

Revised 4/1/11



SAN DIEGO COUNTY  
REGIONAL AIRPORT AUTHORITY  
**STAFF REPORT**

Item No.  
**15**

Meeting Date: **APRIL 7, 2011**

**Subject:**

**Authorize the President/CEO to negotiate and execute Guaranteed Maximum Price Amendments to the existing Green Build Contracts One and Two**

**Recommendation:**

Adopt Resolution No. 2011-0047, authorizing the President/CEO to negotiate and execute Guaranteed Price Amendments to the design-build agreements with Turner/PCL/Flatiron – a Joint Venture and Kiewit/Sundt – a Joint Venture establishing Guaranteed Maximum Prices for certain work under the Green Build and allowing work to proceed on a Guaranteed Maximum Price (GMP) basis rather than a “Progressive Design-Build” Task and Work Authorization basis on the Terminal Development Program.

**Background/Justification:**

On April 2, 2009, the Board awarded two design-build agreements for work under the Green Build. One design-build agreement was awarded to Turner/PCL/Flatiron – a Joint Venture, to design and build the Terminal 2 West Building and Airside Expansion (Contract 1) and another design-build agreement was awarded to Kiewit/Sundt – a Joint Venture, to design and build Terminal 2 Elevated Departures Roadway, Smart Curb, Transit Center, and Landside Modifications (Contract 2) at the San Diego International Airport. The design-build agreements contemplated that work be delivered on a “Progressive Design-Build” basis through a series of Task and Work Authorizations. The design-build agreements allow converting the delivery of the work from a progressive design-build method to a Guaranteed Maximum Price (GMP) to gain overall price and schedule certainty. Specifically, the design-build agreements state:

“If, during the course of the Project, the parties mutually agree to a Guaranteed Maximum Price (GMP) for the Work, or a portion of the Work remaining at the time such work is proposed and negotiated, the parties may execute a GMP Amendment to the Contract. Any terms in the GMP amendment that conflict with terms of any prior agreements shall superseded those prior agreements, provided such conflicting terms are expressly and unambiguously identified in the GMP Amendment.”  
[Section 1.1.4, Contract 1 and Contract 2].

000095

The design of Contract 1 is nearing completion. The Turner/PCL/Flatiron Joint Venture has conducted an extensive outreach effort and has received competitive pricing on 75% of the work, with 25% of the work remaining to be bid. Of the total volume of work available to bid and award on Contract 1, Turner/PCL/Flatiron is projecting an end-of-project achievement of Small and Local Business participation levels of approximately 21% and 70% respectively. Turner/PCL/Flatiron has agreed to transition to three "at risk" GMPs for the Airside, Baggage Handling System, and Terminal Building elements.

The design of Contract 2 is also nearing completion. The Kiewit/Sundt Joint Venture has conducted an extensive outreach effort and has received competitive pricing on 86% of the work. Of the total volume of work available to bid and award on Contract 2, Kiewit/Sundt is projecting an end-of-project achievement of Small and Local Business participation levels of approximately 17% and 91% respectively. Kiewit/Sundt has also agreed to transition to an "at risk" GMP if it is permitted to self-perform the remaining 14% of the work in order to achieve the San Diego County Regional Airport Authority's (Authority's) schedule goals.

The President/CEO requests authority to negotiate and execute 4 GMP Amendments (one GMP Amendment to the Kiewit/Sundt design build agreement and three GMP Amendments to the Turner/PCL/Flatiron design-build agreement) establishing GMPs under Contract 1 and Contract 2 and including industry standard language for this contracting method. The GMP amounts established by the President/CEO will include contingency and allowances that are based upon specific assumptions regarding the work and design of the work. In addition, the GMP amounts established by the President/CEO may be increased to include changes paid for using remaining uncommitted funds from the \$864,612,668 Board approved program budget to fund unanticipated costs arising from scope changes. This action does not modify the total Green Build budget approved by the Board, in November 2010 nor extend the term of the existing Design-Build Agreements.

**Fiscal Impact:**

The GMPs will guarantee price and schedule for the Authority, within the Green Build budget approved by the Board in November 2010.

