

STAFF REPORT FOR CALENDAR ITEM NO.: 7
FOR THE MEETING OF: March 13, 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 Shimmick Construction Company, Inc. (“Shimmick”) as the lowest responsible bidder in the amount of \$48,181,150 for the Structural Concrete Superstructure Package (“TG07.2”), thereby increasing authorized Direct Costs by \$48,181,150 and increasing the authorized Construction Services Fixed Fee by \$3,950,854.30 under and in accordance with Contract No. 08-04-CMGC-000, Section 00 05 20, ¶5.01B. In addition, amending Contract No. 08-04-CMGC-000, authorizing the CM/GC to provide, at TJPA’s cost and in lieu of performance and payment bonds, a Subguard Program, to protect against the risk of a Trade Subcontractor’s default on the Project.

EXPLANATION:

TG07.2: Structural Concrete Superstructure Package

On July 10, 2013, the CM/GC issued a Request for Qualifications (“RFQ”) for TG07.2. In August 2013, seven firms responded to the RFQ. On August 28, 2013, a selection committee consisting of representatives from TJPA, the CM/GC, Construction Management Oversight and Program Management/Program Controls consultants reviewed and scored each firm’s qualifications for technical merit and determined the following contractors to be qualified and to have no conflicts of interest:

- Gonsalves & Santucci Inc., dba Conco
- RGW Construction, Inc.
- Shimmick Construction Company, Inc.
- Skanska Steel Constructors
- Urata & Sons Cement, Inc.

On November 7, 2013, the TG07.2 package was issued for bid. A pre-bid conference was held on November 14, 2013. Four addenda were issued during the bid period to provide clarifications, respond to bidders’ questions, and provide updated specifications, drawings and sketches.

The scope of work for TG07.2 completes the balance of structural concrete work for the Transbay Transit Center building. The major items of the work for this package consist of the following elements:

- Construct reinforced concrete walls, columns, beams, slabs, all curbs, fin walls, shear keys, footings, equipment pads, grade beams, penthouse roofs, and curved concrete scallop walls above the ground floor and up to the Roof Park level.
- Construct reinforced concrete architectural exposed walls in accordance with specified architectural concrete finish requirements.
- Complete the remaining portion of the train box perimeter reinforced concrete foundation wall and train box lid above the delineation of the TG06.0 Below Grade Concrete Trade Package.

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 bid items.

Bidders had the option of submitting value engineering proposals prior to the bid date. No value engineering proposals were received. To ensure the best value for the bid scope, TJPA included in the package several deductive bid alternates that are part of the total bid, and thus were factors in determining the lowest responsible bid.

On February 11, 2014, two bids were received, opened, and evaluated. Below is a summary of the bid results.

Bidder Name	Shimmick Construction Co.	Urata & Sons Cement
Base Bid Amount	\$48,216,950	\$82,265,900
Deductive Alternate No. 1: Delete openings for “Tubular Daylighting Device” as noted on Roof Park Level slab edge plans.	(\$20,000)	(\$13,000)
Deductive Alternate No. 2: Delete concrete curb and cast-in-place plates for the Beale Street Lobby enclosure.	(\$8,700)	(\$11,385)
Deductive Alternate No. 3: Revise concrete foundation to accommodate elevator PE201 enclosure modifications.	(\$7,100)	\$0
Deductive Alternate No. 4: Provide standard concrete finish in lieu of architectural concrete finish.	(\$6,400)	(\$3,500,000)
Total Base Bid Less Alternates	\$48,174,750	\$78,741,515

Shimmick submitted the lowest responsive bid, based on the sum total of the base bid amount and above-the-line alternates. The recommended award amount is \$48,181,150, which includes the sum of the base bid (\$48,216,950) and deductive alternates No. 1 (-\$20,000), No. 2 (-\$8,700), and No. 3 (-\$7,100).

