

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

TRANSBAY JOINT POWERS AUTHORITY

BRIEF DESCRIPTION:

Amending Contract No. 08-04-CMGC-000, authorizing Webcor/Obayashi Joint Venture (CM/GC) to award a Trade Work subcontract to Otis Elevator Company, the sole responsive bidder, for the negotiated amount of \$9,722,000 for TG14.1A: Elevators (TG14.1A). Authorized Direct Costs are thereby increased by \$9,722,000 (negotiated amount less future maintenance), and the authorized Construction Services Fixed Fee increased by \$738,872, under and in accordance with Contract No. 08-04-CMGC-000, Section 00 05 20, ¶5.01B. In addition, awarding the future maintenance contract for an amount not to exceed \$2,160,000 for 14.1A: Elevators, for a term of ten years. Maintenance contract shall be assigned to the TJPA or its designee following Substantial Completion of the Transit Center, and Notice to Proceed on the maintenance phase given at that time.

EXPLANATION:

On November 5, 2013, the CM/GC issued a Request for Qualifications (RFQ) for TG14.1: Elevators and Escalators. On December 12, 2013, five firms responded to the RFQ. On December 20, 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:

- KONE Inc.
- Otis Elevator Company
- Schindler Elevator Corporation
- ThyssenKrupp Elevator Corporation

On January 30, 2014, the TG14.1 package was issued for bid. The TG14.1 Elevators and Escalators package is comprised of two parts: TG14.1A Elevators and TG14.1B Escalators. Bidders were invited to submit bids for either or both parts. Bidders bidding on both parts had the option of offering a discount on the entire package as an incentive to the TJPA. The TJPA reserved the right to select the bidder or bidders whose combined responsive bids provided the TJPA with the overall lowest total price for the completion of all work described in the bid package.

A pre-bid conference was held on February 12, 2014. Five addenda were issued during the bid period to provide clarifications, respond to bidders' questions, and provide updated specifications, drawings and sketches. The addenda are listed below:

- Addendum #1 added the landscape drawings and specifications to all bidding trade packages for general reference.
- Addendum #2 added the elevator and escalator maintenance scope of work to the base contract bid rather than being an additive alternate to the base contract bid price. This was done to encourage bidders and to guarantee that the manufacturer of the elevators and escalators would be the maintaining this equipment after installation. The bid date was also changed from April 8 to May 15, 2014.
- Addendum #3 deleted Elevator PE203 from the scope of work. The deferral of Elevator PE203 was a value engineering (VE) decision to reduce the overall project budget for Phase I. This elevator provides access to the lower level concourse for the SFPD, which the SFPD agreed could be deferred until Phase II.
- Addendum #4 extended the bid date from May 15 to May 21, to accommodate a bidder's request for additional time.
- Addendum #5 was an administrative addendum to officially incorporate responses to questions provided during bidding into the Contract Documents.

The scope of work under this package includes furnishing and installing twelve elevators and nineteen escalators. The major items of work for this package consist of the following:

- Furnish and install elevators and escalators
- Commission elevators and escalators
- Provide maintenance prior to substantial completion for any elevators used during construction (escalators cannot be used during construction)
- Provide a six-year maintenance contract for elevators and escalators after substantial completion per Specification Section 14 01 00

The scope of work also 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.

Following a standard industry best practice, the Trade Work subcontract includes a provision for the selected Trade Work Subcontractor to maintain the elevators and escalators for an initial term of six years following Substantial Completion of the Transit Center. This future maintenance is a line item in the base bid; thus, the TJPA factored in the cost of future maintenance in determining the lowest responsive bid. While this contract modification will award the future maintenance contracts, those contracts will be given notices to proceed subsequent to substantial completion, and funded out of the Transit Center operating budget. At that time, the maintenance contracts would be assigned from the CM/GC to TJPA or a designee, such as a facility manager.

Bidders had the option of submitting VE proposals prior to the bid date. One VE proposal was received for elevators, to change two service elevators from overhead "gearless" machines to overhead "geared" machines. The proposed savings were \$150,000 per elevator, \$300,000 total.

However, the design team specified gearless equipment because geared equipment is being phased out of the elevator industry. The design team was also concerned about the impacts of this change on other building elements that have already been designed or are part of trade subcontracts already awarded. Furthermore, the costs to redesign or change the design to a geared machine would negate a portion of the offered cost savings.

To ensure the best value for the bid scope, TJPA included in the package several deductive alternates that are a part of the total bid, and thus were factors in determining the lowest responsible bid. Deductive Alternate No. 13 defers the installation of service elevator SE201 (one of two service elevators serving the Lower Concourse) until Phase 2 when the Lower Concourse and Train Platform levels will be operational. Deductive Alternate No. 14 allows for the use of the manufacturer’s standard passenger elevator stainless steel cab finishes in lieu of customized stainless steel wall and ceiling panels detailed by the architect. Additive Alternate No. 22 increases the size of the glass in the interior and exterior elevator doors for added safety and security.

