



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Katy Allen

SUBJECT: SEE BELOW

DATE: 11-30-10

Approved

Date

11/30/10

COUNCIL DISTRICT: Citywide

SUBJECT: DELEGATION OF AUTHORITY TO NEGOTIATE AND EXECUTE THE CONTRACT FOR THE CONVENTION CENTER EXPANSION AND RENOVATION PROJECT AND MAKING CERTAIN FINDINGS FOR USE OF DESIGN BUILD PROJECT DELIVERY METHOD

RECOMMENDATION

Adoption of a Resolution:

- (a) Finding that the design-build procurement process will result in faster project completion than if the City used a procurement process involving its normal competitive bidding process;
- (b) Subject to the completion of the related bond financing and appropriation of funds, authorize the City Manager to negotiate and execute a contract with Hunt Construction for the Convention Center Expansion and Renovation Project in an amount not to exceed \$117,000,000;
- (c) Subject to the completion of the related bond financing and appropriation of funds, authorize establishing a City-controlled contingency in the amount of \$3,000,000, and authorize the Director of Public Works the authority to issue all change orders of any cost not to exceed \$3,000,000.

OUTCOME

This will allow the execution of the construction contract for the Project immediately upon receipt of bond proceeds, which is anticipated to occur in January 2011.

BACKGROUND

On June 22, 2010, the City Council authorized staff to advertise a Request for Proposals for the Convention Center Project. Based on that action, staff has developed a more specific schedule to

move through the process to award the project. As of today, each milestone has been met and the procurement process is on schedule.

The following is a recap of the schedule.

- June 22 Approval of the RFP and Advertisement
- September 1 Due Date for RFP
- September 1 to 10 Evaluation of Proposals and Interviews
- October 5 Council Authorization to Negotiate
- October and November Contract Negotiations
- December 14 Council authorization to Award of Contract Subject to Completion of Bond Financing

On October 5, Council approved the rankings and authorized the Director of Public Works to negotiate the contract. Today's action is the third and final action for the Council necessary to award the project.

ANALYSIS

Program Validation

On October 28, 2010, an all-day program validation session was conducted by Hunt and Populous at the California Theatre. In attendance were representatives from Team San Jose, the hotels, convention center users, and Bay Area convention planners. The Hunt/Populous team presented their approach to the project, schematic drawings used to prepare their proposal and a program level cost estimate. The design concepts presented received broad support from the stakeholders. The contractor and architect committed to delivering the project for \$120 million on a 24 month schedule. The various cost elements are shown below.

Summary of Cost Estimate in Millions		
Element	Cost	Notes
Demolition	\$2.6 million	Old King Library
New Construction	\$62.8 million	125,000 new square feet
Central Plant	\$13.7 million	New chillers, boilers, cooling towers, pumps
Systems	\$12.9 million	New fire alarm, building management system
Renovation	\$20.0 million	Cosmetic front of house
Contingency	\$3.0 million	2.5% of \$120 million
Delivery Costs	\$5.0 million	Project delivery, art
Total	\$120 million	

The delivery costs are \$3.4 million for project delivery, \$0.6 million for special inspection and testing, \$0.6 million for public art, and \$0.4 million for construction support consultants.

The contract with Hunt Construction has been substantially negotiated and the terms have been agreed to by both parties. Delegation of authority to the City Manager to negotiate and execute the contract will allow the City to execute the contract immediately upon receipt of bond proceeds.

Contract Elements

The contract with Hunt Construction is similar to the contract used for the Airport's Terminal Area Improvement Program, modified as necessary to accommodate the different scope of work. This contract is essentially a master agreement with Hunt that allows the City to negotiate successive construction contracts known as Guaranteed Maximum Price contracts (GMP) with the contractor.

In general the contract has been 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 fixes Hunt's profit, establishes the 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, the City may, at its discretion, publicly bid and award that element of work.
2. Contingencies - There are two contingencies available for unexpected conditions: a design-builder contingency and a City Contingency.

The "Design-Builder Contingency" covers unforeseen/unforeseeable costs 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, although the City will monitor the use of these contingency funds. Pursuant to the terms of the contract, the design-builder can use the funds without obtaining the City's authorization. However, the design-builder is responsible for any cost in excess of its contingency – unless the cost is eligible for a change order using the City-controlled contingency. Moreover, as discussed below the design-builder will be able to share in any savings generated from the contingency.

The contract also provides for a City-controlled contingency to cover costs arising from the issues arising during the Project that are not within the control or responsibility of Hunt, 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 Director of Public Works. Any costs 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, Hunt will be entitled to extended overhead charges and additional working days.

4. Liquidated Damages - The contract contains liquidated damage provisions should the completion date for the project be late. The liquidated damages are \$3,500 per day, capped at 90 days.

5. Incentives – In facilities such as convention centers that require booking well in advance of the events it is difficult to quantify the value of early completion since the facility might not be used. As a result there are no incentives for early completion of the work.