**Environmental Review:**

- A. CEQA: This Board action is a "project" subject to the California Environmental Quality Act ("CEQA"), Pub. Res. Code Section 21065. The Terminal Development Program was evaluated for compliance with CEQA as part of the Final Environmental Impact Report ("FEIR") for the Airport Master Plan. The FEIR was prepared in accordance with CEQA and was certified by the Board on May 1, 2008. A Finding of No Significant Impact ("FONSI") under Section 101(a) of the National Environmental Policy Act ("NEPA") was issued by the Federal Aviation Administration on April 20, 2009.
- B. California Coastal Act Review: The Terminal Development Program is a "development" as defined by the California Coastal Act, Pub. Res. Code Section 30106. Coastal Development Permit ("CDP") #6-08-066 for the Remain-Over-Night ("RON") Apron component of the airside Terminal Development Program ("TDP") was issued by the California Coastal Commission at its March 11, 2009, hearing. CDP #6-09-015 for the Terminal and Landside components of the Terminal Development Program was issued by the California Coastal Commission at its August 14, 2009, meeting.

**Equal Opportunity Program:**

The Authority's small business program promotes the utilization of small, local, disadvantaged, and other business enterprises, on all contracts, to provide equal opportunities for qualified firms. By providing education programs, making resources available, and communicating through effective outreach, the Authority strives for diversity in all contracting opportunities.

The Authority has a Disadvantaged Business Enterprise ("DBE") Plan as required by the Department of Transportation, 49 CFR Part 26. The DBE Plan calls for the Authority to submit an annual overall goal for DBE participation on all federally funded projects.

TDP Contract 1 includes federal funds and would normally be included in the overall DBE goal. However, the Federal Aviation Administration allows for a project-specific goal to be established that will remain in effect for the life of the project. DBE participation on this project would be applied to the overall goal as being achieved through race-neutral means.

**Prepared by:**

BRYAN ENARSON  
VICE PRESIDENT, DEVELOPMENT



RESOLUTION NO. 2011-0047

A RESOLUTION OF THE BOARD OF THE SAN DIEGO COUNTY REGIONAL AIRPORT AUTHORITY AUTHORIZING THE PRESIDENT/CEO TO NEGOTIATE AND EXECUTE GUARANTEED MAXIMUM PRICE AMENDMENTS TO THE DESIGN-BUILD AGREEMENTS WITH TURNER/PCL/FLATIRON – A JOINT VENTURE AND KIEWIT/SUNDT – A JOINT VENTURE ESTABLISHING GURANTEED MAXIMUM PRICES FOR CERTAIN WORK UNDER THE GREEN BUILD AND ALLOWING WORK TO PROCEED ON A GUARANTEED MAXIMUM PRICE (GMP) BASIS RATHER THAN A “PROGRESSIVE DESIGN-BUILD” TASK AND WORK AUTHORIZATION BASIS, ON THE TERMINAL DEVELOPMENT PROGRAM

WHEREAS, on April 6, 2009, the Board awarded two design-build agreements for work under the Green Build. One design-build agreement was awarded to Turner/PCL/Flatiron – a Joint Venture, to design and build the Terminal 2 West Building and Airside Expansion (Contract 1) and another design-build agreement was awarded to Kiewit/Sundt – a Joint Venture, to design and build Terminal 2 Elevated Departures Roadway, Smart Curb, Transit Center, and Landside Modifications (Contract 2) at the San Diego International Airport. The design-build agreements contemplated that work be delivered on a “Progressive Design-Build” basis through a series of Task and Work Authorizations. The design-build agreements allow converting the delivery of the work using a progressive design-build method to a Guaranteed Maximum Price (GMP) to gain overall price and schedule certainty; and

WHEREAS, the design-build agreements state: “If, during the course of the Project, the parties mutually agree to a Guaranteed Maximum Price (GMP) for the Work, or a portion of the Work remaining at the time such work is proposed and negotiated, the parties may execute a GMP Amendment to the Contract. Any terms in the GMP Amendment that conflict with terms of any prior agreements shall supersede those prior agreements, provided such conflicting terms are expressly and unambiguously identified in the GMP Amendment.” [Article 1.1.4, Contract 1 and Contract 2]; and