On May 21, 2014, one bid was received from Otis Elevator Company (Otis) for TG14.1A, Elevators:

Bidder Name	Otis Elevator Company
Base Bid to Furnish and Install Elevators	\$12,325,000
Deduct Alt No. 13: Defer installation of Service Elevator SE201	\$(1,525,000)
Deduct Alt No. 14: Manufacturer’s standard cab finishes in lieu of custom	\$(150,000)
Add Alt No. 22: Increase glass size in elevator doors	\$0
Base Bid Less Alternates 13 and 14	\$10,650,000
Maintenance of Elevators after Substantial Completion (6 years)	\$3,600,000
Total Bid Including Alternates and Maintenance	\$14,250,000

Otis submitted a discounted bid of \$22,500,000 for the combined scopes of elevators and escalators, including future maintenance. The bid did not indicate how much of the discounted price was attributable to construction versus future maintenance. However, because Otis indicated that its escalators, manufactured in China, would not comply with Buy America regulations, TJPA deemed the TG14.1B part of the bid unresponsive, and therefore was not able to consider Otis’ discounted price.

Otis’ submitted the sole bid for elevators, based on the total bid amount of \$10,650,000, which is the amount of the base bid, less deductive alternates (\$1,675,000) and future maintenance (\$3,600,000). Otis’ bid included no Small Business Enterprise (SBE) participation, not meeting the 5% SBE goal on this package. According to the CM/GC, Otis attempted to find local unionized elevator SBE subcontractors that met Otis Elevator Company's technical and financial qualifications but were unsuccessful in finding a suitable SBE subcontractor for the size and duration of the Project.

The bids for elevators (Otis) and escalators (Schindler) combined were 47 percent over the CM/GC estimate and the bid prices could not be determined to be fair and reasonable. On June 12, 2014, the TJPA Board authorized staff to negotiate a reasonable price with the sole bidders, Otis for Trade Package TG14.1A and Schindler for Trade Package TG14.1B.

Representatives from the TJPA, CM/GC, CMO, and PMPC entered into negotiations with Otis, which were completed on July 3. The negotiations resulted in reductions of the offer amount from Otis as detailed below:

Cost Reductions:

Eliminate off-site storage costs and provide room for on-site storage	\$115,000
CM/GC to provide traffic control through existing contract	\$ 24,000
Provide standard Otis Gen2 elevator cab shell	\$175,000
Eliminate off-site elevator cab mock-up	\$ 24,000
CM/GC to provide survey information through existing contract	\$ 12,000
Delete requirement for specific scheduling software and use existing software	\$ 5,000
Installation of embeds to be done by other trade subcontractor with oversight by CM/GC and Otis	\$ 73,000
Reduction from full-time on-site project manager to shared project manager*	\$200,000
Reduction from dedicated safety representative to use of Otis site superintendent**	\$300,000
Total Negotiated Cost Reductions	\$928,000

*Full time on-site project manager is not necessary for the duration of the work. Reduction reflects appropriate project management as confirmed by the CM/GC.

** Crew size of 3-4 mechanics does not require a full time dedicated safety representative. Safety responsibility will be with Otis site superintendent with oversight by CM/GC. Only crew sizes in excess of 30 requires a dedicated safety representative per bid manual.

The \$928,000 reduces the total bid price to \$9,722,000. In addition, the annual cost for the maintenance agreement was reduced from \$600,000 per year to \$216,000 per year. This reduction is in part for deleting the requirement to provide a full-time on-site maintenance representative and instead providing a maintenance staffing level consistent with manufacturer recommendation and industry practice for transit facilities. A further discount was offered for extending the term of the maintenance agreement from six years to ten years.

TJPA's budget for TG14.1A is \$5,793,566 (which includes \$4,482 in design contingency and \$586,898 in escalation), and the CM/GC's estimate is \$6,747,737. Both exclude maintenance costs, which will be funded from future operational budgets. Consistent with the construction cost update mitigation plan presented to the Board at the May 8, 2014 Board meeting, the \$3,928,434 balance between the awarded amount and the current TG14.1A budget will be funded by using Program Reserve. The current available Program Reserve funding is \$46,960,101. After the award of TG14.1A, the remaining funding balance in the Program Reserve will be \$43,031,667.

The negotiated price with Otis is fair and reasonable. The major driver of the cost difference between the budget, CM/GC's estimate, and the negotiated price is the current active

construction market in San Francisco and parts of the Bay Area, and Buy America requirements, which are limiting the pool of bidders and significantly increasing construction costs.

On May 29, 2014, the TJPA received a protest from Schindler regarding the bid submitted by Otis on TG 14.1-Elevators and Escalators. Schindler's protest contended that Otis' combined bid for elevators and escalators was non-responsive on the basis that: (1) it did not comply with the federal Buy America Act; and (2) it did not meet SBE goals nor establish good faith efforts to meet SBE goals. Prior to receipt of the protest, the TJPA had independently determined that Otis' bid for TG 14.1-Elevators and Escalators was non-responsive on the basis that it failed to comply with the Buy America Act. On this basis alone, the protest was rendered moot. Therefore, in response to the protest, the TJPA informed Schindler that Otis' bid has been deemed non-responsive and would not be considered by the TJPA.

