

**THIS STAFF REPORT COVERS CALENDAR ITEM NO.: 8
FOR THE MEETING OF: December 9, 2010**

TRANSBAY JOINT POWERS AUTHORITY

BRIEF DESCRIPTION:

Amending Contract No. 08-04-CMGC-000, authorizing Webcor/Obayashi Joint Venture to award a Trade Subcontract to Balfour Beatty Infrastructure Inc. as the responsible bidder submitting the lowest responsive bid in the amount of **\$187,251,070** for TG03 - Buttress, Shoring, and Excavation (“BSE”), and thereby increasing authorized Direct Costs under Contract No. 08-04-CMGC-000 (Section 00 05 20 Agreement, ¶5.01B), by \$187,251,070 and increasing the authorized Construction Services Fixed Fee by \$15,354,587.74.

SUMMARY:

- On February 2, 2010, the CM/GC issued a Request for Qualifications (RFQ) for the TG03 BSE Package scope of work to be performed as part of the Transbay Transit Center. Qualification packages were received on February 23, 2010 and evaluated by a panel of TJPA, CM/GC, and PMPC staff. The following five contractors were determined to be qualified and have no conflicts of interest:
 - Balfour Beatty Infrastructure, Inc.
 - Granite/CJA/NCC Joint Venture
 - Kiewit Pacific Co.
 - Shimmick/Skanska/Traylor, A Joint Venture
 - Tutor-Saliba CorporationA sixth contractor was qualified but excluded from further participation when a conflict arose after submission of the qualifications.
- The Invitation for Bids (IFB) was issued to the five remaining qualified contractors on July 30, 2010. Seven addenda were issued during the bid period as necessary to clarify and respond to bidders’ questions.
- The main scope of work is installing a temporary buttress adjacent to the 301 Mission Street building, installing the temporary shoring wall around the perimeter of the Phase 1 train box, excavating inside the shoring wall with design-build internal bracing, design-build dewatering, design-build temporary access trestle, design-build temporary bridges, and installing permanent micropiles.
- A total of four bids was received and opened on November 9, 2010.
- Staff recommends awarding Trade Subcontract TG03 to Balfour Beatty Infrastructure Inc. (“Balfour Beatty”) as the responsible bidder submitting the lowest responsive bid, in the total amount of \$187,251,070. Said amount includes a base bid plus a \$500,000 allowance for Muni OCS Work, and a \$2,000,000 allowance for Water Discharge Fees for Dewatering Operations.
- Balfour Beatty made good faith efforts to meet the goal of 24% Small Business Enterprise (SBE) utilization set for this package. Their bid includes 17.3% SBE participation exceeding the participation achieved by two of the other three bidders. The 17.3% SBE participation in this contract remains consistent with the overall goal of 17% for the Webcor/Obayashi contract.
- This Trade Subcontract will be funded by the American Recovery and Reinvestment Act funding granted to the TJPA by the Federal Railroad Administration.

EXPLANATION:

Scope of Work

The main scope of work is installing a buttress adjacent to the 301 Mission Street building, installing the temporary shoring wall, and installing permanent micropiles. The major items of the work for this package consist of the following elements:

- Buttress Construction
- Temporary Shoring Wall Construction
- Excavation including removal/disposal of hazardous material
- Design, installation, modification, and removal of a Temporary Dewatering System (Design-Build)
- Removal of existing foundations and utilities
- Design, installation, and removal of Temporary Internal Bracings (Design-Build)
- Design, installation and removal of Temporary Access Trestle (Design-Build)
- Design, installation and removal of Temporary Bridges (Design-Build)
- Micropile Construction
- Installation of mud/rat slab

Schedule & Phasing

The Trade Subcontractor is required to meet ten detailed Completion Milestones as specified in the Contract Documents. The milestones were developed to allow a flexible start date for work in each of the four below-grade zones, as the zones become available. Zone availability is dependent upon the completion of utility relocation work, as well as the phased completion of the demolition of the existing terminal building and ramps. Per the Bid Documents, Substantial Completion of this scope of work is scheduled for May 20, 2016, at the completion of removal of the Dewatering System.

Invitation for Bids

The initial Invitation for Bids (IFB) was issued on July 30, 2010, noting that the Engineer's Estimate was \$191,200,000. Seven addenda were issued during the bidding period as necessary to clarify and respond to bidders' questions. The final detailed Engineer's Estimate based upon revised plans and specifications issued via addendum was \$206,500,000.

