

STAFF REPORT FOR CALENDAR ITEM NO.: 12
FOR THE MEETING OF: June 9, 2016

TRANSBAY JOINT POWERS AUTHORITY

BRIEF DESCRIPTION:

Authorize the Director of Design & Construction for the Transbay Transit Center, SF Public Works, to execute Amendment No. 4 to the Professional Services Agreement between the Transbay Joint Powers Authority (TJPA) and Turner Construction Company (Turner). Amendment No. 4 provides for the following: 1) an increase in the contract amount from \$57,180,000 to a total of \$72,500,000, 2) extends the length of the contract two years to June 30, 2018, and 3) reduces the allowable fee from 9% to 7% beyond June 30, 2016.

SUMMARY AND HISTORY:

On January 15, 2010, the TJPA issued a Request for Proposals (RFP) for Construction Management Oversight (CMO) Services for the Transbay Transit Center and Related Structures (the "Project"). The RFP set forth the services to be performed by the CMO contractor, which involved essentially serving as the TJPA's "eyes and ears" on the jobsite during construction by monitoring and documenting the progress of the CM/GC (who is responsible for coordinating and managing the actual construction). In its role, the CMO contractor is also responsible for providing project communication, documentation, record keeping, cost and schedule management, technical support, environmental monitoring oversight, coordination with other agencies, administration of the CM/GC and demolition contracts, progress reporting, and quality assurance services (testing and inspection). These services are necessary for any construction project. On a federally funded project, these services must be performed by a contractor that is independent of the contractor performing the construction work.

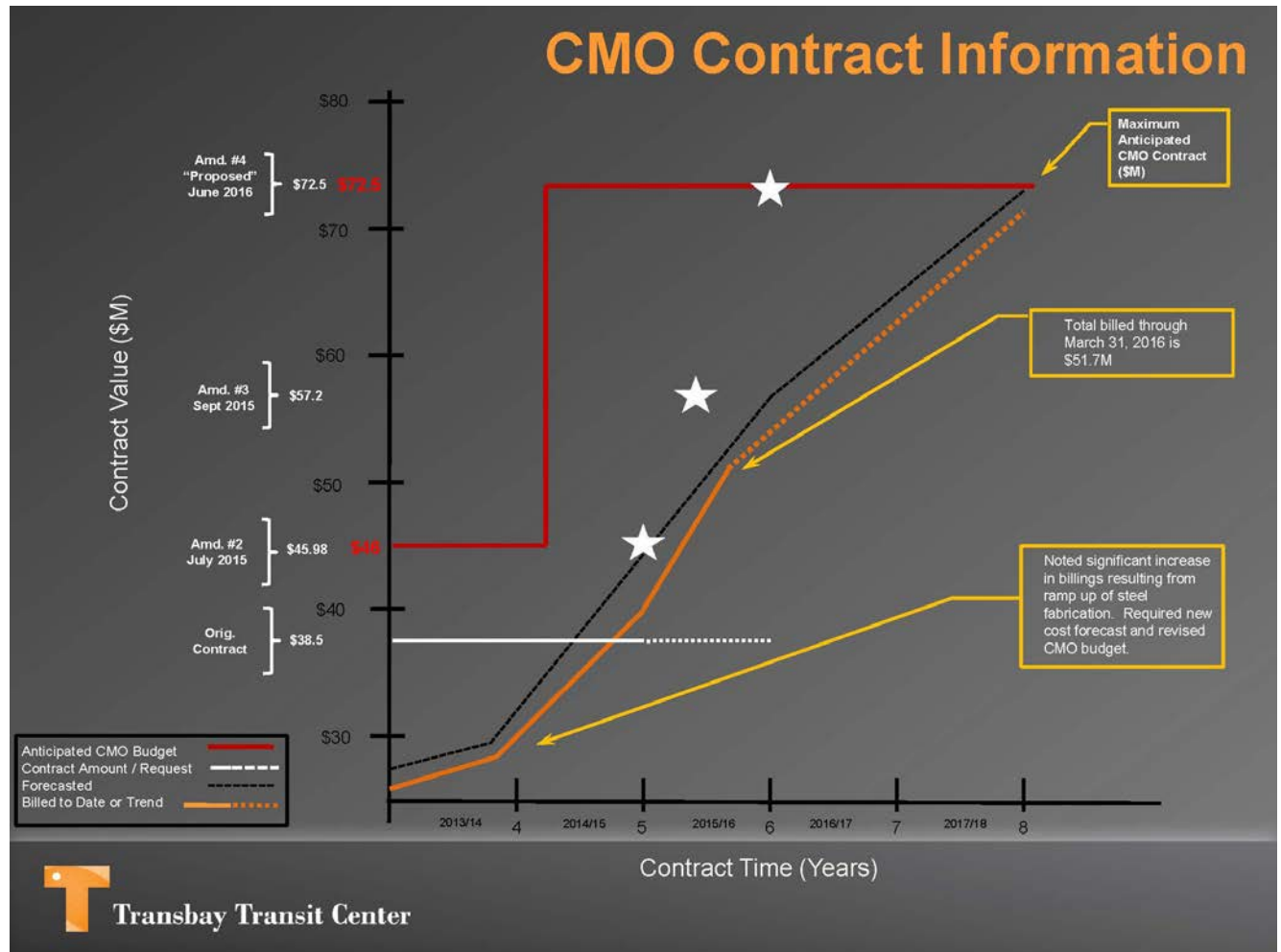
On February 19, 2010, the TJPA received six proposals in response to the RFP. A selection committee evaluated the written proposals for technical merit. Based on the selection committee's evaluation scores, the TJPA invited four firms for interviews. Following the interviews, the selection committee ranked Turner the highest, determining that it was the best qualified to perform the required services.

