

DEPARTMENT OF TRANSPORTATION SERVICES  
**CITY AND COUNTY OF HONOLULU**

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RT 3/09-304677

March 17, 2009

Mr. Leslie T. Rogers, Regional Administrator  
Federal Transit Administration, Region IX  
U.S. Department of Transportation  
201 Mission Street, Suite 1650  
San Francisco, California 94105

Dear Mr. Rogers:

The purpose of this letter is to confirm understandings from our teleconference on March 11, 2009, related to two waiver requests by the City. Further this letter provides the additional information requested related to the proposed reduction of the performance bonding requirement from 100 percent to 50 percent for our West Oahu/Farrington Highway Design-Build Contract.

We discussed the City's request for a waiver of the FTA Design-Build Interim Guidelines (September 2000) that we interpreted to require issuance of a Record of Decision (ROD) prior to releasing an RFP for technical and price proposals to contractors. FTA has now advised us that it is not necessary for us to request such a waiver. We intend to issue the RFP for this work in April. We will not execute a contract with a design-builder until we have had further discussions with FTA on our readiness for this action.

With regard to FTA's request for further justification for reducing the performance bonding requirement, we provide the following information:

- 1. There are concerns in the insurance markets with the provision of very high value performance bonds.**
  - a. We have undertaken discussions with the Risk Manager for the City and County of Honolulu, Beverly Braun; the Risk Manager for the Bay Area Rapid Transit District, Jim Bridgeman; and the Caltrop OCIP Risk Management Consultant to the City, Jim Birkowski. All of these individuals are regularly involved in the purchase of insurance and bonding for very large projects.

- b. Each has advised us that obtaining performance bonds above \$300 million is problematic in the current insurance market for some large contractors. We do not wish to diminish our potential field of proposers unnecessarily.
- c. The State of Washington Department of Transportation, with the Governor's approval, is currently seeking legislation to reduce performance bonding requirements for projects in excess of \$250 million. A brief explanation of their justification for this action is attached to this letter.

**2. We are not significantly at risk if the performance bond requirement is reduced.**

- a. The work we intend to undertake with this contract occurs over a long period of time. In any given month throughout the duration of the project, we have determined the total value of work in progress is less than 5 percent of the contract amount. So long as we continually monitor the quality and progress of the work, as we intend to do, the failure of a contractor to perform over several months prior to a default, is not likely to involve more than 20 percent of the total contract value and a proportion of the work performed would still be of some value.
- b. We have attached a graphic illustration of the amount of performance bond proceeds required, assuming a default at any point in time over the contract life. In this analysis, we have taken several worst case scenario assumptions about the progress of the work, the utilization of mobilization payments, the timing of contractor default and the cost/schedule consequences of bringing in a new contractor under the surety program. We do not believe all of these adverse factors occurring simultaneously form a credible scenario. Nonetheless if this worst case were to occur, we still expect less than \$200 million worth of the performance bond would be expended.

**3. There are several precedents for FTA to approve a reduction in Performance Bonding requirements for very large projects.**

- a. In 1992 for the Honolulu Rapid Transit Development Project, a performance bond of \$250 million for the design-build portion of the DBOM contract was approved by FTA. This bond cap was determined through analysis in estimating the maximum value of work in progress during the contract period.

- b. The Bay Area Rapid Transit System Airport Extension project utilized a \$250 million performance bond for a line contract valued in excess of \$500 million. We assume this was with the FTA approval.
- c. A reduced performance bond requirement was established for for the Oakland Bay Bridge in the San Francisco Bay area and for the I-15 highway projects in Salt Lake City. Reducing performance bond requirements is not an unusual action for very large projects where it is permitted by law.

d. According to the AASHTO Joint Task Force on Design Build:

"For larger projects, agencies are often willing to accept reduced bond amounts, with the amount based on the potential cost overruns resulting from a "worst case" scenario. The bonds for the ACTA, CO DOT, TCA, and UT DOT projects were in the amount of \$250 million. For the Legacy Parkway project UT DOT agreed to accept a performance bond in the amount of 50 percent of the contract price, and a \$170 million payment bond.

