
**MINETA SAN JOSE INTERNATIONAL AIRPORT
MASTER PLAN TEAM**

1732 N. First Street, Suite 500
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Terminal Area Improvement Program

Design Build

Comments (C), Questions (Q) & Answers (A) Set #3 from Web Comments

- Q:** May we be scheduled for an informal tour of the airport/project site?
- A:** The City will not be conducting tours for individual firms. The City will schedule a tour for interested parties that file a Notice of Intent to submit a proposal. Refer to the advertised RFP (available 3/8/06) for additional details.
- C:** During the Airport Design Build Outreach Meeting on February 1, 2006, it was stated that the construction management fee is no longer included in the selection criteria. Comment: Please confirm that this is still the City's position.
- A:** The advertised RFP (available 3/8/06) will not require submittal of management fee information and management fee information will not be part of the selection process.
- C:** The written responses to the Q&A session held at the Feb. 1, 2006 outreach meeting have not been posted to the website. Many of the questions raised at that meeting are important to our participation in this procurement (e.g. review of the proposed Contract prior to the submission of proposals; clarification on what amount will be bonded upon award of the project since actual construction costs will not be determined until a later date).
- A:** Q&A Set 2 incorporating responses to the 2/1/06 outreach meeting questions was posted to the design build website on 2/17/06. Refer to answers provided below for additional information regarding proposed contract and bonding requirements.
- Q:** From the "Contracting Provisions" posted on the website, there is the sentence, "The contract will specify a maximum not-to-exceed price for the total contract." Can this be clarified? Will we be expected to supply a not to exceed budget that the city expects the Proposer to design and manage to?
- A:** The City will establish a maximum budget for the design build contract and the design builder will be required to manage within that budget. The scope of work will be subject to negotiation.
- Q:** How will the City effectively "assure no labor dispute or unrest will occur"? Will there be federal funding and if so, will the use of federal funding exclude the opportunity to negotiate project labor agreements?
- A:** As part of the requirements of the RFP, the proposer shall submit a plan for labor peace. The City does not want to preclude the use of federal funds for the project. As such, the City cannot require the use of a project labor agreement. However, a proposer does have project labor agreements as an option to address labor peace.
- Q:** Will the initial contract be for the design portion of the project only? If so, will the payment and performance bond be for the management fee for this portion only and then be added to as the city agrees to a LS for each component of the work?
- A:** See also response to bonding questions/comments later in this Q&A set. The initial compensation amount of the contract will be the design portion only. Amendments to the contract will increase the maximum compensation amount as the costs for construction work are agreed upon. As such, the contract contemplates all of the design and construction work under a single design build contract. The bonding requirements will be related to the construction work under the contract. It is anticipated that the bonding requirements will vary over the course of the contract as construction work is agreed upon, commences, and completes. Refer to the advertised RFP (available 3/8/06) for additional information.

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- Q:** Can the RFP indicate more information with respect to how each of the project's primary components will proceed through the progressive lump sum process. For example, one project may be far ahead of another to meet an earlier required finish date. Therefore, it may achieve 30% design far ahead of another project. The city will be at a decision point one one project before the other 4. Will the selection of whether to proceed with the next stage of design occur for each of the projects independently? If so, how will the city handle the situation where it wants to proceed with design on one, but does not know yet on another because it is not at that stage?
- A:** The decision to proceed with subsequent design phases will be for each project independently. At each decision point, the City and design builder will need to consider how the cost of that project element relates to the other project elements and the overall program. The City is open to suggestions from proposers (in accordance with Section 11.9 of the RFP) regarding methods for establishing schedule milestones for negotiations. For example, a proposer might propose key check-in points geared to a single project element or geared to the aggregate project progress.
- C:** In order to properly formulate a schedule to incorporate the response to the RFP, we recommend the city indicate the review period they will need to sufficiently review each stage of design (SD, DD, CD) for each of the 5 primary project components (Terminal A, B, C, roadways, etc.)
- A:** The review time required will vary according to the complexity and quality of the submittals. It is the intent of the City to minimize review times by utilizing over-the-shoulder reviews and focused review efforts. For the purpose of the schedule to be submitted with the proposal, it is suggested that a 30 calendar day review time be used for all major submittals; however, it is the intention of the City for the actual review times to be subject to negotiation and subsequently be incorporated into the contract terms.
- C:** The city intends to employ the LEED rating system. The level of LEED certification (Certified, Silver, Gold, Platinum) should be a part of the RFP as the level could potentially impact the "Management Fee"
- A:** The current City policy requires facilities greater than 10,000 square feet to be designed and constructed to meet San Jose LEED Certified rating as stated in Section 29.1 of the RFP.
- C:** One of the answers in the first set of Q & A states that the Design Build team will be managed by the Airport Department with support from Public Works. However, another answer acknowledges the City's D/B ordinance language which assigns a "Director" to manage this contract. Please confirm that it will be the Director that manages the contract.
- A:** The Director of Aviation or designee will manage the contract.
- C:** The first set of questions and answers stated that the cumulative size of the entire joint venture team could not exceed 35. At the last meeting on Feb. 1 it seemed the clarification to this answer was that the entire JV (Design Build) team assigned to the airport project could not exceed 35 staff. Please confirm if this is correct. It would seem that the number of employees all of the firms in the JV (Design Build) team working for their company anywhere (not just on this project) would be a better indicator of whether a business is "small" or not. This would better relate to how many employees they have.
- A:** Note that for a firm or JV to be considered small, they must also meet the requirements for local. In order to be considered a small firm, the sum total of all employees company-wide must be 35 or fewer. For a JV, the sum total of all company-wide employees of all member firms must be 35 or fewer.