On June 10, 2010, following the aforementioned competitive procurement process and contract negotiations, the TJPA Board of Directors authorized the Executive Director to execute the Professional Services Agreement ("Agreement") with Turner to provide CMO services for the Project. Under the Agreement, Turner is responsible for providing construction management oversight of the demolition of the former Transbay Terminal and roadway ramps (complete), the relocation of utilities, and the construction of the new Transbay Transit Center and Bus Ramp. Specifically, Turner's CMO services include: preconstruction surveys, project communications, meetings/meeting minutes, recordkeeping, progress reporting on a daily basis as needed and on a monthly basis as required, quality assurance/quality control, document control, cost control support, schedule support, inspection and testing, technical support, environmental monitoring, coordination with other agencies and affected entities, and project closeout.

The original Agreement has a term of six years and may be extended for an additional three one-year periods. Note that this contract was entered into prior to the official incorporation of the train box into the Phase 1 schedule. The term of the Agreement currently expires on June 27, 2016. The fixed fee amount for the original term of the Agreement was \$38,500,000.

Amendment No. 1 to the Agreement was executed on July 1, 2014 to revise Appendix B, Calculation of Charges, in order to update the Base Hourly Rate for Turner's staff.

Pursuant to the previously approved July 2013 Phase 1 Program Budget, a total of \$45,980,000 was allocated for Turner. This increase of \$7,480,000 covered certain costs associated with the additional off-site inspection services, as described below, and Amendment No. 2 to the Agreement was executed on July 10, 2015. In September 2015, the Board authorized a further interim increase to the Turner contract to \$57,180,000 in Amendment No. 3. It was noted at that time that the ultimate Turner increase, to an anticipated \$72,700,000, would be brought to the Board for approval when the final Phase 1 Program Budget was presented. The following graphic depicts the contract history. The interim amendments in 2015 were necessary to avoid impacts to the CMO while the program budget issues were being resolved.



COST DRIVERS:

An increase in Turner's fixed fee amount has been necessitated by the additional off-site special inspection services that Turner has been required to perform. The additional off-site special inspection services were caused by increased hours of production on multiple work shifts, multiple production locations and gathering of test data and quality records associated with the steel superstructure subtrade package (TG 7.1R). Additional inspection services consist of special certified welding inspections at multiple off-site locations throughout the country that covered steel manufacturing production schedules that ran 24 hours, seven days a week.