The decision to accept a reduced amount is based in part on the surety industry's reluctance to issue 100 percent bonds for mega-projects, and in part on the fact that only a handful of contractors have sufficient bonding capacity to provide such bonds. Requiring a 100 percent bond would therefore be likely to reduce the pool of interested contractors and could therefore have a significant impact on the contract price."

Based on these factors, we believe the interests of both the City and County of Honolulu and the Federal Government are adequately protected with a performance bond level at 50 percent of the contract value.

Sincerely,

  
Kenneth T. Hamayasu, Chief  
Rapid Transit Division

Attachment 1: WSDOT Legislation Request  
Attachment 2: City of Honolulu Bonding Requirements Analysis

# **2009 WSDOT Agency Request Legislation**

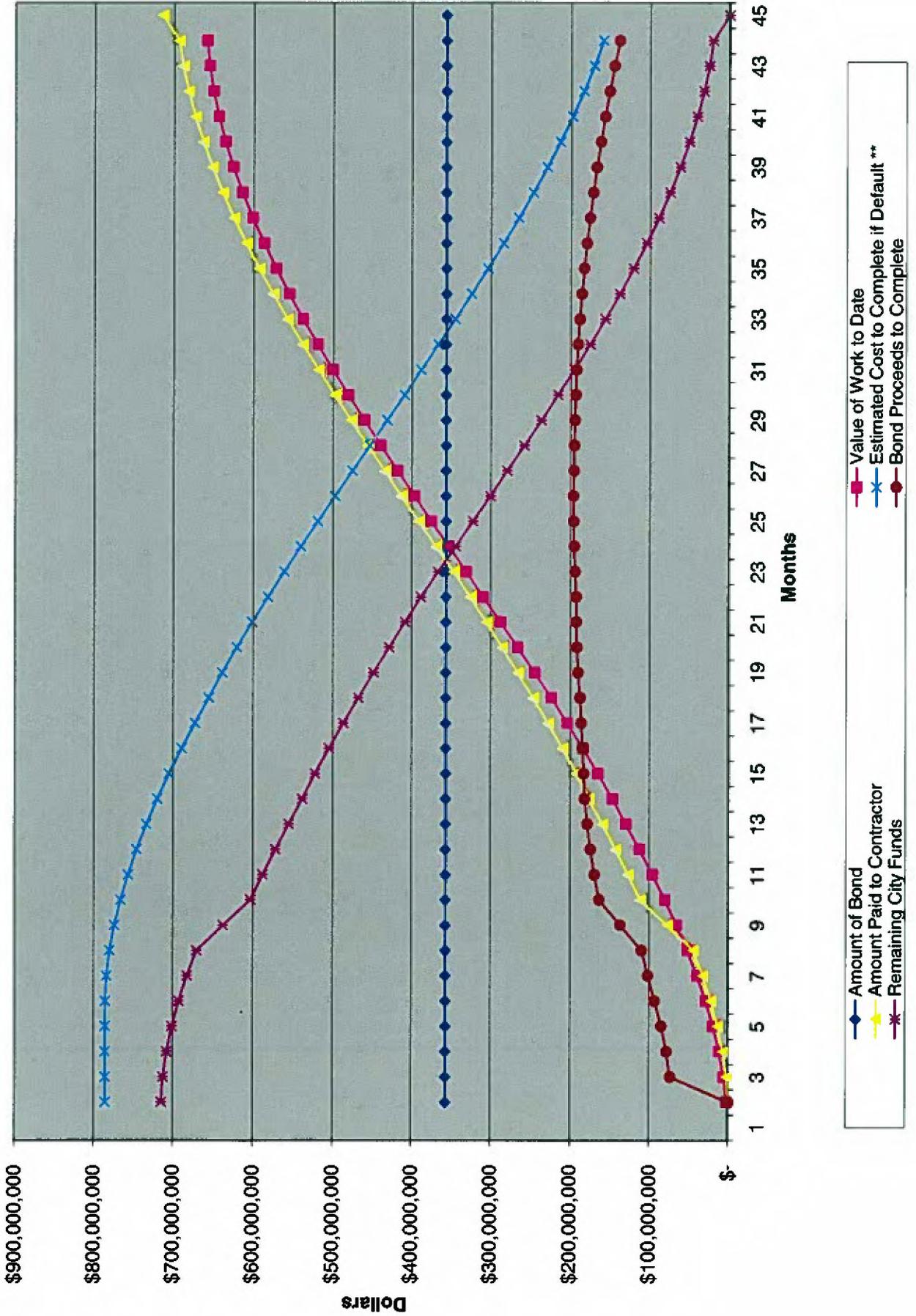
## **Information**

### **Bills for Agency Request (Approved by Governor's office)**

#### ***Concerning Bond Amounts for Department of Transportation Highway Contracts***

To help deliver the many projects on time and within budget WSDOT has explored innovative ideas for delivery. The construction industry strongly encouraged WSDOT to consider adjusting the performance bond amount on the most expensive projects. Because of the increased number of construction projects and rising costs, contractors are finding it more difficult and expensive to obtain performance bonds that are above \$250 million, and are experiencing a limited ability to bid on additional projects. Surety bonds requiring 100% of contract value on mega projects impacts the public as fewer bidders are able to compete due to the limited capacity to maintain such high bond limits. This may result in higher project bids, and restrict the potential for business growth of affected Washington state contractors. This proposed legislation would adjust the performance bond amount for projects with a contract value exceeding \$250 million, while ensuring the state's exposure to loss is still 100% covered. In practice, this will be implemented on our largest mega-project contracts.