Deductive alternate No. 4 will not be accepted. The engineer’s estimate for the architectural concrete finish of the 9,875 square feet of walls is significantly above Shimmick’s bid amount. Taking Deductive Alternate No. 4 would result in a standard concrete finish in lieu of an architectural concrete finish of the walls, and our analysis of the bids determined that the savings indicated in Shimmick’s bid would neither be cost effective nor result in best value to TJPA.

TJPA’s budget for TG07.2 is \$35,555,000, and the engineer’s estimate is \$39,286,000. The \$12,626,150 balance between the awarded amount and the current TG07.2 budget will be funded by using Program Reserve. The current available Program Reserve funding is \$87,335,700. The remaining funding balance in the Program Reserves will be \$74,709,550 after TG7.02 is awarded. Shimmick submitted a balanced

and reasonable bid. The major driver of the cost difference between the budget, engineer's estimate, and the bid submitted by Shimmick is the current active construction market conditions in San Francisco and parts of the Bay Area, which is limiting the pool of bidders and significantly increasing the construction costs.

Shimmick's bid includes 21.4% Small Business Enterprise ("SBE") participation, exceeding the 20% SBE participation goal on this package.

No bid protests were received during the bid protest period, which ended on February 19, 2014.

This Trade Work subcontract will be funded by land sales proceeds and a Prop K allocation.

Contract Amendment: Subguard Program

In accordance with the Contract, the CM/GC currently requires its Trade Subcontractors to obtain, at TJPA's cost, Payment and Performance ("P&P") bonds. The CM/GC has agreed to amend the Contract to replace the P&P bonds with the Subguard Program, an insurance program designed to address the risk of subcontractor or supplier defaults. (Note, the CM/GC's obligation under the Contract to provide P&P bonds to TJPA for 100% of the CM/GC Contract value remains in place and is not impacted by the Subguard Program).

The Subguard Program has several benefits. First, it will potentially increase competition by allowing smaller businesses to participate in the bidding process that may have otherwise been precluded from bidding due to lack of bonding capacity. Second, it is less expensive than P&P bonds, resulting in an estimated savings of one million dollars to the project. Third, unlike bond claims where the surety is often slow to respond and likely to raise numerous defenses, the CM/GC is the insured under the Subguard Program, which allows the CM/GC to immediately respond to a Trade Subcontractor default with little to no impact to the project schedule and project cost (increased costs for a replacement subcontractor are covered within the policy limits).

The Subguard Program will be underwritten by Zurich with policy limits of \$25,000,000 per loss and \$50,000,000 aggregate. The premium rate has been set at .98% of the cost of each Trade Subcontract (as compared to Trade Subcontractor P&P bond rates typically ranging from 1% to 3%). Based on this rate, the estimated premium for the Subguard Program is based on an estimated enrolled Trade Subcontract value of \$407,984,173.00 resulting in an estimated premium of \$3,998,244.90 ($\$407,984,173.00 \times .98\%$). Based on this estimated premium, the CM/GC shall bill TJPA based on the following schedule:

March 2014	\$472,175.27
June 2014	\$881,517.40
September 2014	\$881,517.40
December 2014	\$881,517.40
March 2015	\$881,517.43

Following the last payment, and to the extent necessary, actual premiums shall be reconciled with payments based on estimated premiums every six (6) months until Project completion based on the updated Trade Subcontract values for all enrolled Trade Subcontractors. Under the CM/GC Contract,

premiums are a reimbursable expense and therefore not subject to mark-up. Under the Subguard Program, the CM/GC is responsible for any deductibles. Other than the premium payments, there are no other costs to TJPA in connection with the Subguard Program. For Trade Subcontracts less than \$40,000,000, the Subguard Program will cover all future, enrolled Trade Subcontractors during the performance of their work and for a period of ten (10) years after final completion. (For Trade Subcontracts in excess of \$40,000,000 that are not included in the Subguard Program, P&P bonds will be provided to the CM/GC by the Trade Subcontractor).

TG07.2 would be the first trade package awarded under the Subguard Program.

