

**STAFF REPORT FOR CALENDAR ITEM NO.: 10
FOR THE MEETING OF: September 11, 2014**

TRANSBAY JOINT POWERS AUTHORITY

BRIEF DESCRIPTION:

Amending Contract No. 08-04-CMGC-000, authorizing Webcor/Obayashi Joint Venture (the CM/GC) to award a Trade Work Subcontract to Desert Mechanical, Inc. (Desert Mechanical) as the responsible bidder submitting the lowest responsive bid in the amount of \$12,059,025 for TG10.3: Heating, Ventilating and Air Conditioning (TG10.3), thereby increasing authorized Direct Costs by \$12,059,025, and increasing the authorized Construction Services Fixed Fee by \$916,486, under and in accordance with Contract No. 08-04-CMGC-000, Section 00 05 20, ¶5.01B.

EXPLANATION:

On October 17, 2013, the CM/GC issued a Request for Qualifications (RFQ) for TG10.3. On November 15, 2013, nine firms responded to the RFQ. On November 26, 2013, a selection committee consisting of representatives from the TJPA, CM/GC, Construction Management Oversight (CMO) consultant and Program Management/Program Controls (PMPC) consultant reviewed and scored each firm's qualifications for technical merit. Based on its evaluation, the selection committee determined the following bidders to be qualified and free of conflicts of interest:

- ACCO Engineered Systems, Inc.
- Airco Mechanical, Inc.
- Critchfield Mechanical, Inc.
- Desert Mechanical, Inc.
- F.W. Spencer & Sons, Inc.
- Lyles Mechanical Co.

On January 30, 2014, the TG10.3 package was issued for bid. A pre-bid conference was held on February 12, 2014. To provide further outreach to bidders, a second pre-bid question and answer session was held on July 23, 2014. Six addenda were issued during the bid period to provide clarifications, respond to bidders' questions, and provide updated specifications, drawings and sketches. While only a few of these addenda were specific to this trade package alone, Addenda #2 through #6 were issued to all packages currently in the bidding phase for the purpose of providing the 100% issued for construction (IFC) set of drawings, related architect's supplemental instructions (ASIs), and value engineering (VE) items to all bidders. The addenda are described below:

- Addendum #1 added the landscape and site utility drawings and specifications to all bidding trade packages for general reference and extended the bid date to May 21, 2014, to allow bidders time to review the added drawings and specifications.

- Addendum #2 added the 100% IFC set of drawings and specifications to all bidding trade packages for general reference and extended the bid date to June 17, 2014, to allow bidders time to review the IFC set.
- Addendum #3 included administrative changes, including a reduction to the SBE participation goal from 20% to 12% to more accurately reflect the current availability of SBE firms for this type of work based on the current construction market conditions. The overall CM/GC contract SBE goal remains at 17%, and even with the reduction for this trade package, the overall project goal is expected to be achieved. Addendum #3 also extended the bid date to August 20, 2014, at the bidders' request, to allow time to assimilate the changes issued in Addendum #2.
- Addendum #4 incorporated three ASIs to the IFC set as follows: ASI 117 (general coordination of bidding documents to respond to bidders questions), ASI 118 (incorporation of secondary mitigation value engineering items), and ASI 119 (incorporation of secondary mitigation value engineering items). Addendum #4 also modified the bid form to incorporate the Optional Deductive Credit (described below) for the award of both TG10.3 and TG10.2 (Plumbing) should the same bidder submit the lowest responsive bid for both packages.
- Addendum #5 incorporated three ASIs to the IFC set as follows: ASI 120 (incorporation of changes to glazing packages and responses to bidders' questions), ASI 121 (moving the physical security information monitoring system from one bid package to another), and ASI 122 (incorporation of secondary mitigation value engineering items).
- Addendum #6 was an administrative addendum to officially incorporate into the Contract Documents responses to bidders' questions during bidding.