# Bonding Requirement Analysis



## Basis of Estimate

- 1 Amount of Bond equals 50% of Design Build Contract Amount.
- 2 Total Design Build Contract Amount equals \$584,604,858 (as shown in the Draft EIS) plus 6% Project Reserve plus 5% inflation for a Contract Amount of \$650,665,207
- 3 Total Construction amount equals \$524,309,290 (as shown in the Draft EIS) plus 6% Project Reserve plus 5% inflation for a Contract Amount of \$583,556,240
- 4 Design Build Contract duration = 43 months as shown in the Master Program Schedule.
- 5 Construction work in place estimated to follow typical "S" curve as shown in Chart 2
- 6 Design Cost equals \$23,593,918 (as shown in the Contract Package Plan) plus 6% Project Reserve plus 5% inflation for a Design Cost of \$26,260,030.
- 7 Design duration estimated to be 12 months as shown in the Master Program Schedule.
- 8 Design work in place estimated to follow typical "S" curve as shown in Chart 3
- 9 Design value is assumed to be worth at 50% of Amount Paid in case of default.
- 10 Mobilization & Start-up Costs estimated to be \$36,701,650 (as shown in the contract package Plan) plus 6% Project Reserve plus 5% inflation for a cost of \$40,848,937.
- 11 Mobilization & Start-up Costs are assumed to be \$0 in case of default.
- 12 50% Mobilization to be paid after 5% of the work is in place. The remaining 50% mobilization to be paid after 10% of the work is in place.
- 13 5% Retainage to be held until 50% work is in place and then held to end of project.
- 14 Estimated Cost to Complete assumes a five (5) month delay for default.
- 15 Estimated Cost to Complete assumes an additional cost equal to 10% over original Contract Amount in order to rebid contract to next highest bidder.
- 16 Above costs were in 2007 4th Quarter dollars escalated to 2009 4th Quarter dollars using 5% inflation based on various sources.

