions;
- Commitment to provide access and exposure to key project and Design-Build Subcontractors to local and disadvantaged firms;
- Packaging work scopes that best fit the capabilities and size of local and disadvantaged firms that have been identified and ensure these packages are earmarked as such to ensure maximum work opportunities for them, including the Named Subcontractors in this package adjustment process; and

- Developing and posting general project information, key contact listings, potential opportunities and the method interested firms can participate in the opportunities on an appropriate website.

The Hensel Phelps team includes a designated Local Business Outreach Manager assigned in the advocacy role to push the initiative forward externally and internally within the project team. This individual will manage and coordinate the development and implementation of the local business and disadvantaged firm participation program. This Local Business Outreach Manager will also be responsible to monitor the program performance and ensure compliance and recommend corrective actions when performance is not in accordance with the plan. In addition, the project intends to engage a local outreach consultant to assist in community outreach and public communications. Hensel Phelps will coordinate and use its expertise and experience to ensure collaboration between the community outreach and the local and disadvantage business firm outreach program to the greatest extent possible to ensure a successful outcome.

6.0 NAMED LOCAL FIRMS

The use of local subconsultants and subcontractors was a priority during the preparation of the Hensel Phelps proposal and, following negotiations, remains intact for project implementation.

Considerable effort was made to select subconsultants based on financial strength, areas of professional expertise, as well as local knowledge, local presence, and experience. Hensel Phelps also selected construction subcontractors in the areas of general building construction, selected building trade work, electrical, mechanical, and baggage systems. Hensel Phelps will work with the Named Subcontractors at the appropriate times in the design-build process to arrive at a price, schedule and scope for the various elements of work and submit to the City for negotiations. In the event that negotiations are not successful, in accordance with the Design-Build Ordinance, Hensel Phelps will publicly bid the work to prequalified firms and award on a low bid basis.

Additional and Local Subcontractors will also be able to participate as a Lower-tier Subcontractor to a Named Subcontractor. Named Subcontractors will develop their own subcontracting plans and will be strongly encouraged to use local firms to supply goods and services to the greatest extent possible. The Named Subcontractors will be required to participate with Hensel Phelps and the City in the outreach program and will make a concerted effort to use local firms identified via the outreach efforts and the prequalification process. Small and Local firms will be provided access to the Named Subcontractors to become prequalified and submit proposals in an effort to secure work. Named Subcontractors will engage its Lower-tier Subcontractors through the use of negotiated procurements and / or competitive bidding. Hensel Phelps and the City will work with the Named Subcontractors to ensure interested Local Subcontractors are made aware of potential opportunities in their field of expertise and have a chance to express their interest in submitting a bid to the Named Subcontractors. Opportunities with Named Subcontractors include work in areas such as: mechanical, electrical, supplies and services, roadway materials and supplies, etc.

7.0 HENSEL PHELPS SELF-PERFORMED CONSTRUCTION WORK

Under the design-build contract Hensel Phelps itself is able to self-perform elements of the construction work either with its own personnel or by subcontracting the work. Local Subcontractors will have the opportunity to participate in the project under direct subcontract with Hensel Phelps for subcontracted work that is not identified as part of a Named Subcontractor's scope. Hensel Phelps will publicly bid the work to prequalified firms and award on a low bid basis. Subcontracting opportunities with Hensel Phelps may include building specialties, janitorial, security, office furniture and supplies, construction equipment and material supply, rebar supply, trailers, landscaping, and other general services.

A list of subconsultants and subcontractors is provided as Exhibit A along with a short description of their scope of work.

8.0 LABOR PEACE

Labor peace will be maintained by means of adopting the existing Project Labor Agreement (PLA) put in place by the City and the labor unions. All subcontractors will be required to comply with applicable wage laws and work under the terms of the PLA in order to ensure labor harmony.

9.0 PREQUALIFICATION PROCESS

All potential bidders will be prequalified before being allowed to submit a bid for the project. A prequalification questionnaire will be publicly advertised, and if possible, will also be posted or made known using the City's existing resources such as Bid Hotline, RFP/RFQ, and/or Bid Line. The prequalification questionnaire will include the relevant details on the work package to be bid such as general scope description, estimated value, schedule requirements, minimum qualification requirements of interested bidders, submission details (submission date, address, etc.) and work package contact. Additionally, potential bidders will be identified as part of the outreach program.

Work packages will be tailored to ensure the scope best fits the capabilities and size of small and local firms that have been identified as part of the outreach program and prequalification questionnaire submissions.

Interested firms will be evaluated based on their responses to the prequalification questionnaire in areas, including but not limited to:

- Technical competency
- Work experience
- Past performance on previous City projects
- Past performance on similar and applicable projects
- Safety/quality record
- Customer references for similar work

COUNCIL AGENDA: 10-17-06
ITEM:

- Subcontractors' current workload, resources, and performance capacity
- Commercial review, outstanding claims, litigation, suits, or pending legal actions
- Financial data
- Bonding capability
- Debarment status
- Local preference

Only those companies that have been prequalified as being capable to perform the work will be allowed to bid the work. Companies that submit prequalification questionnaire responses and fail to be short-listed will be notified prior to the issuance of the bid packages. The project will ensure the short-list includes a diverse range of firms and gives preference to local and disadvantaged companies when all other qualifications are equal. The project intends to use a transparent and objective method to select a short-list of bidders.