The steel superstructure for the building is comprised of steel columns and frames located in the lower concourse to the roof levels. The design team specified the International Building Code (IBC) and American Welding Society (AWS) Code as the minimum code requirements for level 1 (visual) welding inspection. The design team also specified the American Institute of Steel Construction (AISC), AISC 341, to cover minimum Non Destructive Testing (NDT) requirements. The PMPC's risk, vulnerability, and assessment team members and security subject matter experts validated the design team's design and specified requirements for steel superstructure components. Therefore, per the Contract Documents, all steel fabrication required inspection at all times and at all locations by a qualified special inspector, familiar and trained in welding and steel fabrication requirements (Quality Assurance representative). The quality and inspection requirements were appropriate based on project specific design criteria and safety and security criteria.

Special inspection for welding and steel fabrication was performed by technicians at prevailing wages. The amount of inspection hours and coverage was determined and closely linked to the contractor's production schedule, location and size of facility and complexity of steel elements. Based on the available construction scheduling information and before the steel superstructure package was awarded, Turner originally assumed that off-site special inspections would require 8-hour daily shifts, steel fabrication would occur Mondays through Fridays (five days per week), two shifts per day and inspections at two fabrication shops with limited extended hours. Based on the aforementioned assumptions, steel fabrication shop inspections were estimated as 1,460 hours per month. However, actual steel fabrication shop inspections surpassed the original estimate. For example, work shifts for steel fabrication were ten hours rather than eight hours, and work weeks were seven days rather than five days. Work shifts overlapped and were not necessarily in the same areas or locations within a single facility. Furthermore, there were seven fabrication shops rather than two. Each of the seven fabrication locations divided specific work into differing areas and shift times, and each location and shift required dedicated inspection staff. The locations were geographically spread apart and therefore, special inspection staff could not monitor two or more locations within the same work shift or area. For example, Oregon Iron Works located in Clackamas, Oregon, split fabrication of girders and basket columns into two separate fabrication locations. XKT Engineering located in Vallejo, California, fabricated cruciform Seismic load resisting system (SLRS) vertical members and light columns in separate locations. The Herrick Corporation located in San Bernardino, California, and Fresno, California fabricated WF shaped interior steel members and SLRS members in separate locations and shifts. Transfer girders were fabricated in the Thompson Metal Fabrication site in Vancouver, Washington. Star Seismic, located in Salt Lake City, Utah, fabricated seismic braced frames.

Based on the actual working conditions of the fabrication shops, off-site special inspection services averaged 3,396 hours per month rather than the previously estimated 1,460 hours per month.

Moreover, the increased complexity and rigor of the steel design that was increased after the original Turner assumptions were formulated also contributed to extending fabrication durations and production times. All of the structural steel members and connections for the new Transbay Transit Center are heavier and thicker than used in comparable conventional building design for steel due to the enhanced seismic as well as risk and vulnerability criteria. The increased steel member sizes and thickness require more welding passes (time) to join members and produce steel fabrication components. Therefore, the built up steel sections require additional inspections than originally assumed during the construction planning and additional inspections than were contemplated by the Agreement.

In addition, fabrication and production time of the steel were exacerbated by the fact that some steel sections had to be redesigned post-bid to comply with the requirements of Buy America. Certain steel sections were no longer available in the United States and were redesigned to accommodate the domestic fabrication shops.

In addition to the additional off-site inspection services, the increase in the fixed fee amount is necessary due to additional CMO support for the ongoing second and third shifts of work, waterproofing inspection, claims resolution and partnering. These items were not part of the original Scope of Services under the Agreement. However, these items were necessary for the Project. Additional CMO support for the ongoing second and third shifts provides an extra set of eyes onsite during the later shifts to ensure that there are no issues with the neighborhood regarding noise and safety. Enhanced waterproofing inspection has also been included due to the importance of the product to the Project. Turner has had a vital role in claims resolution over the last two years as evidenced by the fact that there are currently no certified claims. Finally, partnering was added to assist the delivery of this very complex project with multiple stakeholders and interests. Partnering assists in the process of all the parties working for the best interest of the Project.