End of Month	Amount of Bond	Escalation	Design Cost Completed*	Mobilization Cost Earned*	Construction Work in Place*	Value of Work to Date	Retainage Held	Amount Paid to Contractor	Estimated Cost to Complete if Default**	Remaining City Funds	Bond Proceeds to Complete	% Work in Place
1	\$ 357,173,092	0.2958%	\$ 972,193	\$ -	\$ 1,322,635	\$ 1,808,732	\$ 114,741	\$ -	\$ 785,780,803	\$ 714,348,185	\$ -	0.00%
2	\$ 357,173,092	0.2958%	\$ 2,614,324	\$ -	\$ 4,424,359	\$ 5,731,521	\$ 351,934	\$ 2,180,086	\$ 785,780,803	\$ 712,166,098	\$ 73,814,705	0.31%
3	\$ 357,173,092	0.2958%	\$ 4,809,292	\$ -	\$ 8,222,048	\$ 11,626,984	\$ 701,587	\$ 6,686,748	\$ 785,780,803	\$ 707,659,436	\$ 78,121,367	0.94%
4	\$ 357,173,092	0.2958%	\$ 7,425,120	\$ -	\$ 15,644,424	\$ 19,358,984	\$ 1,153,477	\$ 13,329,773	\$ 785,780,803	\$ 701,016,412	\$ 84,764,391	1.87%
5	\$ 357,173,092	0.2958%	\$ 10,328,238	\$ -	\$ 23,073,452	\$ 28,765,190	\$ 1,697,376	\$ 21,916,066	\$ 785,780,803	\$ 692,430,118	\$ 93,350,685	3.07%
6	\$ 357,173,092	0.2958%	\$ 13,383,476	\$ 20,851,197	\$ 43,932,657	\$ 52,159,882	\$ 2,322,846	\$ 32,250,138	\$ 783,972,072	\$ 682,096,047	\$ 101,876,025	4.51%
7	\$ 357,173,092	0.2958%	\$ 16,454,048	\$ 41,825,764	\$ 66,122,441	\$ 65,823,212	\$ 3,061,905	\$ 44,134,082	\$ 780,049,283	\$ 670,212,103	\$ 109,837,180	6.18%
8	\$ 357,173,092	0.2958%	\$ 19,401,543	\$ 41,825,764	\$ 96,122,441	\$ 96,823,212	\$ 3,867,487	\$ 77,178,198	\$ 774,154,109	\$ 637,169,987	\$ 136,984,123	10.80%
9	\$ 357,173,092	0.2958%	\$ 22,085,910	\$ 41,825,764	\$ 126,089,146	\$ 126,089,146	\$ 4,673,893	\$ 111,482,320	\$ 766,997,409	\$ 602,863,924	\$ 163,558,896	15.61%
10	\$ 357,173,092	0.2958%	\$ 24,365,448	\$ 41,825,764	\$ 156,007,298	\$ 156,007,298	\$ 5,519,917	\$ 126,803,972	\$ 756,997,409	\$ 587,542,212	\$ 169,455,196	17.75%
11	\$ 357,173,092	0.2958%	\$ 26,086,796	\$ 41,825,764	\$ 185,925,896	\$ 185,925,896	\$ 6,391,493	\$ 142,859,424	\$ 746,016,613	\$ 571,486,760	\$ 174,528,853	20.00%
12	\$ 357,173,092	0.2958%	\$ 27,134,913	\$ 41,825,764	\$ 215,843,534	\$ 215,843,534	\$ 7,219,917	\$ 159,438,365	\$ 733,620,922	\$ 554,907,819	\$ 178,713,102	22.32%
13	\$ 357,173,092	0.2417%	\$ 27,134,913	\$ 41,825,764	\$ 245,763,983	\$ 245,763,983	\$ 8,097,461	\$ 176,328,017	\$ 719,957,591	\$ 538,018,167	\$ 181,939,423	24.68%
14	\$ 357,173,092	0.2417%	\$ 27,134,913	\$ 41,825,764	\$ 275,688,529	\$ 275,688,529	\$ 8,987,884	\$ 192,231,751	\$ 705,171,857	\$ 522,114,434	\$ 183,057,223	26.91%