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 Shimmick Construction Company, Inc., as the responsible bidder in the amount of \$48,181,150 for TG07.2: Structural Concrete Superstructure Package, thereby increasing the authorized Direct Costs by \$48,181,150 and increasing the authorized Construction Services Fixed Fee by \$3,950,854.30, under and in accordance with Contract No. 08-04-CMGC-000, Section 00 05 20, ¶5.01B. In addition, TJPA staff recommends that the TJPA Board authorize amending Contract No. 08-04-CMGC-000, authorizing the CM/GC to provide, at TJPA's cost and in lieu of performance and payment bonds, a Subguard Program, to protect against the risk of a Trade Subcontractor's default on the Project.

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 8.2% of Direct Costs (Contract, Section 00 05 20, ¶5.01); and

WHEREAS, On November 7, 2013, the CM/GC issued Invitation for Bids for TG07.2: Structural Concrete Superstructure Package (“TG07.2”) for the entire Transbay Transit Center Program to construct the Structural Concrete Superstructure for the Transbay Transit Center building; and

WHEREAS, Under TG07.2, the Trade Subcontractor will perform all Structural Concrete Superstructure related activities for the entire Transbay Transit Center Program; and

WHEREAS, On February 11, 2014, two bids were received and opened publicly; and

WHEREAS, The CM/GC and TJPA have determined that Shimmick Construction Company, Inc. (“Shimmick”) of Oakland, CA, is the lowest responsible bidder, with a bid of \$48,181,150 which includes the sum of the base bid (\$48,216,950) and deductive alternates No. 1 (-\$20,000), No. 2 (-\$8,700), and No. 3 (-\$7,100); and

WHEREAS, Funds for this Trade Work subcontract are available from land sales proceeds and Prop K funds; and

WHEREAS, In accordance with the Contract, the CM/GC previously required its Trade Subcontractors to obtain, at TJPA’s cost, payment and performance bonds to protect against the risk of the Trade Subcontractor’s default on the Project; and

WHEREAS, On all future Trade Subcontracts, TJPA and the CM/GC have determined the Project will benefit by implementing a Subguard Program, in lieu of performance and payment bonds, to protect against the risk of a Trade Subcontractor’s default on the Project; and

WHEREAS, The time allowed for completion of the work under the Contract is 1168 calendar days after issuance of the Notice to Proceed; now, therefore, be it

RESOLVED, That the TIPA Board of Directors authorizes the CM/GC to execute a Trade Work subcontract for TG07.2 with Shimmick as the lowest responsible bidder in the amount of \$48,181,150; and be it

FURTHER RESOLVED, That upon award of the Trade Work subcontract to Shimmick, 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 Shimmick for TG07.2 by increasing authorized Direct Costs by \$48,181,150 and increasing the authorized Construction Services Fixed Fee by \$3,950,854.30 under and in accordance with Contract No. 08-04-CMGC-000, Section 00 05 20, ¶5.01B; and be it

FURTHER RESOLVED, That Contract No. 08-04-CMGC-000 is hereby modified to authorize the CM/GC to provide, at TIPA's cost, a Subguard Program, in lieu of performance and payment bonds, to protect against a Trade Subcontractor's default on all future Trade Packages that qualify under the Subguard Program.

I hereby certify that the foregoing resolution was adopted by the Transbay Joint Powers Authority Board of Directors at its meeting on March 13, 2014.

