

**STAFF REPORT FOR CALENDAR ITEM NO.: 9
FOR THE MEETING OF: February 12, 2015**

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 McKendry Door Sales, Inc. (McKendry) as the responsible bidder submitting the lowest responsive bid in the amount of \$1,599,999 for TG08.9: Roll-up Doors and Grilles (TG08.9R), thereby increasing authorized Direct Costs by \$1,599,999, and increasing the authorized Construction Services Fixed Fee by \$121,600, under and in accordance with Contract No. 08-04-CMGC-000, Section 00 05 20, ¶5.01B.

EXPLANATION:

On June 3, 2014, the CM/GC issued a Request for Qualifications (RFQ) for TG08.9. On July 8, 2014, eight firms responded to the RFQ. On July 17, 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:

- Barton Overhead Door, Inc.
- B.T. Mancini Co., Inc.
- CCDS, Inc. dba Industrial Door Company
- McKendry Door Sales, Inc.
- Smoke Guard California, Inc.
- United California Glass & Door

On September 30, 2014, the TG08.9 package was issued for bid. A pre-bid conference was held on October 21, 2014. One addendum to TG08.9 was issued during the bid period to officially incorporate into the Contract Documents all responses to TG08.9 bidders' questions during the bid period.

On December 11, 2014, two bids were received, opened and evaluated. One bidder, Smoke Guard California, Inc. (Smoke Guard) included several material qualifications and exclusions in its bid that were contrary to the terms of the bid documents; this rendered Smoke Guard's bid non-responsive. The second bidder's bid (United California Glass & Door) was significantly higher than the CM/GC's estimate and budget. A third bid package sent via delivery service arrived after the bid submission deadline and was not accepted. As a result, the CM/GC, in consultation with the TJPA, made a determination to reissue the package.

On January 6, 2015, TG08.9R was issued for bid. Two addenda to TG08.9R were issued during the bid period. The addenda are described below:

- Addendum #1 was an administrative addendum to extend the bid date one week, to January 27, 2015, to allow sufficient time to respond to bidders' questions and post them on the TJPA's website.
- Addendum #2 was an administrative addendum to officially incorporate into the Contract Documents all responses to TG08.9R bidders' questions during the bid period.

The major items of work for this package consist of designing, fabricating, and installing the following:

- automatic smoke and fire curtains
- power operated overhead coiling grilles to secure areas
- power operated overhead coiling doors, both fire-rated and non-rated

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.

No deductive or additive alternates were included in the bid documents. Bidders had the option of submitting value engineering (VE) proposals prior to the bid date. No VE proposals were submitted. On January 27, 2015, three bids were received, opened, and evaluated. Below is a summary of the bid results:

	McKendry Door Sales, Inc.	Smoke Guard California, Inc.	United California Glass & Door
Base Bid Amount	\$1,599,999	\$1,799,000	\$2,057,186

McKendry submitted the lowest responsive bid based on its Base Bid Amount of \$1,599,999. McKendry is a Small Business Enterprise (SBE) and its bid includes 73% SBE participation, significantly exceeding the 10% SBE goal on the package.

TJPA's budget for TG08.9R is \$1,594,173 (which includes \$16,250 in design contingency and \$142,651 in escalation), and the CM/GC's estimate is \$1,773,063. The \$5,826 balance between the awarded amount and the current TG08.9R budget will be covered using savings from Trade Package TG16.8 Fireproofing, which was awarded in October 2014 and came in \$229,681 under budget.

On February 2, 2015, the TJPA received a bid protest from United California Glass & Door, the third lowest bidder for TG8.9R, to the bids submitted by McKendry and Smoke Guard. 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 United California Glass & Door's bid protest on February 4, 2015. The TJPA also forwarded United California Glass & Door's protest to McKendry and Smoke Guard and requested them to provide written responses. McKendry submitted its written response on February 4, 2015. Smoke Guard submitted its written response on February 5, 2015. McKendry and Smoke Guard

disagreed with and specifically addressed each issue raised by United California Glass & Door's bid protest. McKendry and Smoke Guard's responses will be incorporated, to the extent necessary, in the TJPA's written response to the bid protest.