WHEREAS, the design-build agreements require that the GMP Amendment "identify all documents, including plans, specifications, assumptions, qualifications, exclusions, conditions, Contractor's Contingency, bid items, estimated quantities, unit prices, and alternates that form the basis for the GMP" [Article 1.2.1.32, Contract 1 and Contract 2]; and

WHEREAS, the design of Contract 1 is nearing completion and the Turner/PCL/Flatiron Joint Venture has conducted an extensive outreach effort and has received competitive pricing on 75% of the work, with 25% of the work remaining to be bid. Of the total volume of work available to bid and award on Contract 1, Turner/PCL/Flatiron is projecting an end-of-project achievement of Small and Local Business participation levels of approximately 21% and 70% respectively. Turner/PCL/Flatiron has agreed to transition to three "at risk" GMPs for the Airside, Baggage Handling System, and Terminal Building elements; and

WHEREAS, the design of Contract 2 is also nearing completion and the Kiewit/Sundt Joint Venture has conducted an extensive outreach effort and has received competitive pricing on 86% of the work. Of the total volume work available to bid and award on Contract 2, Kiewit/Sundt is projecting an end-of-project achievement of Small and Local Business participation levels of approximately 17% and 91% respectively. Kiewit/Sundt has also agreed to transition to an "at risk" GMP if it is permitted to self-perform the remaining 14% of the work in order to achieve the San Diego County Regional Airport Authority's (Authority's) schedule goals; and

WHEREAS, Article 1.1.4 of the General Conditions of the design-build agreements allows the establishment of GMPs through the execution of GMP Amendments for the delivery of the remaining work; and

WHEREAS, the President/CEO requests authority to negotiate and execute GMP Amendments establishing Guaranteed Maximum Prices for certain work under Contract 1 and Contract 2 and including industry standard language for this contracting method; and

WHEREAS, the GMP amounts established by the President/CEO will include contingency and allowances that are based upon specific assumptions regarding the work and design of the work all of which shall be set forth in the GMP Amendments. In addition, the GMP amounts established by the President/CEO may be increased to include changes paid for using remaining uncommitted funds from the \$864,612,668 Board approved program budget to fund unanticipated costs arising from scope changes; and

WHEREAS, this action does not modify the total Green Build budget approved by the Board, in November 2010 nor extend the existing term of the Design-Build Agreements; and

000099

WHEREAS, the GMPs will guarantee price and schedule for the Authority, within the Green Build budget approved by the Board in November 2010.

NOW, THEREFORE, BE IT RESOLVED that the Board authorizes the President/CEO to negotiate and execute Guaranteed Price Amendments to the design-build agreements with Turner/PCL/Flatiron – a Joint Venture and Kiewit/Sundt – a Joint Venture establishing Guaranteed Maximum Prices for certain work under the Green Build and allowing work to proceed on a Guaranteed Maximum Price (GMP) basis rather than a “Progressive Design-Build” Task and Work Authorization basis on the Terminal Development Program; and

BE IT FURTHER RESOLVED that the Authority and its officers, employees, and agents hereby are authorized, empowered, and directed to do and perform all such acts as may be necessary or appropriate in order to effectuate fully the foregoing; and

BE IT FURTHER RESOLVED that the Board finds that this Board action is a “project” subject to the California Environmental Quality Act (“CEQA”), Pub. Res. Code Section 21065. The Terminal Development Program was evaluated for compliance with CEQA as part of the Final Environmental Impact Report (“FEIR”) for the Airport Master Plan. The FEIR was prepared in accordance with CEQA and was certified by the Board on May 1, 2008. A Finding of No Significant Impact (“FONSI”) under Section 101(a) of the National Environmental Policy Act (“NEPA”) was issued by the Federal Aviation Administration on April 20, 2009; and

BE IT FURTHER RESOLVED that the Terminal Development Program is a “development” as defined by the California Coastal Act, Pub. Res. Code Section 30106. Coastal Development Permit (“CDP”) #6-08-066 for the Remain-Over-Night (“RON”) Apron component of the airside Terminal Development Program (“TDP”) was issued by the California Coastal Commission at its March 11, 2009, hearing. CDP #6-09-015 for the Terminal and Landside components of the Terminal Development Program was issued by the California Coastal Commission at its August 14, 2009, meeting.