Secretary, Transbay Joint Powers Authority

AGREEMENT
AMENDMENT NO. 30
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 (the "CM/GC"). By this Amendment No. 30 the TJPA and the CM/GC hereby modify the Agreement dated March 17, 2009 (the "Agreement"), only to the extent expressly provided in this Amendment No. 30. 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 (the "Project").
- B.** As detailed in the Agreement CM/GC is required to procure construction services through the award of Trade Packages, at which time the 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 TG07.2 Structural Concrete Superstructure package on November 7, 2013, and received and publicly opened two bids on February 11, 2014.
- D.** Shimmick Construction Company, Inc. was the responsible bidder submitting the lowest responsive bid in the amount of \$48,181,150, which consists of a Base Bid of \$48,216,950 and above-the-line alternates No. 1 (-\$20,000), No. 2 (-\$8,700) and No. 3 (-\$7,100).
- E.** Furthermore, in accordance with the Agreement, the CM/GC previously required its Trade Subcontractors to obtain, at the TJPA's cost, payment and performance bonds to protect against the risk of the Trade Subcontractor's default on the Project.
- F.** On and after the Effective Date of this Amendment, the TJPA and the CM/GC have agreed to protect against the risk of a Trade Subcontractor's default on the Project by authorizing the CM/GC to provide, at the TJPA's cost and in lieu of performance and payment bonds, a Subguard Insurance Policy ("Subguard Policy"), pursuant to the terms and conditions set forth below.

Terms and Conditions

- 1.** By this Amendment the TJPA authorizes an increase in the CM/GC scope of work and the value of the Contract Sum by \$52,132,004.30 (Trade Package Direct Costs of

\$48,181,150 and CM/GC Fixed Fee, calculated at 8.2 percent of Direct Costs, of \$3,950,854.30), the award of Trade Subcontract No. TG07.2 to Shimmick Construction Company, Inc. for performance of the construction of TG07.2 Structural Concrete Superstructure.

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

3. By this Amendment the TJPA authorizes the CM/GC to provide, at the TJPA's cost, a Subguard Policy, pursuant to the terms and conditions set forth below:

- 3.1 In lieu of bonding certain Trade Subcontractors, the CM/GC will provide a Subguard Policy.
- 3.2 The coverage shall: (i) provide policy limits of \$25,000,000 each loss / \$50,000,000 in the aggregate, dedicated solely to the Project; (ii) cover enrolled Trade Subcontractors during the performance of the Work and for a period of ten (10) years after Final Completion of the Work; and (iii) require no deductible, copayment or contribution from the TJPA in connection with the Subguard Policy at any time.
- 3.3 The TJPA and the CM/GC agree that only Trade Subcontractors that are awarded work on or subsequent to the Effective Date of this Amendment shall be enrolled under the Subguard Policy. The TJPA and CM/GC acknowledge that enrollment under the Subguard Policy may be unavailable to certain Trade Subcontractors at the election of the insurer if such Trade Subcontractors have a contract value in excess of \$40,000,000. In such cases, the CM/GC shall require such Trade Subcontractors to provide a payment and performance bond ("Bond") as previously required under the Agreement. The cost of the Bond is a Reimbursable Expense and shall be added to the Trade Subcontractor's cost of the work without mark-up.
- 3.4 For the Subguard Policy provided by CM/GC as described above, the TJPA shall pay CM/GC .980% of the cost of each Trade Subcontract, including change order costs, for those Trade Subcontractors enrolled under the Subguard Policy (the "Subguard Charge"). This Subguard Charge includes two separate charges comprising the total Subguard Policy Program cost – one charge from Zurich Insurance Company and one charge from Paramount Insurance Company. The Subguard Charge is based on an estimated enrolled Trade Subcontract value of \$407,984,173.00 resulting in an initial premium cost of \$3,998,244.90 (\$407,984,173.00 X .980%) which shall be billed, upon issuance of an approved Subguard policy to the CM/GC, as follows:

March 2014	\$472,175.27
June 2014	\$881,517.40
September 2014	\$881,517.40
December 2014	\$881,517.40
March 2015	\$881,517.43

No mark-up shall be charged by the CM/GC on any premiums paid under the Subguard Policy. Following the last premium payment set forth above, and to the extent necessary, premium costs shall be reconciled every six (6) months until Project completion based on the updated Trade Subcontract values for all enrolled Trade Subcontractors.

IN WITNESS WHEREOF, the parties hereto have executed this contract Amendment No. 30 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