Bids Received

On November 9, 2010, TJPA received and opened four bids, as follows:

<u>Bidder</u>	<u>Bid Amount (Base Plus Allowances)</u>
1. Balfour Beatty Infrastructure, Inc. 2333 Courage Drive, Suite C Fairfield, CA 94533	\$ 187,251,070
2. Granite/CJA/NCC Joint Venture 585 W. Beach Street Watsonville, CA 95076	\$ 207,756,000
3. Kiewit Infrastructure West Co. 4650 Business Center Drive Fairfield, CA 94534	\$ 219,927,000
4. Tutor-Saliba Corporation 15901 Olden Street Sylmar, CA 91342	\$ 227,776,982

SBE Participation

Balfour Beatty has included Small Business Enterprise (SBE) participation of 17.3% in its contract bid. They made *bona fide* good faith efforts to meet the goal, including:

- attendance at the August 19 pre-bid meeting and SBE networking opportunity, and the SBE workshop facilitated by the TJPA's outreach consultant on October 1
- placing advertisements in five trade and minority-business targeted media over the course of eleven days during the bid period
- contacting 127 SBEs on 529 different occasions via telephone, fax or in-person meeting to solicit bids for work
- hired Eldredge Bid Reporter to conduct additional outreach to the SBE community on their behalf.

Bid Protest

On November 16, 2010, a bid protest was received from Granite/CJA/NCC Joint Venture. The protest raised the following challenges regarding Balfour Beatty's proposal:

- Whether the role of Parsons Brinckerhoff, a subsidiary of Balfour Beatty, as the Program Manager for the California High Speed Rail Authority represented a conflict of interest;
- Whether Balfour Beatty, met the good faith effort in attempting to meet the SBE participation goal; and
- Questioning the completeness and accuracy of the subcontractor listings in Balfour Beatty's proposal.

On November 23, 2010, Balfour Beatty provided a response to the protest, as provided for in the Contract Documents. TJPA and CM/GC staff evaluated Balfour Beatty's proposal, the protest and Balfour Beatty's response and concluded that the points were not valid or substantive. Specifically, TJPA and CM/GC staff concluded:

- Balfour Beatty's ownership of Parsons Brinckerhoff does not create a conflict of interest or competitive advantage. Parsons Brinckerhoff is not under contract with the TJPA and has not had access to special information on the scope, design or construction of the Buttress, Shoring Wall and Excavation package.
- Balfour Beatty made a *bona fide* good faith effort to meet the 24% SBE utilization goal
- That the irregularities in Balfour Beatty's Subcontractor List were minor, independently verifiable, and do not constitute a basis for finding Balfour Beatty's bid nonresponsive.

On November 29, 2010, the TJPA denied the protest from Granite/CJA/NCC Joint Venture and issued a letter of Evaluation and Written Decision.

Funding

This Trade Subcontract will be funded by the American Recovery and Reinvestment Act funding granted to the TJPA by the Federal Railroad Administration.

RECOMMENDATION:

As Balfour Beatty was pre-qualified, CM/GC, TJPA and PMPC staff is satisfied the company possesses the requisite experience to perform the scope of work for this subcontract. Balfour Beatty complied with the instructions to bidders and submitted all required forms and certifications, including certification that it is signatory to a recognized apprenticeship and/or training program under Chapter 4 of the California Code as certified by the State of California Division of Apprenticeship Standards.

Staff recommends that the TJPA Board of Directors authorize amending Contract No. 08-04-CMGC-000, authorizing Webcor/Obayashi Joint Venture to award a Trade Subcontract to Balfour Beatty Infrastructure Inc. as the responsible bidder submitting the lowest responsive bid in the amount of **\$187,251,070** for TG03 - Buttress, Shoring, and Excavation (“BSE”), and thereby increasing authorized Direct Costs under Contract No. 08-04-CMGC-000 (Section 00 05 20 Agreement, ¶5.01B), by \$187,251,070 and increasing the authorized Construction Services Fixed Fee by \$15,354,587.74.

ENCLOSURE:

1. Resolution
2. Contract Amendment

AGREEMENT
AMENDMENT NO. 10
BETWEEN
TRANSBAY JOINT POWERS AUTHORITY
AND
WEBCOR/OBAYASHI, J.V.

THIS AMENDMENT for AGREEMENT is entered into as of the _____ day of _____, 2010 by and between the TRANSBAY JOINT POWERS AUTHORITY ("TJPA") and Webcor/Obayashi, J.V. (the "CM/GC"). By this Amendment No. 10 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. 10. 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 TG03 - Buttress, Shoring, Internal Bracing, Access Trestle, Temporary Bridge, Excavation, Demolition, Dewatering, and Micropiles ("BSE") on July 30, 2010, and received and publicly opened four bids on November 9, 2010.

D. Balfour Beatty Infrastructure Inc. was the responsible bidder submitting the lowest responsive bid in the amount of \$187,251,070, which consists of a Base Bid of \$184,751,070 plus a \$500,000 allowance for Muni OCS Work, and a \$2,000,000 allowance for Water Discharge Fees for Dewatering Operations.