This Trade Work subcontract is anticipated to be funded by land sales. Future maintenance will be funded through operational grants and revenues.

RECOMMENDATION:

TJPA staff recommends that the TJPA Board authorize amending Contract No. 08-04-CMGC-000, authorizing Webcor/Obayashi Joint Venture (CM/GC) to award a Trade Work subcontract to Otis Elevator Company, the sole responsive bidder, for the negotiated amount of \$9,722,000 for TG14.1A: Elevators (TG14.1A). Authorized Direct Costs are thereby increased by \$9,722,000 (negotiated amount less future maintenance), and the authorized Construction Services Fixed Fee increased by \$738,872, under and in accordance with Contract No. 08-04-CMGC-000, Section 00 05 20, ¶5.01B; and the future maintenance contract is also awarded for an amount not to exceed \$2,160,000 for TG14.1A: Elevators, for a term of ten years. The maintenance contract shall be assigned to the TJPA or its designee following Substantial Completion of the Transit Center, and Notice to Proceed on the maintenance phase will be given at that time.

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 (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 TG14.1 Elevators and Escalators Package (TG14.1) for the entire Transbay Transit Center Program to furnish, install and maintain the elevators and escalators in accordance with the Contract Documents; and

WHEREAS, Under TG14.1A the Trade Subcontractor will perform all elevator construction, commissioning, and maintenance related activities for the entire Transbay Transit Center Program; and

WHEREAS, On May 21, 2014, only one responsive bid was received for TG14.1A and only one responsive bid was received for TG14.1B, each substantially over the engineer's estimate and at a price that could not be determined to be fair and reasonable; and

WHEREAS, On June 12, 2014, the TJPA Board authorized the Executive Director to enter into price negotiations with the CM/GC and Otis Elevator Company for TG14.1A Elevators, and the CM/GC and Schindler Elevator Corporation for TG14.1B Escalators; and

WHEREAS, The TJPA, CM/GC and Otis Elevator Company negotiated a fair and reasonable price for TG14.1A, in the amount of \$9,722,000; and

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

RESOLVED, That the TJPA Board of Directors authorizes the CM/GC to execute a Trade Work subcontract for TG14.1A Elevators with Otis Elevator Company in the amount of \$9,722,000; and be it

FURTHER RESOLVED, That upon award of the Trade Work subcontract to Otis Elevator Company, 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 Otis Elevator Company for TG14.1A by increasing authorized Direct Costs by \$9,722,000, and increasing the authorized Construction Services Fixed Fee by \$738,872 under and in accordance with Contract No. 08-04-CMGC-000, Section 00 05 20, ¶5.01B; and be it

FURTHER RESOLVED, That the TJPA Board of Directors authorizes the award of the future elevator maintenance contract for TG14.1A to Otis Elevator Company for an amount not to exceed \$2,160,000 for a period of ten years following Transit Center Substantial Completion and the assignment of the maintenance contract from CM/GC to the TJPA or its designee under and in accordance with Contract No. 08-04-CMGC-000, Section 00 07 00, ¶4.03A.2.

I hereby certify that the foregoing resolution was adopted by the Transbay Joint Powers Authority Board of Directors at its meeting of July 10, 2014.

Secretary, Transbay Joint Powers Authority

AGREEMENT
AMENDMENT NO. 36
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. 36 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. 36. 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 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 TG14.1 Elevators and Escalators package on January 30, 2014.

D. Trade Package TG14.1 consists of two parts: TG14.1A Elevators and TG14.1B Escalators.

E. On May 21, 2014, only one responsive bid was received for TG14.1A and only one responsive bid was received for TG14.1B, each substantially over the engineer's estimate and at a price that could not be determined to be fair and reasonable.

F. On June 12, 2014, the TJPA Board authorized staff to negotiate a fair and reasonable price with each of the sole bidders.

G. Otis Elevator Company negotiated a fair and reasonable price for TG14.1A Elevators in the amount of \$9,722,000 and was subsequently determined to be the sole responsive bidder to TG14.1A.

H. The Trade Work Subcontract for TG14.1A includes a ten-year maintenance contract for an amount not to exceed \$2,160,000 following substantial completion of the work.

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 \$10,460,872 (Trade Package Direct Costs of \$9,722,000 and CM/GC Fixed Fee, calculated at 7.6 percent of Direct Costs, of \$738,872) and the award of Trade Subcontract No. TG14.1A Elevators to Otis Elevator Company for performance of the construction of TG14.1A Elevators. The cost of the ten-year maintenance contract following substantial completion of the work is not reflected in the Trade Package Direct Costs.

2. By this Amendment, the TJPA further authorizes the CM/GC to enter into a ten (10) year future maintenance contract for an amount not to exceed \$2,160,000 with Otis Elevator Company to be assigned to the TJPA, or its designee, and to commence upon substantial completion of the Project.

3. The detailed scope of work and schedule incorporated by this Amendment is provided in the Contract Documents dated January 23, 2014, and all associated Addenda.

IN WITNESS WHEREOF, the parties hereto have executed this contract Amendment No. 36 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