15	\$ 357,173,092	0.2417%	\$ 27,134,913	\$ 41,825,764	\$ 305,613,075	\$ 305,613,075	\$ 9,878,884	\$ 208,643,863	\$ 689,410,950	\$ 504,702,322	\$ 184,708,628	29.35%
16	\$ 357,173,092	0.2417%	\$ 27,134,913	\$ 41,825,764	\$ 335,537,621	\$ 335,537,621	\$ 10,773,278	\$ 227,769,892	\$ 672,825,107	\$ 486,576,383	\$ 186,248,724	31.89%
17	\$ 357,173,092	0.2417%	\$ 27,134,913	\$ 41,825,764	\$ 365,462,167	\$ 365,462,167	\$ 11,673,278	\$ 246,530,278	\$ 655,585,585	\$ 467,815,907	\$ 187,749,678	34.51%
18	\$ 357,173,092	0.2417%	\$ 27,134,913	\$ 41,825,764	\$ 395,386,713	\$ 395,386,713	\$ 12,573,278	\$ 265,945,278	\$ 638,824,812	\$ 428,712,465	\$ 191,783,809	37.22%
19	\$ 357,173,092	0.2417%	\$ 27,134,913	\$ 41,825,764	\$ 425,311,259	\$ 425,311,259	\$ 13,473,278	\$ 285,860,278	\$ 620,496,274	\$ 448,500,975	\$ 190,323,837	39.99%
20	\$ 357,173,092	0.2417%	\$ 27,134,913	\$ 41,825,764	\$ 455,235,805	\$ 455,235,805	\$ 14,373,278	\$ 305,875,278	\$ 601,416,338	\$ 408,532,082	\$ 192,884,286	42.81%
21	\$ 357,173,092	0.2417%	\$ 27,134,913	\$ 41,825,764	\$ 485,160,351	\$ 485,160,351	\$ 15,273,278	\$ 325,890,278	\$ 581,688,468	\$ 388,728,979	\$ 192,941,489	45.58%
22	\$ 357,173,092	0.2417%	\$ 27,134,913	\$ 41,825,764	\$ 515,084,897	\$ 515,084,897	\$ 16,173,278	\$ 347,425,482	\$ 561,336,961	\$ 366,920,703	\$ 194,416,259	48.64%
23	\$ 357,173,092	0.2333%	\$ 27,134,913	\$ 41,825,764	\$ 545,009,443	\$ 545,009,443	\$ 17,073,278	\$ 369,381,256	\$ 540,506,950	\$ 344,964,929	\$ 196,542,022	51.71%
24	\$ 357,173,092	0.2333%	\$ 27,134,913	\$ 41,825,764	\$ 574,933,989	\$ 574,933,989	\$ 17,973,278	\$ 391,397,131	\$ 519,264,410	\$ 322,949,053	\$ 196,315,357	54.79%
25	\$ 357,173,092	0.2333%	\$ 27,134,913	\$ 41,825,764	\$ 604,858,535	\$ 604,858,535	\$ 18,873,278	\$ 413,382,844	\$ 497,889,887	\$ 300,963,341	\$ 196,732,823	57.87%
26	\$ 357,173,092	0.2333%	\$ 27,134,913	\$ 41,825,764	\$ 634,783,081	\$ 634,783,081	\$ 19,773,278	\$ 434,469,678	\$ 475,889,887	\$ 279,896,507	\$ 196,983,381	60.82%
27	\$ 357,173,092	0.2333%	\$ 27,134,913	\$ 41,825,764	\$ 664,707,627	\$ 664,707,627	\$ 20,673,278	\$ 456,022,155	\$ 453,934,113	\$ 258,324,030	\$ 195,810,083	63.84%
28	\$ 357,173,092	0.2333%	\$ 27,134,913	\$ 41,825,764	\$ 694,632,173	\$ 694,632,173	\$ 21,573,278	\$ 477,288,511	\$ 431,918,238	\$ 237,080,874	\$ 194,857,684	66.81%
29	\$ 357,173,092	0.2333%	\$ 27,134,913	\$ 41,825,764	\$ 724,556,719	\$ 724,556,719	\$ 22,473,278	\$ 498,146,251	\$ 409,932,526	\$ 218,199,933	\$ 193,732,592	69.73%
30	\$ 357,173,092	0.2333%	\$ 27,134,913	\$ 41,825,764	\$ 754,481,265	\$ 754,481,265	\$ 23,373,278	\$ 518,510,020	\$ 388,865,691	\$ 195,836,185	\$ 193,029,527	72.59%