000100

**PASSED, ADOPTED, AND APPROVED** by the Board of the San Diego County Regional Airport Authority at a regular meeting this 7th day of April, 2011, by the following vote:

**AYES:** Board Members:

**NOES:** Board Members:

**ABSENT:** Board Members:

**ATTEST:**

---

**TONY R. RUSSELL**  
**DIRECTOR, CORPORATE SERVICES/  
AUTHORITY CLERK**

**APPROVED AS TO FORM:**

---

**BRETON K. LOBNER**  
**GENERAL COUNSEL**

**C00101**



# Green Build Contractual Update

April 7, 2011





- Green Build Contractual History
  - April 2009, Contract 1 & 2 approved by the Board
  - November 4, 2010 Board approved the Green Build Program Budget and Schedule
  - November 4, 2010 to present, staff has been negotiating a final price and schedule for all elements of the Green Build
  - The GMP(s) will reflect the final price and schedule



- The Design Build Contracts anticipated a conversion to a GMP
- Specific GMP Contract language:
  - 1.1.4: If, during the course of the Project, the parties mutually agree to a Guaranteed Maximum Price (GMP) for the Work, or portion of the Work remaining at the time such price is proposed and negotiated, the parties may execute a GMP Amendment to the Contract. Any terms in the GMP Amendment that conflict with terms of any prior agreements shall supersede those prior agreements, provided such conflicting terms are expressly and unambiguously identified in the GMP Amendment.



- Benefit:
  - Price Certainty
  - Schedule Certainty
- TDP Negotiating Focus:
  - Price (at or below budget )
  - Schedule (on or ahead of target )
  - Small & Local Business (opportunities maximized)

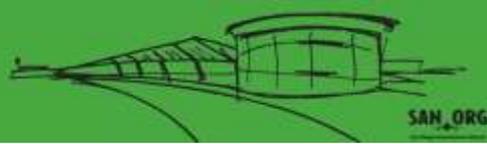




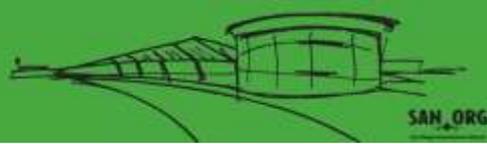
- Design-Builder agrees to perform a specified scope of work.
- Design-Builder agrees to deliver the project on (or before) an agreed upon date.
- Design-Builder agrees to complete the work for a guaranteed maximum price.  
(Contractor accepts full financial “risk” for any cost or schedule overruns.)
- Unused contingency shared with the Owner (75%/ 25%)



- Owner develops the program criteria, including:
  - Equipment performance
  - Material standards and quality
  - Operational restrictions
- Owner evolves the project design (15% - 30%)
- Design-Builder finishes the plans and specifications to satisfy the Owner's requirements.



- Prior to design completion the Design-Builder prepares a GMP based on:
  - Competitively bids on portions of the work, e.g. foundations (100% design level)
  - Estimates of the remaining work using historical cost data and past production rates. (30% to 60% design level)
- Design-Builder commences construction before the drawings are completed (Often the 60% design level).



- Contractors have bid the majority of the work
- Based on the work accomplished to date, the “unknown conditions” factor is reduced
- The Joint Ventures desire to streamline the execution of the Program by eliminating the use of multiple Work and Task Authorizations
- The Authority wants to reduce its exposure to budget and schedule risks and reduce the volume of Work and Task Authorizations



- **Small and Local Businesses Impacts**
  - Contract 1: With 70% of the work bid, the Contractor is projecting:
    - At completion of the Green Build 70% local & 21% small business
  - Contract 2: With 86% of the work bid, the Contractor is projecting:
    - At completion of the Green Build 88% local & 17% small business
- **Self Performance (Work performed by Joint Venture)**
  - Contract 1: 8% (\$24 million) for airside work
  - Contract 2: 14% (\$24.3 million) for roadway & bridge work



- Authorize the President/CEO to negotiate and execute GMP's for both Contract 1 and Contract 2 of the Green Build.



# Questions

?