CONCLUSION:

For the reasons set forth above, the TJPA will present a revised budget in June 2016 that includes a CMO fixed fee of \$72,500,000. Along with the increase in the fixed fee, Amendment No. 4 will extend the term of the Agreement by two years so that Turner may continue to perform CMO services until Phase 1 construction of the Project is complete. The Phase 1 schedule for substantial completion of the Transit Center is December 2017 and the final Transit Center commissioning is Spring 2018.

As part of negotiations for this Amendment No. 4, Turner agreed to reduce the fee percentage charged from 9% down to 7% effective July 1, 2016. This has slightly reduced the increase sought in the revised Phase 1 Program Budget, by \$200,000.

The CMO RFP had a Small Business Enterprise (SBE) utilization goal of 35%. Turner exceeded

this goal in its proposal by including multiple certified SBE subcontractors at a level of 39%. Through April 2016, Turner has achieved an SBE utilization of 48%, including Disadvantaged Business Enterprise utilization of 43%.

RECOMMENDATION:

TJPA staff recommends that the TJPA Board authorizes the Director of Design & Construction for the Transbay Transit Center, SF Public Works, to execute Amendment No. 4 to the Professional Services Agreement between Turner and the TJPA to increase the fixed fee by \$15,320,000 to a total amount of \$72,500,000, extend the contract term by two years, and reduce the fee percentage to 7% effective July 1, 2016.

ENCLOSURES:

1. Resolution
2. Amendment

**TRANSBAY JOINT POWERS AUTHORITY
BOARD OF DIRECTORS**

Resolution No. _____

WHEREAS, On June 10, 2010, the Transbay Joint Powers Authority (TJPA) Board of Directors authorized the Executive Director to execute a Professional Services Agreement (Agreement) with Turner Construction Company (Turner) for Construction Management Oversight services for a six year term and a maximum compensation of \$38,500,000, with options to extend the Agreement for three additional one-year periods; and

WHEREAS, On July 1, 2014, the Agreement was amended by Amendment No. 1 mutually agreed upon by the TJPA and by Turner to revise Appendix B, Calculation of Charges, in order to update the Base Hourly Rate for construction management oversight staff; and

WHEREAS, Turner has been providing satisfactory construction management oversight services for the construction of the Transbay Transit Center and Related Structures, which includes independently monitoring and documenting progress by the Construction Manager/General Contractor and its subcontractors performing the construction work; and

WHEREAS, The July 2013 Budget approved by the TJPA Board of Directors included an additional \$7,480,000; and

WHEREAS, On July 9, 2015, the TJPA Board of Directors authorized Amendment No. 2 to the Agreement in order to revise the fixed fee by \$7,480,000, for a total fixed fee of \$45,980,000, consistent with the previously approved July 2013 Budget; and

WHEREAS, On September 10, 2015, the TJPA Board of Directors authorized Amendment No. 3 to the Agreement in order to revise the fixed fee by \$11,200,000, for a total fixed fee of \$57,180,000; and

WHEREAS, Amendment No. 4 to the Agreement specifies (1) an increase in the contract amount by \$15,320,000, for a total fixed fee of \$72,500,000, (2) extends the contract by two years to June 30, 2018 and (3) reduces the fee percentage charged from 9% to 7% beyond June 30, 2016, and

WHEREAS, Such change to the compensation term requires an amendment to the Agreement, but does not change the scope or deliverables under the Agreement; now, therefore, be it

RESOLVED, That the TJPA Board of Directors authorizes the Director of Design & Construction for the Transbay Transit Center, SF Public Works, to execute Amendment No. 4 to the Professional Services Agreement between the TJPA and Turner to increase the fixed fee by \$15,320,000, for a total fixed fee of \$72,500,000, extend the term by two years, and reduce the fee percentage to 7% effective July 1, 2016.

I hereby certify that the foregoing resolution was adopted by the Transbay Joint Powers Authority Board of Directors at its meeting of June 9, 2016.