In its bid protest, United California Glass & Door contends that: (1) the bids submitted by McKendry and Smoke Guard are not responsive because the scope of work set forth in TG8.9R required a C10 electrical license and neither McKendry and Smoke Guard have such a license, nor did they list a subcontractor with such a license; and (2) McKendry and Smoke Guard did not include the full scope of work in their bids. Counsel for the TJPA has reviewed United California Glass & Door's bid protest, and based on the evidence currently available, finds it to be without merit for the following reasons:

(1) During the prequalification process, W/O determined that McKendry and Smoke Guard possessed the appropriate contractor's license, a D-28 license, required to perform the scope of work set forth in TG8.9R and were therefore qualified to bid on TG8.9R. With a D-28 license, a contractor may install, modify or repair all types of commercial or industrial doors including overhead and sliding door assemblies. Any incidental or supplemental electrical work may be performed by the contractor holding a D-28 license or a subcontractor. The major items of work for this trade package consisted of designing, fabricating, and installing the automatic smoke and fire curtains, power operated overhead coiling grilles to secure areas, and power operated overhead coiling doors, both fire-rated and non-rated. The electrical work associated with this package was incidental and supplemental to the major items of work. Therefore, the scope of work set forth in TG8.9R could be performed with the contractor's licenses held by McKendry and Smoke Guard.

(2) There is no evidence to support United California Glass & Door's assertion that McKendry and Smoke Guard did not include the full scope of work in their bids. McKendry and Smoke Guard's Schedule of Bid Prices includes a bid price for each line item. In their written responses, McKendry and Smoke Guard also confirmed that their bids included the full scope of work.

In advance of this Board meeting, a written response will be sent to United California Glass & Door formally denying its bid protest.

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 McKendry as the responsible bidder submitting the lowest responsive bid in the amount of \$1,599,999 for TG08.9R: Roll-up Doors and Grilles, thereby increasing the authorized Direct Costs by \$1,599,999, and increasing the authorized Construction Services Fixed Fee by \$121,600, 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 6, 2015, the CM/GC issued an Invitation for Bids for TG08.9R: Roll-up Doors and Grilles (TG08.9R) for the Transbay Transit Center Program to construct the Roll-up Doors and Grilles in accordance with the Contract Documents; and

WHEREAS, Under TG08.9R, the Trade Subcontractor will perform all Roll-up Doors and Grilles construction-related activities for the Transbay Transit Center; and

WHEREAS, On January 27, 2015, three bids were received and opened publicly; and,

WHEREAS, CM/GC and TJPA have determined that McKendry Door Sales, Inc. (McKendry) is the responsible bidder submitting the lowest responsive bid, with a Base Bid Amount of \$1,599,999; and

WHEREAS, Funds for this Trade Work Subcontract are available from interim bridge financing funds; now, therefore, be it

RESOLVED, That the TJPA Board of Directors authorizes the CM/GC to execute a Trade Work Subcontract for TG08.9R with McKendry as the responsible bidder submitting the lowest responsive bid in the contract amount of \$1,599,999; and be it

FURTHER RESOLVED, That upon award of the Trade Work Subcontract to McKendry, 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 the Trade Work Subcontract awarded to McKendry for TG08.9R by increasing authorized Direct Costs by \$1,599,999, and increasing the authorized Construction Services Fixed Fee by \$121,600 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 February 12, 2015.

Secretary, Transbay Joint Powers Authority

AGREEMENT
AMENDMENT NO. 47
BETWEEN
TRANSBAY JOINT POWERS AUTHORITY
AND
WEBCOR/OBAYASHI JOINT VENTURE

THIS AMENDMENT for AGREEMENT is entered into as of the 12th day of February, 2015, by and between the TRANSBAY JOINT POWERS AUTHORITY (TJPA) and Webcor/Obayashi Joint Venture (CM/GC). By this Amendment No. 47, 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. 47. 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, 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 TG08.9R: Roll-up Doors and Grilles package on January 6, 2015, and received and publicly opened three bids on January 27, 2015.

D. McKendry Door Sales, Inc., was the responsible bidder submitting the lowest responsive bid in the amount of \$1,599,999.

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 \$1,721,599 (Trade Package Direct Costs of \$1,599,999 and CM/GC Fixed Fee, calculated at 7.6 percent of Direct Costs, of \$121,600) and the award of Trade Subcontract No. TG08.9R to McKendry Door Sales, Inc., for performance of the construction of TG08.9R Roll-up Doors and Grilles.

2. The detailed scope of work and schedule incorporated by this Amendment is provided in the Contract Documents dated March 31, 2014, and all associated Addenda.

IN WITNESS WHEREOF, the parties hereto have executed this contract Amendment No. 47 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