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 \$202,605,657.74 (Trade Package Direct Costs of \$187,251,070 and CM/GC Fixed Fee, calculated at 8.2 percent of Direct Costs, of \$15,354,587.74), and the award of Trade Subcontract No. TG03 to Balfour Beatty Infrastructure Inc. for performance of the construction of Buttress, Shoring, Internal Bracing, Access Trestle, Temporary Bridge, Excavation, Demolition, Dewatering, and Micropiles ("BSE").

2. The detailed scope of work and schedule incorporated by this Amendment is provided in the Contract Bid Documents dated July 30, 2010, and all associated Addenda.

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IN WITNESS WHEREOF, the parties hereto have executed this contract Amendment No. 10 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:

Dennis J. Herrera, City Attorney

By: _____
Deputy City Attorney

WEBCOR/OBAYASHI, JOINT VENTURE

Authorized Signature

Printed Name

Title

**TRANSBAY JOINT POWERS AUTHORITY
BOARD OF DIRECTORS**

Resolution No. _____

WHEREAS, On March 12, 2009, the TJPA awarded a contract to Webcor/Obayashi Joint Venture as Construction Manager/General Contractor ("CM/GC") for the Transbay Transit Center Building and Related Structures (Contract No. 08-04-CMGC-000 (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 Subcontract, (b) authorize the associated increase in allowable Direct Costs under the Contract (Agreement (Section 00 05 20), ¶5.01), and (c) authorize the CM/GC to charge a Construction Services Fixed Fee invoiced at a rate of 8.2% of Direct Costs; and

WHEREAS, On July 30, 2010, the CM/GC advertised for bids for TG03 - Buttress, Shoring, Internal Bracing; Access Trestle, Temporary Bridge; Excavation; Demolition; Dewatering; and Micropiles ("TG03"), which is part of the Transbay Transit Center Program and which involves below grade work necessary to facilitate construction of the Transbay Transit Center/construction of the Transbay Transit Center Building/construction of the Bus Ramps connecting the Transit Center Building to the Bus Storage Facilities and the West Approach to the Oakland-San Francisco Bay Bridge; and

WHEREAS, Under TG03, the Trade Subcontractor will perform the construction of the Buttress, Shoring, Internal Bracing, Temporary Access Trestle, Temporary Bridges, Excavation, Demolition, Dewatering, and Micropiles; and

WHEREAS, On November 9, 2010, four bids were received and opened publicly; and

WHEREAS, CM/GC and TJPA have determined that Balfour Beatty Infrastructure Inc. of Fairfield, California, is the responsible bidder submitting the lowest responsive bid, with a bid of \$187,251,070; and

WHEREAS, The second low bidder, Granite/Condon Johnson-Nicholson, Joint Venture, filed a protest challenging the low bid. TJPA reviewed the protest and issued a written response denying the protest; and

WHEREAS, Granite/Condon Johnson-Nicholson then filed a protest with the Federal Transit Administration ("FTA"), and FTA will issue either a ruling or a determination to decline to review the protest; and

WHEREAS, The TG03 Trade Subcontract shall only be awarded under this resolution subject to FTA's ruling in TJPA's favor on all issues raised in the protest or FTA's determination to decline to review the protest; and

WHEREAS, Funds for this contract are available from American Recovery and Reinvestment Act funding granted to the TJPA by the Federal Railroad Administration; and

WHEREAS, The time allowed for completion of the work under this contract is 2,058 calendar days after issuance of the Notice to Proceed; now, therefore, be it

RESOLVED, That the TJPA Board of Directors authorizes Webcor/Obayashi Joint Venture to award a Trade Subcontract to Balfour Beatty Infrastructure Inc. as the responsible bidder submitting the lowest responsive bid in the amount of \$187,251,070, subject to FTA's ruling in TJPA's favor on all issues raised in the Granite/Condon Johnson-Nicholson protest or FTA's determination to decline to review the protest; and be it

FURTHER RESOLVED, That upon award of TG03, the Trade 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 Subcontract TG03 - Buttress; Shoring; Internal Bracing; Access Trestle, Temporary Bridge; Excavation; Demolition; Dewatering; and Micropiles (BSE), by increasing authorized Direct Costs under Contract No. 08-04-CMGC-000 (Section 00 05 20 Agreement, ¶5.01B), by \$187,251,070, and increasing the authorized Construction Services Fixed Fee by \$15,354,587.74.

I hereby certify that the foregoing resolution was adopted by the Transbay Joint Powers Authority Board of Directors at its meeting of December 9, 2010.

Secretary, Transbay Joint Powers Authority