The scope of work under this package includes constructing the complete heating, ventilating and air conditioning systems for the Transbay Transit Center. The major items of work for this package consist of heating, ventilating and air conditioning equipment, panels, pumps, heat exchangers, air handlers, cooling towers, heat pumps, dampers, fans, valves, louvers, hydronic system, insulation, and all general piping and duct distribution.

The scope of work includes all labor, materials, equipment, tools, transportation, disposal fees, incidentals and any other costs/fees necessary to complete work in accordance with the Contract Documents. All necessary work from mobilization to handover to the next trade subcontractor is included in the scope of work.

Bidders had the option of submitting VE proposals prior to the bid date. On July 28, 2014, three VE proposals were received. On August 8, 2014, the VE evaluation team consisting of representatives from the TJPA, CM/GC, CMO, PMPC, and the design team evaluated the VE proposals. The following VE proposal was accepted.

- VE Proposal #1A: Pro Press System using premade fittings to join piping rather than soldering
 - Proposed Savings: \$102,000

- Reason for Acceptance: Though product is more expensive to purchase, the added costs are offset by the reduction in labor costs to install.

The following VE proposals were not accepted:

- VE Proposal #1B: Type M copper piping in lieu of Type L copper piping
 - Proposed Savings: \$21,600
 - Reason for Rejection: The proposed product is of lower quality than the specified product.
- VE Proposal #1C: Round Air Ducts in lieu of rectangular air ducts
 - Proposed Savings: \$21,000
 - Reason for Rejection: Not enough value provided and could cause fit problems with other building components.

To ensure the best value for the bid scope, TJPA included in the package three deductive bid alternates that are part of the total bid, and thus were factors in determining the lowest responsible bid. These are described below:

Deductive Alternate No. 4: Delete Beale Street Lobby, reconfiguring the Beale Street space as an open air lobby rather than an enclosed space, and correspondingly reducing the HVAC scope in this area.

Deductive Alternate No. 15: Eliminate Radiant Floor mechanical system within the Grand Hall.

Deductive Alternate No. 23: Eliminate MEP Systems serving the Security Guard Booth at the top of the Vehicle/Bike Ramp to the Lower Concourse Level. This booth will be deferred until Phase II when the Train Box is built out.

The TG10.3 package also included an Optional Deductive Credit. If the bidder elects to bid both TG10.2 and TG10.3 packages and is awarded both contracts as the responsible bidder submitting the lowest responsive bid for each package, the bidder has the option to provide credits to the TJPA to be incorporated into its total TG10.2 and TG10.3 bid prices.

There were no Additive Alternates.

On August 20, 2014, four bids were received, opened and evaluated. Below is a summary of the bid result:

Bidder Name	ACCO Engineered Systems, Inc.	Airco Mechanical, Inc.	Desert Mechanical, Inc.	F.W. Spencer & Sons, Inc.
Base Bid Amount	\$16,470,000	\$14,968,000	\$12,445,672	\$18,563,874
Deductive Alternate No. 4: Delete Beale Street Lobby	\$(60,000)	\$(116,700)	\$(200,000)	\$(114,979)
Deductive Alternate No. 15: Eliminate Radiant Floor System	\$(410,000)	\$(216,400)	\$(43,000)	\$(520,727)
Deductive Alternate No. 23: Eliminate MEP Systems Serving Security Guard Booth	\$(6,000)	\$(8,000)	\$(4,800)	\$(11,546)
Accepted Value Engineering Proposals			\$(102,000)	
Optional Deductive Credit*	\$(200,000)	\$(125,000)	\$(284,647)*	\$(647,000)
Base Bid Less Alternates, VE and Credit	\$15,994,000	\$14,626,900	\$11,811,225	\$17,916,622

*Note: Optional Deductive Credit (**bold**) only applies to bidder submitting lowest responsive bid on both TG10.2 and TG10.3. Desert Mechanical submitted the lowest responsive bid on TG10.2 and TG10.3 and therefore the Optional Deductive Credit applies.