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- Q:** Several firms have asked who will be on the selection committee. We have been told there will be 8-9 individuals consisting of half city employees and half from the private sector. By the time the RFP is issued, can the list of which city employees are on the committee and what types (Ex: one architect, one civil engineer) of private sector representatives be given?
- A:** The composition of the selection panel will be presented to the City Council at the time of approval of the RFP (scheduled for 3/7/06). The RFP will not identify the composition of the selection panel.

RFP Comments

- C:** The RFP does not seem to ask for what the Architect and Engineers and other subconsultants to the Contractor's Airport design experience is. This seems to be a critical part of the selection process.
- A:** As required by the Minimum Qualifications Application, information from at least one design firm is required. The draft RFP does not otherwise specifically require design experience information to be submitted. However, these services are important to the successful performance on the project and it would behoove the proposer to address them in their submittal. The City will review and determine if changes to the RFP language are warranted.
- C:** Section 1.5: Please explain the role and responsibilities the Proposer/Contractor has regarding "interfacing" with other projects. Comment: Proposer/Contractor's ability to interface effectively with other projects/contractors is limited due to the lack of contractual relationship with these parties.
- A:** The proposer will be expected to coordinate its designs with interfacing project designs to ensure compatibility of the facilities. The proposer will be expected to provide reasonable opportunity to other contractors for the performance of their work and to coordinate scheduling of activities where appropriate or required. Refer to the advertised RFP (available 3/8/06) for additional information.

Comments Regarding Minimum Qualifications (Section 5 of the RFP)

- C:** The minimum standards for a 75 million dollar project seem low for a complex project containing 2 projects larger than that and one close to that. And twice that with assigned projects. Recommendation: Increase to match comparable projects.
- C:** Several firms seemed to be suggesting that the Minimum Project Experience (section 5.2) be changed to include more firms. In an effort to achieve this, yet make the requirements remain strong enough to still benefit the City by setting a minimum standard and to maintain its goals for this specific project, we would suggest the following Minimum Requirements in lieu of the ones currently in the draft RFP: A. Must be able to bond a minimum of \$320 million (this is stated as a requirement elsewhere anyway in the RFP, but should be listed here as well). B. Must have 2 or more Design Build projects in the U.S. in excess of \$75 million in value (active or completed projects). C. Must have completed 1 or more Design Build projects in the U.S. in excess of \$75 million at a medium or major hub Airport. D. All of the above (A-C) must have been within the last 7 years.
- C:** We suggest that you change the Minimum Project Experience Requirement to include two (2) design build public works projects in excess of \$150 million and two (2) airport projects in excess of \$150 million. The current requirement of two (2) design build airport projects in excess of \$75 million is too stringent. There have not been many design build airport projects, and we do not think many interested firms will be able to

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meet the current requirement. Please revise the Minimum Project Experience Requirement as suggested to enable us to participate in this exciting project.

- C: In order to increase the amount of competition for this procurement, we suggest that you reconsider the "Minimum Project Experience" criteria listed in Section 5.2.1 of the draft RFP due to the fact that few design-build projects of this size have been completed at medium or large hub airports in the United States. The criteria, as it is currently written, would effectively eliminate the vast majority of competitors, and would certainly prohibit many local firms from participating in the project.

In its place, may we suggest the following project experience criteria so the we may participate in the procurement process:

5.2.1 The proposer or at least one member of a team/JV must meet the following criteria in order to be considered.

5.2.1.1 Proposer must have completed or currently have under construction a minimum of 15 design build projects, where the proposing firm was the Design-Builder. Each project must be currently under construction or completed within the last 10 years, valued at more than \$75 million, and at least 5 of the projects must have been completed in the state of California.

