

STAFF REPORT FOR CALENDAR ITEM NO.: 10
FOR THE MEETING OF: February 12, 2015

TRANSBAY JOINT POWERS AUTHORITY

BRIEF DESCRIPTION:

Under Contract No. 08-04-CMGC-000, authorize the Executive Director to enter into negotiations with Webcor/Obayashi Joint Venture (W/O or CM/GC) and Olson and Company Steel for Trade Package TG07.3 Miscellaneous Metals to determine a fair and reasonable price for this Trade Subcontract.

EXPLANATION:

On February 20, 2014, the CM/GC issued a Request for Qualifications (RFQ) for TG07.3 Miscellaneous Metals (TG07.3). On March 18, 2014, six firms responded to the RFQ. On March 28, 2014, 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:

- C.E. Toland and Son
- Kwan Wo Ironworks, Inc.
- Olson and Company Steel
- Shimmick Construction Company, Inc.
- Southwest Steel of California, Inc.

On August 20, 2014, TG07.3 was issued for bid. A pre-bid conference was held on September 10, 2014. Seven addenda to TG07.3 were issued during the bid period to provide clarifications, respond to bidders' questions, and provide updated specifications, drawings, and sketches. Addenda #4, #5, #6, and #7 were specific to TG07.3. The addenda are briefly described as follows:

- Addendum #1 incorporated two Architect's Supplemental Instructions (ASI) into the issued-for-construction (IFC) set: ASI 124 (incorporation of secondary mitigation/value engineering items) and ASI 125 (transfer of the Emergency Communication System/Mass Notification System from one bid package to another).
- Addendum #2 incorporated ASI 126 (glazing package TG08.10 plans and specifications) into the IFC set.
- Addendum #3 incorporated one ASI and three field orders (FO) into the IFC set as follows: ASI 127 (bidding clarifications and responses to bidders' questions), FO 29 (SFPUC IFB drawings), FO 29R1 (revised SFPUC IFB drawings), and FO 33 (SFMTA OCS plans and specifications).
- Addendum #4 extended the bid date to November 19, 2014, at the bidders' request.
- Addendum #5 extended the bid date to December 17, 2014, at the bidders' request.

- Addendum #6 extended the bid date to January 22, 2015, at the bidders' request.
- Addendum #7 was an administrative addendum to officially incorporate into the Contract Documents all responses to TG07.3 bidders' questions during the bid period.

The scope of work under this package includes designing, fabricating, and installing the handrails and guardrails that are not part of the metal stairs and ladders package, as well as metal covers, fences, bike racks, metal plates/covers on walls and columns, site metal fabrications, stair enclosure profiles, façade access track, and miscellaneous secondary steel support members. 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 hand over to the next trade subcontractor is included in the scope of work.

Bidders had the option of submitting value engineering (VE) proposals prior to the bid date. No VE proposals were submitted. No deductive or additive alternates were included in the bid documents.

On January 22, 2015, one bid was received, opened, and evaluated. Olson and Company Steel (Olson) submitted the sole bid, in the amount of \$11,528,242. Olson's bid includes 10.1% Small Business Enterprise (SBE) participation, meeting the 10% SBE goal on the package with two SBE subcontractors. Olson's bid was responsive, and no bid protests were received during the protest period, which ended on January 29, 2015.

TJPA's budget for TG07.3 is \$7,894,395 (which includes \$78,523 in design contingency and \$631,808 in escalation), and the CM/GC's estimate is \$5,700,000.

Because Olson's bid exceeds both the budget and CM/GC's estimate, TJPA staff and the CM/GC recommends entering into price negotiations with Olson to agree on a price which is fair and reasonable, as provided for under San Francisco Administrative Code Section 6.23(C)(2) and allowed by Federal Transit Administration regulations.

Price Negotiation Procedure

In order to enter into price negotiations with the sole bidder, TJPA must first determine that there was adequate competition. This step requires TJPA to determine why other prequalified bidders did not submit a bid. If other prequalified bidders indicate that they did not bid for reasons that are unrelated to the specification and/or solicitation terms, then TJPA may presume that competition was adequate. Also, this determination should involve an evaluation of whether further outreach efforts or removal/modification of certain requirements in the contract would result in receiving more than one bid. If further outreach efforts or removal/modification of certain requirements in the contract would not have resulted in more than one bid, then competition may be deemed adequate.

TJPA has determined that adequate competition existed. Based on its communications with the other prequalified bidders, the primary reasons for the lack of other bids are (1) prequalified bidders have sufficient existing work and lack the necessary manpower to undertake an

additional large project, and (2) other and potentially more lucrative work exists based on an upswing in current market conditions. While other reasons were provided, the two reasons listed above were consistently communicated to TJPA by prequalified bidders who did not submit bids. After competition is determined to have been adequate, TJPA may, subject to Board approval, enter into negotiations with the sole bidder in an attempt to establish a price that is fair and reasonable.

A price analysis must be performed to determine if the bid price is fair and reasonable. The CM/GC and TJPA are currently unable to determine if the submitted bid price is fair and reasonable, based on available information. Further negotiations with Olson will clarify if the submitted bid price is fair and reasonable. If a fair and reasonable price is agreed upon, and again subject to Board approval, a Trade Subcontract may be awarded.

Proposed Resolution

Based on TJPA's determination that adequate competition existed and given that TJPA is unable to determine if the submitted bid price is fair and reasonable, TJPA, subject to Board approval, will enter into price negotiations with Olson for TG07.3 with the objective of reaching agreement on a price that is fair and reasonable. Assuming a fair and reasonable price is mutually agreed upon, TJPA will seek Board approval of the award of TG07.3 to Olson for the agreed-upon price.

RECOMMENDATION:

Staff recommends that the Board of Directors authorize the Executive Director to enter into price negotiations with the CM/GC and Olson and Company Steel to determine a fair and reasonable price for the TG07.3 Miscellaneous Metals for the Transbay Transit Center.

ENCLOSURE:

1. Resolution

**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; and

WHEREAS, On February 20, 2014, the CM/GC issued a Request for Qualifications (RFQ) for TG07.3 Miscellaneous Metals; and

WHEREAS, On March 18, 2014, six firms responded to the RFQ; and

WHEREAS, On March 28, 2014, 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 and determined five bidders to be qualified and free of conflicts of interest; and

WHEREAS, On August 20, 2014, the CM/GC issued an Invitation for Bids for TG07.3: Miscellaneous Metals (TG07.3) for the Transbay Transit Center to design, fabricate, and install miscellaneous metal elements of the Transit Center in accordance with the Contract Documents; and

WHEREAS, Under TG07.3, the Trade Subcontractor will perform all miscellaneous metals construction-related activities for the Transbay Transit Center; and

WHEREAS, On January 22, 2015, one responsive bid was received and opened publicly; and

WHEREAS, The bid exceeded the engineer's estimate by \$6,150,160; and

WHEREAS, Following receipt of the bid, TJPA, in conjunction with the CM/GC, determined that adequate competition existed; and

WHEREAS, Following receipt of the bid, TJPA, in conjunction with the CM/GC, is unable to determine whether the submitted bid price is fair and reasonable; now, therefore, be it

RESOLVED, That the TJPA Board of Directors authorizes TJPA's Executive Director to enter into price negotiations with the CM/GC and Olson and Company Steel for TG07.3 Miscellaneous Metals with the objective of reaching agreement on a fair and reasonable price for TG07.3 Miscellaneous Metals Trade Package.

I hereby certify that the foregoing resolution was adopted by the Transbay Joint Powers Authority Board of Directors at its meeting of February 12, 2015.

Secretary, Transbay Joint Powers Authority