31	\$ 357,173,092	0.2333%	\$ 27,134,913	\$ 41,825,764	\$ 784,405,811	\$ 784,405,811	\$ 24,273,278	\$ 538,281,593	\$ 367,283,215	\$ 178,084,591	\$ 191,228,623	75.35%
32	\$ 357,173,092	0.2333%	\$ 27,134,913	\$ 41,825,764	\$ 814,330,357	\$ 814,330,357	\$ 25,173,278	\$ 557,364,877	\$ 346,029,859	\$ 156,981,308	\$ 189,048,551	78.02%
33	\$ 357,173,092	0.2333%	\$ 27,134,913	\$ 41,825,764	\$ 844,254,903	\$ 844,254,903	\$ 26,073,278	\$ 576,662,900	\$ 325,169,118	\$ 138,683,284	\$ 186,465,834	80.59%
34	\$ 357,173,092	0.2333%	\$ 27,134,913	\$ 41,825,764	\$ 874,179,449	\$ 874,179,449	\$ 26,973,278	\$ 595,077,811	\$ 304,805,350	\$ 121,288,374	\$ 183,536,975	83.02%
35	\$ 357,173,092	0.2333%	\$ 27,134,913	\$ 41,825,764	\$ 904,103,995	\$ 904,103,995	\$ 27,873,278	\$ 613,824,443	\$ 285,033,776	\$ 104,835,316	\$ 180,198,460	85.32%
36	\$ 357,173,092	0.2333%	\$ 27,134,913	\$ 41,825,764	\$ 934,028,541	\$ 934,028,541	\$ 28,773,278	\$ 632,862,443	\$ 265,950,492	\$ 89,483,741	\$ 176,468,751	87.47%
37	\$ 357,173,092	0.2333%	\$ 27,134,913	\$ 41,825,764	\$ 963,953,087	\$ 963,953,087	\$ 29,673,278	\$ 651,918,129	\$ 247,632,469	\$ 75,314,178	\$ 172,338,291	89.46%
38	\$ 357,173,092	0.2333%	\$ 27,134,913	\$ 41,825,764	\$ 993,877,633	\$ 993,877,633	\$ 30,573,278	\$ 670,862,443	\$ 230,237,559	\$ 62,428,056	\$ 167,809,503	91.26%
39	\$ 357,173,092	0.2333%	\$ 27,134,913	\$ 41,825,764	\$ 1,023,802,179	\$ 1,023,802,179	\$ 31,473,278	\$ 689,811,229	\$ 213,804,501	\$ 50,927,712	\$ 182,876,789	92.87%
40	\$ 357,173,092	0.2333%	\$ 27,134,913	\$ 41,825,764	\$ 1,053,726,725	\$ 1,053,726,725	\$ 32,373,278	\$ 708,760,443	\$ 198,452,928	\$ 40,916,387	\$ 157,536,529	94.27%
41	\$ 357,173,092	0.2333%	\$ 27,134,913	\$ 41,825,764	\$ 1,083,651,271	\$ 1,083,651,271	\$ 33,273,278	\$ 727,709,443	\$ 184,283,383	\$ 32,498,279	\$ 151,785,084	96.45%
42	\$ 357,173,092	0.2333%	\$ 27,134,913	\$ 41,825,764	\$ 1,113,575,817	\$ 1,113,575,817	\$ 34,173,278	\$ 746,658,443	\$ 171,387,240	\$ 25,778,447	\$ 145,618,793	98.39%
43	\$ 357,173,092	0.2333%	\$ 27,134,913	\$ 41,825,764	\$ 1,143,500,363	\$ 1,143,500,363	\$ 35,073,278	\$ 765,607,443	\$ 159,896,897	\$ 20,862,922	\$ 139,033,975	97.08%
44	\$ 357,173,092	0.2333%	\$ 27,134,913	\$ 41,825,764	\$ 1,173,424,909	\$ 1,173,424,909	\$ 35,973,278	\$ 784,556,443	\$ 148,846,897	\$ 15,948,000	\$ 123,085,975	100.00%

Date: 3/17/09

\* Includes escalation as used Draft EIS  
 \*\* Includes 10% cost risk to rebid contract.