



U.S. Department
of Transportation
**Federal Transit
Administration**

REGION IX
Arizona, California,
Hawaii, Nevada, Guam
American Samoa,
Northern Mariana Islands

201 Mission Street
Suite 1650
San Francisco, CA 94105-1839
415-744-3133
415-744-2726 (fax)

Formatted: Right: 0"

Mr. Kenneth T. Hamayasu
Chief, Rapid Transit Division
City and County of Honolulu
650 South King Street, 3rd Floor
Honolulu, Hawaii 96813

Dear Mr. Hamayasu,

Thank you for the City and County of Honolulu's (the "City") letter dated February 8, 2010, which provides notification of the City's intention to proceed with an additional notice-to-proceed (NTP) on the City's design-build (DB) contract with Kiewit Pacific Company (Kiewit) prior to issuance of a Record of Decision (ROD) and completion of the National Environmental Policy Act (NEPA) process. The City's letter describes a contract action to award NTP #1A to Kiewit for additional tasks by February 22, 2010. The Federal Transit Administration (FTA) is unable to complete its review, and thus concur with your proposed action, until it receives additional information about some of the activities listed in NTP #1A.

Previously, FTA issued a letter to the City dated December 1, 2009, which noted that while FTA does not generally conduct a pre-award review of a project sponsor's third-party contracts, FTA does require it for DB contracts executed prior to completion of NEPA. Because of the nature of DB contracts, with activities occurring sometimes simultaneously; rather than sequentially, FTA wants to ensure that appropriate provisions (commonly referred to as "off-ramps") are in place to prevent the design-builder from proceeding with final design activities and physical construction that could biasjeopardize the outcome of the NEPA process. NTP #1A-The descriptions and documents submitted to the FTA regarding NTP #1A describe many lump sum activities, which could includelead to final design activities and construction mobilization. The attachment submitted within your letter providesdoes give further explanation about some of these activities, but it does not describe the hold points that would keep your contractor from proceeding with final design. Please submit contract provisions that describe these hold points for the tasks identified in your attachment. FTA also needs additional information regarding the following specific activities:

- On site security, communication and project signage--is this referring to actions along the proposed alignment or to the contractor's facilities?
- Utility permits--what specifically is anticipated to be done regarding permits?
- Other permits-- what specifically is anticipated to be done regarding permits?same question as above.

Comment [ed1]: "Lead to" language is unclear. Not sure if "include" is the right word or not.

- Mobilization--please provide more specific information regarding this activity.
- Design foundations Area 1--please explain.
- Design foundations Area 4—please explain same as above.
- NPDES Implementation and Permits--explain what activities would be connected with a NPDES permits.

Comment [ed2]: Spell out – first usage of acronym

Finally, FTA is aware of certain upcoming dates included in the related to the DB contract. At the time the contract was awarded the City anticipated completion of the NEPA process being completed by the end of calendar year 2009. Obviously that has not occurred. The anticipated schedule for completion of the NEPA process is uncertain at this time, pending resolution of issues at the airport. Because of some significant NEPA issues, the anticipated schedule has been delayed and it is unlikely that the NEPA process will be completed before summer 2010. The City needs to make sure that it is addressing the schedule changes with Kiewit and not undertaking activities that would, so that it does not jeopardize federal funding for the project-DB contract.

Comment [ed3]: Have we said this publicly before? This will make news in Hawaii and I am just wondering if Peter will have any concerns about saying this so definitively. Should we have a more generic sentence instead such as "The anticipated schedule for completion of NEPA is uncertain at this time, pending resolution of issues at the airport and with historic properties"

If you have any questions about this matter, please contact Regional Counsel Renee Marler. Ms. Marler can be reached at 415--744-2736.

Sincerely,

Leslie Rogers
Regional Administrator