5.2.1.2 Proposer must have completed or currently have under construction a minimum of 6 projects at a medium to large hub airport where the proposing firm was the Prime Contractor. Each project must be currently under construction or completed in the last 10 years, valued at more than \$75 million, and at least 2 of the projects must have been completed in the state of California.

5.2.1.3 The proposed Design-Builder and its primary Architect must have completed or currently have under construction a minimum of 9 design-build projects that demonstrate their ability to successfully work together on other design-build projects. Each project must be ongoing or completed in the last 10 years and a least 4 of the projects must have been completed performed in the state of California.

- C: Section 5.2.1.1 Change minimum project experience to require design-build experience and airport experience, without limiting the qualifying experience to 2 combined design-build airport projects. Projects that are design-build or airport projects should qualify. Consider requiring more projects to qualify, such as 4 design-build or airport projects.
- C: Regarding the City's MQA and sections 5.2.1.1 & 5.2.1.2: Could the city give a more detailed description of acceptable qualifications, please? Within construction projects done at Med & Large Hub Airports, there has been very little true D/B activity within the past 7 years.

Response to Comments Regarding Minimum Qualifications: The City has carefully considered all of the suggestions regarding the minimum qualifications. The advertised RFP will reflect the following minimum project experience requirements:

- One (1) design build project >\$75 million (completed) in the last 10 years
- One (1) medium or large hub (or comparably-sized) airport project >\$75 million (completed) in the last 10 years

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Q: Section 11.1.6 Are larger font sizes acceptable? What about smaller fonts on exhibits?

A: Under consideration.

Q: Section 11.4 (p. 9 of 28) When listing the key personnel proposed by the Contractor need stipulate that no substitutions will be allowed unless approved by the airport, may be grounds for reimbursement, defaulting on the Proposal Bond or other damages. Recommendation: Add language as in comment suggestion.

A: Under consideration.

Q: Section 11.4 Do you have any key personnel requirements? Clarifying key personnel may allow you to more easily evaluate the proposals.

A: As stated in Section 11.4, information regarding key individuals is required to be submitted. The City does not wish to dictate who the key individuals should be. It will be up to the proposer to describe their proposed organization, the key individuals, roles, and how they intend to manage the project.

Q: Section 11.5 Second paragraph seems out of place. Consider moving to 11.4.

A: Under consideration.

Q: Section 11.6.19 Please clarify what is specifically required in this element of the project approach; it seems to repeat what is being requested for in other sections.

A: Under consideration.

Q: Section 11.8 Do not include the audited annual financial reports in the page count and exempt the financials from font size requirement.

A: Under consideration.

Q: Section 11.8 requires the proposer to provide "audited annual reports". Comment: Since there will be both publicly traded and private companies responding to the RFP, we suggest the deletion of the requirement for "audited annual reports", and replace with something less prescriptive such as "financial information on the lead firm and any participating firms for the past five years sufficient to demonstrate the firms' financial capability to perform the work." (Comment also applies to Attachment C - MQA Contractor Information Form: Financial Capability)

A: The City will be modifying the financial information requirement. Refer to the advertised RFP (available 3/8/06) for additional information.

Q: Section 11.9 Please consider offering a stipend for unsuccessful proposers. This is appropriate when the RFP requests options, alternates and innovations.

A: The City will not offer stipends.

Q: Section 11.9 Please clarify whether or not inserted text of proposer suggested modifications to specific language in the Contract Terms should be red. The example is currently shown as black.

A: The proposed inserted text should be red.

Q: Section 12.1.2 Limit the short list to 3 proposals.

A: The City does not wish to commit to a specific number of shortlisted proposals due to the potential variability in the number of proposals that could reasonably achieve award of contract.

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- C:** Section 13.3 Please clarify that the Subcontractors referred to here are design consultants and other subcontractors that are exclusive to the team as know at the time of the submittal.
- A:** The language in Section 13.3 is from the Design Build Ordinance Section 14.07.540, "Listing Subcontractors" (Municipal Code Section 14.07.540). A link is available from the Design Build web page: <http://www.sjc.org/about/design.html>. Please note that a subcontractor is not required to be exclusive to one proposer team but may be listed on more than one proposal. The subcontractor listing requirement is not intended to be limited to subcontractors that are exclusive to one proposer team.

A proposer shall list, in their proposal, all subcontractors that they intend to use or that they anticipate using on the contract. The subcontractor listing can only be amended prior to contract award when necessary to address changes in the proposal resulting from negotiations with the City. After award of contract (and pursuant to Municipal Code Section 14.07.800), a substitution of a construction subcontractor will be subject to the requirements of the Public Works project substitution process as identified in the City's Standard Specifications (Section 2-1.15). After award of contract (and pursuant to Municipal Code Section 14.07.810), addition of subcontractors shall be in accordance with the subcontractor bidding process identified in the design build contract.