6. Shared Savings – The contract contains provisions for cost savings to be shared between the City and Hunt. Should the GMP for any project element be negotiated for a value that is lower cost than the budgeted amount for that project element, the full amount of any such savings would immediately revert to the City. Should the actual cost to complete a project element be less than the GMP, inclusive of the design-builders contingency, the savings will be pooled for use in the event another project element costs more than the budgeted amount. Upon completion of all project elements, the cost savings for the program will be shared with 85% to the City and 15% to Hunt.

7. Fees – As part of the RFP process Hunt was required to provide certain fees in a sealed envelope to the City. After the qualifications based selection process was completed, the envelope was unsealed and the following fees were proposed by Hunt. These fees are very competitive with the current construction market, and staff supports approval of the terms including these fees.

Fee	Percent
Profit and Overhead as a percentage of design and construction	3.15
General Conditions as a percentage of design and construction	4.50
Design as a percentage of construction	6.75

8. Dispute Resolution – Consistent with the City’s Dispute Avoidance and Dispute Resolution Policy, the project team will engage in a partnering program and will establish a Dispute Resolution Board (DRB). The DRB will be used for any disputes that could lead to claims or litigation. Because the nature of design-build contracts is collaborative, the City and Hunt will only convene the DRB in the event of a dispute that cannot be resolved by the project team.

Findings

Section 1217(e)(7) of the City Charter – which is implemented by Chapter 14.07 of the Municipal Code - governs the process the City must follow to use the design-build project.

procurement process. In order to use this process, the design-build contract must exceed \$5 million. If the contract exceeds \$5 million, the Council must find that the design-build process is likely to save money or result in faster project completion than if the City used its normal competitive bidding process.

At its February 23, 2010 meeting, the Council identified a series of projects (program) at the Convention Center which included four elements: demolition, new construction, systems improvements, and cosmetic renovation. Staff has estimated the cost of the program and has determined that the approximate cost would be \$120 million.

In addition, staff has performed a schedule analysis for the project comparing design-build to the traditional design-bid-build method of project delivery. The table below summarizes the comparison of the delivery methods. A more complete comparison of the delivery methods is contained in Attachment A.

Comparison of Delivery Methods by Time in Months		
Process	Design-Bid-Build	Design-Build
Acquire Designer	8	10
Design	12	24
Acquire Contractor	3	
Construct	20	
Totals	43 months	34 months

Based on the above comparison, it is reasonable for the City Council to make the necessary finding that the design-build method of delivering the Project will be faster than the traditional design-bid-build method of project delivery.

Local and Small Contractor Outreach

The Hunt proposal contained a local and small contractor outreach plan that featured the following elements to ensure local and small business opportunities to the maximum extent possible.

- Competitive bidding at the local level for non-named subcontractors.
- Hunt will not self perform any trade work.
- Named local subcontractors and sub consultants.
- Contractors commitment to use local labor.
- Direct contact through mass advertising, one-on-one contact, email and electronic notification.
- Transparent bid opening and evaluation.
- Subcontractor prequalification to level the playing field.

In addition, staff will keep records on the local labor utilization through our certified payroll process. Hunt has estimated that this project will create 300 to 500 craft trade jobs for the life of the project.

Project Financing

In addition to the aforementioned project schedule, the Finance Department has proceeded with a financing schedule designed to yield the anticipated project costs. On June 14, 2010, the Finance Department issued a Request for Proposals for underwriting services for the issuance of Convention Center Community Facilities District bonds. Based on the results of the process, Bank of America was selected as senior manager with Citibank and Wells Fargo selected as co-managers.

The financing teams' principal objective is to generate up to \$120 million in net proceeds for the project without exposing the City's General Fund to undue risk. The underwriting team will assist the City in the structuring and marketing of the financing which is expected to sell in early 2011. The Finance Department will present the financing plan for City Council and City of San José Financing Authority Board approval in early 2011.

EVALUATION AND FOLLOW-UP

Staff will be recommending a financing plan to the Council in January 2011.

PUBLIC OUTREACH/INTEREST

If approved by the City Council, staff will continue to work with stakeholders to solicit input on the process.

- Criterion 1:** Requires Council action on the use of public funds equal to \$1 million or greater.
- Criterion 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.
- Criterion 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.

This memorandum will be posted on the City's Internet website for the December 14, 2010 Council agenda.

HONORABLE MAYOR, CITY COUNCIL AND AGENCY BOARD

11-30-10

Subject: Authority to Award the Convention Center Project

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COORDINATION

This staff report has been coordinated with the City Attorney's Office, San José Redevelopment Agency, and the Departments of Finance, General Services, Planning, Building and Code Enforcement, City Manager's Budget Office and the Capital Facilities Advisory Committee.

COST SUMMARY/IMPLICATIONS

The award of the project is contingent upon completion of the bond sale related to the Project.

CEQA

CEQA: Resolution No. 72767 and Addenda thereto. File No. PP08-002.

/s/

KATY ALLEN

Director, Public Works Department

For questions please contact HARRY FREITAS, DEPUTY DIRECTOR, at 408-535-8300.