Secretary, Transbay Joint Powers Authority

**Amendment No. 04 to
Professional Services Agreement between
The Transbay Joint Powers Authority and Turner Construction Company**

THIS Amendment No. 4 to the Professional Services Agreement to provide Construction Management Oversight Services dated June 10, 2010 (“Agreement”) is entered into as of the ____ day of June, 2016 in San Francisco, California, by and between Turner Construction Company (“Contractor”), and the Transbay Joint Powers Authority (“TJPA”).

Recitals

A. On January 15, 2010, the TJPA issued a Request for Proposals (“RFP”) No. 09-08 for Construction Management Oversight (“CMO”) Services for firms or individuals with expertise in construction management of similar facilities.

B. On February 19, 2010, Contractor submitted a proposal in response to TJPA’s RFP, which was reviewed and evaluated by the TJPA’s Selection Committee, which determined the Contractor’s proposal to be the highest-ranked proposal, and TJPA subsequently negotiated a professional services agreement with the Contractor.

C. On June 10, 2010, the TJPA Board of Directors adopted Resolution No. 10-017, which authorized the Executive Director to execute the Agreement with the Contractor for CMO Services for a term not to exceed six years, with the option to extend for three additional one-year periods, and an amount not to exceed \$38,500,000.

D. On July 1, 2014, the TJPA Executive Director executed Amendment No. 1 to the Agreement with the Contractor to revise Appendix B, Calculation of Charges.

E. On July 9, 2015, the TJPA Board authorized the Executive Director to execute Amendment No. 2 to the Agreement with the Contractor to revise Article 5, Compensation, increasing the not-to-exceed amount to \$45,980,000.

F. On September 10, 2015, the TJPA Board authorized the Executive Director to execute Amendment No. 3 to the Agreement with the Contractor to revise Article 5, Compensation, increasing the not-to-exceed amount to \$57,180,000

G. The TJPA and Contractor now desire to amend the Agreement. The sections of the Agreement that are to be amended by this Amendment No. 4 are: Article 2, Term of the Agreement; Article 5, Compensation; and Appendix B, Calculation of Charges.

H. The TJPA and Contractor intend that this Amendment No. 4 to the Agreement comply with the regulations of the United States Department of Transportation (“USDOT”).

Terms and Conditions

Now, therefore, the TJPA and the Contractor agree to amend the following sections of the Agreement to read as follows (*changes are in ~~striketrough~~ and italics*):

Article 2. Term of the Agreement

Subject to Section 1, the term of this Agreement shall be for six years, *plus two years pursuant to the TJPA’s exercise of its option to extend this Agreement for an additional two one-year periods*, from the Effective Date of the Agreement, as described in Section 3 below. *Accordingly, this Agreement shall*

be effective until June 30, 2018, provided that (i) the TJPA shall have the right to extend this Agreement for an additional ~~three one year option periods~~ by providing to the Contractor written notice of such extension on or before the expiration of this Agreement, and (ii) any such extension shall be subject to and conditioned upon the written agreement of the Contractor and the approval of such extension by resolution adopted by the TJPA Board of Directors.

Article 5. Compensation

The Contractor shall perform all services for the Construction Management Oversight of the Project for a Fixed Fee of ~~Fifty seven million, one hundred, eighty thousand dollars and zero cents (\$57,180,000.00)~~ Seventy two million, five hundred thousand and zero cents. (\$72,500,000.00).