- Q:** Section 15.2 and 15.3 indicate that once a proposal is accepted, the Proposer shall be obligated to enter into an agreement and should the Proposer fail to execute an agreement, the City shall have the right to seek legal remedies. Comment: We suggest that a failure of the City and Proposer to reach an agreement after a good faith negotiation be exempted from this article.
- A:** The "legal remedies" language will be removed from the advertised RFP (available 3/8/06).

Comments Regarding Draft Contract Terms and Conditions (Section 18 of the RFP)

- C:** Section 18. Please provide the draft contract for review and comments.
- Q:** Section 18.1 sites Attachment G, Exemplar Agreement. Question: When will a copy of this attachment be available to proposers?
- C:** Contract terms must be included in the RFQ so the Contractors know the conditions that they will need to comply with. This will have a great effect on the number of bidders willing to forgo a bid bond. Recommendation: Suggest City creates the terms and provides the form of Contract with the RFQ. This must include all terms relative to the 7 various projects of base work and the others intended to be novated. Liability and risk clarification can not be overstated here. Begin to receive feedback during the RFQ process, otherwise will hold up the execution of the Contract and delay getting started with design which is critical for maintaining aggressive schedule.
- C:** How will the GMP be contracted if 60, 90% is agreed to. Terms? GC's? etc... Recommendation: Terms and conditions must be prepared before RFQ is on the street- a must.
- C:** Terms and conditions of the agreement are unclear or not existent. Recommendation: Terms and conditions must be prepared before RFQ is on the street - a must.
- C:** Several firms seemed to think it best that the city issue the proposed contract for review during the RFP process. We agree. It will be critical to review the contract, and our sureties will also want to review it to

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properly analyze the risk involved with the project before committing bonding to the project. The risks in the contract will also impact the "Management Fee" that must be submitted. We recommend that the proposed contract be issued at the time of the RFP or no later than one month prior to the RFP due date to allow sufficient review time. We suggest the city use the AGC 410 contract for design build, an agreement designed for owners and D/B contractors. (AGC - Associated General Contractors)

Response to comments regarding contract terms and conditions: The City will make the key contract terms and conditions available with the advertised RFP (available 3/8/06). Note that the management fee has been deleted from the requirements of the proposal and will not be a factor in the selection process.

Comments Regarding Bonding (Section 20 of the RFP)

- C:** Section 20.1.1 indicates that the Proposal Bond will be held to guarantee execution of the Design Build Agreement. Comment: We suggest that additional language be included that defines the circumstances and timing under which the Proposal Bond would be returned to a successful proposer.
- A:** The City will be deleting the requirement for a Proposal Bond.
- C:** Section 11.8 requires the proposer to provide "the maximum performance bond the lead firm can obtain." Comment: This request may not be reasonable in that bonding amounts are dependent on project specifics and sureties may be willing to provide larger bonds for extremely high premiums which would be economically infeasible. In lieu of this request, we suggest the City establish a specific limit/penal sum amount that is consistent with the surety market and the requirements of the project. We also propose that other considerations as to the firm's ability to perform be considered in addition to the bonding requirements. (Comment also applies to Attachment C - MQA Contractor Information Form: Bonding Information)
- Q:** Section 20.2 requires the successful Proposer to deliver a performance bond in the full amount of the Contract upon execution of the Contract. Comment: We suggest that the City consider excluding the 100% payment and performance bond requirement based on the special nature of this project, and establish a bonding requirement consistent with the surety markets for this type of work. We suggest that a bonding level not to exceed 50% of the contract value would provide adequate security for the City. In addition, other forms of security should be considered to supplement or replace bonding such as parent company guarantees and bank letters of credit. (Comment also applies to MQA Attachment C - MQA Contractor Information Form: Bonding Information)
- A:** After considering the comments, the City has determined that only amounts for construction will require payment and performance bonds. Therefore, the revised minimum bonding capacity amount will be set at \$240 million. Also, it is anticipated that the bonding requirements will vary throughout the duration of the contract as construction amounts are agreed upon, construction commences and completes. Ultimately, the bonding requirements will be subject to negotiation between the City and Design Build contractor. The City will consider other guarantees (bank letters of credit, or other guarantees) in lieu of bonding. Also, the City will delete the requirement for the proposer to submit information regarding the maximum bonding amount that can be obtained.
- Q:** Section 29. Consider adding LEED experience to qualification requirements and scope of work sections.
- A:** Under consideration.