Desert Mechanical submitted the lowest responsive bid, based on the total bid amount for the bid selection. The recommended award amount is \$12,059,025, which includes the sum of the base bid (\$12,445,672), the accepted VE proposal (-\$102,000), and the Optional Deductive Credit (-\$284,647).

Deductive Alternate No. 15 was not accepted because the bid price value Desert Mechanical offered of \$43,000 to delete the radiant floor in the Grand Hall (other bidders deduct alternate values ranged between \$216,400 and \$520,727) is very cost effective. The radiant floor is designed to be integrated into the geothermal system that has been installed below the bottom of the Train Box mat slab and is therefore an extremely efficient heating and cooling source. Both the natural ventilation design strategy, that allows doors and operable windows at the perimeter of the Grand Hall and at the Park Level to be open or closed dependent on the outside temperature, and the radiant floor will provide a comfortable environment for patrons. Deductive Alternate Nos. 4 and 23 were not accepted in order to allow the TJPA to preserve the option of enclosing the Beale Street Lobby and constructing the security guard booth located at the top of the vehicle/bike ramp to the Lower Concourse level in a future trade package.

Desert Mechanical's bid is above 15% Small Business Enterprise (SBE) participation, exceeding the 12% SBE goal on the package. Desert Mechanical's bid includes four SBE firms.

TJPA's budget for TG10.3 is \$13,038,905 (which includes \$595,313 in design contingency and \$1,101,600 in escalation), and the CM/GC's estimate is \$12,318,886.

Airco Mechanical, Inc. (Airco), the second lowest bidder for TG10.3, submitted a bid protest to Desert Mechanical's TG10.3 bid on August 26, 2014, with an update submitted on August 27, 2014. Consistent with the TJPA's Board Policy No. 2, Protest Procedures for the Bidding and Award of Federally Assisted Third Party Contracts, the Federal Transit Administration was notified of Airco's bid protest on August 27, 2014 and of Airco's updated bid protest on August 28, 2014. The TJPA also forwarded Airco's protest and updated protest to Desert Mechanical and requested a written response from Desert Mechanical. Desert Mechanical responded in writing to the protest on September 4, 2014. Desert Mechanical's response disagreed with and specifically addressed each issue raised by Airco in its bid protest. Desert Mechanical's response will be incorporated, to the extent necessary, in the TJPA's written response to Airco's protest.

Airco's protest contends that: (1) Desert Mechanical's bid price was "irresponsible in relation to the current industry market"; (2) Desert Mechanical "inflated their SBE Participation" by misrepresenting the cost of materials to be purchased from one of its SBE material suppliers, Temper Insulation Co., Inc. (Temper); and (3) Desert Mechanical intends to prefabricate its work outside "the local jurisdiction" and, as a result, will avoid local collective bargaining agreements. No other basis for the protest was provided by Airco. Counsel for the TJPA has reviewed Airco's bid protest, and based on the evidence currently available, finds it to be without merit for the following reasons:

(1) The CM/GC confirmed Desert Mechanical's price with Desert Mechanical after bid opening. Furthermore, Desert Mechanical stated in its September 4, 2014 response that, if awarded Trade Package TG10.3, it will execute a trade subcontract for the price stated in its bid. Furthermore, there is no provision within the solicitation upon which to reject a bid for being "irresponsible" in relation to "the current industry market."

(2) Desert Mechanical's written response confirmed that its SBE participation exceeds the 12% goal for TG10.3. In confirming its SBE participation, Desert Mechanical did identify a minor error in its calculation. However, correction of the error did not reduce its SBE participation below the stated goal. Desert Mechanical's SBE participation remains above 15%, more than 3% above the stated goal.