Appendix B, Calculation of Charges, subsection A

A. Charges for Services Performed by the Contractor

1. Direct Labor Cost

Contractor has submitted to the TJPA audited individual hourly base salary rates (the "Base Hourly Rate"), attached to this Appendix B as part of Appendix B-1. The TJPA acknowledges and agrees that Base Hourly Rates may be adjusted annually beginning July 1, 2011. The amount of such annual adjustment, if any, is limited to a maximum of the CPI annual percent change increase (San Francisco Bay Area for Urban Wage Earners and Clerical Workers) for the previous calendar year. If the Index declines or shows no increase, Base Hourly Rates shall not increase. Wage rates which are set by a federal or state published scope of work and prevailing wage rate shall be increased in conformance with applicable published increases. In no event shall any Base Hourly Rate *for personnel assigned full time to the project* exceed ~~\$150~~ \$155 per hour. *Part time consultants that the TJPA requests the CMO to add to the team may be billed at rates higher providing appropriate back up is available and prior approval received from the TJPA.*

Contractor and the TJPA have agreed to a negotiated overhead rate of ~~100.28%~~ 115.5% (the "Overhead Rate"). This overhead rate includes all direct and indirect costs of labor for each employee, all general liability insurance costs and all local taxes. In no event shall the TJPA be responsible to the Contractor for the payment of labor or overhead costs in excess of the Base Hourly Rate plus the Overhead Rate. ~~The Overhead Rate shall remain in effect during the entire term of this Agreement, including all extensions.~~

The TJPA shall compensate the Contractor the Base Hourly Rate plus the Overhead Rate multiplied by the number of hours worked in the invoice period. The formula to calculate Direct Labor Costs shall be as follows: ([Base Hourly Rate] + [Overhead Rate]) x number of hours = Direct Labor Costs.

2. Profit and Fee

Contractor shall invoice its profit and fee at a rate of 9% (the "Profit/Fee Rate"), up to an amount not to exceed \$3,465,000, through June 29, 2016. *Thereafter, the Profit/Fee Rate shall be 7%.*

These Profit/Fee Rates shall remain in effect during the entire term of this Agreement, including all extensions. The Contractor may invoice the Profit/Fee rate only on Direct Labor Costs and on no other charge under this Agreement.

Appendix B, Calculation of Charges, Appendix B-1, Contractor's Audited Individual Hourly Base Salary Rates is to be updated as attached.

All other provisions of the Agreement shall remain in full force and effect.

TRANSBAY JOINT POWERS AUTHORITY

TURNER CONSTRUCTION COMPANY

By: Ronald Alameida
Title: Director of Design & Construction
for the Transbay Transit Center,
SF Public Works

By: Lisa A. Ballantyne
Title: Vice President, General Manager
Turner Construction Company
300 Frank H. Ogawa Plaza, Suite 510
Oakland, CA 94612

Transbay Joint Powers Authority
Board of Directors
Resolution No. _____
Adopted: _____
Attest:

Secretary, TJPA Board

Approved as to Form by:

TJPA Legal Counsel

**APPENDIX B-1
CONTRACTOR'S AUDITED INDIVIDUAL HOURLY BASE SALARY RATES**

TURNER CONSTRUCTION CO., INC.		
Position Description / Classification	Revised Base Hourly Rate Range (1840 hours / year***)	
	Low	High**
Sr. Construction Manager / Const. Executive	\$ 130.00	\$ 155.00
Construction Manager - Field	\$ 75.00	\$ 130.00
Construction Manager - Engineering	\$ 65.00	\$ 130.00
Construction Manager - Controls	\$ 75.00	\$ 130.00
Construction Manager - MEPF	\$ 60.00	\$ 90.00
QA Manager	\$ 65.00	\$ 95.00
Assistant CM – Field and Engineering	\$ 30.00	\$ 75.00
Sr. Administration	\$ 30.00	\$ 85.00
Chief Estimator (part time)	\$ 110.00	\$ 130.00
Estimator (part time)	\$ 85.00	\$ 110.00
VDC Manager (part time)	\$ 50.00	\$ 75.00
Project Accountant (part time)	\$ 30.00	\$ 50.00
Accounting Assistant (part time)	\$ 30.00	\$ 40.00
Project Cost Engineer (part time)	\$ 35.00	\$ 55.00
Sr. Administration / IT Support (part time)	\$ 30.00	\$ 85.00
Administration (part time)	\$ 25.00	\$ 45.00
Intern	\$ 20.00	\$ 30.00

**** Maximum rate by contract \$155 per hour.**

***** Full time staff only; rates for part time staff are based on 2080 hours / year.**