Airco also alleges that the same "pricing" was provided by Temper to Airco and Desert Mechanical and therefore the listed amount for materials in each bidder's "Subcontractor List" and/or "Bidders/Proposers Information Request Form" should be identical. While Airco may be correct that the "pricing" provided by Temper to both bidders was identical (*i.e.*, the same unit price for a particular material was quoted to Airco and Desert Mechanical), Airco fails to recognize that the scope of materials being quoted by Temper to each bidder was different. Desert Mechanical received a quote from Temper for "hydronic and HVAC insulation." Airco received a quote from Temper for "fire stop and mechanical insulation." The scope of the quoted materials is not identical and hence the total price is different.

(3) Airco contends that based on Desert Mechanical's bid "It is clear of their [Desert Mechanical's] intent to prefabricate all of the work outside local jurisdictions." First, contrary to Airco's contention, Desert Mechanical's bid does not state that prefabrication will occur "outside local jurisdictions." Desert Mechanical's bid is silent on where prefabrication will occur. Second, in its response to Airco's protest, Desert Mechanical confirmed in writing that it will comply with the Project Labor Agreement, Project specifications and all other Project requirements.

In advance of this Board meeting, a written response was sent to Airco formally denying its bid protest.

This Trade Work Subcontract is anticipated to be funded by land sales proceeds.

RECOMMENDATION:

TJPA staff recommends that the TJPA Board authorize amending Contract No. 08-04-CMGC-000, authorizing the CM/GC to execute a Trade Work Subcontract with Desert Mechanical, Inc. as the responsible bidder submitting the lowest responsive bid in the amount of \$12,059,025 for TG10.3: Heating, Ventilating and Air Conditioning, thereby increasing the authorized Direct Costs by \$12,059,025, and increasing the authorized Construction Services Fixed Fee by \$916,486, under and in accordance with Contract No. 08-04-CMGC-000, Section 00 05 20, ¶5.01B.

ENCLOSURES:

1. Resolution
2. Contract Modification

**TRANSBAY JOINT POWERS AUTHORITY
BOARD OF DIRECTORS**

Resolution No. _____

WHEREAS, On March 12, 2009, the Transbay Joint Powers Authority (TJPA) awarded a contract to Webcor/Obayashi Joint Venture as Construction Manager/General Contractor (the CM/GC) for the Transbay Transit Center Building and Related Structures (Contract No. 08-04-CMGC-000 or the Contract). Under the Contract, the CM/GC must competitively procure trade subcontractors. The Contract provides for the incorporation of Trade Packages by amendment to (a) authorize award of a Trade Work Subcontract; (b) authorize the associated increase in allowable Direct Costs under the Contract; and (c) authorize the CM/GC to charge a Construction Services Fixed Fee invoiced at a rate of 7.6% of Direct Costs (Contract, Section 00 05 20, ¶5.01); and

WHEREAS, On January 30, 2014, the CM/GC issued an Invitation for Bids for TG10.3: Heating, Ventilating and Air Conditioning Package (TG10.3) for the entire Transbay Transit Center Program to construct the complete heating, ventilating and air conditioning systems in accordance with the Contract Documents; and

WHEREAS, Under TG10.3, the Trade Subcontractor will perform all heating, ventilating and air conditioning systems construction related activities for the entire Transbay Transit Center Program; and

WHEREAS, On August 20, 2014, four bids were received and opened publicly; and

WHEREAS, CM/GC and TJPA have determined that Desert Mechanical, Inc. is the responsible bidder submitting the lowest responsive bid, with a bid of \$12,059,025 including the accepted VE proposal (-\$102,000), and the Optional Deductive Credit (-\$284,647); and

WHEREAS, Funds for this Trade Work Subcontract are available from land sales; now, therefore, be it

RESOLVED, That the TJPA Board of Directors authorizes the CM/GC to execute a Trade Work subcontract for TG10.3 with Desert Mechanical, Inc. as the responsible bidder submitting the lowest responsive bid in the contract amount of \$12,059,025; and be it

FURTHER RESOLVED, That upon award of the Trade Work Subcontract to Desert Mechanical, Inc., the Trade Work Subcontract shall be deemed part of the Contract Documents under Contract No. 08-04-CMGC-000; and be it

FURTHER RESOLVED, That Contract No. 08-04-CMGC-000 is hereby modified to incorporate the authorized amount of Trade Work Subcontract awarded to Desert Mechanical, Inc. for TG10.3 by increasing authorized Direct Costs by \$12,059,025, and increasing the authorized Construction Services Fixed Fee by \$916,486 (Direct Costs of \$12,059,025 multiplied

by the Construction Services Fee of 7.6%) under and in accordance with Contract No. 08-04-CMGC-000, Section 00 05 20, ¶5.01B.

I hereby certify that the foregoing resolution was adopted by the Transbay Joint Powers Authority Board of Directors at its meeting of September 11, 2014.

Secretary, Transbay Joint Powers Authority

AGREEMENT
AMENDMENT NO. 38
BETWEEN
TRANSBAY JOINT POWERS AUTHORITY
AND
WEBCOR/OBAYASHI JOINT VENTURE

THIS AMENDMENT for AGREEMENT is entered into as of the _____ day of _____, 2014, by and between the TRANSBAY JOINT POWERS AUTHORITY (TJPA) and Webcor/Obayashi Joint Venture (CM/GC). By this Amendment No.38, the TJPA and the CM/GC hereby modify the Agreement dated March 17, 2009 (Agreement), only to the extent expressly provided in this Amendment No. 38. All other terms and conditions of the Agreement shall remain in full force and effect.

Recitals

A. On March 12, 2009, the TJPA Board awarded the Agreement to the CM/GC to perform pre-construction and construction services for the Transbay Transit Center Building and Related Structures Project (Project).

B. As detailed in the Agreement, the CM/GC is required to procure construction services through the award of Trade Packages, at which time TJPA shall adjust the value of the Contract Sum to reflect the amount of the awarded Trade Work Subcontract plus the proportionate CM/GC's Construction Services Fixed Fee in accordance with Article 5.01 of the Agreement.

C. The CM/GC issued an Invitation for Bids for TG10.3 Heating, Ventilating and Air Conditioning package on January 30, 2014, and received and publicly opened four bids on August 20, 2014.

D. Desert Mechanical, Inc. was the responsible bidder submitting the lowest responsive bid in the amount of \$12,059,025, which consists of a Base Bid of \$12,445,672, the accepted VE proposal (-\$102,000), and Optional Deductive Credit (-\$284,647). Deductive Alternate No. 4 for -\$200,000, Deductive Alternate No. 15 for -\$43,000, and Deductive Alternate No. 23 for -\$4,800 were not accepted and are not part of the current award.

Terms and Conditions

1. By this Amendment, TJPA authorizes an increase in the CM/GC scope of work and the value of the Contract Sum by \$12,975,511 (Trade Package Direct Costs of \$12,059,025 and CM/GC Fixed Fee, calculated at 7.6 percent of Direct Costs, of \$916,486) and the award of Trade Subcontract No. TG10.3 to Desert Mechanical, Inc. for performance of the construction of TG10.3 Heating, Ventilating and Air Conditioning.

2. The detailed scope of work and schedule incorporated by this Amendment is provided in the Contract Documents dated September 23, 2013, and all associated Addenda.

IN WITNESS WHEREOF, the parties hereto have executed this contract Amendment No. 38 on the day first mentioned above.

TRANSBAY JOINT POWERS AUTHORITY

Maria Ayerdi-Kaplan
Executive Director

Transbay Joint Powers Authority
Board of Directors
Resolution No. _____
Adopted: _____
Attest:

Secretary, TJPA Board

Approved as to Form:

By: _____
TJPA Legal Counsel

WEBCOR/OBAYASHI, JOINT VENTURE

Authorized Signature

Printed Name

Title